

THE
KHOTI SETTLEMENT ACT
BOMBAY ACT I OF 1880.

As Amended By Acts III of 1904 and VIII of 1912.

WITH
A SHORT HISTORICAL SKETCH, EXPLANATORY NOTES,
NOTES OF CASES, KHOTI-RULES, GOVERNMENT
RESOLUTIONS AND ORDERS, REVENUE FORMS,
GLOSSARY, PROCEEDINGS-IN-COUNCIL
AND AN INDEX.



Published with the approval of Government.

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PREFACE.

THIS book ought to have made its appearance in 1911, but it could not be published in time, as Government were then thinking of amending the law relating to transfer of occupancy-tenant's rights. This amendment was subsequently made by Act VIII of 1912. The changes so introduced have been duly noticed and explained in the book.

Act VIII of 1912 was followed shortly after by another Amending Act IV of 1913; but it was passed after this book was carried through the Press. The changes made by the latter Act could not thus be referred to in the body of the book. The text of the Act will however be found printed at the end of the book. The last Amending Act (IV of 1913) does not materially alter the substantive law on the subject. It suggests certain verbal alterations, the principal of these is the substitution of the words 'permanent tenant' and 'permanent tenancy' for the old phrases 'occupancy tenant' and 'right of occupancy' respectively wherever they occur in Act I of 1880.

The amendments that have been made by Acts III of 1904 and VIII of 1912 have been noticed at their proper places and where necessary notes have been added to explain the same. The reported as well as the important unreported cases, and the Government Resolutions and Orders will be found referred to in the book under appropriate headings. To add to the utility of the book, a Short Historical Sketch of the Khots and the Khoti tenure, the

different Revenue Forms in use in the Khoti Districts and a glossary of some of the important terms have also been appended.

This work was undertaken at the desire of the Government of Bombay and the writer is very grateful to them for giving him every facility in editing the same. The writer is also very thankful to H. B. Clayton Esqr. I.C.S. for having carefully gone through the manuscript and for making many valuable suggestions.

HIGH COURT, BOMBAY. }
August 1913. }

A. G. D.

A short Historical Sketch of the Khots and the Khoti Tenure in the Ratnagiri District.

AT a time when it was the rule of the spear or the sword, the Ruling Power for the time being would naturally meet with the difficulty of collecting the Dast or revenue directly from each individual holder of land who happened to cultivate the same. A powerful and influential middleman who would himself settle in the village and expend capital on the improvement of the land, collect rent and be responsible to Government for the revenue of the whole village was deemed a necessity. The Konkan, rugged and hilly as it is, as compared with the rich and fertile soil in the Deccan, could not draw to itself the shifting peasantry to settle therein. Land which could be brought under cultivation was ample, but it required money and also men who could take it up and be responsible for the ever fluctuating demands of Government. Such men were not wanting and the Khots undertook to farm the lands, "induce cultivators from foreign country to settle in the village, bring the village under cultivation and pay Government Revenue".

THE earliest recorded evidence of the existence of the Khoti system is to be met with in certain Sanads issued in the time of Yusuf Adil Shah, the King of Bijapur (1489-1510. A. D.). Many of the Khots south of the Bankot or Savitri river hold Sanads given to them by the Marathas (1670-1760. A. D.), the Moguls (1690-1720. A. D.), or by the Peshwas (1760-1818. A. D.). *Vide* Government Selection CCCCXLVI pages 166-192. But the number of such holders of Sanads does not exceed about $\frac{1}{5}$ th of the whole body of the Ratnagiri Khots. It is possible that others also had had Sanads given to them, but that they are lost or are not forthcoming. So far as the status of the Khot in the Southern Konkan is concerned, the distinction however between a Sanadi and Non-Sanadi Khot is now merely a matter of history, except perhaps in the case of disputes about title to waste and uncultivated lands. (*See* notes to Secs. 41 and 42).

THE earliest recorded Land Revenue Settlement of Ratnagiri owes its origin to the Bijapur King, Yusuf Adil Shah (1489-1510. A. D.). Under this Settlement rice lands were taxed at $\frac{1}{6}$ th of the year's produce payable part in money but most in kind, while hill or Varkas lands were taxed on Autbandi system *i. e.* at a fixed rate per plough. The actual cultivators obtained favourable terms and were assessed at a light rent payable chiefly in kind to the Khots.

ABOUT the middle of the 16th century Shir Shah Soor introduced the system of assessing the Revenue in a *measured area of land* and this system was perfected by Todarmal the financier of Akbar. He divided the soils into three classes and each field was measured by a uniform standard called "Bigha" and assessed according to the quality of the soil. The royal share was fixed at $\frac{1}{3}$ rd of the produce and the Settlement so introduced was to hold good for 10 years. All the extra cesses were abolished and the Rayats had an option to pay the rent in cash or kind.

THE principles of Todarmal's settlement referred to above were adopted throughout the Hindusthan proper *i. e.* the territories North of the Vindhya Range. The Deccan and Konkan however owe their settlement to Malik Amber, the great Ahmednagar minister (1610-1626. A. D.). Malik Amber made settlements direct with the village headmen, who were made hereditary and were responsible for the Government dues. He divided the soils into four classes and fixed the royal share at $\frac{2}{5}$ ths. The rent was payable mostly in kind.

DADOJI KONDDEV was the first to introduce Malik Amber's Bighoti system into the territories of his master Shahaji, father of Shivaji, and this was adopted with some modifications by the latter in the territories administered by him. (1660-1680). Shivaji also fixed the royal share at $\frac{2}{5}$ ths, but the area of the Bigha having been slightly increased, it practically amounted to only a $\frac{1}{3}$ rd of the produce. The Khots, Kulkarnis

Revenue Settlement : (1) Under the Marathas, 1660-1765. A. D.

and others were forbidden from imposing cesses or otherwise interfering with the cultivators.

UNDER Sambhaji (1680-9), however, the administration in general fell into disorder; the revenue was *farmed out* and the royal share was raised to about one-half or two-thirds of the produce. Rajaram tried to mend matters, but part of the district (Suvarnadurga and Anjanvel) had already passed into the hands of the Habshis or Siddis and the Siddis in turn were ousted by the Angriyas in 1744, who practically held the whole of the Ratnagiri District till 1756. Under the Angriyas, new and very onerous taxes were imposed and several fresh cesses came into vogue and the poor rayats were left at the mercy of the Village and District Officers.

THE whole of the District of Ratnagiri came under the Peshwas in 1756, but it was as late as in 1770 that (1) Under the Peshwas, 1765-1818, A. D. Nana Fadnavis ordered the Survey of the Konkan with a view to the settlement of the revenue. Survey was however actually commenced in 1784 by Gangadharpant Bhanu, Subhedar of Rajapur, and was completed principally by the Mamlatdar Parshurampant Patwardhan (1787-8) and Raghunathrao Barve (1788-1794). The Survey and Classification carried on by these officers resembled that followed by Annaji Dattu in the time of Shivaji, but the result of this Pahani or Survey was very carefully recorded in the Survey Register or Pahan Kharda, which gave a record of "the area of all the cultivated lands held by village renters, Khots and peasant-holders, Dharekaris together with the names of the holdings and the assessment of each". (*Vide* Appendix II). The entries in the Pahan Kharda are even to this date treated as authoritative evidence for determining what land is "Dhara land". (*Vide* the Rules under S. 40 cl. b). The Peshwas left the collection of the revenue to the Khots, who engaged to collect the whole grain assessment of the village and deliver the same at the Government Dastans or granaries. In return for this, the Khots were allowed to make what bargains they liked with the peasants who tilled Khoti or village waste land. The Khots had no doubt to meet the ever fluctuating Chads or increased demands of Government, but they could

recoup themselves from the rates and cesses which they were left free to levy from the tenantry.

THE Southern Konkan came under the British Rule in 1817-1818 and ever since that time numerous efforts have been made by the Bombay Government to arrive at a satisfactory solution as to the relation between the Government and Khot on the one hand, and the Khot and the tenant on the other. In the earliest period of the British administration of the District, the Khots were treated as absolute proprietors of their villages and all the cultivators except Dharekaris were regarded as Khots' tenants-at-will. Thus Mr. Pelly (1820) and Mr. Chaplin (1821) both considered that the cultivators, other than the Dharekaris, were nothing better than Uparis or mere tenants—at—sufferance of the Khots. Government also considered that the Khots were like the "smaller zamindars in Bengal" (G. R. 955/28-1-1821); and it was thought that they had no power to limit the Khots' demands over their tenants (Ardhelis). In 1823 it was no doubt proposed, at the instance of Mr. Dunlop, to weaken the power of the Khots by introducing a Survey to ascertain "whether Ardhelis have any right in which Government is entitled to protect them and whether there is any point in assessment beyond which it might restrain the Khot from proceeding towards the Rayats". (*Vide* G. R. 435/25-2-1823). Mr. Dunlop actually asked for sanction of the Government "to the cultivator being allowed to withhold all payments beyond the regular revenue". Government however declined to do so, as it was "neither just nor politic to interfere", particularly in the case of Uparis or Ardhelis who were considered to possess not even a "usufructuary right to the soil which they cultivate". With them, it was thought "unnecessary to interfere by any rule on the part of Government". The only mode it was then thought sufficient to protect them was "by the grant of liberal terms on the part of Government in Kulargi villages which would soon draw off the Ardhelis from the Khots, or force them to grant reasonable terms". (*Vide* G. R. 33/10-1-1825). This attitude of the Bombay Government did not however meet with the approval

(III) Under the
British : (a) 1818-
1828. A. D.

of the Home Government. The Court of Directors thus wrote (4-5-1825), " we can by no means rest satisfied that the interests of the villages or any portion of them should remain without protection against the exaction of such a class of men as the Khots ". The Court further suggested (23-5-1827), that " the demands on the cultivators should be defined and this both for demands on their labour and on their money. Government should effectually interfere to ensure the due limitation as well as the exact definition of the demand ".

As a result, the Survey sanctioned in 1826 was immediately proceeded with in the Taluka of Ratnagiri and
 (b) 1828-1848.A.D. Lt. Dowell, who was deputed to carry out the work, found on the completion of his Survey (1829), that *all* the Ardheli tenants were not merely tenants-at-will of the Khots as theretofore supposed by Government. He found that *some* of them had permanent rights of occupancy and had power to sell or mortgage their lands and that the Khots could demand from them no more than a recognised share of the produce and some additional cesses according to the local usage. Lt. Dowell followed the Peshwa's system of measuring and classifying and also adjusted the assessments, but the settlement, proposed by him, could not be adopted in practice, owing to the difficulty of fixing the Khot's demands.

NUMEROUS complaints having reached Government, between
 1836-1845, against the imposition of certain
 (c) 1848-1858.A.D. taxes and the oppression of the Khots in general, Government had again to direct the Collector " to make a full and searching enquiry into the Khoti system ", and to ascertain, " how much of this system is ancient and legitimate, and how much is modern usurpation ". A correct field Survey and Classification was thought indispensable, and Mr. Coles was placed in charge of the Revenue Survey of the District. (*File* G. R. 2641/10-5-1848). Mr. Coles worked jointly with Captain Wingate, who was then Superintendent of the Revenue Survey. Captain Wingate doubted if the Khot had any " absolute proprietorship of the soil ". He thought that *all* the Khoti culti-

vators were *permanent* tenants and suggested (1851), that Government was competent, to interfere, "in its legislative, if not in its administrative capacity to regulate the relations of the Khot and his Rayats". Government agreed with Captain Wingate and considered that practical effect could not be "given to a settlement in Khoti villages and Kichei (mixed) villages without the aid of legislation, as without it Government could not effectually define the relations inter partes", or "put a limit on the exactions of the Khot for the future". Experimental Survey was accordingly sanctioned, with a view to ascertain to what extent it was desirable "to define or modify the relations of the Khot and his tenants by legislative enactment". (G. R. 10555/8-11-1851). On receiving the report of Lt. Kemball on the result of this Survey, Captain Wingate again pressed on the attention of Government the need of early legislation, "to confer the requisite power on the settling officers", as the rights of the Khot did not exist "beyond the collection of rents and cesses payable by the Rayats in accordance with the custom of the village". He further proposed to make these Rayats the hereditary proprietors of their holdings by compensating the Khots for the loss of their privileges by a percentage payment on the revenues of the village. Government also thought that the rights of the Khot were "limited to the revenues of the village lands and not to amount to a property in the lands themselves". (*Vide* G. R. 1937/31-3-1853). Experimental Survey was accordingly sanctioned at the instance of Captain Wingate in certain selected villages. (*Vide* G. R. 1354/14-3-1854), but it met with no better fate and Government had to suspend all the Survey operations, as they were "satisfied that Survey operations on the plan heretofore attempted ought to have been preceded by legislation, the existing law being, as is now sufficiently manifest wholly inadequate for the purpose". (*Vide* G. R. 1899/23-4-1857).

WITH this end in view, fresh attempt was again made in 1859 (G. R. 1892/19-5-1859). Col. Francis, in charge (d) 1858-1865. A. D. of this Survey, suggested that the settlement to be successful must be based on an agreement, with the Khot *himself* as the superior holder for the revenues of:

the village in the gross. He proposed to afford protection to the Rayats "by giving them a right of occupancy, by depriving the Khot of the power of ejecting his tenants, except by order obtained on petition to the Collector". Thus under Col. Francis's settlement *all* Rayats including tenants-at-will were to have occupancy rights given to them—Dharekaris at Survey rates, the other tenants at terms as agreed on with the Khots, but not higher than one-half or 50 per cent. of the produce. Government accepted Col. Francis's suggestion, but by way of a caution, observed, that in attempting to reform the system of settlement, it was their desire "to adopt rather than overthrow institutions". Government further conceded that they could revise and alter the amount of the Jama only on the occasion of a general Survey and that the Khot had a right to settle with Government and derive profit by sub-letting the land to others. The Rayats, on the other hand, were held entitled to protection from over-exaction on the part of the Khot. Under this settlement, the Khots were to hold their villages at the Survey rates on a lease for *thirty* years, but they had in turn to "give leases for the same period to the *permanent* occupants of Khoti lands, a maximum assessment being fixed beyond which the Khot" could "not be permitted to tax the sub-tenant". The underholders' rights were to be hereditary and under certain restrictions transferable. (*Vide* G. R. 1832/18-5-1860).

CURIOSLY enough Government declined to pass any legislative enactment to legalise the settlement referred to above. Government thought that the Survey operation could be successfully carried on under the Bombay Regulation 17 of 1827, as the Khot was "an occupant" within the meaning of S. 3 of the Regulation and as such he could be compelled to accept such terms as Government thought fit to lay down in the annual *Kabulayats* or agreements of the Khots. (*Vide* G. R. 3765/ 24-8-1861). Thus although by the end of 1860, both Government and their officers had been convinced of the futility of introducing Surveys without legislation, Government in 1861 considered that they had found out an easy way out of the difficulty, "to carry out according to their discretion, a settlement which shall ensure due protection to all parties". Government thought that they had only to insert certain restrictive clauses in

the Khot's Kabulayats and thus compel the Khot to be more moderate in his demands on his tenants. If the Khot proved to be recalcitrant, Government thought that they could raise the revenue fixed in the Kabulayat any year, "to such a pitch as to absorb all his profits and to render the farm no longer worth the holding".

GOVERNMENT however early realised the impracticability of this policy, and it was after all conceded that "it was only fair that the Khots should have the same advantages in regard to *permanency* of tenure as is guaranteed in other surveyed districts". Government also found as before, that any interference by them in their administrative capacity was quite ineffective. An early opportunity was therefore seized to incorporate some provisions, for the settlement of Khoti villages, in the Bombay Survey and Settlement Bill which was then under consideration. Two sections (Secs. 37 & 38) were accordingly inserted in the Act (Bombay Act I of 1865), which whilst recognising the permanency of the Khot's tenure and making it conditional merely on the payment of the Jama, sought to impose some limits on the exactions of the Khot from the tenantry.

AN attempt was again made to introduce Survey Settlement in different parts of the district (1866-73), this time, under a legislative enactment (Act I of 1865). But even this attempt proved abortive, for both the Khot and the tenant grew discontented with the working of the Survey thus newly inaugurated. The Khot was dissatisfied as *all* the cultivators under him without distinction, were entered as holders or *occupants* of the lands held by them in the Survey Records; the tenants began grumbling as the new system of punctual payment of rent, in cash or in kind, with the alternative of a revenue sale for default was found by them to be unduly harsh and obnoxious. The demands of the Khot, however numerous and irksome were felt by them less onerous, as payments could be made to the Khot in and out of season; in cash or in kind or by way of labour. Further the parties concerned grew discontented with the careless demarcation of the Varkas lands but more particularly with the entries of lands held by them as Dhara or Khoti. Numerous

suits were filed by the parties *inter se* and against the Collector and the Survey Officers. In many a case the Khots by way of protest refused to pass any *Kabulayat* at all or to otherwise manage the village. Such villages had perforce to be attached and taken under Government management. The relations between the Khots and the tenants thus continued to be more and more strained and Government had ultimately to appoint a Khoti Commission, consisting of Col. Francis and Messrs. A. K. Nairne, N. G. Sathye and N. B. Gole, to investigate and ascertain the mode of settlement which would satisfy the views of all the parties concerned. (*Vide* G. R. 4983/16-9-1874).

On receiving the report of the Commission, Government found that it was impracticable to arrive at any settlement by mutual consent of the parties. Government, however, ruled as finally settled that the Khot, Sanadi or Non-Sanadi, was "a superior holder" within the meaning of the Survey Act, that he had a right to settle with the Government for the land revenue, that he had "as against the Government the very good and full hereditary and transferable title, analogous to that of a survey occupant", and that he had full rights, subject to the provisions of the Survey Act, over all lands included in his estate which were not encumbered by the rights of the holders subsidiary to his. Government further ruled, that on the lapse of such rights the lands affected by them would lapse to the Khot and not to Government. It was thus made clear that the only person who could legally claim to be "a survey occupant" was the Khot himself and that all the other cultivators, whether a *Dharekari* or an occupancy-tenant, were no more to be regarded as "survey occupants" holding from Government, but as *tenants* holding on certain terms from the Khot. All the old tenants of Khoti lands, on the other hand, who had continuously cultivated at least for 20 years prior to 1865, were not to be regarded as mere tenants-at-will, but were to have secured to them full hereditary rights of occupancy, conditional on their payment of rent—customary or as fixed by agreement. It should also be noted that Government did not then think, that it was in the real interests of "the poor and ignorant tenant" to substitute "cash for produce-rents". Government further resolved to abolish all the extra-

cessess and by way of compensating the Khot for the loss so caused, it was proposed "to fix the Jama at something less than the total survey assessment of all the assessable lands comprised" in the village. (*Vide* G. R. 2474/24-4-1876).

TENTATIVE settlements were immediately introduced, into different parts of the district, on lines suggested (g) 1889-1904. A.D. in the very important Resolution referred to above. The settlements so introduced, also promised to work well. But it was necessary to legalise the new settlement by a *special* legislative enactment. A Bill (III of 1879) was accordingly introduced in 1879-1880 and the same was ultimately passed as Act I of 1880.

THREE quarters of a century was spent in experimental Surveys and Settlements. The relation between Government and the Khot, and the Khot and the tenant had become so unsettled during this period and by the time the Act was passed, and so numerous were the theories advanced as to the relative positions of the Khot and the tenant, that this measure, which at last authoritatively determined the mutual rights and obligations of the contending parties, was hailed with satisfaction both by the Khot and the tenant. The Act, however, being in the nature of a compromise could not naturally afford complete satisfaction to either of the parties. The Khot would protest that his proprietary rights were too much encroached upon; the tenant, on the other hand, would complain that no sufficient relief had been given to him against his own thralldom to the Khot.

THE Act, no doubt, did away with one of the main difficulties in the smooth revenue administration of the Khoti villages by making it clear that, from amongst the Khot's tenantry, none but the privileged occupants were to have their names entered in the Survey Records. There was however another difficulty and that was about the payment of rents by the occupancy-tenants. (*Vide* the old clause C. to Sec. 33). All would have been well if the Khot and the tenant could have agreed, as to the amount of rent to be paid by the latter but this was often not the case. The result was, that the ascertainment of the customary rents payable in the form of a share of the crop, was invariably a fruitful source

of dispute. Government also found, that the crop-share system pressed very hard on the tenantry, and that it required either abolition or modification. A Bill (IV of 1898) was accordingly introduced in the Council in 1898, "for the abolition of crop-share and annual appraisements and the substitution of rents on a simple and equitable principle." The Bill as drafted was however one-sided, as it left the Khot almost entirely at the mercy of the tenant. The tenant could pay his rent any year, in cash or in crop-share, just as it might suit his convenience. The Bill had accordingly to be withdrawn in Jan'y, 1900, at the instance of the Secretary of State.

ANOTHER Bill (VI of 1903) was therefore introduced in the Council, mainly with a view to substitute cash
(h) 1904-1912. A.D. for crop-share rent. The new Bill allowed the tenant to exercise the right to pay his rent in cash under certain restrictions. (*Vide* S. 33 Rule 5). The Bill was subsequently passed as Act III of 1904. Act I of 1880 as amended by Acts III of 1904 thus forms in the words of the Preamble the "special provision for the settlement and revenue-administration of villages in the Ratnagiri District".

THE law, as it now stands, recognises the Khot as the Superior holder entitled to settle with Government for the revenue of his village and to hold the same conditionally on the payment of the Jama (Secs. 4 and 24). His rights are heritable and transferable (S. 9). He has the right as against Government to resume all lands in his village which are either resigned, or are forfeited or which lapse for failure of heirs (S. 10). He can confer the higher rights of a privileged occupant on any one or more of his tenants in the village (S. 11). As a Superior holder he is entitled to claim assistance from the Revenue Court, for the recovery of rents (S. 31), as entered in the Settlement Records (Secs. 17 and 33), from all the privileged occupants in the village. Further in the case of lands held by occupancy-tenants he is entitled to his Fayada or percentage (S. 33 c. Rule IV cl. 3). In the case of ordinary tenants, the Khot is of course at liberty to settle his own terms with them (S. 8). He has a right to cultivate all waste or uncultivated lands in the village and is entitled to the timber standing thereon provided he proves the grant of a proprietary title therein.

THE position of the privileged occupants is on the other hand also safeguarded. The Khot is debarred from exacting from them any kind of cess, rate, tax, or service whatsoever (S. 35). He cannot claim from them anything more than what is entered against their names in the Survey Records. The Khot is also bound to keep accounts and grant receipts for every payment of rent or land revenue made to him (S. 15). No privileged occupant can be evicted so long as he pays rent (S. 7), and no privileged occupant will have his rights forfeited for failure to pay rent, unless such forfeiture is certified by the Collector (S. 10). The rights of Dharekaris and quasi-dharekaris are both heritable and transferable; those of occupancy-tenants are heritable but are transferable if the tenants prove that such right of transfer was exercised independently of the consent of the Khot at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66 (S. 9).

To avoid expensive litigation and to prevent the raking up of old disputes, parties are prevented from challenging certain decisions and entries of the Recording Officer in any Civil Court. (S. 20). Decisions or entries on certain other matters which the Recording Officer is bound to record *e. g.* the nature of tenure, are on the other hand declared to be final unless the same are set aside in time in a Civil Court by the party affected thereby (S. 21).

So far as the Khoti villages in the Ratnagiri District are concerned, it is probable that no new difficulties will arise in connection with the revenue-administration thereof. The substitution of cash for crop-share rents did, no doubt, present some difficulties in the beginning, immediately after Act III of 1904 was passed; but the principle as laid down in Rule V to S. 33 (c) promises to work well.

THE Legislature will have, however, it is surmised, shortly to amend the law relating to wrongful transfers by occupancy-tenants not having the right to transfer. The law as it now stands fails to provide any effective restriction on such transfers. (*Vide* G. R. 8352/10-9-1909 and Government Letter No. 3158/8-4-1910).*

* Sections 9 and 10 have since been amended.

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## BOMBAY ACT NO. I OF 1880.

[The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 6th May, 1880.]

An Act to amend the law relating to the settlement of Villages held by Khots.

**W**HEREAS it is expedient to make special provision for the settlement and revenue-administration of villages in the Ratnágiri District which are held by khots; It is enacted as follows :—

### PART I.

#### PRELIMINARY.

1. **THIS** Act may be cited as the **Khoti Settlement Act, 1880.**

Short title.

It extends to all villages held by khots in the district of Ratnágiri.

Extent

The Governor in Council may from time to time, by notification in the *Bombay Government Gazette*, extend all or any of its provisions to any such village in the Kolaba District.

#### NOTES.

1—Preamble and headings of sections how far useful in the construction of the Act.—The preamble of a Statute has been said to be a good means to find out its meaning and, as it were, a key to the understanding of it; and as it usually states, or professes to state, the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity, or of fixing the meaning of words which may have more than one, or of keeping the effect of the Act within its real

scope, whenever the enacting part is in any of these respects open to doubt(1). The preamble cannot, however, restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt(2). The headings prefixed to sections or sets of sections are regarded as preambles to those sections(3). In a recent case the Privy Council however observed: "It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purposes of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament"(4).

**2—The date of commencement.**—The Act does not state on what day it is to come into force. The assent of the Governor General to this Act was first published by the Governor of Bombay on the 6th May, 1880. The Act thus comes into force on that day (*vide* Secs. 5 and 6 of the Bombay General Clauses Act I of 1904).

**3—Local Extent.**—The Act is made applicable to all those khoti villages in the Konkan, which lie to the South of the Bankot or Savitri river(5). There are nine Talukas in this District (Ratnagiri). The Northern five are Dapoli, Khed, Chiplun, Ratnagiri and Sangmeshwar; the Southern four are Rajapur, Devgad, Malvan and Vengurla. The latter two are however non-Khoti with the exception of one or two villages in Malvan. Of the 1273 or 1275 Khoti villages in this District, there are about 883 in the five Northern Talukas, and 391 or 393 in the two Southern Talukas of Rajapur and Devgad. Of these Khoti villages, 170 are pure Dhara, 970 pure Khoti and the remaining 135 are Khichdi or mixed *i. e.* Dhara and Khoti.

(1) Maxwell p. 59; *Turquand v. Board of Trade*, 11 App. cases 286.

Ambiguities must not, however, be created or imagined "in order to bring in the aid of the preamble or recital. *Municipal Commissioner v. Mancherji* 13 Bom. L. R. 1130.

(2) Maxwell p. 63; *Patterson v. Banks*, Cowp. 513.

(3) Maxwell p. 71; *Bryan v. Child*, Ex. 368.

(4) *Thakurain v. Rae Jagatpal* 11 Bom. L. R. 516, at p. 524.

(5) Such Khoti villages are exempted from the operation of the Bombay Land Record of Rights Act (IV of 1903). G. R. 262 12-1-04; 3653 18-5-04.

4—**Khoti in the other Districts.**—The Khoti tenure is also to be met with in Salsette in the Thana District and also in the District of Kolaba.

The Salsette Khots have their own peculiar institutions and usages. They obtained their grants mostly from the British Government and they do not claim to be the proprietors of the village. They are merely farmers of Revenue or Lease-holders of the villages they hold(1). The Khoti Act has no application to these Khots, nor is any power reserved in the Act to the Bombay Government to extend the Act to the Salsette Khots.

The Khoti tenure in the four Khoti Talukas of Pen, Roha, Mangon and Mahad in the Kolaba District however stands on a different footing. There is much in common between the Khoti in the Kolaba and the Khoti in the Ratnagiri District. The Kolaba Khots do claim proprietary rights. The provisions of this Act are however not yet made applicable to the Khoti villages in the Kolaba District with the exception of a few villages in the Mahad Taluka(2). The relation between these Khots and their tenants will therefore be governed by Secs. 37 and 38 of the Bombay Act 1 of 1865 and by the local usage; and that between the Government and the Khots presumably by the terms as laid down in the Khot's annual or periodical Kabulayats. The Kolaba Khots still pass these Kabulayats, but they do so under protest(3). Express reservation is of course made in Sec. 1 of this Act, for extending this Act to the Khoti villages in the Kolaba District. The Kolaba Khots do desire that this Act should be extended to their villages but Government do not yet think it desirable to do so(4).

(1) *Vide* Bom. Reg. 1 of 1898, Secs. 18 to 24. *See also* Tajubai v. The Sub-Collector of Kolaba 3 Bom. H. C. R. 132 at pp. 148 and 159.

(2) These are, Dabatkhand, Gavalkhand, Valatkhand, Latwan, Kalvan Bholavali and Taleghar. They have been transferred to the Ratnagiri District.

(3) *See note* 1 Sec. 25. *post*.

(4) *Vide* G. R. 696/4-2-89, 5124/5-9-81 and 1363/8-2-12.

2. SECTIONS 37 and 38 of the Bombay Survey and Settlement Act, 1865, (Bom. I of 1865),<sup>†</sup> are repealed so far as they apply to any village to which this Act extends, or may hereafter be extended: Provided that the said repeal shall not affect the validity of any settlement already made under the provisions of the said sections and which has been guaranteed by the Government for a fixed period under section 28 of the said Act.

Repeal of secs. 37 and 38 of Bombay Act I of 1865,

### NOTES.

1—Repeals of Secs. 37 and 38.—The whole of the Act (Act I of 1865), except Secs. 37 and 38 thereof, is repealed by the Land Revenue Code (Bombay Act V of 1879). Sections 37 and 38 are repealed by this Act, so far as the Khoti villages in the Ratnagiri and the few villages in the Mahad District are concerned. The sections

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† S. 37. Whenever, in the Ratnagherry collectorate and in the Ryghur, Rajpooree, and Sanksee talookas of the Thana collectorate, the survey settlement is introduced into villages or estates held by Khoties, it shall be competent for the Superintendent of Survey or Settlement Officer, with the sanction of the Governor in Council, to grant the Khote a lease for the full period for

which the settlement may be guaranteed, in place of the annual agreements under which such villages have hitherto been held; and, further, the provisions of Section 36 in respect to the right of permanent occupancy at the expiration of a settlement lease shall hold good in regard to those villages or estates.

S. 38. It shall also be competent to such officer, with the sanction of the Governor in Council, to fix the demands of the Khote on the tenant at the time of the general survey of a district, and the terms thus fixed shall hold good for the period for which the settlement may be sanctioned. But this limitation of demand on the tenant shall not confer on him any right of transfer by sale, mortgage, or otherwise, where such did not exist before, and shall not affect the right of the Khote to the reversion of all lands resigned by his tenant during the currency of the general lease.

The Superintendent of Survey or Settlement Officer may fix the demands of the Khote on the tenant at the time of the general survey of a district.

Proviso.

however stand unrepealed so far as the old Talukas of Sankshee, Rajpuri and Kayagad are concerned. These old Talukas now correspond to the Talukas of Pen, Roha, Mangaon and Mahad in the Kolaba District.

**2—Proviso.**—The settlements made under Secs 37 and 38 of Act I of 1865, will continue to be effective for the full period for which they were guaranteed in spite of the repeal of Secs. 37 and 38 by this Act. Other Survey Settlements approved and confirmed by the Governor-in-Council will also continue to be operative for the period for which they are guaranteed (*Vide* Sections 37 and 38 of this Act).

**3—Entries of tenures under Act I of 1865 how far binding.**—The mere entries of the names of the tenants of a Khot in the Government Register as *occupants* under Bombay Act I of 1865, and the offer which they involve to receive the assessment from such tenants do not result in any tangible injury to the landlord or the Khot of which Civil Courts can take cognizance. Khot's rights as landlord, if they can be otherwise established, cannot be prejudiced by any proceedings under the Survey Act, (Act I of 1865); there being nothing in the Act or the Rules under it, which affects the rights of subjects of the Government *inter se*. A mistaken entry under the Act cannot deprive the landlord of his ownership. The utmost benefit which the tenants can derive as against their landlord, from being entered as *occupants* under the Act, is that they can claim to deduct the amount of assessment paid by them direct to Government, should their leases allow it from the rents for which they are answerable. But "if, being tenants, they should, on the strength of their being made occupants for Land Revenue purposes, *deny* their landlord's title, he (Khot) could forthwith sue them, either to establish his title and recover the full rent due to him or to eject them as holding possession of his lands only by a title which they themselves repudiate"(1).

Entries however of the nature referred to above, if made under Act I of 1880, will certainly prejudice the Khot's rights as landlord, unless the Khot takes proper steps in time (*Vide* Sec. 21). Thus

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(1) D. R. Bam. v. Survey Commissioner, 3 Bom. 134, (West and Pinhey JJ.) 1879; see also Krishnaji v. Nilo, P. J. 1894, p. 82. (Bayley and Candy JJ).

where the Survey Officer entered certain ordinary tenants of a Khot as Daspatkaris, the Khot was held entitled to forthwith "sue in ejectment, on the ground that this entry of tenure was wrong, that the defendants were not Daspatkaris but ordinary tenants, and that they could be ejected by him"(1).

4—Survey Settlement commenced under Act I of 1865 but introduced after 1880.—Entries in the Survey Register by the Settlement Officer made by him in the course of a Survey Settlement commenced under Sec. 38 (Act I of 1865), but introduced in a village after Act I of 1880 came into force, will be referred to a valid and proper enactment then in force. Such entries if they purport to give the items required under Sec. 33 (Act I of 1880), will therefore be considered final under Sec. 17, although the same may be made in an old Survey Form, with the heading "Appendix D. &c., under Act I of 1865"(2).

5.—Some special features of Secs. 37 and 38 of Act I of 1865.—1. Sections 37 and 38 are based on G. R. 1832/18-5-60 which laid down (a) that the Government has a right on the occasion of a General Survey to review and alter revenue payable by the Khots; (b) that the Khots have a right to settle with Government in the gross and of deriving a profit by sub-letting the land to others; (c) but that the rayat has a right to protection from over-exaction on the part of the Khots(3).

2. It should be noticed that the Khot is recognized as an *occupant* and not as a simple farmer of Revenue under the last clause of Sec. 37.

3. The Sections also restrict the power of the Government to alter or raise the assessment fixed in the annual agreements within the guaranteed period which is generally 30 years.

(1) *Vasudev v. Shiva*, P. J. 1896, p. 118, (Farran C. J. and Parsons J.) *Vide* also note 5 to Section 21, *post*.

(2) *Balaji v. Bal*, 21 Bom, 235. Farran, C. J. and Parsons J.) 1895.

(3) But the rayat may himself renounce the advantage given to him by the Legislature. If he himself accepts "the position of a mere temporary contractual tenant, instead of a guaranteed tenant under the Act," there is "no enactment which would benevolently guard him against such a transaction and its consequences." *Narayan v. Balu*, P. J. 1870 p. 243, (West and Pinhey JJ).

4. Section 38 does not make it clear if Government have power "to fix the demands of the Khot on the tenant" after the expiry of the original settlement guaranteed under Sec. 37. In other words cannot the Khot claim to revert to his Mamal rates immediately on the expiry of the settlement guaranteed under Sec. 37? Whether this contingency was or was not contemplated by the Legislature is not clear. The answer to this difficulty may perhaps be found in the substitution of the words "sanctioned" in Section 38 for the word "guaranteed" immediately after the word "settlement may be." Thus Government may "sanction" or ratify the settlement previously guaranteed and thereby again "fix the demand of the Khot on the tenant."

If this interpretation be correct another difficulty is likely to arise. Thus if Government mean to limit the demands of the Khot on the tenant, they must sanction "the settlement" previously made. That is to say, if Government raise the amount of Jama payable by the Khot, they would immediately lose their hold over the Khot, and would have no Legislative authority to intervene on behalf of the tenant. In other words, what is the effect of the fixed period terminating before any revised settlement has been introduced? Beaman J. answers in *Secretary of State v. Sadashiv*, that the effect "can be no other than to continue the sanctioned settlement relieved from the quality of fixity. That is to say, that the position of those holding under it, until interfered with, precisely the same, as it was at the commencement of the fixed period, but less secure since at any day Government might intervene, revise the settlement and enhance the rates and assessment. So long, however, as it does not do so, we must presume that the settlement originally sanctioned continues to be sanctioned," and "no proof is needed, even of any implied sanction on the part of Government, so long as the other side can show nothing to the contrary"(1).

5. The Act (I of 1865) does not purport to create any rights; it only aims at ascertaining and defining—not altering the relations between the Khot and the tenant which were till then undefined. Any record or proceeding under the Act "does not therefore confer on

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(1) *Secretary of State v. Sadashiv* 14 Bom. L. R. 77, 87, Beaman and Hayward, JJ.



any one any right not already in existence. Survey Officers do not decide upon questions affecting landed and other interests. They merely prepare a record of what they find in existence."

6. Sections 37 and 38 were inserted in the Survey and Settlement Bill *after* the same was drafted and are thus worded without due regard to the other provisions of the Act. The word "tenant" referred to in Sec. 38, would thus under the definition of that word in Sec. 2 of the Act would mean "a tenant-at-will." The Khot would thus have to claim even from his tenant-at-will such rent only as the Survey Officer may fix under Sec. 33 of the Act. But the Khot under his general rights of a superior holder is certainly entitled to enhance the rent after due notice to the tenant-at-will. What is, however, really meant by the Legislature by the word "tenant" in Sec. 38 is "a permanent or an occupancy tenant." That this is the correct interpretation of the word is made clear by the express reservation of "the right of the Khot to the reversion of all lands resigned by his tenant." This right of reversion either on resignation or failure of heirs can only hold good in the case of a tenant who is a permanent or an occupancy tenant. It is incongruous to talk of such a reversion in the case of a tenant who has no right of occupancy at all. The Khot if he intends to eject a tenant-at-will or a tenant for a term of years, has only to give a notice after the expiry of the lease and resume possession from such a tenant. The Khot is not required to wait for the uncertain event of resignation or failure of heirs in the case of such tenants, as he has to, in the case of a permanent or an occupancy tenant.

7. Section 37 if strictly construed, would not apply to villages which are held by Khots under Sanads. The section would apply to such villages as are held by Khots under annual agreements only. This was however not intended by the Legislature. The faulty wording is probably due to the misconception of the operation and the effect of the annual agreements. The Sanadi Khot at any rate certainly does not derive his rights from such an agreement; the agreement is merely by way of security for the punctual payment of Government Revenue(1).

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(1) Collector of Ratnagiri v. Antaji Laxman, 12 Bom. 534.

8. Section 37 further assumes that the lease, for the guaranteed period granted by the Survey Officer, would necessarily be accepted by the Khot. There is thus no provision made in case of non-acceptance of the lease by the Khot either as regards attachment and management of the village or as regards the liabilities—if any—of the Khot for such non-acceptance(1).

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

(1) "village" means a village, or a portion or share of a village, to the extent to which a khot has any right or interest in such village, or portion or share thereof :

(2) "khot" includes—

(a) a mortgagee lawfully in possession of a khotki,

(b) all co-sharers in a khotki :

(3) "khotki" means the aggregate of the rights and interests vested in a khot as such :

(4) "jama" means land-revenue payable by a khot to Government :

(5) "privileged occupant" means—

(a) a dharekari, or

(b) a quasi-dharekari, or

(c) an occupancy-tenant :

(6) "dharekari" means a land-holder who holds on the "dhara" tenure :

(7) "quasi-dharekari" means a land-holder of any

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(1) Candy, pp. 60-65.

of the denominations named in the first column of the schedule [a] :

(8) "occupancy-tenant" means a holder of khoti land who has a right of occupancy in such land :

(9) "dhara land" means land held by a dharekari, or by a quasi-dharekari :

(10) "khoti land" means land in respect of which a khot has, as such, any right or interest and which is not dhara land :

(11) "Recording-officer" means any officer duly empowered to make or amend entries in the settlement register or other settlement records by or under section 108 of the Bombay Land-Revenue Code, 1879, (Bom. V of 1879) or Part III of this Act :

(12) any word or expression which is defined in the Bombay Land-Revenue Code, 1879, (Bom. V of 1879) and is not hereinafter defined, shall be deemed to have the meaning given to it by that Code.

Expressions defined in the Bombay Land-Revenue Code.

### Old Section.

[a] Words "hereto annexed" were repealed by Bom. Act III of 1886.

[b] Clause (11) was inserted by Bom. Act III of 1904, Sec. 2, in the place of the former clause (11) which was repealed by Bom. Act III of 1886. It ran as follows :—(11) "Part and Section" mean respectively a part and section of this Act.

### NOTES.

1—Village : Khoti, Khichadi and Kulargi.—The three kinds of villages in the Khoti Districts are : Niwal Khoti, Khichadi Khoti and Kulargi. "In a Niwal or pure Khoti village, the land is all Khoti, the division being Khasgi lands held by Khots themselves, (their home-farm as it has often been called), and the Khot Nisbat lands viz. lands held by cultivators, most of whom have occupancy and some also transferable rights".

A Khichadi or mixed Khoti village, contains both Khoti and Dhara lands.

A Kulargi or Dhara village is one held by Dharekaries in opposition to a Khoti village. In a purely Khoti village there can be no Dharekaries or Dhara or Kulargi lands(1).

In the case of Khoti lands in pure Khoti or mixed villages, the occupancy-tenant, pays "thal" or rent to the Khot as entered in the Survey Records [Secs. 33C and 17(a)]. In the case of Dhara lands in pure Dhara or mixed villages, when they are held by Dharekaries, the rent that they have to pay to the Khot, is the Dhara or survey-assessment only [Secs. 33(a) and 17(a)]; and when they are held by quasi-dharekaries, the rent that they are required to pay to the Khot is the survey-assessment *plus* the amounts of grain or money set forth in the Schedule [Secs. 33(b) and 17(a)].

**2—Khot defined.**—The word "Khot" has not been defined as such in the Act. Molesworth defines the word "Khot" as "a renter of a village, a farmer of land or revenue, a farmer of the customs, a contractor, a monopolist; in some provinces an hereditary Officer whose duty it is to collect the revenue of the village for Government; also an officer appointed for this Office, a farmer of land or revenue, sometimes hereditary and sometimes not". The Ratnagiri Khot may be best defined as a farmer of the land revenue, having an hereditary right of farming the village.

**3—Interpretation of "Khot" and "Khoti" by the Revenue and other Officers.**—(a) Mr. Pelly (1818-26):—"He (Khot) may rather be viewed as the farmer of the entire revenue of the village than like Patel elsewhere, the mere agent or receiver of Government". "They may be separated into two classes, the Watandar Khots (as they term themselves) and the Sarkari. The latter are liable at any time to be dispossessed by Government. The Watandar Khots, on the contrary, maintain that they possess an hereditary indefeasible right, and that they cannot be dispossessed".

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(1) Raghunathrao c. Vasudev, 23 Bom. 769 : 1 Bom. L. R. 436 at p. 441, Candy and Crowe JJ. 1899.

(b) Mr. Chaplin (1820-21):—"The Khot is the farmer of the *village* and is alone answerable to Government for the rent, and the rayats to him...In letting the lands, he is not guided by the rent fixed by Government for each rayat's land but gets as much more as he can, nor has the rayat right to it except upon the terms upon which he can agree with the Khot, the only limit to the Khot's demand being the fear that the land may be thrown up without his being able to find another tenant for it". "They the rayats look upto him only and consider him as their sole master and landlord".

(c) Mr. Dunlop (1822):—"The Khoti villages "were therefore farmed to any person who would engage for their revenue".

(d) Mr. Reid (1827-28):—"Both hereditary proprietors and temporary farmers of the villages bear this denomination (Khot)". The Khot or head of the village claims the land, and is answerable for the revenue of rayats.

(e) Mr. Glass (1837):—"In villages purely Khoti, the proprietary right to the land centers in the Khot".

(f) Mr. Robertson (1850-51):—"Khot is the "owner of the soil" but "not an absolute one".

(g) Capt. Wingate (1851):—"The rights of Khots appear...to fall very short of an absolute proprietorship of the soil". Their rights "were originally limited to the collection of the rents and cesses payable by the ryots in accordance with the custom of the village. The Khot has in fact, managed the village, as an hereditary farmer, and in consequence of no interference having been exerted on the part of Government has been allowed to levy the assessment without any further limit than may have been offered to his exactions by the resistance of the ryots and their adherence to usage".

(h) Mr. Coles (1851-52):—"I consider him a farmer who has usurped great privileges when no check was at hand". "The Khoti watan is restricted to the revenue of the village lands, and cannot be considered as conferring any proprietary rights in the lands themselves".

(i) Mr. Turquand (1856):—"They (Khots) are equitably entitled to be considered proprietors"; but "they are limited and not absolute proprietors".

(j) Mr. Reeves (1856-57) :—The Khot is “ a revenue Officer or servant of Government as well as a manager of the land and revenue”, and “ his proprietary right, so far as the land is concerned, extended no further than the management of it”.

(k) Col. Francis (1859) :—Khots “ held their villages at a certain fixed sum, and managed them as they pleased, and so long as the sum agreed upon was paid, the Government (Maratha) seems to have made little enquiry as to the manner in which it was realized”.

(l) The Hon. Mr. Ellis (1865) :—Khots are “ a class of Superior holders whose rights were of a very long standing. The settlement of the revenue had been made with them, just as in ryotwari villages the settlement is made with the cultivator. That the Khot has an interest of a very high order in the soil, was a fact, to ignore which, was to commit a manifest injustice”.

(m) Mr. Candy (1874) :—“ A khot is a farmer but he is the farmer of the village, not simply of the revenues”. “ It is indubitably established that a khot’s interest in his village is limited, not absolute; that he possesses in some measure a proprietary right; in fact he is an “ occupant” with all the rights and liabilities appertaining to such a status”.

(n) The Hon. Mr. Ashburner (1880) :—“ Khots are mere farmers of the revenue”. “ He is in fact a Government Officer, collecting the Government revenue”.

(o) Mr. A. B. Desai (1886-87) :—It (Khoti) was a hereditary right to collect rent and pay it to Government and *incidentally* therewith to enjoy profits by extending cultivation and to enjoy also the customary honour, privileges etc. “ The Khot’s rights extend over all the things in the village, not as an *actual holder or occupant*, or owner, but as a *Watan*dar, whose main business was to encourage cultivation, collect rent, and pay it to Government”. “ The Khoti watan does not indicate a single marked peculiarity as against the Patelki Watan. Both the *Watan*s were service *watan*s. Both were created for the promotion of cultivation and the recovery of Government assessment in times when the agency of a middleman was a necessity of the administration”.

4—Interpretation of “ Khot” and “ Khoti” by Government.—(a) G. R. 955/28-1-1821 : Khots are like “ smaller Zamjndars in Bengal and it is much to be feared that the rights of all

other persons of the agricultural classes may fall into oblivion as they have done in Bengal”.

(b) G. R. 1937/31-3-53. :—The rights of Khots are “ limited to the revenues of the village lands, and not to amount to a property in the lands themselves ”.

(c) G. R. 1832/18-5-60. :—“ The Khot has the right of settling with Government in the gross and the deriving a profit by sub-letting the land to others ”; but “ the rayat has a right to protection from over-exaction on the part of the khot ”.

(d) G. R. 3765/24-8-61. :—“ Our khots have a hereditary right to realize the revenue and manage the lands of their villages upon which they pay the land-tax to Government ; consequently in accordance with the definition laid down in Sec. III (Regulation XVII of 1827), the khot is of that class of our agricultural subjects who is and ought to be looked upon as the occupant with whom the Government are called upon to make the settlement ”.

(e) G. R. 2474/24-4-76 :—The position of a khot, Sanadi or Non-Sanadi, is thus that of a Superior holder, with the same rights, conditional on the payment of assessment over his estate as against Government, as the occupant of a survey number is defined to have by Sec. 36 of the Survey Act. It follows that he has full rights, subject to the provision of the Survey Act, over all lands included in his estate, which are unencumbered by the rights of holders subsidiary to his and that on the lapse of such rights, the lands affected by them lapse to the khot and not to Government ”.

(f) G. R. 675/25-1-90. :—“ Before Bombay Act I of 1890 came into force, Khoti villages were not held on the same tenure and were not governed by the same principles. Some were the *estates* of the khots, secured to them by sanads, etc., with superadded conditions of service connected with the collection of the revenue. These estates were not all in full proprietary right, but were yet distinguishable from a mere farm or office, as they were not held solely as remuneration for services to be performed. Other Khoti villages were held altogether without sanad by khots who were mere farmers of the revenue and whose rights were conditioned on the performance of service.... But it was different with regard to Sanadi khots. They were not mere servants

for farmers. They had estates. The estates were burdened with service but were not conditioned on the performance of service. These estates, if they made default, were no doubt liable to attachment, but were not absolutely forfeited by such default. If therefore they were dispossessed, they had a right to claim them again on payment of due compensation, provided they made their claim within the period allowed by law for the recovery of immoveable property".

### 5—Judicial interpretation of "Khot and Khoti".—

(a) Khot is only a hereditary farmer of revenue, and in the absence of Sanad expressly granting it, the *ownership* of the soil, cultivated or uncultivated does not pass by the mere grant of the Watandari Khoti. "And an incident which seems conclusively to show that a khot possesses, with reference to the lands within his khoti, no rights which are not dependent on the continued exercise by him of his functions as a farmer of the revenue, is the fact...that although a Khot while in office may dispose of available land for his own benefit, or cultivate it himself, he becomes liable, in the latter case, for the full amount of assessment as an ordinary cultivator whenever he ceases to discharge the duties of his office. The right to cultivate such waste or other lands as may be at the khot's disposal or to give them out in cultivation under such terms as may be most to his advantage, must consequently be viewed as the recognised mode of his remuneration for the services rendered"(1).

(b) "A khot cannot by himself cultivating the land acquire higher title to it than he has to the khotship, or a title independent of it. His occupation of the land without making any additional payment is really part of the fruits of the khotship, and is only provisional upon its continuance"(2).

(c) "Without expressing any opinion that no khot is or can be the proprietor of the soil, it is sufficient to say that it is clear that the proprietorship of the soil is not vested in every khot"(3).

(1) *Tajubai v. Sub-Collector of Kolaba*, 3 H. C. B. 132 at pp. 150-151. (Arnould and Newton JJ. 1866). (Tucker J. Dissenting held that the Khot had a proprietary right).

(2) *Ramchandra v. The Collector of Ratnagiri*, 7 H. C. B. 41. at p. 45. (Couch C. J. and Melvill J.) 1870.

(3) *Nagarlas v. Conservator of Forests*, 4 Bom. 264 at p. 272 P. C. 1879.



(d) "The Khot enjoys the position of a Superior holder....In many villages in the Ratnagiri District, the khots especially those known as Watani and Sanadi Khots admittedly possess proprietary interest in the soil. But in the Kolaba District, since the decision in Tajubai's case, it would not be safe to hold in the case of any particular village, in the absence of evidence, that a khot is a Sanadi or Watandar khot"(1).

(e) The mere fact that a person is a Watandar or permanent khot, that does not make him proprietor of the cultivated lands in the village. The proprietary rights were not essential to the conception of khotship. But "being subject to settle with the Government for the whole land tax of the village which tax was in theory variable according to the produce of its lands", Khots "had obviously even as farmers an interest in every cultivated plot not specially exempted to the extent of the "thal", or contribution properly leviable upon it. This was the right by which as khots settling for the village revenue as an aggregate they were compensated for the obligation they thus accepted. Without this right every extension of cultivation would but tend to make them poorer. With it they would be rewarded for their augmented pains by an increase of the difference between the moderate aggregate payment to the Government under their annual Kabulayat and the sum of the rents levied in detail from the occupants of the soil"(2).

(f) Khot is not a mere hereditary Patel; but "the proprietorship of Government in the soil of the village does not, in the absence of a Sanad expressly conferring it vest in the Khot merely by his appointment as Watandar Khot". He has however permanent right of cultivation which cannot be interfered with so long as the settlement remains in force(3).

(g) "They are mere farmers of the land revenue having only an hereditary right of farming the *village*". As "hereditary farmers of the *whole village*" they have "the right to bring into cultivation *all* waste or uncultivated land in the village"(4).

(1) Bhikaji v. Nizamalli, 8 Bom. 525, (Birdwood and Kembal JJ). 1884.

(2) Moro v. Narayan, 11 Bom. 680, (West and Nanabhai JJ). 1887.

(3) Collector of Ratnagiri v. Antaji, 12 Bom. 534, (Sargent C. J. and Nanabhai J), 1888.

(4) Secretary of State v. Wasudeo, 9 Bom. L. R. 719, (Chandavarkar and Pratt JJ), 1907.

**6—'Khot' does not include mortgagees of Khoti co-sharers.**—The word 'khot' as used in the Act would include a mortgagee lawfully in possession of a Khotki; and khotki means the aggregate of the rights and interests vested in a khot as such. Thus the only mortgagee recognised by the Act is one who is in possession of the (*whole*) Khotki; the term "co-sharers in a khotki" is not defined, and in the absence of definition it cannot be held to include mortgagees of co-sharers(1).

**7—Khot's rights.**—The rights of the Khot are :—

(a) that he can hold his village unconditionally and merely on the payment of the *Jama* (Sec. 4) like a Survey occupant (Compare Sec. 68 of the L. R. Code);

(b) that he can transfer his village or a share therein (Sec. 9);

(c) that he can create *Dharas* or sub-proprietors paying fixed Government revenue to himself (Sec. 11);

(d) that he can collect rents from all the khoti occupants in his village, with a right to claim Khot's percentage in the case of occupancy-tenants (Sec. 33);

(e) that he is entitled to cultivate all waste and unoccupied lands in the village(2);

(f) that he is entitled to claim one-third of the net profits derived by Government by constituting any uncultivated land in the village, a reserved forest (Sec. 42).

The khot has also a reversionary interest as against Government in all the lands of the privileged occupants. Thus he has a right to resume any such land when it is resigned, or is wrongfully transferred\*, or when it lapses for failure of heirs, or when the same is forfeited on the occupant's failure to pay rent (Sec. 10).

Further the khot's rights are heritable, the succession being regulated by the Personal Law to which he is subject (Sec. 9).

(1) *Dattatraya v. Ramchandra*, 24 Bom. 533,=2 Bom. L. R. 354, (Parsons and Ranade JJ.), 1900.

(2) *Secretary of State v. Wasudeo*, 9 Bom. L. R. 719. (Chandavarkar and Pratt JJ.), 1907.

*Vide* the amended Sec. 10.

**8—Privileged occupants and their privileges.**—The rights or privileges of the three classes of Privileged Occupants—Dharekaries, Quasi-Dharekaries and Occupancy-tenants are:—

(a) that they are all entitled to have the survey numbers held by them entered in their own names as Khatedars thereof (Sec. 16);

(b) that they all have a right of occupancy in the land occupied or cultivated by them;

(c) that their rights are transferable without the consent of the khot and as a matter of course in the case of Dharekaries and Quasi-Dharekaries. In the case of occupancy-tenants, however, they are transferable but under the limitations laid down in Sec 9;

(d) that they have a right to hold their lands undisturbed and uninterruptedly merely on the payment of the recorded rents to the khot (*vide* Secs. 7, 33 and 35).

Further their rights are heritable, the succession being regulated by the Personal Law to which they are subject (Sec. 9).

**9—Quasi-Dharekaries : in what they differ from the Dharekaries.**—The Quasi-Dharekaries or Kaccha-Dharekaries are to be met with mostly in Khed and Dapoli Talukas of the Ratnagiri District. The Quasi-Dharekaries i. e. the Daspatkaris, Didpatkaris, Paunedupatkaris and Dupatkaris were all originally like the Dharekaries liable to pay fixed rates of the District(1), but as the right of the khot to levy something in excess of the former payment had become the established usage of the country, it was thought "impolitic and unjust to attempt to restore this class of cultivators to their original status"(2). The liability to pay the "excess" has been recognised in this Act, and the Schedule gives the details of such excess amount,

(1) Quasi-Dharekaries were at one time Dharekaries. But their Superior rights were either bought up by the Khots in consideration of the debts due or the Dharekaries themselves "resigned their superior rights to the Khots and became his permanent tenants, on the agreement that they should pay him so much in addition to the Government assessment", but on the understanding that they were no more liable to the extra cesses. (Candy p. 65). Thus Daspatkaris paid Rs. 10 in excess for each Khandi of assessment while Didpatkaris, Paunedupatkaris and Dupatkaris paid in excess 1½, 1¾ and 2 Maunds respectively for each Maund of assessment.

(2) Government Selection, No. CCCLXX, pp. 35 and 45.

which they have to pay to the Khot in addition to the survey-assessment. This is the only point of difference between the Dharekaries and Quasi-Dharekaries; in all other respects their rights and liabilities are similar to those of the Dharekaries(1).

**10—Dhara and Khoti land.**—There can be no Dhara land in a purely khoti village. The Dharekaries or Quasi-Dharekaries who hold such lands, can thus only be found in villages which are pure Dhara or “mixed”. Similarly there can be no Khoti land in a purely Dhara village. It can only be found in villages which are pure khoti or “mixed” (*Vide Note 1 supra*)

**11—Khot's interests in Dhara land.**—The interpretation of “Dhara land” in clause 9 is rather ambiguous. Clauses 9 and 10 read together would go to show at the first sight that the khot has no right or interest whatsoever in respect of Dhara land. It is not however quite correct to say, that the khot has no right or interest in such land. No doubt the khot gets nothing for his trouble in collecting the rents from the Dharekaries; but he gets at least the amounts mentioned in the Schedule in the case of Quasi-Dharekaries. Further he gets the usual percentage for collecting Local Fund-cess and something by way of Khoti Khatpati allowance from Government. (*Vide Note 2 to Section 33 post*). The khot has also “an interest” in the Dhara land, for Section 10 does not exclude the Dhara land from the operation of that section. The khot can thus resume Dhara as well as khoti land, in case it is resigned, forfeited or lapses for failure of heirs. (*Vide G. R. 658 23-1-85*).

**12—Khoti-Nisbat and Khoti-Khasgi lands.**—“All lands in a khoti village, which is not Dhara, must be Khoti. The khoti lands which are cultivated by the khot himself or by means of hired labourers are khoti-khasgi and the rest are Khoti-Nisbat, which may be sub-let to permanent tenants or to recent cultivators”. Both these terms are coined by the Survey Department.

In the case of *Khoti-Khasgi* land “proprietary title is proved by the very term itself, for they are lands which belong to the khot as having been acquired by him either by his own expenditure of money

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(1) Government Selection, No. CCLXXVIII, p. 13.

in bringing them into cultivation or by lapse or forfeiture from those who originally owned them or by purchase"(1). "If the khotship were abolished and the village treated by Government as an ordinary *ryotwari* village, the khot would hold such land as an ordinary survey occupant"(2). It may however be observed that if the khot acquires any land by transfer from the occupancy-tenant thereof, "then it would still remain *Khot-Nisbat* (as it must have been when held by the occupancy-tenant), and it would require the assent of the whole body of the khoti-sharers to change it from *Khoti-Nisbat* to *Khoti-Khasgi*"(3). [*Khoti-Khasgi* may well correspond to the *demesne* land and *Khoti-Nisbat* to the *Book-land* and *Folk-land* of the Feudal tenure (Candy, p. 26).] *Khoti-Nisbat* land also belongs to the khot, but it is generally encumbered with the rights of occupancy of the underholder. Most of the cultivators who hold such land have occupancy and some also transferable rights; but it is not correct to say that "all *Khoti-Nisbat* land must necessarily be held by permanent tenants"(4).

**13—Khoti Takshim includes Khoti-Khasgi lands allotted to it**—A khot's khoti Takshim represents ordinarily the sum total of the khot's interest in the Khoti Watan. "It is quite possible for a khot when executing a mortgage of his share (Takshim) in a khoti to reserve a portion and not mortgage the whole. Thus he may reserve his *khasgi thikans*, and only mortgage his *share in the rents* received from the tenants of the *Khoti-Nisbat* lands". But it is

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(1) Secretary of State v. Narayan, 1 Bom. L. R. 19, at p. 24 (S. C. Secretary of State v. Sitaram 23. Bom. 580). Parsons and Ranade JJ. 1899; (Parsons J. further observes "ownership of these lands *in no wise depends upon his tenure of the khotship*, for as I have before remarked, were the Khotship abolished, he would continue to hold them and would then become an occupant of them as defined in the Land Revenue Code."

It is however difficult to see in the words of Candy, J. (Rahunathrao v. Vasudeo 1 Bom. L. R. 436 at pp. 410-411) "how a khoti sharer's proprietary interest in such lands could even be independent of his share in the *khoti-ratan*". Because "such an idea would involve contradiction in terms. A *Khoti-Khasgi* field must have some connection with a khoti *ratan*".

(2) Rahunathrao v. Vasudeo, 1 Bom. L. R. 436, at p. 442, Candy and Crowe JJ. 1899.

(3) *Ibid* at p. 441.

(4) Candy p. 66

“ wrong to suppose that the purchase of a takshim, would not include the Khasgi lands allotted to that takshim, even though they were not expressly recited ”.

Ordinarily, therefore, the sale of a khoti takshim would mean the sale of Khoti-Khasgi lands allotted to that takshim also, unless of course the khot concerned proves otherwise. A khot thus remaining in possession of such Khasgi lands even after the sale of his takshim would be nothing better than a tenant-at-will and will be liable, in the absence of a specific agreement, to pay *thal* like all other cultivators of khoti lands(1), or to ejection after a notice to quit(2).

## PART II.

### GENERAL PROVISIONS RELATING TO KHOTS AND THEIR INFERIOR HOLDERS.

#### *Khots.*

4: KHOTS shall continue to hold their villages conditionally on the payment of the amounts due on account of the *jámá* of the same, according to the provisions of this Act and of the Bombay Land-Revenue Code, 1879, (Bom. V of 1879) and of any rules for the time being in force made under this Act or under the said Code, and subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure.

Continuance of khots' villages to be subject to payment of *jámá*.

## NOTES.

1--Khot as a Survey occupant.—The khot, as well as the Survey occupant, is entitled to hold his lands conditionally on the

(1) *Dinkarrao v. Narayan*, P. J. 1893 p. 550, *Sargent C. J.* and *Candy J.*

(2) *Kajannachrao v. Vasulea*, 1 Bom. L. R. 436=23 Bom. 769, *Candy and Crowe J.J.* 1890. See also *Govindrao v. Rathi*, P. J. 1888 p. 59, and *Mahaleva v. Kadamath*, P. J. 1888 p. 558, *Sargent C. J.* and *Nanabhai J.*

payment of the Government revenue (Cf. Sec. 68 L. R. Code). So long, therefore, the khot or the Survey occupant continues to pay the land-revenue, Government cannot interfere with his right to "hold the village" or to "use and occupy the land". The status of the khot is thus not inferior to that of a Survey occupant and this was also never seriously denied by the Executive even prior to this Act(1).

**2—Khot as a Superior Holder.**—The khot has been recognised as a Superior holder and is thus "entitled to receive from other holders rent or land-revenue on account of lands held by them"(2). As a Superior holder, he is entitled to file "assistance suits" for the recovery of rents from privileged occupants under Secs. 86 and 87 of the L. R. Code. (*Vide* Sec. 31). As a Superior holder the khot is primarily responsible for the payment of Jama or land-revenue of the khoti villages (Secs. 4, 26 and 39 C.).

**3—Khot as a limited proprietor.**—Khots hold their villages conditionally on the payment of Jama *i.e.* they are legally invested with a right to the possession and enjoyment or disposal of their villages either immediate or at the termination of tenancies legally subsisting (*Vide* L. R. Code Sec. 2 cl. 10). There is no doubt that khots are *full* proprietors of all their Khoti-Khasgi lands(3). But in respect of the Khoti-Nisbat lands, khots have as such only a limited or a reversionary interest therein *i.e.* such lands would revert to them or become their Khasgi only on resignation, lapse, or forfeiture as laid down in Sec. 10. Their right to recover rents even from occupancy-tenants is further very much curtailed. They have no right to fix the *maximum* rent. It is the Government which has reserved for itself the right of fixing such rents. (*Vide* Sec. 33). They are also not exonerated from the duty of keeping accounts. (*Vide* Sec. 15).

In the case of waste or uncultivated land it would, no doubt, be necessary for them "to prove a grant of the soil"(4); but then as

(1) *Vide* Sec. 3 of Reg. 17 of 1827; Sec. 37 of Act I of 1865, Candy. p. 59 and G. R. 3765, 24-3-61.

(2) *Vide* the heading to part III of the Act and Bhikaji v. Nizamali, 8 Bom. 525, Kembal and Birdwood JJ, 1884.

(3) & (4) Secretary of State v. Narayan, 1 Bom. L. R. 19 at p. 24, Parsons and Ranale JJ, 1899; (S. C. Secretary of State v. Sitaram 23 Bom. 518).

farmers of the *whole village*, they are entitled as against Government under "*their limited title*—that is, their title, not indeed as owners or landlords, but as *khots* of the whole village—" to cultivate or "bring into cultivation *all waste or uncultivated land in the village,*" without let or hindrance on the part of Government(1).

**4—Khot as an agriculturist.**—Whether a khot merely by reason of the fact of his being a khot is or is not an agriculturist within the meaning of the Dekkan Agriculturists' Relief Act (XVII of 1879) is still an open point. In a recent case their Lordships observe, that "the question cannot be answered in the abstract, but must be dealt with on the facts of each case. It may be that the khot as a mere farmer of the revenues of Government is not entitled to the privileges of an agriculturist. On that point we do not express any opinion". Their Lordships, however, observe, that 'a khot is entitled to hold *khasgi* lands as incidental to his khotship'. That being so, it is clear that the income derived by a khot from *Khoti-Khasgi* lands must, at any rate, be taken into account in determining whether he is or he is not an agriculturist within the meaning of the Dekkan Agriculturists' Relief Act(2).

**5—Khoti is not a Service Vatan.**—A khot does not hold his village conditionally on the performance of *any* service, revenue or otherwise, to the Government. He has only to pay the *Jama*, and that is the only known condition on which he is entitled to hold the village. The *khoti vatan* is thus outside the scope and operation of the Bombay Hereditary Offices Act (Bombay Act III of 1874). A khot is not a mere hereditary Patel(3). The khot has no doubt to perform certain duties, for example, he has to keep accounts (Sec. 15); he has also to perform certain duties in respect of the settlement of the village boundaries and the maintenance of the boundary marks (Sec. 39b); but then it must be remembered that he does not hold the *Vatan* by way of remuneration for the performance of any such duty. The only *service*, which

(1) Secretary of State *v.* Wasudeo, 9 Bom. L. R. 713, Chandavarkar and Pratt JJ., 1907.

(2) Gopal *v.* Vidyadhar, S. A. 758/1909 (21-2-1911), Sir Chandavarkar and Heaton JJ.

(3) Collector of Ratnagiri *v.* Antaji, 13 Bom. 534, at pp. 545-46, Sargent C.J. and Nanabhai J. 1888.



the khot has to render to the Government, and for which he gets remuneration for such service is that in connection with reserved forests, (Sec. 42).

6—"Subject to the fulfilment of any other term or liability lawfully annexed tenure".—Neither the Act nor the Rules framed thereunder profess to lay down exhaustively all the duties and liabilities of a khot *qua* khot. It may turn out, that there was some liability appertaining to the khoti tenure, and still not provided for by the Act, nor covered by the Rules. It is to meet such a contingency, that the words, "subject to...tenure", have been advisedly inserted in this Section. A similar provision is made in the case of a survey occupant under Section 68 of the L. R. Code by the insertion of the words, "and on the fulfilment of any other terms or conditions lawfully annexed to his occupancy."

7—Suits by Inamdars to recover Revenues of an alienated Khoti village: Pensions Act.—A suit by an Inamdar to recover revenues of a Khoti village from the khot thereof will not be barred for want of a certificate under the Pensions Act (XXIII of 1871), where the Inamdar is the grantee of the soil(1).

A similar suit, by an Inamdar who is the grantee of the land-revenue only, will not, however, be taken cognizance of by a Civil Court, although the Government is not a party to the suit, until the necessary certificate is produced(2). But if the Collector *once* gives the certificate, which entitles a party to claim a certain right in a Civil Court, the effect of that certificate is to give to the party the right to claim in a Civil Court whatever he is entitled to in virtue of that right, and the party will not be bound under the Pensions Act to get a fresh certificate for each year's revenue before suing for it(3).

8—Limitation for suits by Inamdars for arrears of assessment:—A suit by an Inamdar for arrears of assessment, from the Khatedars who stand to him in the relation of inferior holders

(1) Gangalhar *v.* Morbbat, 18 Bom. 525, Sargent C. J. and Bayley J., 1893.

(2) Jijaji *v.* Balkrishna, 17 Bom. 169, Sargent C. J. and Birdwood J., 1892.  
\* See however Sec. 9 of the Pensions Act.

(3) Krishnaji *v.* Anant, 5 Bom. L. R. 959, Chandavarkar and Jacob JJ, 1903.

and not in that of tenants as such, would fall under Art. 120 (6 years) and not under Article 110 (3 years) of the Limitation Act 1877(1).

*Inferior Holders.*

5. **EVERY** holder of khoti land who has actually occupied or cultivated the same continuously from any time previous to the commencement of the revenue year 1845-46 has a right of occupancy in the land so occupied or cultivated.

What holders are to be deemed occupancy-tenants.

The occupation or cultivating of the father or other person from whom the present holder inherits, and in the case of occupancy-rights which are transferable otherwise than by inheritance, the occupation or cultivating of any former holder through whom the present holder claims, or of any mortgagee or lessee of the present or any former holder, shall be deemed to be the occupation or cultivating of the present holder within the meaning of this section ;

and, in the case of land which is periodically fallow, years of fallow shall be reckoned as years of occupation or cultivation for the purpose of this section.

**NOTES.**

**1—Inferior Holders :**—The word, “ Inferior Holder ”, signifies a holder liable to pay rent or land-revenue to a Superior Holder, whether

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(1) *Sadashiv v. Ramkrishna*, 25 Bom. 566, (1901), followed in *Vinayak v. Laxuman*, 5 Bom. L. R. 700 and *Antaji v. Kashinath* 6 Bom. L. R. 423. In *Morbhat v. Gangadhar* (8 Bom. 234), it was held by West J. that whether the Khot holds towards the Inamdar the one position or the other—that is that of a proprietor subject to assessment or rating by the Government and paying the Inamdar as assignee of the Government, or as an Officer or Agent of the Government, carrying out its command in favour of the Inamdar—a claim by the Inamdar against the Khot for arrears is equally subject to Limitation, and will be barred by Limitation after 3 years under Article 62.

on account of such Superior Holder or Government. [L. R. Code Sec. 3 cl. (14)]. The privileged occupants and the ordinary tenants in a khoti village are all the Inferior Holders of the khot. The Dharekari pays as *rent* survey assessment, to his Superior Holder, the khot, on account of Government. The Quasi-Dharekari pays as rent, survey-assessment *plus* certain amount of grain or money (*vide* the Schedule) to the khot; the first on account of Government, the latter on account of the khot. The occupancy and the ordinary tenants pay rent to the khot on account of the khot.

2—What is an “Occupancy-right”? :—“It is a right established by a tenant against his superior holder, to hold his land in perpetuity conditionally on the payment of the rent from time to time lawfully due by him to the superior holder”(1). Or it may be better described, in the words of Batty J., as the right of “permanent occupancy on the (fixed) statutory rental”.

It thus guarantees to its holders, “security of tenure on payment of statutory rent, which exempts them from liability (a) to enhanced rent and (b) to a determination of tenancy, by efflux of time or on notice given”(2).

3—Right of occupancy how acquired :—Occupancy-tenant is defined to mean a holder of khoti land, who has a right of occupancy in such land. To obtain this right of occupancy the holder must prove :—

(a) that the land he holds is *khoti*(3) ;

(b) that such land was *actually* occupied or cultivated by himself or by the persons from whom he inherits, or by his or their mortgagees or lessees, or by his or their vendor or vendors where the occupancy-right is transferable (*Vide* note 3 to S. 6) ;

(1) Raghunathrao v. Vasudeo, 1 Bom. L. R., 436 at p. 442, (Candy and Crowe JJ.), 1899 : (S. C. 23 Bom. 769).

(2) Yesa v. Sakharam, 7 Bom. L.R. 911 at p. 945. (Russell & Batty JJ.), 1905.

(3) *Vide* Raghunathrao v. Vasudeo, 1 Bom. L. R. 436 at p. 443, (23 Bom. 769) Candy and Crowe JJ. 1899, where it is observed that occupancy-rights cannot, strictly speaking, be acquired in *Khoti-Khasgi* Thikans. See however Note 7 *post*.

(c) that such occupation was *continuous*, credit being given for years of fallow ;

(d) and lastly that such occupation or cultivation commenced *prior* to the commencement of the year 1845-46 (i. e. 20 years prior to the passing of the Act I of 1865).

Another recognised mode of acquiring such a right is when the *khot* himself confers it on the Holder under Secs. 11 and 12. *Vide* also Rule 1 to Sec. 40 Clause (e), and note 6 *post*.

The rights of occupancy or of permanent tenancy were meant to be settled once for all and were not intended to accrue in *future* or *during* the period of settlement. Thus in the words of Col. Francis "only those *now* entered as permanent tenants and their representatives shall be able to claim permanent tenancy at the next revision of the survey"(1).

Unless the conditions referred to above are fulfilled a *khoti* tenant, who was liable to be ousted at will by the *Khot*, does not acquire the right of perpetual tenancy merely by the introduction of the survey(2). But where the tenant had actually cultivated and paid rent though to a *farmer* of *khot's* rights for 13 years prior to 1845-46, it was held, that the tenant had acquired the occupancy-rights as against the *Khot*(3).

**3A—Whether occupancy-rights can be acquired by adverse possession.**—Occupancy-rights can only be acquired in the manner referred to in Secs. 5 and 6, Sec. 11 or Rule 1 to Sec. 40 cl. E. It is however a moot point whether these can be acquired by adverse possession(4). A stranger holding adversely, either against the *khot*, the *Dharekari*, the *Quasi-Dharekari*, or an *Occupancy-tenant* having the right to transfer, can very well rely on the plea of adverse possession and can thus acquire the rights of the *khot*, *Dharekari*, *Quasi-Dharekari* or *Occupancy-tenant* as the case may be. Because in each of these cases the original holder had in him the right of transfer and there is nothing in the Act to indicate that the status so acquired should not be recognised.

(1) Col. Francis's report of 9th March 1875. *Vide* however Secs. 11 & 12.

(2) *Vithoji v. Bhagoji*, P. J. 1874 p. 298, *Kemball* and *Nanabhai JJ.*

(3) *Mahadev v. Krishna*, P. J. 1892 p. 91, *Sargent C. J.* and *Birdwood J.*

(4) *Narayan v. Ramchandra*, 27 *Bom.* 373.

The case is, however, it seems otherwise in the case of occupancy holdings which are not transferable. Such holdings are declared under Sec. 9 to be *heritable* only. This statutory declaration would in a sense override the Common Law doctrine of adverse possession so far as such holdings are concerned. Because an interest which by statute or otherwise is made "not transferable" cannot be parted with either by act of parties or by operation of law. The word "transferable" is of the widest possible import, and includes *every* means by which the property may be passed from one person to another. *Gothercole v. Smith*, 50 L. J. Ch. 671. Thus a stranger holding adversely any such holding cannot claim to hold the same as an *occupancy-tenant* either against the occupancy-tenant himself or the Khot concerned. If this were not so, nothing could be easier for any such occupancy-tenant intending to transfer his occupancy-rights than to collude with a stranger and make him set up the plea of adverse possession as against himself and thus thrust upon the Khot an *occupancy-tenant* whom he would never have otherwise recognised as such.

4.—No question of the acquisition of the right of occupancy in the case of Dhara land.—The expression *Khoti* land excludes the idea of Dhara land. No question of any new acquisition of a right of occupancy thus arises in respect of Dhara lands under Sec. 5 or 6. The holders of such lands *i. e.* the Dharekaries and Quasi-Dharekaries have all the benefits that attach to the right of occupancy and their rights are heritable and transferable just like those of the Khot.

5—A Khoti Co-sharer cannot claim occupancy-rights in Khoti-Khasgi lands.—Holders of Khoti lands *i. e.* both Khoti-Nisbat and Khoti-Khasgi are entitled to acquire the rights of occupancy under certain conditions. Section 5 makes no distinction between holders of Khoti-Nisbat and Khoti-Khasgi land. But no question of acquisition of occupancy-rights can arise in the case of Khoti-Khasgi lands when they are held by Khoti *co-sharers* themselves. Thus Candy J. observes: "In this case the District Judge has in several places in his judgment referred to *Khot's* interest in his *khoti-khasgi* fields partaking of a dual nature, *viz.*, his own occupancy-right and his right to take rent from his tenant-at-will, whom he may put into actual occupation of the land. But there is a fallacy at the foundation of this proposition. For what is an "occupancy-right"? It is a right established against his superior holder, to hold his land in perpetuity conditionally on the payment of the rent from time to time lawfully due by him to the superior holder".

“How can a *khot* establish such a right against himself? If he has such an occupancy-right it must be against himself and his co-sharers in the *khoti watan*. If he sells his *khoti*—that is the sum total of his interests in the *khoti watan*—then *ex-hypothesi* the purchaser acquires this occupancy-right. And if, as the District Judge holds, on the occasion of such a sale this occupancy-right does not pass to the purchaser, then the vendor, who is no longer a *khot*, is an occupancy-tenant of the fields which were once *khoti-khasgi*, but have now become *khoti nisbat*. This shows that there cannot be an “occupancy-right” in *khoti-khasgi* lands.... It is true that Section 5 of Bombay Act I of 1880 speaks of a holder of “*khoti land*” (which would include *khasgi*) acquiring under certain conditions occupancy-rights. But that comes under the heading “inferior holders” in contradistinction to the heading “*khots*” above Section 4, and therefore it would only empower the Settlement Officer at the most to give an occupancy-right to the actual cultivator of a *Khoti-Khasgi thikan* against the *khoti* sharer, to whose share this *thikan* had been allotted. This, even if within the letter of the Statute, would be distinctly opposed to the intention of the makers of the Statute, and the point if ever it arises will require careful consideration”(1).

#### 6—Position of the purchaser of Khoti-Khasgi lands.

It sounds rather an anomaly that a *Khoti* sharer should have no occupancy-rights in the *Khoti-Khasgi* lands allotted to his share, but that a purchaser under him of these lands should have the same. But as a matter of fact, this is so; thus when a *Khoti* sharer sells any of his private land(2), “the purchaser thereof shall be entered in the survey papers in respect of that land as an occupancy-tenant paying customary rates with the right to alienate his land”(3). After such a sale the land will presumably be entered as “*Khoti-Nisbat*”.

7—Whether a holder who is not a *Khoti* sharer can acquire occupancy-rights in *Khoti-Khasgi* lands.—It should be observed that the case of an actual holder who is not a *Khoti*

(1) *Raghunathrao v. Vasudeo*, 1 Bom. L. R. 436, at pp. 442-43, Candy & Crowe JJ., 1899. [S. C. 23 Bom. 769].

(2) The sale referred to in this Rule is of the *Khoti-Khasgi lands* and not of the *Khoti Thik* only. Vide note 13 to Sec. 3.

(3) Vide Rule 1 under Sec. 40 Clause (c), and *Raghunathrao v. Vasudeo* 1 Bom. L. R. 436 at pp. 442-43, Candy and Crowe JJ., 1899.

co-sharer was expressly reserved for consideration in the case *Raghunath-rao v. Vasudev*, noted above. (*Vide* note 5 *supra*). It is submitted that such a cultivator can acquire occupancy-rights, if the other conditions as laid down in Sec. 5 are fulfilled, independently of any consideration whether the land is Khot-Nisbat or Khoti-Khasgi(1).

**8—The present holder is entitled to tack on the occupation of certain other holders.**—Paragraph 2 shows that the present holder need not have actually cultivated the land himself. In addition to his own cultivation, if any, he can rely on the cultivation of the following persons:—

- (a) The person or persons from whom he inherits, *i. e.* his predecessors-in-interest. It would make no difference, it is submitted, whether the holder gets into the land as an heir or as a co-parcener.
- (b) "Any former holder through whom the present holder claims" *i. e.* his predecessors-in-title. This clause read with the one that follows implies the case of an out and out transfer such as a sale or a gift.
- (c) "Any mortgagee or lessee of the present or any former holder."

It would be observed that in the first case noted above there is a transfer of the holding by inheritance; in the last two cases the transfer is otherwise than by inheritance, that is, by act of parties. In the last two cases it is presumed that the occupancy-rights are transferable. As to the result of such transfer, when the occupancy-rights are not transferable: *Vide* Sec. 6 and note 3 thereto.

**9—It is not obligatory to prove occupation by direct and affirmative evidence.**—It is not obligatory to prove possession *i. e.* occupation or cultivating by direct and affirmative evidence. The holder can rely on the presumption laid down in Sec. 83 of the L. R. Code, as such a presumption is not contrary to the scheme of

(1) *Maheshwar v. Babaji*, S. A. 594 1906, [17-2-1910], Scott C. J. and Bachelor J. This case seems to favour this view. In this case the Khot contended that the lands in dispute being Khoti-Khasgi the tenants could not acquire occupancy-rights therein. The Lower Court overruled this plea and the decision of the Appellate Court was confirmed by the High Court.

the Khoti Act, provided of course the antiquity of the tenancy is first established(1).

**10—The commencement of the revenue year 1845—**  
The revenue year commences on the 1st of August and ends on the 31st of July of the ensuing year (Sec. 3 cl. 21, L. R. Code). The occupation or cultivating must therefore be proved from a date prior to the 1st of August 1845.

**11—Years of fallow reckoned as years of cultivation.**  
—In the Ratnagiri District, the greater part of the land is Warkas; and this is required to be kept uncultivated for a period, which varies with the different fields as also with the sort of crop, previously had from the field. Keeping fallow is, therefore, a part of cultivating such land.

**12—The privileges appertaining to the right of occupancy—**These are :—(a) the security of tenure on payment of statutory rent (Sec. 7); (b) exemption from liability to enhanced rent [Sec. 7 and 83 (c)]; (c) exemption from determination of tenancy by efflux of time or on notice given under Sec. 81 of the L. R. Code. The occupancy tenure may thus shortly be described in the words of Batty J. as “a permanent tenure on the fixed statutory rent”(2).

**13—The right of occupancy as distinguished from the right of transfer.**—(a) Sections 5 and 6 lay down how the right of occupancy is acquired; while Sec. 9 shows how the holder who has acquired the right of occupancy acquires also the right to transfer such right. Secs. 5 and 6, in other words, *create* a right; while Sec. 9 *annuls* one of its necessary adjuncts, *viz.* the right of transfer. Thus the holder acquires the right of occupancy by the *user* and occupation of the Khoti land, while he loses the right of transfer by the *non-user* of such a right within a particular period.

(b) A holder of Khoti land may acquire the right of occupancy and yet may not have the right of transfer. It is absurd to talk of an occupancy-tenant not having the right of occupancy, but there are quite a number of occupancy-tenants who have not got the right of transfer.

(1) *Krishnaji v. Rango*, S. A. (709/1906), 30-8-07, Heaton J.

(2) *Yessa v. Sakharan*, 7 Bom. L. R. 941 (=30 Bom. 290) Russell & Batty JJ. 1905.



(c) To acquire the right of occupancy, the holder has to prove continuous cultivation from any date previous to the commencement of 1845-46 i. e. 20 years prior to the passing of the Act I of 1865. To acquire the right of transfer, the holder must have exercised his right of transfer *within 30 years* prior to 1865. It will be observed that if the 1st period of 20 years be curtailed the Khot will suffer; because many holders, whose cultivation may not be so old as required under Sec. 5 or 6, would acquire by such curtailment the right of occupancy as against the Khot. If however the latter period of 30 years is curtailed, the occupancy-tenant would be the loser thereby; because the occupancy-tenant may have actually exercised his right earlier and yet would lose his right to transfer by the curtailment.

(d) The Recording Officer's decision whether a holder has or has not the occupancy-rights is not final and can be set aside by a Civil Court (Sec. 21); but that about the transferability or otherwise of such rights is final and conclusive and cannot be challenged in any Civil Court (Sec. 20).

**6.** IF an occupancy-right which is not transferable otherwise than by inheritance, has been Right of occupancy when land has been wrongfully transferred. so transferred, the actual holder of the land shall be deemed to be the tenant thereof, and if he, or his father, or other person from whom he inherits, has occupied or cultivated the land continuously from any time previous to the commencement of the revenue year 1845-46, he shall have a right of occupancy therein :

Provided that, if the actual holder is in possession of the land as mortgagee, or lessee merely, his occupation or cultivating shall for the purpose of this section and of section 5 be deemed to be the occupation or cultivating of the mortgagor or lessor, and that, if such mortgagor or lessor has a right of occupancy in the land, such right shall, notwithstanding the provisions of section 9, be subject to the mortgage lien or lease of the said mortgagee or lessee until the same is duly discharged or determined.

## NOTES.

**1—Scope of the Section.**—Section 6 is to be read as a continuation of Sec. 5, so far as it deals with the question of acquisition of occupancy-rights. Para. 2 to Sec. 5 shows how the occupation of the former holder (vendor etc.), or of the mortgagee or lessee of the former or present holder would enure for the benefit of the present holder. That section, however, presumes that the occupancy-rights are transferable. Sec. 6 tells us what becomes of such occupation, when the occupancy-rights are not so transferable. The transfer referred to in para. 1 to Sec. 6 is an out and out transfer and that this is so, is made more clear by the wording of the proviso to this section. It is submitted that Sec. 6 will not apply to transfers, which are effected after the Amending Act VIII of 1912 comes into force. (*Vide* note 2 *post*).

**2—Whether Sec. 6 refers only to past transfers.**—It was not quite clear, prior to the amendment of Secs. 9 & 10 by the Act VIII of 1912, whether the operation of Sec. 6 was limited to cases arising for decision, (a) at the commencement of a survey settlement, or (b) at each successive Settlement, or (c) at the date when the Act came into force, or (d) at any future date. Batty J. took the latter view, because had Sec. 6 been intended, his Lordship observed, “to apply only to the state of things existing when the Act came into force, it would be reasonable to suppose that in lieu of the phrase ‘has been so transferred’ some such phrase would have been employed as ‘has before the coming into force of this Act been so transferred’”. Further, in His Lordship’s opinion, “the reference to the provision of Sec. 9 in the last para. of Sec. 6, suggests that *future* mortgages and leases were in contemplation”(1). Reading Sec. 6, with the new Secs. 9 & 10, it would appear, that Sec. 6 would govern all such transfers as are effected prior to the 29th of June 1912, i. e. the day on which the Amending Act VIII of 1912 came into force.

**3.—Position of an out and out transferee when the occupancy-rights are non-transferable.**—In cases in which any occupancy-tenant may have wrongfully transferred his rights, before the Amending Act VIII of 1912 came into force, the transferee (the vendee, donee or devisee) would be in a no better position than that of a tenant, i. e. an ordinary tenant under Sec. 8 and would be

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(1) *Yesa v. Sakbaram*, 7 Bom. L. R. 241. at p. 248. Russell and Batty JJ. 1905.

liable to be evicted on three months' notice (Sec. 84 of the L. R. Code). Thus although his transferor had himself the occupancy-rights, the transferee would not get the same. The transferee can acquire the right of occupancy, if he or the person from whom he inherits have independently occupied prior to 1845 as laid down in Sec. 5; he cannot tack on the occupation or cultivating of his 'former holder' or transferor, as he could have done if his transferor had a right of transfer. The reason of this is obvious. An occupancy-tenant not having the right to transfer cannot confer on his transferee "a permanent tenure on the fixed statutory rent" i. e. his right to claim immunity from enhancement or ejection on three months' notice. By such transfer, the occupancy-tenant determines his own tenancy and the right of occupancy. The transferee having thus no right left in his transferor to fall back upon, would not even be an ordinary tenant, but for the special provision in Sec. 6, that he "shall be deemed to be the tenant thereof".(1) The occupancy-tenant, can as long as his own tenancy is undetermined, grant to another the right which is in him, but he cannot give a right which would survive his own interest so as to force upon the khot, a tenant claiming in his own right a permanent occupancy as against the khot, surviving after the rights of the transferor had determined. Sec. 11 reserves to the Khot alone the power to confer such rights on the tenants. All that the occupancy-tenant can then convey to his transferee is the right of notice under Sec. 84 of the L. R. Code(2). That these rights of ordinary tenancy may mature into those of an occupancy-tenancy, the transferee, as observed above, must prove his own occupation or cultivation prior to 1845.

In the case of a wrongful transfer, however, effected after the Amending Act VIII of 1912 came into force, the position of the transferee would be nothing better than that of a trespasser (*vide* note 11 to Sec. 10).

**4—Proviso.**—The proviso refers to cases where the occupancy-rights otherwise non-transferable are transferred by way of mortgage or lease before the Amending Act VIII of 1912 came into force. The mortgagor or lessor continues in such cases to be the Khoti tenant and the occupation or cultivation of the actual cultivator, the mortgagee or the lessee, would be considered to be that of the mortgagor or the lessor.

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(1) *Vide* however Note 8 Sec. 9.

(2) *Yesa v. Sakharam*, 7 Bom. L. R. 941, Russell and Batty JJ.

Thus if the mortgagor or the lessor or the persons through whom he inherits or his or their mortgagees or lessees have occupied or cultivated the Khoti land for at least 20 years prior to 1865 as laid down in Sec. 5, he shall acquire the right of occupancy therein.

**5—The occupancy-right shall be subject to the mortgage lien or lease :—**An occupancy-tenant not having the right of transfer, cannot transfer his occupancy-rights absolutely; but he could at least do so by way of mortgage or lease prior to the Amending Act VIII of 1912 came into force. Thus in the case of mortgages or leases effected before the Amending Act VIII of 1912 came into force, the mortgagees or lessees had, under the law as it then stood, a right to remain in possession until the mortgage debt was paid off or until the term expired. It is not however quite clear as to what is the remedy of a mortgagee in the case of a *simple* mortgage effected before the Amending Act VIII of 1912 came into force and how he is to enforce the payment of the mortgage debt. He cannot claim to be put into possession, nor can he properly ask for the sale of the occupancy holding, because a sale of an occupancy holding, not otherwise transferable, in execution of a decree would be *null and void* and would give the action purchaser, no title nor right to the possession thereof(3).

It may also be noticed that the power of the occupancy-tenant, not having the right to transfer or to let out his holding has now been very much curtailed by the new Secs. 9. & 10. Prior to this the only restriction on his power was that he could not execute a permanent lease. But now he cannot grant a lease for a term exceeding one year.

**7. PRIVILEGED** occupants shall continue to hold their lands conditionally on the payment of the rent from time to time lawfully due by them to the khot or other person entitled to receive payment of the same.

Continuance of privileged occupants' tenures.

## NOTES.

**1—Rights and liabilities of privileged occupants.—**The privileged occupants i. e. the Dharekaries, Quasi-Dharekaries and

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(1) Dattatraya v. Nilu, P. J. 1898 p. 378; Parsons and Banale J.J.

the occupancy-tenants are entitled to hold their lands without any interference on the part of the khot so long as they pay rent to the Khot as laid down in Sec. 33. Sec. 7 thus assures them "a permanent tenure on the fixed statutory rent" and the Khot will have no right to eject them on notice given or on any efflux of time, nor will he have a right to enhance their rents(1). The khot is also prohibited from levying any cesses, taxes or rates or from exacting any kind of service from any of these privileged occupants (Sec. 35). If the privileged occupants, however, fail to pay their rents for two consecutive years or if the occupancy-tenants transfer their lands in contravention of the new Secs. 9 & 10 their holdings are liable to be forfeited to the khot (*vide* Notes 4 and 11 to Sec. 10).

2—"Other person entitled to receive payment of the rent".—When the khoti village or any part thereof is attached *e. g.* under Sec. 27, it is taken under the management of the Collector, who generally deputs an Agent to manage the village; this Agent or Japtidar, as he is commonly called, is then entitled to receive payment of the rents from the privileged occupants. Similarly the agent or the assignee of the managing Khot would be entitled to receive such payments(2).

3—Liability of an Inamdar persuading tenants not to pay rents to the Khot.—An Inamdar in an alienated Khoti village, if he prevents the ryots from paying their rents to the khot of the village, will be answerable in damages to the Khot. The khot must, however, bring his claim within the principle enunciated in *Lumley v. Gye*(3) and *Allen v. Flood*(4), and show (a) that there was a legal relationship between him and the several tenants which entitled the former to receive and (if necessary) to enforce by suit payment of certain sums of money; (b) that the Inamdar injuriously interfered with that relationship by inducing the tenants not to make payments due to the khot, and (c) that by reason thereof the Khot did suffer damage(5).

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(1) *Yesa v. Sakharam*, 7 Bom. L. R. 941 : (S. C. 30 Bom. 290) *Russell and Batty JJ.* 1905.

(2) *Vide* Sec. 31A. and *Vasudeo v. Dhaku*, S. A. 88/1902, (11-12-02), *Chandavarkar and Aston JJ.* *Vide* Note 4 to Sec. 31.

(3) 2 E. and B. 216.

(4) 1893, A. C. I.

(5) *Vishnu v. Balu*, 2 Bom. L. R. 65, *Jenkins C. J.* and *Candy J.*, 1899.

**8. TENANTS** other than occupancy-tenants shall continue to hold their lands subject to

Ordinary tenants. such terms and conditions as may have been, or may have hereafter be, agreed upon between the khot and themselves, and in the absence of any such specific agreement shall be held to be yearly tenants liable to pay rent to the khot at the same rates as are paid by occupancy-tenants in the village in which the lands held by them are situate: Provided that the said rates shall not exceed the maxima prescribed in section 33, clause (c).

### NOTES.

**1—Who are ordinary tenants.**—The following holders are considered as ordinary or Ek Sali tenants.—(a) Holders of Khoti land who cannot prove their occupation or cultivating to any date prior to the commencement of the revenue year 1845-46; (b) Absolute transferees in possession under an occupancy-tenant not having the right to transfer(1); (c) Khoti co-sharers occupying khoti khasgi lands after the sale thereof(2).

**2—Position of “tenants other than occupancy tenants”.**—These are the ordinary or annual (*Ek Sali*) tenants of the khot. If so agreed upon between the Khot and these tenants they may hold their land for a term of years. But in either case they cannot claim “a permanent tenure on the fixed statutory rent”. The rents payable by them can be enhanced and their tenancy terminated at the will of the Khot or on the expiry of the term as the case may be. These tenants are not entitled to have a khata of their own. (Sec. 16). But their rights are of course transferable(3).

**3—Rents payable by such tenants.**—In the absence of a *specific* agreement to the contrary, ordinary tenants are entitled to pay

(1) If such transfers are effected after the Amending Act VIII of 1912 comes into force, the position of the transferees would be nothing better than that of mere trespassers. *Vide* Note 3 to Secs. 6 & 11 to Sec. 10.

(2) *Raghunathrao v. Vasudeo*, 1 Bom. L. R. 436, Candy and Crowe JJ. 1899.

(3) *Vide* Note 6. *post*.

rents at the rates paid by the occupancy-tenants in the village under Sec. 33 (C)(1). In a non-khoti village, in the absence of an agreement, such tenants have to pay such rents or render such service as is allowable by the local usage and in the absence of both, such rent "as shall be just and reasonable." (*vide* L. R. Code Sec. 83).

**4—Notice to quit.**—An ordinary tenant in the absence of an agreement to the contrary, cannot be evicted unless he is served with a notice in writing to that effect, full three months before the end of the year of his tenancy, which would be presumed, in the absence of proof to the contrary, to end on the 31st of March. [*vide* Sec. 84 L. R. Code](2).

If the tenant repudiates the landlord's title notice is not necessary. Thus for example where under a plea of ownership the tenant succeeds in obtaining a possessory order in a suit before a Mamlatdar, it is not necessary for the evicted Khot to give notice to quit before suing in ejection on his title(3).

**5—One of several joint khots cannot enhance rent or evict a tenant.**—One of several co-sharers or co-parceners, unless he is acting by consent of the others as manager of the estate is not at liberty to enhance rent or eject tenants at his pleasure. If this were so, "there manifestly would be no safety for tenants, and it would be impossible for them to know how to regulate their conduct or whom to regard as their land-lord".

(a) Thus in a suit brought by one of two joint khots to recover enhanced rent from a tenant, the notice of enhancement given to the tenant, having been signed by the plaintiff alone and not concurred in by the other joint Khots, was held to be insufficient to render the tenant liable for the increased rent(4).

(1) *Krishnova v. Keshav*, 4 Bom. L. R. 606, (S. C. 27 Bom. 71), Crowe and Batty JJ, 1902.

(2) *Yesa v. Sakharam*, 7 Bom. L. R. 941 (S. C. 30 Bom. 290), Russell and Batty JJ, 1905.

(3) *Mahipat v. Lakshman*, 2 Bom. L. R. 228 (S. C. 24 Bom. 426), Parsons and Ranade JJ., 1900.

(4) *Balaji v. Gopal*, 3 Bom. 23, Westropp C. J. and Kemball J. 1878.

(b) Similarly the Managing khot cannot enhance the rents payable by the tenants, without the consent of all the khoti co-parceners. If that were not so, the tenants would have no security and the managing khot for the time being would be able to harass the cultivators and thus the other co-parceners, when next their turn comes round, might find that they had no cultivators left to collect rents from, or that they had only new and unskilled ones in whose hands the estate might rapidly deteriorate in value(1).

**6—Ordinary tenant's rights are transferable.**—There is no restriction in the case of ordinary tenants of the Khots, as regards their right to transfer. The peculiar privileges appertaining to the rights of occupancy, viz. the non-liability to enhancement of rent or to determination of tenancy by efflux of time or on notice given, are absent in the case of ordinary tenants. Whether therefore the rights of the latter are transferred or not it does not result in any harm either as regards the Khot's reversionary interest or his right to evict the undesirable transferee by giving him notice to quit(2).

*Transfer, etc, of Rights.*

**9. THE** rights of khots, dharekaris and quasi-

dharekaries shall be heritable and transferable.

What rights are transferable.

Occupancy-tenants' rights shall be heritable, but shall not be otherwise transferable without the consent of the khot, unless in any case the tenant proves that such right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or

(1) Balaji v. Gopal, P. J. 1880 p. 53, Pinhey and Melville JJ.

(2) Sonshet v. Vishnu, 20 Bom. 78, Bayley Ag. C. J. and Fulton J. (1894); Yasa v. Sakharan, 7 Bom. L. R. 941, at p. 945, (S. C. 30 Bom. 200) Russell and Batty JJ. 1905.



unless, in the case of an occupancy-right conferred by the khot under Section 11, the khot grants such right of transfer of the same :

Provided that an occupancy-tenant may without the consent of the khot grant a lease for a term not exceeding one year.

### *Old Section.*

**S. 9.** The rights of khots, dharekaris and quasi-dharekaris shall be heritable and transferable.

What rights are transferable.

Occupancy-tenants' rights shall be heritable, but shall not be otherwise transferable, unless in any case the tenant proves that such right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or, unless in the case of an occupancy-right conferred by the khot under Section 11, the khot grants such right of transfer of the same.

### NOTES.

**1—The old and the new Section 9.**—The new Secs. 9 and 10 have been recently substituted for the corresponding old sections, by the Amending Act VIII of 1912, in consequence of the ruling in *Yesa v. Sakharam* 30 Bom. 290, and with a view to provide an effective restriction against wrongful transfers.

The new Sec. 9 virtually reproduces the old. The only changes made therein are the addition of a new Proviso at the end, and the insertion of the words "without the consent of the khot," immediately after the word "transferable" in the second paragraph of the section.

**2—The right of transfer and its characteristics.**—Sec. 9 lays down how the right of transfer which is otherwise a necessary adjunct of the right of occupancy is lost by the non-user thereof by the occupancy-tenant. The right of transfer is thus distinguishable from the right of occupancy :—

(a) It is not essential to the conception of an occupancy tenancy just as the latter right is.

(b) It is an existing right which is lost or annulled ; while the latter is created or newly acquired.

(c) It is lost by the non-user ; while the right of occupancy is acquired by the user.

(d) In the one case the user has to be proved *within* a period of thirty years prior to 1865-66 ; in the latter there is no such restriction, but the user or occupation must commence from any time prior to 1845-46. (*Vide* also note 3 to Sec. 5).

(e) The Khot's right to confer the rights of occupancy under Sec. 9 is very general, but his power to confer the right of transfer is rather restricted. (*Vide* note 12 *post*).

**3—Occupancy-tenants when entitled to transfer.**—An occupancy-tenant will be entitled to exercise his right of transfer without the consent of the Khot if he proves :—(a) that the lands in dispute were as a matter of fact transferred *out and out*. Transfer by way of mortgages or leases will not constitute such an exercise of the right of transfer as is referred to in Sec. 9.(1) ; (b) that such transfer or transfers were effected *within* 30 years prior to 1865-66 *i.e.* between the 31st of July 1835-36 and the 1st of August 1865-66 ; and (c) lastly that such transfer or transfers were effected quite independently of the consent of the Khot.

**4—Independently of the consent of the Khot.**—This would mean the 16 annas Khot or all the co-sharers in the Khotki or the mortgagee lawfully in possession of the Khotki. (*Vide* Section 3 clause 2). It would thus appear that if an occupancy-tenant transfers his occupancy-rights, with the consent of one or more of the Khoti co-sharers or their mortgagees, the transfer would nevertheless be made “ independently of the consent of the Khot ”.

**5—Transfer with the consent of the Khot.**—An occupancy-tenant not having the right to transfer can no doubt transfer his occupancy-rights with the consent of the Khot. That the khot can give such consent has now been made more clear by the insertion of the words “ without the consent of the Khot ” immediately after the

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(1) *Badesha v. Narayan*, 9 Bom. L.R. 629. Jenkins C. J. and Beaman J. 1907.

word "transferable" in the new Sec. 9. Thus if the khot consents to the mortgage, he may be taken to have consented to a Court sale in a suit brought on the mortgage, as a necessary consequence of that alienation. But it will not follow as a further necessary consequence that such purchaser should further sell his rights without the consent of the khot to another(1).

**6—Transfer with the consent of the mortgagee of a Khotki.**—The word "Khot" in the clauses, "without the consent of the Khot", and "or, unless in the case.....of the same", would include "a mortgagee lawfully in possession of a Khotki". (*Vide* Sec.3 clause 2). The mortgagee would thus, it appears, be entitled to *consent* to any proposed transfer by an occupancy-tenant, but he cannot *confer* such right of transfer, unless he has been specially authorised by his mortgagor to exercise such power. (*Vide* Sec. 12).

**7—Sale in execution of a decree of occupancy-tenant's lands which are non-transferable is null and void.**—Occupancy-tenant's lands which are not transferable cannot be sold directly or indirectly. Thus a court sale of such lands, in execution of a decree will be null and void, and will give the auction-purchaser no title nor right to the possession thereof(2). A Civil Court is, no doubt, precluded from proclaiming any such holding for sale; but the Executive has no right to ask the Civil Courts directly or through the High Court not to proclaim such lands for sale(3).

**8—Section 9 not retrospective.**—An occupancy-tenant whose rights are non-transferable is prohibited from transferring his rights only after the passing of the Act *i. e.* after the 6th of May 1880. Transfers actually effected before the aforesaid date will not be declared null and void under Sec. 9 which is not retrospective(4). Similarly any wrongful transfer effected before the Amending Act VIII of 1912 comes into force *i. e.* before the 29th of June 1912 will not work a forfeiture or place the lands at the disposal of the khot.

(1) Parshotam *v.* Kashidas, 17 Bom. 677, 680, Bayley and Candy JJ., 1892.

(2) Dattatraya *v.* Nilu, P. J. 1898 p. 378, Parsons and Ranade JJ. *See also* Parshotam *v.* Kashidas 17 Bom. 677.

(3) G. R. 2764/4-5-1887.

(4) Vinayak *v.* Baba 13 Bom. 373, Sargent C. J. and Nanabhai J. 1888; Jayaram *v.* Narayan, 5 Bom. L. R. 652, Chandavarkar and Aston JJ. 1903. *See* however note 3 to Sec. 6.

**9—Retrospective operation of a Statute when and how far allowed.**—Remedial Statutes *i. e.* those which relate to procedure may well be retrospective, without any reservation. Because no one has any vested right in any course of procedure and as a general principle “alterations in the procedure are always retrospective, unless there be some good reasons against it”. (Maxwell p. 314). In respect of Statutes which lay down substantive law, the law is otherwise. In the case of such Statutes which take away or impair vested rights acquired under existing laws, or create a new obligation, or impose a new duty, or attach a new disability in respect of transactions or considerations already passed, the fundamental rule of law is that, “no Statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such a construction”(1). When, however, “the intention is clear that the Act or any section thereof should have retrospective operation, it must be unquestionably so construed even though the consequences may appear unjust and hard”.(2) (*Vide e. g.* Sec. 41).

**10—Estoppel as against the occupancy-tenant, not having the right of transfer.**—The question as to whether an occupancy-tenant who alienates his occupancy-rights is or is not estopped from questioning his own right to alienate the property very often arises for consideration: (a) So far as alienations effected before the 6th of May 1880 are concerned, it has been held that the occupancy-tenant will be estopped at least as between the parties to the transaction. Thus where a mortgagee filed a suit on a mortgage of 1871 to recover the mortgage money by the sale of the mortgaged property, the defendant the son of the mortgagor contended that the mortgage was illegal under Sec. 9. *Held*, over-ruling this plea, that the principle of estoppel applied to the case and “on the principle of the ruling *Narayan v. Kaigaunda*(3), the mortgagor could not have questioned his own right to mortgage the property in dispute. The mortgage was effected in 1871 and Sec. 9 of the Khoti Act does not apply to it. It cannot be regarded as a void transaction... The mortgaged property must be declared, therefore in this suit, as between the parties, liable

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(1) Maxwell 29-9; *Lauri v. Renar*, 3 Ch. 421.

(2) Maxwell 310.

(3) 14 Bom. 407.

to be sold according to the terms of the deed. But whether the purchase will be a valid one, so as to confer a title on the purchaser at a court sale, is a question, which we are not called upon to decide in this case. All that is declared is that according to the contract between the parties, the property is liable to be brought to sale".(1)

(b) In the case of alienations, effected after the 6th of May 1880 and before the Amending Act VIII of 1912 came into force, the occupancy-tenant will not be so estopped, because whether any alienation of occupancy-rights is or is not valid is "a point which the court is bound to notice *suo motu*" under Sec. 9. The moment the purchaser relies for his title upon his purchase of the occupancy-rights, the question arises, whether the purchase is valid according to law. The purchaser cannot rely merely upon the *factum* of his purchase; he has also to show that *under the Khoti Act*, it is a purchase recognised as valid(2).

(c) In the case of alienations(3) effected after the Amending Act VIII of 1912 comes into force, the question of estoppel or no estoppel sinks into insignificance. Because a wrongful transfer would immediately result in a forfeiture of the occupancy-rights to the Khot and thus give no occasion for a dispute between the occupancy-tenant and his transferee.

**11—Whether an occupancy-tenant can mortgage or lease his occupancy-rights.**—Under the old Secs. 9 and 10 an occupancy-tenant not having the right to transfer was not precluded from parting *temporarily* with the possession of his land by way of a mortgage or lease. What he was prohibited from doing was any act of his which resulted in the transfer of his immunity from enhancement and ejection on 3 months' notice. He could not therefore sell,

(1) Jayaram v. Narayan 5 Bom. L.R. 652, Chandavarkar and Aston JJ. 1903.

(2) Mahadeo v. Mahadaji 13 Bom. L.R. 1157 Chandavarkar & Heaton JJ. 1911.

(3) No question of *estoppel* can arise in the case of a *court* sale. Because there is no mutuality, which is one of the essentials of the principle of estoppel, between the judgment-debtor and the court-purchaser, Gajanan v. Nilo 6 Bom. L. R. 864. 867. Chandavarkar and Aston JJ. 1904. Further, it is submitted, that no question of *forfeiture* will also arise in the case of such sales effected after the Amending Act VIII of 1912 comes into force, because such sales are entirely *in iudicio* as regards the judgment-debtor.

grant, or devise his land. There was, however, no prohibition to disable an occupancy-tenant from conferring on another any rights which fall short of the occupancy-rights. The occupancy-tenant could therefore without infringing the old Sec. 9 allow another to enjoy such of his rights as involved no transfer of the permanent occupancy on the statutory rental. What he could not give was his immunity from enhancement and ejection on three months' notice. Any attempt to transfer that immunity was therefore null and void(1). In the case of a mortgage or a lease, however, there is no question of a transfer of this immunity; the transferor still remains the occupancy-tenant and the mortgagee or lessee will be entitled to remain in possession until the debt is paid off or until the term expires. (*Vide* note 5 to Sec. 6).

Under the new Secs. 9 and 10, however, an occupancy-tenant not having the right to transfer, cannot without the consent of the khot mortgage, nor can he lease his land for a term exceeding one year. If he does so, the land so sought to be transferred will be immediately forfeited to the khot free of all encumbrances.

**12—Limited power of the Khot to confer the right of transfer.**—The power of the khot to confer the rights of the privileged occupant on any one of his tenantry is very general (*vide* Sec. 11). But his power to confer the right of transfer is, it is submitted, rather restricted. Thus the clause runs "or unless, in the case of an occupancy-right conferred by the Khot under Sec. 11, the khot grants such right of transfer of the same", and not as any Khot might have wished, "or unless the Khot grants such right of transfer of the same". From this it would appear, that the khot is empowered to confer such a right of transfer, whether the occupancy-tenant wishes to have it or not on such of the occupancy-tenants only as are of his own creation and not on those who have acquired the occupancy-rights independently of the khot under Secs. 5 and 6. The reason for this restriction appears to be to protect the latter holdings from being made transferable at the will of the khot and for reasons of his own *e.g.* when he wishes them to be sold in a court sale in execution of a decree obtained by himself or by any friend of his(2). If this is the correct

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(1) *Yesa v. Sakharam*, 7 Bom. L. R. 941 : S. C. 30 Bom. 290, Russell and Batty JJ. 1905.

(2) In *Dawodar v. Babaji*, a decree-holder applied for attachment and sale of

interpretation of the clause, it affords a complete answer to those who would say that Sec. 9 was meant to be one-sided only *i. e.* to protect the rights and privileges of the Khot and the Khot alone without any regard for the interests of the occupancy-tenant(1). The occupancy-tenant who has acquired occupancy-rights independently of the Khot, has as much right that his holding be not be sold *in invitum* or against his will as the Khot has to insist on the tenant not alienating his holding.

Another interesting point worth noticing is as to whether the Khot must confer such right of transfer, if he intends to, *simultaneously* with the exercise by him of his right to confer the rights of occupancy under Sec. 11. In *Mahadeo v. Mahadaji*(2), their Lordships, in deciding a case under the old Section 9, observed, that "there are two exceptions created to this bar" of the non-transferability of occupancy-rights. "first, when the right of transfer is created by custom under the conditions specified in Sec. 9, and secondly, where the khot has in granting lease conferred upon the lessee the right of transfer *at the time* of creating the tenancy. Now in the present case neither of these was alleged. What was relied upon was merely that *after* the occupancy-right had been created the Khot consented to the transfer of his right by the tenant. But such consent has no place whatever in Sec.9.(3) and therefore, the learned District Judge was right in holding that the defendant's purchase must be treated as illegal and void".

his judgment-debtor's occupancy-rights. The occupancy-rights were not *conferred* by the Khot under Sec. 11, nor were they otherwise proved to be transferable. But the sole Khot of the Dhala (sub-division of the Khoti village) in which the lands in dispute were situated was examined as a witness on behalf of the decree-holder and he professed to give his consent to the same. The lower Courts nevertheless held that the lands were not liable to sale. On S. A. to the High Court the decree of the Appellate Court was confirmed. S. A. 831/1903 (20-7-1908) Chandavarkar & Heaton JJ.

(1) In *Govind v. Babaji*, the contention that Sec. 9 was intended for the protection of the interests of the khot alone, was held to be "against the words of the section" and "without substance" S. A. 234/1906, 27-3-07, Russell and Heaton JJ.

(2) 13 Bom. L. E. 1157 Chandavarkar and Heaton JJ. following *Wasuleo v. Laxuman*, S. A. 471/1909 (s-3-1) Bachelor and Davar JJ.

(3) The new Section, however, now allows such transfers with the consent of the Khot.

If this was what was meant by the Legislature it would have been better, it is submitted, if the clause, "or unless in the case,...of the same", had been worded as follows:—"Or unless in the case of occupancy-right conferred by the Khot under Sec. 11, the Khot grants *at the time* such right of transfer of the same", or, "or, unless in conferring an occupancy-right under Sec. 11, the khot grants such right of transfer of the same".

**13—PROVISO.**—This proviso is newly inserted by the Amending Act VIII of 1912. An occupancy-tenant not having the right to transfer, cannot after the Amending Act comes into force grant a lease for a term exceeding one year without the consent of the Khot. If he does so, the land so sought to be transferred will be forfeited to the Khot (Sec. 10).

Prior to this amendment, the only restriction on his power to let out was, that he could not grant a lease which did not purport to be determined by efflux of time. (*Vide* Sec. 6 proviso). Further no penal consequences were attached to the breach of this rule. The transfer was no doubt rendered abortive, but it did not annihilate the occupancy-rights of the transferor.

**10. IF** the land in the holding of a privileged occupant lapses for failure of heirs or is forfeited on the occupant's failing to pay the rent due in respect thereof, or if any occupancy-tenant resigns the land or any portion of the land in his holding or does any act purporting to transfer such land or any portion thereof or any interest therein without the consent of the khot (except in the cases provided for in section 9), such land shall be at the disposal of the khot as khoti land free of all encumbrances, other than liens or charges created or existing in favour of Government.

But it shall not be competent to a privileged occupant at any time to resign a portion only of his entire holding except with the consent of the khot; and no privileged



occupant shall be deemed to have forfeited his land on failure to pay rent unless such forfeiture is certified by the Collector.

### *Old Section.*

**S. 10.** If a privileged occupant resign the land or any portion of the land in his holding, or if any such occupant's land lapse for failure of heirs, or other persons entitled thereto, or is forfeited on the occupant's failing to pay the rent due in respect thereof, the land so resigned, lapsed or forfeited, shall be at the disposal of the khot as khoti land free of all encumbrances, other than liens or charges created or existing in favour of Government.

Resignation, lapse or forfeiture of privileged occupants' lands.

But it shall not be competent to a privileged occupant at any time to resign a portion only of his entire holding except with the consent of the khot ; and no privileged occupant shall be deemed to have forfeited his land on failure to pay rent unless such forfeiture is certified by the Collector.

### NOTES.

1—The old and the new Section 10.—The new Sec. 10 has been substituted for the old by Act VIII of 1912 principally with a view to effectively put a stop to wrongful transfers by occupancy-tenants. The first part of the old section has been recast and materially altered. The old proviso has, however, been retained. The alterations effected are :—

(a) the words “or other persons entitled thereto”, which appeared immediately after the words, “failure of heirs” have been omitted. (*Vide* note 3 *post*) ;

(b) the words, “a privileged occupant” in the old clause, “if a privileged occupant resign the land...holding” have been deleted and the words “any occupancy-tenant” have been substituted therefor with a view to keep alive encumbrances created by Dharekaris and Quasi-Dharekaris, notwithstanding the land so encumbered has been resigned by them to the khot. (*Vide* note 8 *post*).

(c) the words, “or does any act...Sec. 9” have been inserted.

None of these changes have, however, been declared to be operative with retrospective effect.

2—Khot's reversionary interest.—Section 10 treats of the reversionary rights of the khots. A khot as such is not a *full* proprietor

of his village. He has, however, limited proprietary interest in the soil *qua* khot. He has thus the right to resume all the Khoti-Nisbat lands in the village on the happening of certain events. Thus whether any holding, is resigned, forfeited for failure to pay rent, or lapses for failure of heirs, it would ordinarily revert to the khot and not to Government and will thenceforth be at the disposal of the khot as khoti-khasgi land(1). In a Rayatwari village, on the happening of any one of the three events referred to above, the holding would revert to Government (*Vide* Secs. 74, 56 and 57, and 72 L. R. Code). Similarly if an occupancy-tenant not having the right of transfer does any act, after the Act VIII of 1912 comes into force, purporting to transfer his land or any interest therein without the consent of the khot, in contravention of the provisions laid down in the new Sec. 9, such land shall also revert to the khot.

**3—Failure of heirs.**—In a non-khoti village when the occupant dies intestate and without heirs, the Collector is authorized to dispose of his occupancy or holding by the sale thereof. (*Vide* Sec. 72 L.R. Code). In a khoti village, however, when a privileged occupant, whether he be a Dharekari, Quasi-Dharekari or an occupancy-tenant, dies without leaving any heir, the holding of the deceased occupant lapses to the khot and is thus at his disposal as his own private or Khasgi property.

It will be noticed that the words, "or other persons entitled thereto," which appeared in the old section immediately after the words "failure of heirs" have been deleted in the new. One of the effects of this omission would be, it is submitted, that encumbrances created by a privileged occupant will be extinguished, if the privileged occupant dies without "heirs", after the Amending Act comes into force. *See*, however, the proviso to Sec. 6.

**4—Forfeiture for failure to pay rent(2).**—Under the old Section 10 it was only the non-payment of rent which was made penal; but now under the new wrongful transfers will also work a for-

(1) Secretary of State *v.* Narayan, 1 Bom. L. R. 19, 24 : S. C. Secretary of State *v.* Sitaram, 23 Bom. 518, Parsons and Ranale JJ., 1899. In practice such lands are, however, entered in Khot-Nisbat Khata.

(2) As to the effect of failure to pay rent or land-revenue in villages to which the Khoti Act has not been extended : *Vide* Sec. 153, L. R. Code. Sec. 153 of the Code does not apply to a khoti village to which the Khoti Act has been made applicable. *Vide* Sec. 39 of the Act.

feiture. Forfeiture, however, on failure to pay rent must be certified by the Collector and the Collector will not so certify in the case of an occupancy-tenant "unless he has failed to pay rent for *two consecutive* years nor if the tenant is a minor, shall any forfeiture be certified until two years after he has attained majority and has failed to pay rent". (*Vide* Rule 1 to Sec. 40 clause (f) and note 14 post). The Rule as it stands does not make it clear whether the entire holding or only the particular land in respect of which default is committed is to be forfeited. Presumably the *entire* holding is liable to forfeiture. A privileged occupant cannot resign and get rid of only a portion of his holding without the consent of the khot. (*Vide* note 7 post); *a fortiori*, he cannot bring about the same result by deliberately omitting to pay rent in respect of the particular land he wishes to get rid of.

It is not quite clear why an exception is made in the case of an occupancy-tenant only in the Rule referred to above. In the case of Dharekaris and Quasi-Dharekaris non-payment of rent even for *one* year would, it appears, be sufficient for the purposes of certifying forfeiture. Similarly a minor Dharekari or a Quasi-dharekari would not, it appears, be entitled to the benefit reserved for a minor occupancy-tenant under the Rule. The reason for this difference appears to be that the liability of the occupancy-tenant is much higher than that of a Dharekari or a Quasi-dharekari under Sec. 33, and it was perhaps thought advisable by the Framers of the Rule to allow to the former a reasonable opportunity to pay off the arrears due by him.

#### 5—Resignation or Rajinama must be to the Khot.—

The word "resignation" is not defined in the Act. To resign the land would literally mean to relinquish or abandon the land. Whether a particular transaction amounts to a resignation or not must depend on the circumstances of each case. "The resignation must be *to* the Khot, and it is only to the khot that the resignation can be made"(1). That the resignation must be made to the khot is made more clear by its Marathi equivalent Rajinama. The Rajinama is to be given to one who is entitled to accept it. It thus implies in the words of Batty J, "the returning a fee by a vassal into the hands of a superior"(2).

(1) *Badesha v. Narayan*, 9 Bom. L.R. 829, Jenkins C. J. and Beaman J. 1907. *Vide* also Sec. 3 clause 2.

(2) *Yesa v. Sakharam*, 7 Bom. L. R. 941, 947 : 30 Bom. 290 Russell and Batty JJ. 1905.

It is not in the power of the privileged occupant to resign the land in favour of any particular individual. A khoti tenant herein differs from a survey occupant, as the latter can relinquish his occupancy in favour of a specified person. (*Vide* L. R. Code Sec. 74).

**6—No particular formality necessary for a valid resignation.**—Section 10 does not lay down any particular formality for effecting a valid resignation. No notice in writing is required, nor is any particular period of the year specified within which the occupant may resign the land (Compare Sec. 74 L. R. Code). Whether any particular transaction amounts to a resignation or not must depend on the circumstances of each case(1). Where, however, an oral or informal resignation is alleged but the same is denied by the privileged occupant, the courts will naturally require very strict proof from the party setting up the same.

**7—Consent of the Khot not necessary.**—Resignation is a unilateral act and needs no acceptance or ratification by the Khot(2). When, however, the privileged occupant wishes to resign only a *portion* of his holding, the previous consent of the Khot is necessary. The reason for this is obvious. An occupancy-tenant *e. g.* would like to retain with himself rich fields, get rid of those which are not productive and claim a proportionate reduction in the rent. But the Khot would naturally find it difficult to secure other tenants for the particular land so resigned. When however, the whole holding is resigned the khot would not necessarily be placed at a disadvantage in securing a tenant therefor.

**8—Effect of resignation.**—The immediate effect of a valid resignation would be to free the privileged occupant from his liability to pay the rent for the holding so resigned. Further prior to the Amending Act VIII of 1912 was passed, encumbrances created by privileged occupants whether they be Dharekaris, Quasi-dharekaris or occupancy-tenants were also declared null and void, if the land so encumbered was resigned by any of these occupants. Under the new Section, however, land resigned by privileged occupants other than occupancy-tenants will not as before revert to the khot "free of all

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(1) *Balesha v. Narayan* 9 Bom. L. R. 829, Jenkins C. J. & Beaman J., 1907.

(2) *Ibid.*

encumbrances". It is submitted that the encumbrancer, under an occupancy-tenant *who has a right to transfer*, should also be protected. Why should such an occupancy-tenant be allowed to defeat and to render null and void an encumbrance which the law permits him to create?

**9—Fraudulent resignation : Sod-patra must be construed strictly.**—If the Khot would only consent to collude with the occupancy-tenant(1)—such cases are not rare—there is a door wide open for a crafty occupant to defraud even his secured creditors. He has only to show that he has resigned the land so encumbered and his unsuspecting creditors will be left almost without a remedy, particularly when the occupant has no other attachable property of his own. The equitable relief provided for in Sec. 53 of the Transfer of Property Act (IV of 1882) will not avail the creditors, for the simple reason that resignation is not a transfer(2). The occupant can thus, just because his land is heavily encumbered, resign it to the Khot, and the resignation will be perfectly valid apart from any question of good faith or other equitable consideration. Where, however, the fraud is palpable and apparent on the very face of it, it is submitted, that the courts will decline to look on the transaction as a *resignation*, but will treat it as only a *transfer* to the Khot and so subject to the provisions of Sec. 53 of the T. P. Act.

Thus in a case where the question was whether a deed purporting to be a Sod-patra was really a resignation or a sale to the khot, Sir Chandavarkar J. observed :—" But it is not the mere name given by the parties to the deed, but the terms of it which must be looked to in determining its exact nature and effect in Law. Resignation or relinquishment within the meaning of Sec. 10 of the Khoti Act is different from a sale, because in the former all the rights and liabilities of the resignor are *extinguished* whereas in a sale they are *transferred* to the purchaser. The terms of this document are in the nature of a sale. In consideration of Rs. 250, which the occupancy-tenant owed to the Khot, but which the Khot released, the land was made over by the tenant to the Khot. That is not a mere resignation of rights. I think that such deeds must be construed strictly in preservation of rights

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(1) Such collusion with Dharekeris and Quasi-dharekeris is now useless. *Vide* note 8 *ante*.

(2) *adasha v. Narayan*, 9 Bom. L. R. 829.

where those rights concern third parties and we should not give effect to any document so as to bring it within Sec. 10 of the Khoti Act, if there are words in it which will take it out of the category of the deeds contemplated by the Section "(1).

**10—Transfer and resignation.**—A Khot cannot claim the land wrongfully transferred by an occupancy-tenant by treating the transfer thereof as a resignation to himself within the meaning of Sec. 10. Because if the transfer were to be treated as a resignation of the land, the result would be that while Section 9 would enable a Dharekari or a Quasi-Dharekari to transfer his land, he would, in exercising the right of transfer so conferred on him, place his land at the disposal of the khot by virtue of Sec. 10. This obviously cannot have been intended by the Legislature(2).

**11—Effect of wrongful transfer.**—In the case of a wrongful transfer (out and out) by an occupancy-tenant effected before the Amending Act VIII of 1912 came into force, the position of the transferee was, no doubt, in no way better than that of an ordinary tenant(3). But the land so transferred was not placed immediately at the disposal of the khot under the old Sec. 10. The effect of it was that although the transfer of the occupancy-rights was itself null and void, the transferee could not be summarily ejected by the khot as the

(1) *Ramchandra v. Bhaurao S. A.* 822/1909 (14-6-1910) *Chandavarkar and Heaton JJ.*

(2) *Ramchandra v. Dattatraya* 9 Bom. L.R. 320; *Badesha v. Narayan* 9 Bom. L.R. 829; *Yesa v. Sakharam*, 7 Bom. L.R. 941, S.C. 30 Bom. 290.

(3) *Yesa v. Sakharam* 7 Bom. L.R. 941. Even this limited right to occupy the land as an ordinary tenant was denied to the purchaser in *Govind v. Balaji*, B. A. 284/1906 (27-8-07), *Russell and Heaton JJ.* *Russell J.* observes:—"The second contention is that the right to occupy the land could be sold. This, however, would inevitably be an infringement of the rights of the occupancy-tenant which are not transferable. For my part I cannot conceive of a state of things in which without prejudice to his right as such, an occupancy-tenant is deprived of the right to occupy the lands. That right is an integral, an inseparable, and I should say, a very important of his privileges as an occupancy-tenant. Deprived of that right, an occupancy-tenant, would be but a meagre portion of what the Khoti Act contemplates as his collective entity. For this reason I can find no substance in the second contention".

transfer did not work a forfeiture(1). The khot had then either to quietly allow the transferee to continue in possession; or if he wanted to evict him, he was bound to give him three months' notice under Sec. 84 of the L. R. Code, hold the original transferor responsible as before for the payment of rent and await the uncertain chances of a forfeiture of the land so transferred under Rule 1 to Sec. 40 cl. (f).

With a view, however, to provide an effective restriction against wrongful transfers, Secs. 9 and 10 have now been amended by the Act VIII of 1912(2). Any wrongful transfer, effected after the Amending Act comes into force *i. e.* after the 29th of June 1912, except as provided for in the Proviso to Sec. 9, will now immediately work a forfeiture and the land so transferred will be placed at the disposal of the khot. The khot can thus evict both the transferor and the transferee and treat the land as his own private khoti land.

Further the new Sec. 10 does not make any distinction between a transfer out and out and a transfer by way of a mortgage or a lease. The only reservation made in favour of the occupancy-tenant is, that he can grant a lease, but it must not be for a term exceeding *one* year.

**12—Section 10 not retrospective.**—The words “or does any act...Sec. 9”, have not been given retrospective effect; compare *e. g.* Sec. 41. Transfers effected before the 29th of June 1912 *i. e.* the day on which the Amending Act VIII of 1912 comes into force, will therefore be unaffected by the new Sec. 10. Such transfers though wrongful will not therefore work a forfeiture; nor would transfers effected after this Amending Act comes into force, result in extinguishing encumbrances created *prior* thereto.

**13—Effect of wrongful transfer of occupancy-rights in the Kolaba District.**—A transfer out and out by an occupancy-tenant not having the right to transfer did not, as observed above, work a forfeiture in the Ratnagiri District, before the Amending Act VIII of 1912 came into force(3). In the Kolaba District, however, to

(1) *Ramchandra v. Dattatraya* 9 Bom. L. R. 320 Jenkins C.J. and Beaman J. (1907).

(2) *Vide* G. R. 8852/10-9-09 and G. L. 3188-4-10.

(3) *Vide* Note 11. *Supra*.

which the Khoti Act has not yet been extended, a wrongful title by an occupancy-tenant has always been understood to result in a forfeiture. Thus in *Nagardas v. Gannu*, it was held that if a khoti tenant unauthorisedly sells his land and there is relinquishment of possession by him consequent thereon, in favour of the transferee, the transfer so made would work a forfeiture of the tenancy and the khot would be entitled to eject the transferee(1). Because Sec. 38 cl. 2 of the Survey and Settlement Act (Bombay Act I of 1865) clearly lays down that the limitation of demand, contemplated in the Act, on the tenant cannot confer on him any right of transfer by sale, mortgage or otherwise, where such right did not exist before. If such a tenant sells his land to a stranger, his act amounts to an ouster of the khot's rights and the khot would be entitled to go into possession of the land(2). If, however, there is no such change of possession or mutation of names or refusal to pay rent or distinct repudiation of the khot's title as superior holder, the sale would not work a forfeiture and the khot would only be entitled to a declaration that the sale is not binding on him(3). But if the tenant attorns to the transferee, the mere fact that the physical possession is still with the tenant is no answer to khot's right to claim forfeiture. Because the tenant's possession is that of the transferee to whom he has attorned, and the transfer is an act by which the tenant deprives himself of his own right of occupancy. By that act the khot's rights are affected, because by selling the land to the transferee and passing *Kabulayats* to him, the tenant attorns to a stranger who is a trespasser and thereby disowns the title of the khot(4).

**14—Certificate of the Collector.**—It is not left with the khot, as in the case of resignation, to determine whether a privileged occupant's holding should or should not be resumed by him for non-payment of rent. The Khot naturally resents this restriction, but it is necessary in the interests of the privileged occupants. May be, the khot may wrongly refuse to accept the rent when it is tendered to him and try

(1) P. J. 1891 P. 107. *Jardine and Parsons JJ. Batty J.* distinguishes this case on other grounds, see *Yesa v. Sakharam*, 7 Bom. L. R. 941, 950.

(2) *Balvant v. Vishnu*, S. A. 186, 1911, (1-2-12), *Chandavarkar & Bachelor JJ.*

(3) *Nagardas v. Hari*, P. J. 1891, P. 133. *Jardine & Parsons JJ.*

(4) *Balvant v. Vishnu*, *Vide* foot-note No. 1 *Supra*.



to resume the land on the pretext of non-payment. It is to avoid such and other contingencies that the intervention of the Collector is thought necessary. It is, however, presumed that when non-payment of rent by the occupancy-tenant for two consecutive years is clearly proved by the khot, the Collector cannot extend the time or refuse to certify forfeiture. In case he does the one or the other the khot can appeal to the Commissioner under Sec. 203 L. R. Code.

It is submitted that a Civil Court will have no power under Sec. 114 of the Transfer of Property Act (IV of 1882) to grant a relief against forfeiture for non-payment of rent, after it is once certified by the Collector.

*Grant of Privileged Occupant's Rights by Khots.*

11. IT shall be competent to the khot at any time to confer on any tenant the right of a privileged occupant of any class, or on a privileged occupant of one class, the right of a privileged occupant of a superior class: Provided that the grant by the khot of any such right shall not affect any right of Government in respect of the land which is the subject of such grant or of the trees or other forest-produce of such land.

12. ON receipt of a written application from the khot, in such form as shall be prescribed in rules to be framed under section 40, the Collector shall cause an entry to be made, in such record as may from time to time be prescribed by Government in this behalf, of any right conferred by the khot under the last preceding section, and an entry thus duly made and authenticated by the Collector's signature shall be conclusive proof of the facts therein recorded.

Nothing in this section or in section 11 shall be deemed to apply to a mortgagee lawfully in possession of

a khotki unless such mortgagee shall have been expressly authorized by his mortgagor to exercise the powers conferred by the said sections.

## NOTES.

**1—Power of the Khot to confer the privileged occupant's rights.**—The Khot can at any time confer on his ordinary tenant the rights of an occupancy-tenant, Quasi-Dharekari or even of a Dharekari in respect of a part or whole of the holding. Similarly he can confer on an occupancy-tenant the rights of a Quasi-Dharekari or a Dharekari and on a Quasi-Dharekari the rights of a Dharekari. The khot may grant or sell the rights of higher tenure to the tenant without in any way affecting the interests and rights of Government,\* as the Khot continues to be liable for the Jama etc. as before. The khot can also confer the right of transfer on any tenant on whom he can confer the right of occupancy. (*Vide* Note 12 to Sec. 9).

**2—Creation of Dharas in favour of Khoti Co-sharers.**—Section 11 authorizes the Khot to confer the rights of a Dharekari on any tenant or privileged occupant of a lower grade. A Khot can of course hold Dhara land just as any one else can(1). But a Khoti sharer is neither a "privileged occupant" nor a "tenant". A Khot cannot thus, it is submitted, confer the rights of a Dharekari on a Khoti co-sharer under Sec 11(2).

**3—A single Khoti Co-sharer cannot confer such rights.**—Khot includes "all co-sharers in a Khotki" (Sec. 3 cl. 2b). A single co-sharer, although then acting as the managing khot, cannot confer the privileged occupant's rights on any tenant without the concurrence of the other co-sharers. If that were not so, any one of the co-sharers for some benefit received by himself will alone exercise this privilege to the detriment of the other co-sharers. Similarly Rule 4 to Sec. 40 cl. (f) requires that all the known Khoti sharers or other duly empowered attorneys should sign the application under Sec. 12. It would, however, be otherwise in the case of a separated sharer in the Khotki when there are no sub-sharers under him, (*Vide* Sec. 32).

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\* *Vide* also Sec. 3 of Bom. Act VII of 1863.

(1) *Gopal v. Nageshwar*, 21 Bom. 698 (Faran C.J. and Parsons J. 1896).

(2) *Vide* also G. R. 1117, 11-2-1885.

4—Nor can a mortgagee in possession of a Khotki confer such rights—A mortgagee lawfully in possession of a khotki is no doubt included in the interpretation of the word 'Khot' (Sec. 3 cl a), but he is expressly prohibited from conferring such rights without an express authority to that effect by his mortgagor. Further the mortgagee cannot question the right of any Dharekari who has been so created by the khot, because the mortgagee takes only what was left by the Khot to the mortgagee at the date of the mortgage(1). It is not, however, quite clear if the khot can exercise this right *after* he has mortgaged his Taxim. If he does it, the mortgage security will to that extent be lessened in value. But there is nothing under the Act to prevent the Khot from so exercising this right. The Collector also is given no discretion in this matter. Because as soon as he receives an application from the Khot, the Collector is bound to record the grant, and once the grant is so recorded it will be "conclusive proof of the facts therein recorded", What then is the remedy of the mortgagee? The mortgagee can at any rate, if it is submitted, sue the khot for damages for having impaired the mortgage security.

5—Written application.—For the form of the application *Vide* Rule IV to Sec. 40 clause (f).

It is not made obligatory on the Khot wishing to confer the rights of a privileged occupant on any one of his tenants to proceed in the way suggested in Sec. 12. The entry if made on an application from the Khot, would no doubt afford the best evidence of the grant. But the Khot or the tenant will not necessarily be precluded from proving such a grant by any other independent evidence.

### *Recovery of Rents.*

13. [*Repealed by Bom. Act. III of 1904, s. 3.*]

### *Old Section.*

§. 13. Whenever application is made to the Collector under section 86 of the Bombay Land Revenue Code, 1879, for assistance to recover rent from a privileged occupant, tenant or co-sharer and the rent claimed is payable in kind, the Collector may, if he thinks fit, direct the recovery of

Commutation rates for rent payable in kind.

(1) *Krishnaji v. Major Francis*, App. No. 89 1865 (18-12-1866).

the money-value of such rent, and in such case the money-value shall be estimated at such commutation-rates as the Collector may fix in this behalf for the year for which such rent is due.

### NOTES.

This Section, which is now repealed, empowered the Collector to fix commutation rates for rents payable in kind. Elaborate Rules are now laid down for fixing such rates under Section 33. (See also Note 9 to Sec. 31 *post*).

14. IF an occupancy-tenant neglect to raise a crop on any land in his holding on account of the rent of which he would, if he raised a crop, be liable to pay the khot a share of the produce, the khot shall be entitled to receive from him the same amount of rent as if he had raised a crop.

Rent of land which an occupancy-tenant neglects to cultivate.

In the event of a dispute as to the amount of rent due under this section, such amount shall be determined by the Collector, but no such rent shall be recoverable by the khot if the tenant shall satisfy the Collector that in the year for which such rent is claimed it was proper, having regard to the custom of the village in respect of lands of the same class, or to the nature and requirements of the soil, that the land should be left fallow.

### NOTES.

1—**Recovery of rents.**—It is submitted that the proper place for Sec. 14 would be immediately after Sec. 33, as Sec. 33A or as Rule VI to Sec. 33 cl. (C). The heading "Recovery of rents" does not fit in with the Section to which it is affixed, because Sec. 14 does not in itself treat exhaustively all the questions of fixing of rents of the privileged occupants, nor does it lay down how and when and by whom such rents are to be recovered.

2—**Remedy of the Khot where the occupancy-tenant neglects to cultivate.**—When the occupancy-tenant neglects to

cultivate any land in his holding, in respect of which he is liable to pay to the Khot a *crop-share*, the Khot has two remedies open to him, (1) he may hold the tenant liable for the full amount of rent due by him as if the tenant had raised a crop or, (2) he may himself cultivate that land during that season and recover what he can towards the payment of the rent due in respect thereof. [*Vide* Rule III to Sec. 40 cl.(f)].

Where however the occupancy-tenant has to keep the land uncultivated for securing better crop next season (*Vide* note 11 to Sec. 5) and when he satisfies the Collector that it was necessary to keep the land fallow, the Khot would not be entitled to recover rent for such land, nor would he be entitled to cultivate it himself.

### *Accounts.*

#### 15. THE khot shall—

- (a) keep, or cause to be kept, such accounts as may from time to time be required by the Khot's to keep accounts ; Collector under the orders of Government ; and
- (b) produce such accounts, whenever required, to the Collector or to any officer subordinate to the Collector not lower in rank than a mahálkari, and  
and to produce them when required ;
- (c) give a written receipt for every payment of rent or land-revenue made to him whether by a privileged occupant or tenant, or by a co-sharer in his khotki,  
and to give written receipts,

For disobedience of any order duly made under this section, or for any infraction of the provisions of this section, the khot shall, on conviction before the Collector or the Assistant or Deputy Collector in charge of the taluka in which such khot's village is situate, be liable to a fine not exceeding

Penalty.

one hundred rupees, which shall be recoverable as an arrear of *jámá*.

### NOTES.

1—Khots must keep certain accounts.—The khot is required to keep the following three accounts :—

- (1) The Appraisal Register (*Abhavni Patrak* *Vide* App. VII).
- (2) The Ledger or *Khatavani* (*Vide* Form No. 2 App. I).
- (3) The Ryot's Receipt books or *Pavti Pattas* (*Vide* Form No. 3 App. I).

The khot is also required to take copies of the *Botkhat* (*Vide* Form No. 1 App. I) at his own expense and keep it properly corrected. He is also required to take a copy of the "*Sud*" (1) and "*Phalni*" books, and if he fails to do so he will be responsible for any mistakes that might have been prevented by the use of the books, but shall not be subject to any other penalty. [*Vide* Rule VI to Sec. 40 cl. (b)].

2—Appraisal and the appraisal register.—When the rent is payable to the khot as a crop-share, such amount of the produce is ascertained by what is known as the *Abhavni* or Appraisal of crops. When monsoon and other crops are ready for harvest, the khot is required to inspect, on suitable dates, each field and appraise the crop then standing thereon, in the presence of two witnesses and the tenant concerned and enter on the spot the particulars of such inspection and appraisal in the *Abhavni Patrak* or the Appraisal Register (*Vide* App. VII). Each entry so made must be signed by the Khot, the two witnesses present and also by the tenant if he knows to write his name. All such entries duly made in the *Abhavni Patrak*, will be treated as conclusive evidence of the facts therein recorded. Entries made in the absence of the tenant who fails to be present in spite of the notice of appraisal, will also be presumed to be correct. But the tenant, who has not signed or has not otherwise admitted the correctness of the entries, can within six days of the date of appraisal, petition the *Mamlatdar* or the *Mahalkari* for the relief that he claims. The *Mamlatdar* or *Mahalkari* will immediately

appoint three respectable persons to appraise the crops within seven days and the appraisement made by them will have to be entered by the Khot in the Abhavni Patrak and will be binding on the parties concerned. If the tenant reaps the crop before the appraisement is completed, every presumption will be made in favour of the Khot and if the tenant reaps even after notice of appraisement, he will be deemed to have admitted the correctness of the Khot's estimate as entered by him in the Abhavni Patrak. On the other hand if the Khot fails to carry out the inspection and appraisement or omits to make entries as required under the Rules, "the yield of crop" will be taken to be that as may be admitted by the tenant. [*Vide* Rules I to X to Sec. 40 cl. (a)](1).

3—The Ledger or Khatavni.—The Ledger is kept in the ordinary form of debit and credit account, showing the amount due from and paid by each ryot in a separate khata for each khata of the Bot-Khat(2). The items on the debit side when they relate to payments in grain are required to be written within 15 days from the date when the appraisement of the different crops is required to be made under the Appraisement Rules. [Rule VI to Sec. 40 (c)].

4—The Ryot's receipt books or Pavtipattas.—These are to be kept with them by the ryots, but the entries therein are to be filled up by the khot. They are to be written up on the debit side, in cases of grain payments within one month from the several dates within which the appraisement of the crops must severally be made and in cases of Dhara or Quasi-Dhara payments before the 1st September. Any payment made by any ryot must be entered there and then by the khot on the credit side of his receipt book and the same must be returned to its owner. (*Vide* Form 3 App. I).

The khot must not be allowed to deprive the tenants of their old receipt books in order to do away with the proof of their Makta(3).

5—The Botkhat.—The Botkhat of a village ordinarily consists of four parts:—(1) It begins with what is called the B (ब) Patrak, which sets out in serial numbers the names of the Khots and their

(1) *Rajaram v. Dhorodo S. A.* 766 1910 (15-9-11); *Sir Chandavarkar & Bachelor JJ.* *Vide* foot-note to Rule VIII framed under Sec. 40 cl. (a) *post*.

(2) *Vide* Form No. 2, App. I.

(3) *G. R.* 10088 16-12-85

mortgagees if any, the shares that each family of the khots collectively holds in the entire Khotki with the shares held separately by the different sub-sharers, if any; (2) then follows what is called the Akar-survey or Ekunatiche Terij Patrak. It sets out each ryot's khata, with the different survey numbers held by the ryot, the tenure on which the survey numbers are held, the survey assessment payable in respect of each of those numbers. When the ryot is an occupancy-tenant, there is further an entry in column 5 whether he has the power to transfer or not. (*Vide* Rule VII to Sec. 40 (e)). When a proper Wantap or division of the khotki has been made, each khoti sharer is denoted by a numerical figure in the B. Patrak and the Khoti land in each ryot's Khata is suffixed in the Akar-survey with such particular number to indicate at a glance, the particular khoti sharer to whose share the particular khoti land is assigned [*Vide* Rule VII to Sec. 40 (e)]; (3) immediately below the Akar-survey comes what is called the Khand Patrak which sets out the khand or rent that is payable by the khatedars i.e. the Dharekaris, the Quasi-dharekaris and the occupancy-tenants and also by the khoti co-sharers; (4) lastly comes the Addenda and Corrigenda clause, the Kam Jast Patrak, in which are to be found the corrections made in the Botkhat under the signature of the Mamlatdar or Mahalkari. (*Vide* App. I, Form 1).

The Botkhat is the most important document. It is in fact the bases on which the working of the khoti system depends. It is prepared in duplicate, one copy being kept in the Taluka or Mahal Office, the other in the Huzur Deputy Collector's Office. Corrections are made by means of appendices by the Mamlatdar or Mahalkari as the case may be and copies of these are sent from time to time to the Huzur Deputy Collector.

**6-Jangal-Kharda, Sud and "D" Patrak.**-For the forms see Appendices Nos. IV, V and VI.

**7-Difference between the duties of a Khot and a Kulkarni in respect of keeping of accounts.**-It has already been pointed out (note 4 to Sec. 4) that the Khoti Watan is not a Service Watan like that of a Kulkarni or a Patel. Under Sec. 16 the duty is no doubt imposed on the khot to keep certain accounts and the infraction thereof is made penal. But it must be understood that the Khot does not hold his Watan by way of remuneration for the performance of these duties. The Khots are further not bound to keep other



*village* accounts and records(1) as laid down in Sec. 17 L. R. Code. That would ordinarily be the duty of a Kulkarni (*Vide* Secs. 17 and 110 L. R. Code), who holds his Watan by way of remuneration for the performance of these duties.

The mere appointment of a Kulkarni in a Khoti village does not, however, relieve the Khot of his duties laid down in Sec. 15 and the Rules framed under clause (e) to Sec. 40. The khot's relation with the Government is contractual and no power over Government employees has ever been conferred on him(2).

**8—Accounts in villages under attachment.**—When a Khoti village is attached under Sec. 27 of the Act or under Secs. 144 or 159 L. R. Code, it is taken under Government management and the following special accounts or forms are kept by the officers concerned :—

(1) By the Taluka :—

- (a) Napha Tota Patrak. (Statement showing profit or loss in the management).
- (b) Account of expenses of the Japti or attachment.
- (c) Personal Ledger, showing Khot faida, if any, due to the Khot.
- (d) Kird or Day Book.
- (e) Saggewari. (Statement showing the expenses of attachment sanctioned by the Collector).
- (f) Taluka Form 19(b) to show the arrears of *Thal*.

(2) By the Japtidar :—

- (a) Appraisalment Register.
- (b) Rough Khatawani prepared from the Appraisalment Register, showing the *Thal* payable by each occupant.
- (c) Akarni or Jamabandi. (A sort of Lavni Patrak showing the *amounts* due by each occupant).

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(1) These are twenty-five in all and are ordinarily known as Symond's Forms.

(2) G. R. 1567 25-2-1889.

## PART III.

## SURVEY AND SETTLEMENT.

*Settlement-records.*

16. **WHENEVER** a survey-settlement of the land-revenue of any village to which this Act extends is made or revised under the provisions of Chapter VIII of the Bombay Land-Revenue Code, 1879, (Bom.V of 1879.) the settlement-register prepared under Section 108 of the said Code shall show the area and assessment of each survey-number and also whether such survey-number is held by a privileged occupant or not.

Preparation of settlement-register of khoti villages. If a survey-number is held by one or more privileged occupants, the said register shall further specify the tenure on which such number is held, the name of the registered occupant thereof, and, in the case of a survey-number held by an occupancy-tenant, whether his interest therein is transferable otherwise than by inheritance or not.

Survey-numbers which are not held by privileged occupants shall be entered in the said register in the name of the khot, or, if a partition of the khotki has taken place, of the co-sharers to whose shares they respectively belong.

The said register shall also contain a list of all the co-sharers of the khotki, if the village be not held by one khot in his own sole right, and shall specify the extent of each such co-sharer's interest in the khotki.

## NOTES.

**1—Contents of the Settlement Register.**—The Settlement Register prepared under Sec. 108 (L. R. Code) for the Khoti villages should show the following details:—

- (a) The area and assessment of each survey-number. (This is a matter dealt with by the J. R. Code).
- (b) A statement whether such survey-number is held by a privileged occupant or not.
- (c) If it is held by a privileged occupant, the tenure upon which it is held *i. e.* as a Dharekari, Quasi-Dharekari, or as an occupancy-tenant.
- (d) The name of the registered occupant thereof.
- (e) When the registered occupant is an occupancy-tenant, a statement as to whether his interest is transferable otherwise than by inheritance or not.
- (f) A list of the co-sharers—if any—of the khotki and the extent of each co-sharer's interest therein(1).

**2—Settlement Register when to be prepared.**—It is the duty of the Survey Officer to prepare this Register on the occasion of the introduction of a Settlement of the land-revenue, or when the same is revised after the expiry of the guaranteed period which is generally 30 years (Secs. 102 and 108 L. R. Code).

**3—Introduction and expiry of the Settlement in Ratnagiri and Kolaba Districts.**—The following tabulated statement will show the dates on which the current settlement in the Ratnagiri and Kolaba Districts expires *i. e.* the dates on which each District becomes open to re settlement:—

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(1) Antaji or Antaji, 21 Bom. 437 at p. 486 (F. B.) 1896; *Vide*, however, App. No III.

| DISTRICT.     | TALUKA.         | THE YEAR IN WHICH                                             |                                             |
|---------------|-----------------|---------------------------------------------------------------|---------------------------------------------|
|               |                 | The current (original or revision) Settlement was introduced. | The District becomes open to re-settlement. |
| Ratnagiri ... | Dapoli ...      | 1868-69                                                       | 1898-99                                     |
| " ...         | Chiplun ...     | 1871-72                                                       | 1901-02                                     |
| " ...         | Guhagar ...     | 1872-73                                                       | 1902-03                                     |
| " ...         | (Vengurla) ...  | 1875-76                                                       | 1905-06                                     |
| " ...         | (Malwan) ...    | 1883-84                                                       | 1913-14                                     |
| " ...         | Sangmeshwar ... | 1885-86                                                       | 1915-16                                     |
| " ...         | Rajapur ...     | 1890-91                                                       | 1920-21                                     |
| " ...         | Deogad ...      | 1892-93                                                       | 1922-23                                     |
| " ...         | Mandangad ...   | 1895-96                                                       | 1925-26                                     |
| " ...         | Ratnagiri ...   | 1897-98                                                       | 1927-28                                     |
| Kolaba ...    | (Karjat) ...    | 1883-90                                                       | 1919-20                                     |
| " ...         | Panwel ...      | 1893-94                                                       | 1923-24                                     |
| " ...         | Pen ...         | 1894-95                                                       | 1924-25                                     |
| " ...         | Alibag ...      | 1894-95                                                       | Do,                                         |
| " ...         | Roha ...        | 1898-99                                                       | 1928-29                                     |
| " ...         | Mangaon ...     | 1861-62                                                       | 1891-92                                     |
| " ...         | Mahad ...       | 1865-66                                                       | 1892-93                                     |

#### 4 - Revenue Survey Settlement how introduced.—

With a view to the Settlement of the Land Revenue, it is competent to the Governor-in-Council, to direct the Survey of any village or taluka in any part of the Presidency. The Survey Officer is deputed to conduct such a Revenue Survey and he has the power to measure, classify, and fix the assessment on all the lands to which the Survey extends. The assessments so fixed are subject to confirmation by Government, and when they are approved of and sanctioned finally, a notification is issued in the Government Gazette, laying down the period—30 years for agricultural land—for which they are guaranteed.

Government having sanctioned the assessments, the Collector or other responsible Officer is bound to announce *publicly* the assessment fixed on each survey-number. In Khoti villages the rent payable by

each privileged occupant to the Khot, and the amount of Jama payable by the Khot to Government is announced in lieu of the assessment fixed on each survey-number. (*Vide* Sec. 39A). It is at this stage of the announcement of the assessment or of the rents and the Jama, that the Survey Settlement is deemed to have been introduced. (*Vide* Secs. 95 to 103 L. R. Code).

**5—Revision Survey Settlement.**—A fresh Revenue Survey can be directed by Government at any time, but no enhancement of assessment can take effect till the expiration of the guaranteed period; and when the Revision rates are in excess of the old rates, they are to be levied only from the next following year. All the details which the Survey Officer has to enter in the Settlement records at the introduction of the Survey Settlement, will have to be entered afresh with the necessary alterations, if any, at the time of the Revision Survey Settlement(1).

**6—Area of a Survey Number**—The typical Survey Number is supposed to be 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. It was, however, not possible to stick to this rough measure in practice and thus the Survey number is defined to mean “a portion of land of which the area and other particulars are separately entered, under an indicative number in the survey records”(2). The minimum area of a survey number—for agricultural purposes—is, however, fixed (Sec. 98) for the Ratnagiri Collectorate as follows :—

| Class of land.        | Minimum Area. |         |
|-----------------------|---------------|---------|
|                       | Acres         | Gunthas |
| Rice or Kharif ...    | ...           | 5       |
| Garden or Bagayat ... | ...           | 5       |
| Warkas ...            | 2             | ...     |

The extent of a Survey number is represented in Acres, Gunthas and Annas. The measuring chain (of 33 feet) is composed of 16 links.

(1) *Vide* Bapujirao v. Ganu, 24 Bom. 489 : (2 Bom. L. R. 376) 1900.

(2) L. R. Code Sec. 3 (6).

The chain multiplied by one of its links is one "anna". The chain square is one "Guntha" and 40 square chains equal one "acre", (Survey and Settlement Manual Vol. II).

**7—Pot and Falni numbers—**Pot and Falni numbers appear to be included in the term "Recognized share of a survey number" [Sec. 3 (7) L. R. Code], which is defined to mean "a sub-division of a survey number separately assessed and registered". Thus the "recognized share of a survey number" or the "subordinate survey number" in the case of Kharif, Rabbi and Bagayat lands is called the "Pot number" and that in the case of Warkas land is called the "Falni number".

**8—Ordinary tenants not entitled to separate Khatas of their own.**—It should be noted that the privileged occupants are alone recognized as "Registered occupants" and they alone are entitled to have their names entered in the Settlement Records [*Vide* Sec. 3 (17) L. R. Code]. Ordinary tenants are thus not entitled to have khatas of their own *i. e.* Survey numbers held by them will not be entered in their own names in the Settlement Register, as in the case of the privileged occupants; but they will all be entered in the name of the Khot, or if a partition of the Khotki has taken place, of the Khoti sharer to whose share they are allotted.

**9—Mortgagees of Khoti Co-sharers not entitled to have their names entered in the Settlement Register.**—The term "Co-sharer in a Khotki" is not defined. The only mortgagee recognized by the Khoti Act is the mortgagee of the entire Khotki [Sec. 6 (2 & 3)]. The term "co-sharers of the Khotki" in Sec. 16 of the Act cannot be held to include the mortgagees of such co-sharers. Thus if the Survey Authorities enter, the names of the mortgagees of the co-sharers in the Settlement Register, the entry so made will be treated as a mere nullity and not as a *decision* binding on any party(1).

**10—Remedy of the Khoti Co-sharer whose name is not entered in the Settlement Records.**—A Khoti co-sharer

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(1) Dattatraya Gopal *v.* Ramchandra, 24 Bom. 533; S. C. 2 Bom. L. R. 354. Parsons and Rauate JJ. (1900), followed in Vithal *v.* Sitabai, 3 Bom. L. R. 181. Candy and Crowe JJ. (1901).

is entitled to have his name and the extent of his interest in the Khotki entered in the Settlement Register. If, however, the Survey Authorities decline to enter his name or make a wrong entry, the aggrieved co-sharer can, it is submitted, sue the contending parties for a declaration that he has the right to have his name and the extent of his interest ascertained and entered in the Settlement Register. It is also submitted that the co-sharer although undivided, can maintain such a suit without suing for partition. No doubt such a suit looks like a suit for partial partition, and is thus opposed to the general rule that every suit for partition should embrace all the joint family property. The last para to Sec. 16, however, appears to be clear on this point; and further if the co-sharer allows the entry to remain unaltered, he may be, in course of time, debarred from disputing the correctness thereof under Sec. 21.

*In Bhikaji Krishnaji v. Rajaram Krishnaji*, (1) Bachelor and Heaton J.J. held, "that Plaintiffs while retaining their character as joint co-parceners with the defendants, were not entitled to ask the court to declare them entitled to any fixed share in the joint (Khoti) Taxim: for that claim the appropriate suit would be a suit for partition". Their Lordships, however, did not decide the point as to "whether under the Khoti Act all the members of a joint Hindu family in addition to the managing member would be entitled to have their separate names recorded in the Register referred to in Sec. 16".

**11—Evidentiary value of the entries under Sec. 16.**—Entries made under Sec. 16 of this Act are not final, and any person aggrieved thereby can challenge the correctness thereof in a Civil Court under Sec. 21, and get the necessary amendment made in the entry in accordance with the decree that he may obtain (Sec. 18 e) (2).

There is, however, one important exception inserted by the Amending Act III of 1904, and that is that an entry made under Sec. 16, as to whether the interest of an occupancy-tenant is or is not transferable is final and conclusive. [*Vide* Sec. 20 (a)].

(1) S. A. 122/1906, decided on 14-4-08.

(2) *Krishnaji v. Nilo P. J.* 1894. p. 82; *Antaji v. Antaji*, 21 Bom. 480 (F.B.) 1897; *Gopal v. Nageshwar*, 21 Bom. 608, *Farran C. J. and Parsons J.* 1897; *Madhav v. Deonak*, 21 Bom. 695, *Farran C. J. and Parsons J.* 1897; *Ali Saheb v. Vithal P. J.* 1896, p. 309, *Parsons and Hosking J.J.*

12—An entry in the Settlement Record over the signature of the Khot may amount to an “ acknowledgment ” under Sec. 19 Lim. Act 1877.—An admission of an occupant, that certain lands of his were in possession of certain Khots as mortgagees, was entered by the Settlement Officer in the Settlement Register. At the end of the book, the khots concerned admitted in writing signed by them the correctness of the statements so recorded; *held*, that the endorsement if made by the khot with the knowledge of the description of themselves as “ mortgagees ” would operate as an acknowledgment under Sec. 19 of the Limitation Act, as “ it is immaterial for the purposes of Sec. 19 of the Limitation Act, in what connection or for what purpose the description was made by the mortgagor and admitted as correct by the mortgagee—whether it was made in a document which had nothing to do either directly or indirectly with the—mortgage ”(1).

[<sup>a</sup>] 17. THE other records prepared under the said section shall specify—

Other records to show

(a) the description and amount of rent, if any, payable to the khot by each privileged occupant according to the provisions of section 33 ; and

privileged occupants' rents ;

(b) if the khotki is undivided,—

(i) the survey-numbers in the possession of each co-sharer and the rent payable by such co-sharer on account of the same ; and

and when the khotki is undivided, the co-sharers' respective rights ;

(ii) the terms and particulars of any written agreement which the co-sharers; or any of them,

(1) Sheikh Mahomed e. Jamaluddin, 10 Bom. L. R. 385, Chandavarkar and Knight JJ. 1908.

[a] Sections 17 to 22, both inclusive, were substituted for the original sections 17 to 22, both inclusive, by Bom. Act III of 1904, s. 4.



have entered into, or may at the time of the framing of the said record enter into, determining their respective responsibility ; and

(iii) the order of rotation in which the said co-sharers agree in writing, if they do so agree, to take the management of the village under the provisions of section 27 ; or

(c) if a partition has been effected and the co-sharers of the khotki hold their respective shares in severalty,—

or when the khotki is divided, each share treated separately.

(i) the extent and limits of each such separate share ; and

(ii) the same particulars in respect of the several sub-sharers, if any, of each such share as are required by clause (b) to be given concerning all the co-sharers when a khotki is undivided.

### *Old Section.*

**§. 17.** The other records prepared under the said section shall specify the nature and amount of rent payable to the khot by each privileged occupant according to the provisions of section 33 and any entry in any record duly made under this section shall be conclusive and final evidence of the liability hereby established.

Privileged occupants' rents to be fixed.

### NOTES.

1-The new Sections 17 to 22 and the Guzerat Talukdar's Act 1888.—Sections 17 to 22 both inclusive are substituted for the original Secs. 17 to 22. The new Sec. 17 includes the old Secs. 17, 18 and 19. Thus the new Sec. 17 (a) corresponds to the old Sec. 17, and 17 (b) to the old Sec. 18, and 17 C to the old Sec. 19. The details to be entered in the "other records" were formerly scattered over three different Sections, but these are all now grouped together in one Section.

Sections 17 to 22 are drafted "on lines similar to those followed in the analogous case of the Guzerat Talukdar's Act 1888 (Bom. Act VI of 1888), so as to provide in a comprehensive and logical way for the amendment, and finality or otherwise of entries in the Settlement records"(1).

**2—The "other records".**—Section 17 sets out the details which the Survey Officer is bound to enter in the Settlement Register at the original or Revision Survey. Section 17 sets out the details, which the said Survey Officer has to enter in the "other records", which may be compiled as additional columns of the Settlement Register, or as a separate statement or Schedule appended thereto. The Botkhat is one of such "other records"(2). These Settlement Records prepared by the Survey Officer are quite distinct from the *village* records and accounts, which may be prepared by the Revenue Authorities in accordance with the Settlement Register and the "other records".

**3—Description of rent.**—The words "description of rent" were advisedly used for the old and ambiguous words "nature of rent". Both words however mean "rent in money or in kind", and not the "nature of tenure"(3).

**4—Nature of tenure and nature of rent.**—An entry about the nature of tenure is required to be made in the Settlement Register under Sec. 16, while the entry about the nature or description and amount of rent is to be made in the "other records" referred to in Sec. 17.

The entry about the nature of tenure i. e. that a particular survey number is held by an inferior holder as a Dharekari, Quasi-Dharekari, or as an occupancy-tenant is not "conclusive and final evidence of the

(1) *Vide* Secs. 5 to 8 of Bom. Act VI of 1888.

(2) *Vaidkhan v. Sakhya*, 20 Bom. 729, *Jardine and Ranade JJ.* (1895); *Krishnaji v. Krishnaji* 21 Bom. 467 at p. 476, *Parsons and Candy JJ.* 1896; *Autaji v. Autaji*, 21 Bom. 480 F. B., *Ranade J.*, at p. 494 (1896). It is not clear how "an extract from the Botkhat is not a Settlement Record within the meaning of Part III of the Khoti Act", as it seems to have been held in *Pandurang v. Krishnaji* C. A. 131 1902 27-12-1902-

(3) *Autaji v. Autaji*, 21 Bom. 480 at p. 489 (F. B.)

fact so recorded" (Sec. 20), and can thus be reversed or modified by a final decree of a competent court Sec. 21(1).

On the other hand an entry in "the other records" recording the liability of a Dharekari, Quasi-Dharekari, or an Occupancy-tenant to pay rent, with the description and amount thereof, is "conclusive and final evidence of the liability so recorded" (Sec. 20) and cannot be challenged in a Civil Court(2).

**5—An entry about the description and amount of rent to be conclusive, must conform to the provisions of Sec. 33.**—An entry by the Settlement Officer that a privileged occupant held his land rent-free cannot be one under Sec. 33, which requires that some rent *at least* be paid. The Settlement Officer in such a case, instead of determining the *amount* of rent payable, determines the *nature* of tenure on which the land is held. Such an entry would not at all be an entry under Sec. 17, as it does not specify the description and amount of rent payable according to the provisions of Sec. 33 and cannot thus be conclusive(3). The words "according to the provisions of Sec. 33 of the Act" in Sec. 17 qualify the word "payable" and not the word "specify". Although therefore the specification need not include all the facts, mentioned in Sec. 33 and the Schedule annexed, it must at any rate show, "the description and amount of rent" payable under the Statute. (*Vide Antaji v. Antaji* 21 Bom. 480 F. B. Jardine J. at p. 483).

The principle laid down in the case (*Vithal v. Yesa*) referred to above however is subject to one exception under the amended Sec-

(1) *Antaji v. Antaji*, 21 Bom. 480 (F. B.) 1896; *Gopal v. Nageshwar*, 21 Bom. 608, Farran C. J. and Parsons J. 1896; *Madhav v. Deonak*, 21 Bom. 695; *Alisabeh v. Vithal*, P. J. 1896 p. 309; *Parsons and Hosking JJ.*

(2) *Gopal v. Sakhorjirao*, 18 Bom. 133, Sargent C. J. and Bayley J. 1893; *Vaidkhan v. Sakhya*, 20 Bom. 729, Jardine and Kanale JJ. 1895; *Balaji v. Bal*, 21 Bom. 235, Farran C. J. and Parsons J. 1895; *Bava Mahomed Ali v. Narayen*, P. J. 1895 p. 278, Farran C. J. and Parsons J.; and *Gopal v. Dasbrathshet*, 21 Bom. 244 (1895); *Janardon, v. Bhagya*, P. J. 1896 p. 112, Farran C. J. & Parsons J.

(3) *Vithal v. Yesa*, 22 Bom. 95, Parsons and Candy JJ. (1896). [A similar entry was however held to be final and conclusive in *Balaji v. Bal*, 21 Bom. 235, Farran C. J. and Parsons J. (1895).] See also *Alisabeh v. Vithal*, P. J. 1896 p. 309, *Parsons and Hosking JJ.*, and Note 3 to Sec. 20.

tion 33 (c). (*Vide* Rule IV Cls. 2 and 4). Thus if the Recording Officer totally remits the rent payable by an occupancy-tenant, and if he enters any particular survey-number as held "rent-free" for causes laid down in those clauses, it is submitted, the entry will be final. It will also be noticed that the words "if any", after the words "the description and amount of rent" in Sec. 17 clause (a), have been newly added by the Amending Act III of 1904.

**6-Entry of the description and amount of rent payable by a Khoti Co-sharer is not final**—It is only in the case of the privileged occupant that the entries of rent are made final and conclusive under Sec. 20 (b). Entries of rent in the case of a Khoti co-sharer come under clause b or c, and not clause a of Sec. 17. Such entries are not final under Sec. 20 (b), and can thus be reversed or modified by a Civil Court under Sec. 21(1).

**7—Rent payable by a Khoti Co-sharer.**—It is not laid down in the Act, how the rent payable by Khoti Co-sharers is to be determined. Rule III, to Sec. 40 (e) however lays down that "the rent payable to the Managing Khot by Khot sharers for their private Khoti land shall be the customary rates of the village for the occupancy-tenants, unless it is proved that before 1865 Khot sharers paid a *Makta* or a lower rate of '*Thal*' in which case the ancient practice shall be followed". *Vide* also the endorsement at the foot of the Bot-Khat (Appendix I Form I). It will be noticed that the onus is by this Rule put on the Khot sharers who are holding the land in question and not on the Managing Khot. The former have to prove that before 1865 they paid a *Makta* (i. e. fixed amount whether in money or in kind) or a lower rate of *thal* than the customary rates of the village. In default of such proof they must pay the ordinary customary rates(2).

The khot sharers, however, very often do not pay *Thal* or Khot *Faidi* at all, in respect of the *Khoti Khazgi* land held and cultivated by each of them separately, as the amount due by each sharer on this account is adjusted when a division is made between the sharers of the

(1) *Krishnaji v. Krishnaji*, 21 Bom. 467, Parsons and Candy JJ. (1896).

(2) *Ibid* at page 479. Sargent C. J. and Birdwood J.

entire profits derived from the village(1); but this fact in itself will not prove exemption from liability when such lands pass into the hands of a stranger(2). What the purchaser will have further to prove is, that either by virtue of the original tenure of the field in dispute or by virtue of some special agreement between the vendor and the other co-sharers, the field in dispute was held by the vendor free from the payment of Khoti Faida(3), and that such agreement was not purely personal(4).

**8—Co-sharers and separated sharers.**—The term “Co-sharer” is not defined either in the Khoti Act or in the L. R. Code. The term “Co-sharer”, so far as the Khoti Act is concerned, is used rather in a loose sense and does not necessarily mean an *undivided* Co-sharer. Thus in Sec. 17 (b) and presumably in the last para to Sec. 16, it is no doubt used to signify an undivided co-sharer; but in Sec. 17 (c), or in the third para to Sec. 16, or in Sec. 32 it would refer to a *divided* co-sharer or rather to a separated sharer. It will thus depend on the context wherever the term is used in the Act, to determine whether it means an undivided or a divided co-sharer.

It would have been better, it is submitted, if a co-sharer after division or watup had been called simply “a sharer” as is done in Rule VII to Sec. 40 (e), or as a “separated sharer” as is done in the heading or marginal note to Sec. 32.

**9—Details to be entered on a partition of the Khotki**  
—When the Khots have amicably divided their khotki, or a partition

(1) Ramchandra v. Visaji, P. J. 1880 p. 297, Melvill and Nanabhai JJ.; Bhaskar v. Raghaji, P. J. 1886, p. 210. Sargent C. J. and Birdwood J.; Ramkrishna v. Dhaku. P. J. 1899 p. 455, Parsons and Ranade JJ.; Raghunathrao v. Vasudeo, 130m. L. R. 436 at p. 438 (S. C. 23 Bom. 769), Candy and Crowe JJ. 1899. The custom however under which one co-sharer is not liable to pay *Thal* in respect of *Kulargi* lands was held to be “absurd, unjust and inequitable”, and the High Court declined to enforce it. S. A. 490/1908 (16-9-10), Atmaram v. Dattatraya, Bachelor and Rao JJ.

(2) Balkrishna v. Vishvanath, 19 Bom. 523 Bayley Ag. C. J. and Fulton J. (1894).

(3) Ramchandra v. Visaji P. J. 1880 p. 297, Melvill & Nanabhai JJ.

(4) Parashram v. Ganesh, S. A. 26/02 (20-8-1909). Crowe & Batty JJ.

thereof has been effected by the Civil Court, or by the Collector under Sec. 114 of the L. R. Code (*Vide* Sec. 32), and the Khots hold their respective shares in severalty then "each Khot sharer shall be denoted in the Botkhat, Appendix I Form 1, by a number and each Rayat's Khata containing Khoti land shall have the said Khoti land entered with the number denoting the Khot sharer in whose share the land is affixed to the survey number and all the survey numbers in the share of one particular Khot sharer shall be entered consecutively" [Rule VII to 40 (e)]. The details referred to above are entered in the "B" Patrak of the Botkhat(1).

Each such separated sharer is an independent Khot in himself and is liable to pay the Jama in respect of his own separated share only (Sec. 32). Although separated from the main stock, his position will continue to be that of a co-sharer so far as his own sub-sharers are concerned, and all the details about payment of rent, management of the village etc., will have to be entered in the "B" Patrak of the Botkhat, so far as his branch is concerned.

**10—Evidentiary value of the entries under Sec. 17.**—The entries made under clause (a) are final and conclusive under S. 20 (b). The other entries under clauses b or c, are not conclusive and can thus be reversed or modified by a Civil Court under Sec. 21.

*Custody and Amendment of Records :  
Determination of Disputes.*

18. (1) When the survey-settlement of any village to which this Act extends is completed, the settlement-register and other records thereof shall be kept by the Collector.

Collector to keep records after survey-settlement completed.

(2) So long as the settlement-register and other records are in the charge of the Survey-officer, the said officer, and afterwards the Collector or any other officer whom

Power of Recording-officer to amend records with written consent of parties ;

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(1) *Vide* Note 5 to Sec. 15.

the Governor-in-Council from time to time empowers in this behalf, may, in the cases specified in sub-section (3), but not otherwise save with the consent of the parties affected thereby given in writing before the Recording-officer, at any time amend, or cause to be amended, any entry in such register or records, whether by addition thereto, insertion therein, cancellation or other alteration thereof, as may be required; and unless and until so amended, every entry made shall, as long as the survey-settlement for which it was made remains in force, continue to be applicable to the land referred to.

(3) The cases referred to in sub-section (2) are the and in certain other following, namely :—  
cases.

- (a) any clerical error, or any error which all the parties affected thereby admit to have been made in the same, may be corrected;
- (b) any entry which the Recording-officer is satisfied has been caused by mistake or obtained by means of fraud, misrepresentation or personation, or by other means amounting to an offence under the Indian Penal Code, (XLV of 1860.) may be cancelled, and such other entry (if any) substituted therefor as the Recording-officer shall determine;
- (c) any entry which is rendered inapplicable or incorrect by any change of circumstances or transfer of rights or interests relating thereto may be cancelled or corrected, as the Recording-officer may deem fit;

- (d) an entry of the description and amount of the rent payable by an occupancy-tenant may be inserted or altered in accordance with any of the provisions of rules IV and V under clause (c) of section 33 ; and
- (e) subject to the provisions of section 20, any entry in respect of which the parties affected thereby may have obtained *inter se* a final decree of a Court of competent jurisdiction under section 21, shall be amended in accordance therewith, on an application, accompanied by a certified copy of such decree, being duly made to the Recording-officer for that purpose.

### Old Section.

When the khotki is undivided, the co-sharers' respective rights to be recorded.

**S. 18.** If the khotki is undivided the said records shall also specify :

- (a) the survey numbers in the possession of each co-sharer and the rent payable by such co-sharer on account of the same, and
- (b) the terms and particulars of any written agreement which the co-sharers, or any of them, have entered into, or may at the time of the framing of the said record enter into, determining their respective responsibility, and
- (c) the order of rotation in which the said co-sharers agree in writing, if they do so agree, to take the management of the village under the provisions of section 27.

### NOTES.

#### 1-Who can keep and amend the Settlement Records.

—The Survey Officer will remain in charge of the Settlement Register prepared under Sec. 16, and the " other records " under Sec. 17, until the Survey Settlement is completed ; but thereafter the Collector is the proper custodian of these records. It is presumed that the same rule will apply at the time of the Revision Survey Settlement. The Survey Officer has thus the power to amend the entries in the Settlement records only during



the time, that the Survey Settlement, original or revision, is being carried out. After the Survey Settlement is completed, the Survey Officer is *functus officio* and it is the Collector or other Officer specially appointed who alone can amend.

**2—‘Recording Officer’ includes the Survey Officer as well as the Collector.**—‘Recording Officer’ has been defined to mean an Officer duly empowered to make or amend entries, in the Settlement Register or other Settlement Records, under Sec. 108 L. R. Code or Part III of this Act. The expression “Recording Officer” as used in Secs. 18 and 19 would thus include the Survey Officer as well as the Collector. The Survey Officer is the Recording Officer until the Survey Settlement is completed, while the Collector is such Recording Officer after the completion of the Settlement.

**3—Limited power to amend under the old Sections.**—The only provision that was made for amendment of entries under the old Sections was in the following terms:—“The record shall from time to time be amended by the said Survey-officer, or when the survey-settlement is concluded by the Collector, in accordance any such decree as aforesaid which the parties may obtain *inter se*, on an application accompanied by a certified copy of such decree, being duly made to the said Survey Officer, or to the Collector for that purpose” (*Vide* old Sec. 22). The only amendment contemplated of any entry in “the register or other record” was one which could be made in accordance with a decree of a competent Court. When therefore the entry of the Survey Officer was final within the meaning of the old Sec. 17, naturally no suit could be brought to reverse or modify the same. Thus entries about the description and amount of rent once made could not possibly be amended either by the Survey Officer, or by the Collector or by anybody else(1).

Similarly if any entry was made under a mistake or was due to fraud or if the entry had ceased to become applicable by reason of the change of circumstances or even if the parties concerned consented to an alteration—in all such cases both the Survey Officer and the Collector were helpless, as they could not lawfully amend the entries, until the party affected thereby could obtain a decree of a competent Court. All these anomalies have now been removed by the provisions laid down in the new Secs. 18 and 19.

(1) *Krishnaji v. Krishnaji*, 21 Bom. 467 at p. 476, Parsons & Candy JJ. 1896.

**4—Original entries rendered inapplicable or incorrect by 'change of circumstances'.**—Some of the circumstances contemplated in clause (c) are as follows :—

(a) When the privileged occupant resigns or when such occupant's land lapses for failure of heirs or is forfeited, the land so resigned, lapsed or forfeited reverts to the Khot and must be entered in the name of the Khot. (Sec. 10).

(b) When the Khot confers the rights of a privileged occupant on his tenant under Sec. 11, this change in the nature of tenure must be entered in the Settlement Records.

(c) When the Khot or the Registered Occupant is dead, the name of his heir must be entered in the Settlement Records (*Vide* S. 16 of this Act and Sec. 71 of the L. R. Code).

(d) When the Khoti co-sharers effect a partition [Sec. 17 (C)]

(e) When a change is agreed upon by the Khoti co-sharers in the order of rotation.

**5—Original entries rendered inapplicable by "transfer of rights or interests".**—The "transfer of rights or interests" may be by the act of parties entitled to transfer or by operation of law. The transfers contemplated in clause (c) are :—

(a) Any absolute transfer of an interest or share by a Khoti sharer or a separated sharer.

(b) A transfer by way of mortgage with possession of the land to the Khotki (*Vide* note 9 to Sec. 16).

(c) Any absolute transfer of the rights or interests by a Dharekari, Quasi-dharekari or by an occupancy-tenant having the right to transfer

(d) A transfer by operation of law *e.g.* by a Court sale of the right, title and interest of the Khot, Dharekari, Quasi-dharekari or of an occupancy-tenant when the latter has the right to transfer.

**6—Insertions or alterations in the entries of rents payable by occupancy-tenants.**—It was observed by Candy J. in

Krishnaji v. Krishnaji(1), that there was no provision, in the Act I of 1880, for the subsequent amendment of an entry in the Survey Records specifying the nature (description) and amount of rent payable by an occupancy-tenant. Express provision is, however, now made in clause (d) for amendment of such entries. Thus the entries which the Recording Officer can insert or amend under Rules IV and V of Sec. 33 C are as follows :—

(a) In case of any omission of an entry for payment of rent at the introduction of the Survey Settlement, the Recording Officer can *insert* an entry showing the amount of rent payable under Rule II as per agreement between the parties, or under Rule III when there is no such agreement.

(b) In case the original entry is made inapplicable, by reason of a decree of a competent Court, or of any change in the tenant's mode of cultivation or otherwise, the Recording Officer can similarly *alter* the entry under Rules II or III.

(c) When the services originally rendered by an occupancy-tenant for the holding of the land are commuted and rent is fixed in lieu thereof on the ground that the services are no longer *rendered*.

(d) When proportionate enhancement in the occupancy-tenant's rent is rendered necessary to secure to the Khot his 'percentage', or when proportionate reduction has to be made when Government undertake to bear the loss and defray the Khot's 'percentage'.

(e) When proportionate reduction in the amount of rent is rendered necessary by reason of diluvion, deterioration by floods or such other circumstances.

(f) When the rent originally payable in crop-share is commuted into its money-value under Rule V.

19. (1) If it appears to the Recording-officer that there exists any dispute as to any matter which he is bound to record, or as to any amendment proposed to be made

Disputes to be determined by Recording-officer.

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(1) 21 Bom. 467, Patons and Candy JJ. (1896).

under section 18, he may, either on the application of any of the disputant parties, or of his own motion, investigate and decide such dispute, and frame or amend the settlement-register or other record accordingly.

(2) No such decision and no amendment of any entry in the settlement-register or other records shall be made until after due notice to the parties affected thereby, and without giving them an opportunity of being heard in respect thereto :

Notice and opportunity of being heard to be given to parties.

Provided that no such decision or amendment of an entry shall be deemed invalid merely for want of such notice or opportunity as aforesaid.

PROVISO,

(3) But any person affected by any such decision or amendment, to whom such notice or opportunity as aforesaid has not been given, may apply to the Recording-officer to have such decision or amendment cancelled or altered, as the circumstances of the case may require, and, subject to the provisions of sub-section (2), the Recording-officer shall re-investigate the matter and may, if he thinks fit, cancel or alter such decision or amendment accordingly.

Remedy of party affected to whom no such notice or opportunity given.

### *Old Section.*

**S. 19.** If a partition has been effected and the co-sharers of the khotki hold their respective shares in severalty, the said records shall specify :—

When the khotki is divided, each share to be treated separately.

(a) the extent and limits of each such separate share, and

(b) the same particulars in respect of the several sub-sharers, if any, of each such share as are required by the last preceding section to be given concerning all the co-sharers when a khotki is undivided.

## NOTES.

**1—Remedy of the party to whom no notice or opportunity of being heard is given.**—The party aggrieved by the decision or amendment, to whom no notice or a reasonable opportunity of being heard is given, may : (a) apply to the Recording Officer to re-investigate and review the decision ; or

(b) if the decision is final under Sec. 20, appeal to the Governor-in-Council within one year of the date of the entry ; or

(c) if the decision is not final, get the same modified or reversed. *Vide* Sec. 21 and Sec. 18 (e)

**2—Power of the Recording Officer to review the decision or revise an entry.**—In *Bhikaji v. Sakharam*(1) it was held that a Survey Officer had no power to revise an entry made by himself or by his predecessor in office, in accordance with the old Secs. 16 or 17, unless it fell under Sec. 103 of the L. R. Code.

Clause 3 to Sec. 19 however now makes it clear that, at least in one case, *viz.*, where no notice or reasonable opportunity of being heard is given, the aggrieved party can call upon the Recording Officer to review the decision or revise the entry made behind his back.

It is submitted, that the Recording Officer can revise or amend the original entry, even though the same may have been made by his predecessor in office, for there is nothing in clause 3 to indicate that the Recording Officer must cancel or alter "his decision or amendment" only.

20. (1) Subject to such orders as may be passed on appeal under sub-section (2) and to the provisions of sub-section (3), every entry in the settlement-register or other

Recording-officer's decision final in certain matters ;

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(1) P. J. 1897 p. 119, Parsons and Ranade JJ.

records made by the Recording-officer under section 16, 17 or 18, and purporting to record—

- (a) the fact that the interest of any occupancy-tenant is or is not transferable otherwise than by inheritance, or
- (b) the liability of each privileged occupant to pay rent of the description and amount entered, shall, subject to the provisions of section 18, be conclusive and final evidence of the fact or liability so recorded.

(2) Any person aggrieved by any such entry may, subject to appeal to Governor in Council, within one year of the making of the entry, appeal to the Governor in Council to have the entry altered, and the entry shall be altered if the orders passed on the appeal so direct, and the entry so altered in accordance with such orders shall be conclusive and final evidence in the manner and to the extent specified in sub-section (1).

(3) Nothing in this section shall affect proceedings pending in any Civil Court at the time when this section comes into force. Saving of pending civil proceedings.

### *Old Section.*

#### *Determination of Disputes.*

**S. 20.** If it shall appear to the survey officer, who frames the said register or other record, that there exists any dispute as to any matter which he is bound to record, he may, either on the application of any of the disputant parties, or of his own motion, investigate and determine such dispute and frame the said register or other record accordingly. Disputes to be determined by the survey officer.

### NOTES.

1—"Conclusive and final evidence of the fact or liability so recorded".—The words "conclusive and final evidence"

of the fact or liability must, in the ordinary and grammatical meaning, have the effect of shutting out any other evidence on the subject, which might otherwise be adduced before the Civil Court(1). In other words it is not at all open to a Civil Court to enquire into the legality or otherwise of the reasons, which may have led the Recording Officer to make the entry of the nature referred to in Sec. 20(2). See also Sec. 4 Evidence Act.

**2—The entry about the description and amount of rent payable by a privileged occupant is final**—The entry recording the liability of a privileged occupant to pay rent and the amount thereof is final. Thus an entry, in the Settlement Record that an occupancy-tenant is liable to pay Makta *i. e.* fixed rent in cash, is final and a Khot—cannot claim to recover “*thal*” or rent in kind from such a tenant in contravention of the entry(3).

Similarly the Makta arrived at by the Settlement Officer is binding as well on the “registered occupant” as on his several co-owners, and neither he nor they can dispute it(4). Nor can a Khatedar Kul claim to pay Dast and Local Fund cess only, in contravention of an entry to pay *thal*(5).

**3—Cases in which entries of rents are not final and conclusive.**—A. An entry that a privileged occupant held his land *rent-free*, would not be an entry under Sec. 17 at all, for it does not specify the nature and amount of rent payable according to the provisions of Sec. 33, because Sec. 33 requires that *some* rent at least be paid. The provisions of Sec. 33 are wholly ignored and the Settlement Officer instead of determining the amount of rent payable, will have determined the *nature* of the tenure on which the land is held. Such an entry can-

(1) Gopal v. Sakhojirao, 18 Bom. p. 133, Sargent C. J. & Bayley J. (1893).

(2) Gopal v. Dasharathshet, 21 Bom. p. 244 Farran C. J. & Parsons J. (1895).

(3) Gopal v. Sakhojirao, 18 Bom. 133; Vaidkhan v. Sakhya, 20 Bom. 729, Jardine & Ranade JJ. 1895; Balaji v. Bal, 21 Bom. 235, Farran C. J. & Parsons J. 1895. See also Wamanaji v. Bhaika, P. J. 1896 p. 83 and Janardan v. Bhagya, P. J. 1896, p. 112, Farran C. J. & Parsons J.

(4) Bawa Mahomed Ali v. Narayen, P. J. 1895 p. 278 (Farran C. J. & Parsons J.) *Vide Note 3 post.*

(5) Gopal v. Dasharathshet, 21 Bom. 244.

not be conclusive or final evidence and can therefore be set aside by a Civil Court(1). See however note 5 to Sec. 17 and Sec. 33 Rule IV cl. 2 and 4.

*B*—Further an entry of rent made on an incorrect assumption of the existence of a certain tenure will not be conclusive and final. “The finality of the rent entries is thus indirectly impaired. That must be so. *Cessante ratione legis, cessat et ipsa lex*. The rent is fixed with reference to the tenure. It is upon the assumption that the tenure has been correctly determined and entered that the finality of the rent entries depends”. (*Antaji v. Antaji*, 21 Bom. 486, at p. 486, F. B.) Thus if the tenant “can prove that he is a Quasi-Dharekari, then the entry that he is to pay Makta will not be in accordance with Sec. 33 and will not be final and conclusive. To hold that, because the Survey Officer has fixed the amount of rent payable by a person on the assumption of the existence of a certain tenure, that person cannot show that that assumed tenure does not exist, would have the effect of giving the decision as to tenure a finality, which the law does not give it”(2).

*C*—Similarly where the rent payable is entered against the name of a person who is not at all the *real* occupant, the entry so made will not be binding on the latter as the Survey Officer can perform “the judicial functions of investigation and determination of the dispute” only “between parties who are properly interested”(3).

**4—Entry of rent payable by a Khoti Co-sharer is not final.**—Clause (b) to Sec. 20 refers only to privileged occupants and not to khoti co-sharers. An entry of rent payable by a khoti co-sharer is thus not final and can be reversed or modified by a Civil Court under Sec. 21(4).

**5—Entry as to the transferability or otherwise of an occupancy-tenant's right is final, although there be no previous dispute about it.**—In *Narayan v. Ganesh*(5) it was held

(1) *Vithal v. Yesa*, 22 Bom. 95, Parsons and Candy JJ. 1896.

(2) *Alisaheb v. Vithal*, P. J. 1896, p. 399, Parsons and Hosking JJ.

(3) *Vajudin v. Narayan* P. J. 1896 p. 798 Parsons & Ranale JJ. (P. J. 1895 p. 278 distinguished).

(4) *Krishnaji v. Krishnaji*, 21 Bom. 467, Parsons and Candy JJ. 1896.

(5) S. A. 116 1901 (23-9-01), Jenkins C. J. and Chaudavarkar J.



that an entry that an occupancy-tenant's rights were not transferable, was not binding even to the extent provided for by the (old) Sec. 21, as it was made without there being any *dispute* about it. Their Lordships observed that Sec. 21 (old) "is one of a catena of Sections dealing with the determination of disputes and it is only if there is a dispute that the legal consequences in Sec. 21 follow. Here there was no dispute as to the transferability and the entry in reference to that matter must have been in obedience to Sec. 16. But such an entry does not carry with it the same binding consequence".

Under the amended Sections, however, it is submitted, that whether there is or there is not 'a dispute', an entry of the nature referred to above would be final (*Vide* note 6 to 21).

**6—Decision and entry.**—It was observed in *Gopal v. Dash-rathshet*,<sup>(1)</sup> that it is a mistake to suppose that the *decision* of rent is final. "Had the Legislature intended to make the decision final, it would have expressly said so, in Sec. 33 (*Cf.* Secs. 120, 129, 156 of the L. R. Code). It does not however, there say a word about the *decision*, and in Sec. 17 it only makes the *entry* which is the result of the decision, final and conclusive evidence. There is a marked difference between declaring an entry to be final and conclusive evidence and a decision to be final".

There is still room for contention that the new Sec. 20 also makes only "an entry" and not "the decision" of rent final. Further an appeal would lie against any such "decision" of the Recording Officer to his immediate Superior under Sec. 203 L. R. Code and any interference by the latter on appeal would not be without jurisdiction. This was however never contemplated by the Legislature, as is made clear by the wording of the marginal note to the Section.

**7—The right of appeal.**—Prior to the amendment of the old Secs. 17 to 22, the Act gave no power of appeal or of revision against the decision of the Recording or Settlement Officer. The Recording Officer however being the Revenue Officer, the party aggrieved could have appealed, to his immediate Superior under Sec. 203 L. R. Code<sup>(2)</sup>.

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(1) 21 Bom. 244 at p. 247, Farran C. J. and Parsons J. (1897)  
2: *Ibid.*

An appeal is now expressly allowed under the Act itself against the decision or rather the entry of the Recording Officer on matters referred to in Cls. (a) and (b). The appeal however does not lie to the immediate Superior of the Recording Officer, but it must be preferred direct to the Governor-in-Council. Further the time allowed for filing such appeals is much longer than that allowed for appeals under Section 203 L. R. Code.

**8—Saving of pending Civil proceedings.**—It will be observed that under the old Sec. 17 it was only the entry, as regards "the nature and amount of rent" payable by the privileged occupant, which was declared to be conclusive and final. The entry as to whether an occupancy-tenant's rights were or were not transferable was not so declared to be final and hence such an entry could have been challenged in a Civil Court. Under the new Sec. 20, this entry is also declared to be conclusive and final.

Any proceeding in a Civil Court, pending on the 31st of December 1904, i. e. when the Amending Act (III of 1904) came into force, in which the correctness of any such entry is challenged, was not however meant to be affected by the amendment. If therefore a Civil Court passes any decree in any such proceeding setting aside any such entry, it will have to be given effect to under Sec. 18 clause 3 (e).

**21.** IN any other matter the decision of the said Recording-officer shall not be open to appeal or revision, and shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court :

Recording-officer's decision when not final to be set aside only by a decree of Court.

Provided that—

(a) no person shall be permitted in any Civil Court, as a defendant or otherwise, to plead, whether directly or indirectly, that such decision or entry is erroneous or is not binding upon him, if such person is, at the date of the institution of the

Proviso in restraint of suits.

suit in which the question arises, debarred by the law of limitation for the time being in force from instituting a suit for, or with a view to, the reversal or modification of such decision or entry ; and

- (b) no fresh cause of action shall accrue in respect of
- (i) a decision or entry made for the purpose of, or in the course of, a revised survey-settlement, or
  - (ii) an amendment of an entry made under any of the provisions of section 18,

which makes no alteration affecting the substance of the previous decision or entry relating to the same subject-matter.

### *Old Section.*

**S. 21.** In any such matter the decision of the said survey officer, when not final, shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent court,

Survey officer's decision when not final to be set aside only by a decree of court.

### NOTES.

1—"Any other matter".—This refers to matters: (a) which the Recording Officer is bound to enter in the Settlement Register under Sec. 16, except the entry as regards the transferability or otherwise of an occupancy-tenant's rights; and

(b) those which he must enter in the "other records" under S. 17 clauses (b) and (c).

2—"Shall not be open to appeal or revision"—These words have been advisedly inserted by the Amending Act (III of 1904), in view of the ruling in *Gopal v. Dashrathshet* (1), to make it clear that the decision of the Recording Officer on matters, except those referred

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(1) 21 Bom. 244, Farran C. J. & Parsons J. 1895.

to in Sec. 20 clauses (a) and (b), is not subject to the ordinary Appellate or Revisional Jurisdiction under Chapter XIII, L. R. Code(1). But for this insertion an appeal would ordinarily lie under Sec. 203 L. R. Code, against any decision of the Recording Officer which is not expressly declared to be final, because Sec. 203 "gives a general right of appeal from all decisions or orders passed by a revenue officer to that officer's immediate superior *in the absence of express provision to the contrary*". Similarly but for an express provision to the contrary, the decision can be revised under Sec. 211 of the Code, although the same may be declared final. Under the amended Section any interference on appeal or in revision by any Revenue Officer or by the Governor-in-Council would be without jurisdiction.

**3—Recording Officer's decision on the nature of tenure is not final.**—The Recording Officer is bound to enter under Sec. 16, the tenure on which each Survey Number is held by the privileged occupant, but his decision thereon is not final and is liable to be set aside in a Civil Court. The burden of proof in such cases, of course, lies upon the party seeking to vary the decision(2).

Thus his decision:—

- (a) that a certain Survey Number is held on Dhara(3), or on Khoti tenure(4), is not final and can be challenged by the party aggrieved thereby; or
- (b) that survey assessment and not *Thal* is payable in respect of a Survey Number is virtually a decision on the nature of tenure and is thus not final(5); or
- (c) that a certain land is held by an occupancy-tenant as "rent-free" is also not final, because the Recording Officer

(1) *Vide* G. R. 4306, 11-7-87; 6292/16-9-87; 6816, 6-10-87.

(2) *Madhavrao v. Deonak*, 21 Bom. 695.

(3) *Faki v. Sajuak*, 18 Bom. 244, Sargent C. J. and Telang J. 1893; *Madhavrao v. Deonak*, 21 Bom. 695, Farran C. J. and Parsons J. 1896.

(4) *Antaji v. Antaji*, 21 Bom. 480 F. B. (An entry that a certain land was Dhara was treated as final by Jarline and Ranale JJ., in *Ramchandra v. Raghubath*, 20 Bom. 475 (1895) and in *Ramchandra v. Mukundshet*, P. J. 1895 p. 145. But both these cases were disapproved in the F. B. case 21 Bom. 480).

(5) *Krishnaji v. Nilo*, P. J. 1894 p. 82, Bayley and Candy JJ.

“instead of determining the amount of rent payable has determined the nature of tenure on which the land is held”(1); or

(d) that a certain holder is an occupancy-tenant(2), or that he is a Daspathkari(3) is also not final.

**4—Recording Officer’s “decision” without a previous “dispute” how far binding.**—A decision is “a determination of dispute”; in other words it implies some sort of dispute which it determines. Strictly speaking a decision or an entry(4) without there being any previous dispute, would not be binding, though it is not reversed or modified under Sec. 21. Thus a plaintiff relying on an entry in the Settlement Register, contended that the rights of a certain occupancy-tenant were not transferable and that the entry was binding to the extent provided for by Sec. 21. *Held*; that “that section is one of a catena of sections dealing with the determination of disputes and it is only if there is a dispute that the legal consequences in Sec. 21 follow. Here there was no dispute as to the transferability and the entry in reference to that matter must have been in obedience to Sec. 16. But such an entry does not carry with it the same binding consequences”(5).

(1) *Vithal v. Yesa*, 22 Bom. 95, Parsons and Candy JJ. 1896. See also Notes 5 to Sec. 17 and 3 to Sec. 20. [In *Balaji v. Bal*, 21 Bom. 235, it was however held that an entry that a certain survey-number was held rent-free, was final on the ground of “a lost agreement” between the Khot and the tenant which the Settlement Officer could presume under the old Sec. 33 (c)].

(2) *Gopal v. Nageshwar*, 21 Bom. 608, Farran C. J. and Parsons J. 1896; *Mahipat v. Laxuman*, 24 Bom. 426 : S. C. 2 Bom. L. R. 228, Parsons & Ranade JJ. 1900.

(3) *Vasudeo v. Shiva*, P. J. 1896 p. 118, Farran C. J. and Parsons J.

(4) An entry is described to be “the result of decision”. *Gopal v. Dasha-rathshet*, 21 Bom. 244.

(5) *Narayan v. Ganesh*, S. A. 146/1901 [23-9-1901], Jenkins C. J. & Chandavarkar J. [The entry of the nature referred to in this case is now expressly declared to be final, *Vide* Sec. 20 (a) : *Pandurang v. Janardan*, C. J. 143/1903, 23-2-04, Jenkins C. J. and Batty J. [In this case it was observed that whether there was “a dispute” prior to a “a decision” must be determined by carefully scrutinizing the Revenue records and not by simply relying on the Purbhis of the Pleaders].

Under the amended Section, particularly on account of the insertion of the Proviso (a), it is submitted, that no such plea can now be successfully raised.

**5—Decision on the nature of tenure under Act I of 1865 not at all binding.**—Bombay Act I of 1865 had nothing whatever to do with *tenures* and the inquiry which Sec. 27 of that Act authorizes the Survey Officer to make in order to enable him to prepare the records was not of a judicial character and could not affect private rights(1). Thus an entry in the Survey Register, that a khot's tenant held as a "survey occupant", was held not to disturb the contractual relations between the Khot and the tenant. "The khot's rights as land-lord, if they can be otherwise established, cannot be prejudiced by any proceedings under the Survey Act, there being nothing in that Act or the Rule under it, which affects the rights of subjects of the Government *inter se*"(2). (*Vide* Note 3 to Sec. 2).

Any such decision by the Recording Officer under Act I of 1880 on the nature of tenure is however "binding upon all the parties affected thereby until reversed or modified by a final decree of a competent court".

**6—Unauthorized decisions or entries need not be set aside.**—Decisions or entries of the Recording Officer, with reference to matters which he is *bound* to record under Secs. 16 and 17 and which do not fall under Sec. 20, must no doubt be set aside in time by the party aggrieved thereby, if he does not wish to be perpetually debarred from challenging the correctness thereof. Any other decision or entry in connection with any matter which the Recording Officer is *not bound* to record under Secs. 16 or 17, need not at all be set aside, as it is outside the scope of his duties and is thus a mere nullity.

(1) Thus in 1888 a Settlement Officer purporting to act under S. 16, entered in the Settlement Register the names of the mortgagees of a certain sharer in the Khotki. The persons who claimed to be entitled to that share on becoming aware of the entry, contended that the

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(1) *Krishnaji v. Nilu*, P. J. 1894 p. 82, Bayley and Candy JJ.

(2) *D. K. Bam v. Survey Commissioner and Collector of Ratnagiri*, 3 Bom. 134, West and Finlay JJ. 1878.

mortgage had been redeemed and submitted a petition to the Collector in 1891, for the removal of the mortgagee's names from the Settlement Register. The mortgagees opposed the petition in 1892 and denied that the mortgage was redeemed. The petition was finally rejected in 1892. In a suit filed in 1896 by the persons entitled to the said share for a declaration of their title and cancellation of the entry, it was held, that the suit though filed more than six years from the date of the entry was not barred, because the cause of action accrued to the plaintiffs when their title was denied in 1892 and not when the entry was made. The entry was held to be a mere nullity and not a decision binding on the plaintiffs under the Khoti Act, as "the law nowhere gives the Settlement Officer authority to investigate and determine the title of persons to whom no share of the Khotki has been transferred either absolutely or conditionally, but who claim as mortgagees *only of a share* in the Khotki; still less can he decide whether any of these alleged mortgages have been redeemed or are still subsisting"(1).

(2) Similarly where an entry was made by the Settlement Officer to the effect that the occupancy-tenant's right was not transferable "without the consent of the Khot"; held, that the entry as to the consent of the Khot was a mere surplusage and that it could not affect the rights of the parties concerned(2).

**7—Evidentiary value of the statement of collateral facts and the reasons therefor in the Settlement Records**  
—Apart from any question of being final or otherwise, any statement of collateral facts, made by the Recording Officer in any of the Settlement Records and which it is no part of his duty to inquire into, will not even be admissible in evidence unless they are proved to be relevant under Sec 35 of the Evidence Act. Thus the *statements of facts* made by a Settlement Officer in the column of remarks in the Dharepatrak would be admissible under Sec 35 of the Evidence Act; but the *reasons* assigned by him for making them would not be admissible, "even though they consist of statements of collateral facts, but which it was no part of the Settlement Officer's duty to inquire into"(3).

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(1) *Dattatraya v. Ramchandra*, 24 Bom. 533, S. C. 2 Bom. L. R. 334. *Parsons and Kanad*: JJ. 1900.

(2) *Mahadev v. Mahadaji*, 13 Bom. L. R. 1157. *Chanlavarkar & Heaton* JJ. 1911. *Vide* also Note 10 to Sec. 9

(3) *Madhavrao v. Deonak*, 21 Bom. 695, *Farran C. J.* and *Parsons J.* 1896.

**8—Proviso.**—(a) In *Alisabeh v. Vithal*(1), it was held that “when the nature and amount of rent payable depends upon the tenure, it is *always* open to a *defendant* when sued in a Civil Court for rent to plead that the decision of the Survey Officer and entry of his tenure is wrong and to ask the Court to determine the correct nature of his tenure”.

Proviso (a) is inserted in view of this ruling “to prevent a party in a Civil Suit, whether as defendant or otherwise, being allowed to impeach a decision or entry of the Recording Officer *after* the expiration of the period of limitation prescribed for bringing a suit to reverse or modify it”(2).

**9—Nature of suits and the law of limitation.**—The party aggrieved by the decision or entry of the Recording Officer may institute “a suit for the reversal, or modification of such decision or entry” *e. g.*: (a) directly to set aside or cancel the Recording Officer’s decision or entry(3); or

(b) he may institute the suit “with a view to, the reversal or modification of such decision or entry” *e. g.* he may sue for the mere declaration to establish the converse of what is recorded by the Recording Officer(4); or

(c) without claiming the declaration, seek the relief which he would otherwise be entitled to under a correct entry(5).

Any such suit, the object of which is to impugn directly or indirectly the decision or entry of a Recording Officer, must be brought within six years from the date the party concerned becomes aware of such decision or entry (Art. 120 Lim. Act): (A) Thus a Settlement

(1) P. J. 1896 p. 399, Parsons and Hosking JJ.

(2) *Vide* the Report of the Select Committee.

(3) *Madhavrao v. Deonak*, 21 Bom. 695, Farran C. J. & Parsons J. 1896; *Gopal v. Nageshwar*, 21 Bom. 608, Farran C. J. and Parsons J. 1896; *Dattatraya v. Ramchandra*, 24 Bom. 533; (2 Bmo. L. R. 354), Parsons and Ranade JJ. (1900).

(4) *Faki v. Sajnak*, 18 Bom. 244, Sargent C. J. & Telang J. 1893; *Krishnaji v. Nilo*, P. J. 1894 p. 82, Bayley and Candy JJ.; *Antaji v. Antaji*, 21 Bom. 450 F. B. 1896.

(5) *Vithal v. Yesa*, 22 Bom. 95, Parsons and Candy JJ. 1896; *Krishnaji v. Krishnaji*, 21 Bom. 167 Parsons and Candy JJ. 1896.



Officer, in spite of the previous complaints of the Khot, decided in 1882 that certain lands were Dhara but the necessary entry was made in 1889. The Khot sued for a declaration in 1887 that the plaint lands were Khoti and not Dhara. The District Judge on appeal rejected the claim holding that the suit was barred under Article 14 of the Lim. Act, not having been filed within one year from 1882. On appeal to the High Court, it was held that the suit was within time under Art. 120, as it is the *decision* (not act or order) on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision which, as provided for by Sec. 22, are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court. It is further to be remarked that the Section does not contemplate any "order" being made by the Survey Officer between the parties; and even if "the framing the Register" be regarded as an "act" of the Survey Officer, the Section provides, as before mentioned, for its being amended by the Collector himself, in accordance with the decision of the Civil Court. Lastly, in the present case, it is to be observed that the "act" was not done until 1889, nearly two years after the filing of the suit". Plaintiff's cause of action arose in 1882 when the Survey Officer determined that the lands were Dhara, and the suit brought within six years to reverse that decision was therefore held to be in the time under Art. 120(1).

(B) In 1884 a Survey Officer decided that certain lands were held by the defendants as Survey occupants and were liable to pay Dast and Local Fund-cess only. In 1886, the Special Assistant Collector and the Settlement Officer addressed to the plaintiff Khot a yadi informing him that the decision of the Survey Officer was confirmed. The Khot thereupon sued in 1888 *inter alia* for a declaration, that the lands were Khoti and were liable to pay Thal. Held that the suit was within time under Art. 120, and was not barred under Art. 14 on the ground that the suit was not brought within one year from the date of the Yadi(2).

(C) A Survey Officer, purporting to act under Sec. 20 (old), decided in 1890 that the defendants were occupancy-tenants and an

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(1) Faki v. Sajnak, 18 Bom. 244.

(2) Krishnaji v. Nilo, P. J. 1894 p. 82, Bayley & Candy JJ. (18 Bom. 244 followed).

entry was also made to that effect. The plaintiff Khot, however, did not come to know of this decision until the Botkhat was prepared and signed by him in 1893. The Khot, dissatisfied with the decision and "with a view to, reversal or modification of such decision", sued in 1896 to eject the defendants, alleging that they were yearly tenants on his own Khoti Khasgi land. *Held*, that the suit was within time, the cause of action having accrued in 1893, when the Botkhat was prepared and not in 1890, when the Survey Officer passed his decision, on the ground "that the decision can have no force until it is pronounced or in some way brought to the notice of the parties and that it is not shown to have been done in the present case till the Botkhat was framed and signed" (1).

(D) Similarly in *Gopal v Krishna* (2) it was held, following *Faki v. Sajnak* 18 Bom. 244, that for a suit under Sec. 21 the period of limitation is six years (Art. 12). Further although the presumption is that the Survey Officer's decision is duly delivered after notice to the parties, it is open to the party concerned to show that no notice was given to him as required under Sec. 196 clause 2 of the L.R. Code, and that he did not become aware of the decision till some later date i. e. within six years of the date of the suit.

(E) Where however the decision of the Recording Officer is *ultra vires* and the entry, if any, is a mere nullity, a suit which in effect impugns such a decision or entry though filed more than six years after the plaintiff becomes aware of the same, will not be barred. The cause of action in such a case would accrue when the defendant denies the plaintiff's title and not when the entry complained of is made or brought to the notice of the plaintiff (3).

**10—Fresh cause of action or fresh starting period of limitation.**—Proviso (b) is added with a view "to make it clear that no fresh cause of action shall accrue by reason merely of amendments under Sec. 18 or fresh entries in a revision survey, when no material

(1) *Mahipat v. Laxman*, 24 Bom. 423; S. C. 2 Bom. L. R. 228, Parsons and Ranade JJ. 1900.

(2) 3 Bom. L. R. 420, Fulton and Chauhanvarkar JJ. 1901.

(3) *Dattatraya v. Ramchandra*, 24 Bom. 533; 3 Bom. L. R. 374, Parsons and Ranade JJ. (1900).

change is effected". It is the duty of the Survey Officer to prepare a fresh Settlement Register and 'other records' on the occasion of a revision survey-settlement and to enter therein all the details as specified in Secs. 16 & 17 with such alterations and modifications as may be found necessary. Such alterations or those made under Sec. 18 will not however give the party concerned a fresh starting period of limitation.

In each of these cases when a material change is effected in the previous decision or entry, the party affected thereby can institute a suit for, or with a view to, the reversal or modification of such decision or entry, within six years of the date the party becomes aware of the alteration.

**11—No fresh cause of action, where title is denied prior to the Recording Officer's decision.**—Where the title of any person is denied, no fresh cause of action will accrue in his favour, merely by reason of a subsequent decision of the Recording Officer. Thus one V a mortgagee sued *inter alia* for a declaration, that his mortgagor a Khoti co-sharer had  $5\frac{1}{2}$  pies share in a certain Khoti Taxim of 2 annas and 8 pies standing in the name one N, and that his mortgagor was entitled to have that share entered in his name. The title of the mortgagor was however denied by N in 1886. The Survey Officer made an entry of the whole of the 2 annas and 8 pies share in the name of N in 1890 and the Mamlatdar communicated the final decision of the Survey Officer to the plaintiff in 1893. The present suit though filed within six years of the date of the Survey Officer's decision was however held to be barred. Their Lordships observed:—"No doubt if we are bound to go no further back than the preparation of the Settlement Register in 1890, the suit is not barred. For the Register is to contain a list of all co-sharers of the *Khotki* (last paragraph of Sec. 16 of the Khoti Act). If there is any dispute as to any matter which the Survey Officer is bound to record, he is to determine the dispute and frame the said register accordingly, and his decision will be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court (Secs. 20, 21 of the Khoti Act). But we are clearly of opinion that these provisions do not constitute a fresh cause of action, in a case where there has been a denial of a title prior to the proceedings before the Survey Officer"(1).

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(1) *Vithal v. Sitabai*, 3 Bom. L. R. 181 at p. 184, *Candy and Crowe JJ.* & *Se also Dhondo v. Vasudeo*, 1 Bom. L. R. 466, *Jenkins C. J.* and *Candy J.* (1899).

**22.** NO suit shall lie against Government or against any officer of Government to set aside any decision or order of a Survey-officer or other Recording-officer under this Part.

Bar of suits against Government or Government officers.

### *Old Section.*

**S. 22.** No suit shall lie against the said survey officer, or against Government or any officer of Government to set aside any such decision of a survey officer; but the record shall from time to time be amended by the said survey officer, or when the survey settlement is concluded, by the Collector, in accordance with any such decree as aforesaid which the parties may obtain *inter se* on an application accompanied by a certified copy of such decree, being duly made to the said survey officer, or to the Collector for that purpose.

Bar of suits against survey officer or Government.

## NOTES.

**1—The new and the old Section.**—The first part of the old Sec. 22 *i. e.* as regards suits against Government and its Officers,\* is reproduced in the new Sec. 22 with some verbal alterations. The only noticeable alteration is the addition of the words ‘or order’ after the words ‘any decision’.

The scope of the latter part of the Section *i. e.* as regards the power of amendment is however very much extended and amplified, and the new Section 18 is drafted therefor.

**2—Decision or order.**—The words ‘decision’ or ‘order’ have not been defined in the Act or in the L. R. Code. The insertion of the words ‘or order’ in Sec. 22 is, it is submitted, likely to create difficulties particularly in the interpretation of Secs. 20 and 21 :—

(a) Thus Secs. 20 and 21 make no reference to any ‘order’ by Recording Officer at all; any ‘order’ therefore of the Recording Officer although it relates to any of the matters referred to in those two Sections, will not be final nor binding under the one or the other Section.

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\* *Vide* Secs. 4 and 5, of the Revenue Jurisdiction Act (X of 1876).

(b) Further any 'order' of the Recording Officer would be appealable under Sec 203 of the L. R. Code "in the absence of any express provision" to the contrary, although the 'order' may relate to "any other matter" referred to in Sec. 21.

(c) Again if it be necessary to sue to set aside any such 'order', will not the suit properly fall under Art. 14 of the Limitation Act?(1).

If the Legislature did not intend to differentiate between 'decision' and 'order', it may be urged, why is the latter word specially inserted in the new Section?

## PART IV.

### ADMINISTRATION OF SURVEY-SETTLEMENTS MADE UNDER THIS ACT.

23. THE provisions of this Part shall not apply to any village to which this Act extends until such time as the Governor in Council first after the passing of this Act sanctions a survey-settlement or a revised survey-settlement of such village and declares the assessments settled thereunder fixed for a period of years, in accordance with section 102 of the Bombay Land-Revenue Code, 1879. (Bom.V of 1879).

Provisions of this Part when to apply.

Until such time, the rights and responsibilities of all parties so far as regards the matters treated of in this Part shall continue to be such as they would be if this Part had not been enacted.

## NOTES.

Part IV will apply to such of the Khoti villages, in which after the passing of this Act, a Survey Settlement or Revision Survey Settlement

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(1) *Vide Faki v. Sajnak*, 18 Bom. 244, Sargent C. J. and Telang J. (1893), and Note 9 to Sec. 21.

is sanctioned by Government and the assessment settled thereunder is guaranteed under Sec. 102 L. R. Code " for a term of years not exceeding 30 years in case of lands used for the purpose of agriculture alone, and not exceeding ninety-nine in the case of all other lands ".

Until such time the provisions of this Part *i. e.* as regards the calculation of Jama, the appointment, rights and duties of Managing Khots, the liability of separated sharers, the rents payable by the privileged occupants, the abolition of cesses, the payment of Local Fund cess will not apply to any such villages. Any dispute in connection with any of the matters referred to above, will be regulated by custom and local usage. The Section does not, it will be observed, contemplate any provisional, temporary or *ad interim* settlement.

This part will however now apply to almost all the villages held by the Khots in the Ratnagiri District(1).

### *Khots' Jámá.*

24. THE *jámá* payable to Government by the khot shall be the aggregate of the survey-assessments of the lands of the village minus such percentage of deduction, if any, as Government may in each case direct.

*Jámá* how to be calculated.

The amount of the said *jámá* shall be from time to time fixed for the same period for which the survey-assessments are fixed.

Amount to be fixed for certain periods.

### NOTES.

1—Khot's liability to pay Jama.—The word " Jama " has been defined to mean " land revenue payable by a khot to Government " (Sec. 3 clause 4). Under Sec. 4 the khot is entitled to hold his village subject to the payment of Jama due therefor.

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(1) *Vide* Note 3 to Sec. 16.

The khot is however not entitled to any exemption on the ground of relinquishment of the holdings, even by Dharekaris(1). If the khot fails to pay the Jama, it may be recovered from his inferior holders or persons in actual occupation of the village, or he may be treated as a defaulter under Sec. 147 of the L. R. Code, and the arrears may be recovered from him by one or the other processes laid down in Sec. 150 Cls. (a) and (c) to (f) of the Code. (*Vide* Sec. 22 cl. c of this Act and Sec. 187 of the Code).

**2—Guaranteeing the amount of Jama.**—On the introduction of an Original or Revision Survey Settlement in any village the amounts payable as survey assessment are guaranteed for a term of years—generally 30 for agricultural and 90 for non-agricultural lands. (Sec. 102 L. R. Code). Similarly at every such introduction of the Original or Revision Survey Settlement, the amount of Jama payable by the Khot, has also to be fixed, for the same period for which the survey assessments in the village are fixed.

**3—Dates for the payment of Jama.**—The dates for the payment of instalments of the Khot's Jama are(2) :—

|                |             |
|----------------|-------------|
| 15th December. | 15th March. |
| 1st February.  | 1st May.    |

The minimum of an instalment of Jama is Rs. 50(3) ; but it may be paid on 1st February *i. e.* on the date of the 2nd instalment. Local Fund cess however must be paid as usual *i. e.* on the 15th December(4).

**4—Relative position of Khots and Inamdars.**—In alienated Khoti villages Khots pass *ka*bulayats to the Inamdars and pay them the Jama of the village. Inamdars and not the Khots are primarily responsible to meet the Government demands. Government have nothing directly to do with the Khots, except when the village is attached for Inamdars' failure to pay the Judi in respect thereof.

(1) G. R. No. 4265/6-9-70.

(2) *Vide* Rule VI to Sec. 10 clause (f).

(3) G. R. 29, 3-1-96.

(4) G. R. 4098/9-11-96

In a Sarkati Inam village however, the Khot has to pass kabulayats and pay the Jama both to Government and the Inamdars for their respective shares in the village. If the village is not divided between the Inamdar and Government and if the Khot fails to take up the management in respect of the share of Government in the village, the whole village and not only the Government share therein may be attached, if the Inamdar so desires it(1).

### *Managing Khots.*

25. THE annual kabulayats hitherto executed by khots shall no longer be required from them: Provided that nothing herein contained shall be deemed to affect the liability of khots to perform any condition of their tenure, or to do any act which they are now bound to perform or to do, or their obligation to refrain from doing anything which they are now bound not to do.

### NOTES.

1—The khot does not derive his title under the Kabulayat.—The Sanhdi or Vatandar khot whatever his proprietary rights to the soil, “does not hold his village on the strength of his Kabulayat. His title-deed is of course his Sanad. The Kabulayat is merely his security for payment of the Government assessment”(2). The execution of this periodical agreement by the lessee does not alter the character of a khot's estate, though it is certainly a peculiar incident. It is worthy of remark that the practice of requiring this agreement is said to have commenced in A. D. 1819-20, at which time the absolute proprietary right of the khot in the entire lands of the village was recognized by the Revenue Authorities(3).

(1) Vide Commissioner's orders 2338 24-7-05 and 3268 20-7-06.

(2) Candy p. 54.

(3) Tajubai v. the Sub-Collector of Kolaba, 3 Bom. H. C. R. 132 Tucker J. at p. 157 (1896).



So far as the Ratnagiri Khots are concerned, the Kabulayats are merely formal agreements, they can neither detract from the rights, nor add to the liabilities, duties or obligations of the Khots(1). Thus Sargent and Nanabhai JJ. observe: "We entirely agree with the Court below that the Kabulayats passed by the Ratnagiri Khots can only be regarded as formal agreements by which the khot engages to make good the fixed sum at which the revenue is assessed, coupled with two securities for the punctual payment of the revenue"(2).

**2—Proviso.**—By the insertion of the Proviso, the Legislature has guarded itself against any adverse inference that may possibly be drawn by the abolition of the Kabulayats. It was thus not meant by the abolition of the Kabulayats to absolve the Khots from their liabilities, duties or obligations which appertain to or are otherwise in vogue as the necessary incidents of the Khoti tenure.

**26. WHEN** a village is held by two or more co-sharers jointly, the said sharers shall be jointly and severally responsible for the *jārnā*, but one of their number shall be nominated every year to receive the inferior holders' rents, to pay the Government dues, and generally to perform all acts required by this Act or by any other law or rule having the force of law, to be performed by the khot.

The sharer so nominated shall be called "the managing khot" and shall for all the purposes of the Bombay Land-Revenue Code, 1879, (Bom. V of 1879.) be deemed to be the registered occupant of all survey-numbers in the village not held by privileged occupants.

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(1) The Kolaba Khots would be bound to execute such Kabulayats and would be bound to abide by their terms, so far as they conform to Secs. 37 and 38 of the Survey Act (Bom. Act I of 1865), *Vide* Secretary of State *v.* Sadashiv 14 Bom. L. R. 77 Beaman and Hayward JJ. 1912.

(2) The Collector of Ratnagiri *v.* Antaji Laxman, 12 Bom. 534 at p. 548.

## NOTES.

**1—Managing Khots why appointed.**—It was urged on behalf of the khots, that there was no occasion for appointing a Managing khot, “as unlike the village patel, he has not any other responsibilities except that of paying the assessment and he is the owner of his vatan and not a mere officer of Government”. “If the Khot Sharers cannot agree to a nomination from among their own body, the village should, as at present, be placed under attachment. The holding of a certificate for a Managing khot, derogates from his Superior rights as a proprietor and it will be enough if a *takid* is given to the village by the Mamlatdar mentioning the name of the khot to whom Government looks for the payment of the Jama”. It was also contended “that the appointment of a co-sharer to act as manager of an estate would create ill-feeling and confusion” and lead to litigation(1).

The provisions embodied in Secs. 26 to 31 have however been retained, as Government thought it was absolutely necessary, for the proper administration of the village, not to leave it without a head, to whom alone Government may look up for the proper performance and exercise of all duties and powers in connection with the management of the village.

**2—Managing Khot shall be deemed to be the registered occupant.**—It will be observed that para 2 to Sec. 26 does not, in any way *authorize* the *registration* of the names of the Managing Khot alone in the Settlement Register; Sec. 26 does not over-ride the provisions of Sec. 16, under which all the Khoti co-sharers are entitled to have their names registered in the Settlement Register. The Managing Khot is only to be *deemed* the registered occupant (*Vide* Sec. 3 cl 17 L. R. Code) of all the survey numbers which are not held by privileged occupants i. e. of lands held by ordinary tenants as well as those held by the Khoti co-sharers.

Although therefore under the first para, the Khoti co-sharers are all jointly and severally liable, it is the Managing khot who alone will be primarily responsible for the payment of the Jama or land revenue. (Secs. 76 and 136 L. R. Code). In case it is not so recovered from

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(1) *Vide* the Hon'ble Mr. Moraji's speech in Council.

him, it will be recovered from the co-sharers under the first para of this Section or from other persons in actual occupation under Sec. 136 L. R. Code.

If the Registered occupant fraudulently withholds such payment, to incur forfeiture with a view to injure the co-sharers or other persons interested *e. g.* a tenant or a mortgagee, such co-sharers or persons interested will certainly be entitled to pay the Jama on behalf of the Managing khot. (Secs. 80 and 81 L. R. Code).

27. IF the co-sharers have, at the time of the framing of the survey-settlement records or at any subsequent period, agreed in writing as to the order of rotation, the nomination of the managing khot shall be made by the Collector in the order so agreed upon.

Managing khot how to be nominated.

In the absence of any such agreement,<sup>[a]</sup> or if the sharer, whose turn it is to be nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31-A within such time as may be prescribed by the Collector in this behalf,<sup>[a]</sup> the co-sharers shall be called upon to nominate one of their number year by year,<sup>[b]</sup> or for the year, as the case may be,<sup>[b]</sup> and in the event of their failing so to do within such time as may be prescribed by the Collector in this behalf, or if they are not unanimous as to the nomination, the Collector shall either select the managing khot for the year, or cause the village to be attached and taken under the management of himself or any agent whom he appoints for that purpose in the manner provided in section 144 of the Bombay Land-Revenue Code, 1879. (Bom. V of 1879).

[a—a] These words were inserted by Bom. Act III of 1904, Sec. 5, cl. (a).

[b—b] These words were inserted by Bom. Act III of 1904, Sec. 5, cl. (b).

## NOTES.

**1—The nomination of the Managing Khot.**—The Act requires that the village be managed by *one* out of the several khoti co-sharers. Two or more co-sharers cannot claim to manage the village at the same time. However numerous the sharers may be, they must select *one* from amongst themselves, who alone shall manage the village for any particular year for which he is appointed.

Where the co-sharers wish to settle in advance the order of rotation, in which they agree to take the village under management, they must do so in writing either at the time of the framing of the Settlement records or they may do so even after the framing of those records. In either case the Recording Officer will have to make the necessary entries in terms of the arrangement agreed upon. (*Vide* Sec. 17 Cls. *b* and *c*; and Sec. 18 clause 2).

Further, it is submitted, that when there is such an agreement in writing, the Collector is bound to give effect thereto, whether or not the same is entered in the Settlement Record, and issue a written order nominating the sharer so selected to work as the Managing Khot. (Sec. 28).

In the absence of an agreement in writing as to the order of rotation, the Mamlatdar or Mahalkari shall "year by year" *i. e.* "on or before the 1st June in each year, issue a notice calling on the co-sharers to nominate one of their number on or before the 30th of June to be the Managing khot for the following revenue year". [*Vide* Rule V to Sec. 40 (*f*)].

It will be observed that the appointment of the Managing khot is to be made by the year and not by months or fraction of a year however numerous the khoti sharers may be. Monthly appointment would obviously be useless to the Khot and Government alike.

**2—Procedure where the sharer otherwise entitled is unable to manage.**—If the sharer whose turn it is to manage the village under the agreement is unable or is unwilling to manage the village by himself, or by appointing an agent under Sec. 31-A within a certain time fixed by the Collector, the other co-sharers will be called upon to nominate one of their number to manage the village "for the year".

The same procedure will have to be followed when the sharer having once taken up the management, refuses or is unable to manage it till the end of his turn.

The temporary arrangement referred to above will, of course, not affect the rights of the co-sharer next in order to manage the village when his turn comes.

**3—Collector's power of interference.**—When the co-sharers fail to agree as to who should manage the village, the Collector is empowered to adopt one of the following measures :—

(a) He may himself select any one of the khoti sharers to act as the Managing khot. He cannot however refuse to appoint a sharer on the ground that he is the holder of an infinitesimal share. But as a rule of practice, "a sharer who—neither by himself nor by any one of his predecessors in title had ever exercised the right of management for over 30 years should not be recognized by the Collector as having a right to serve to the exclusion of the better claimant, without the production of an order of a Civil Court(1) ; or

(b) he may as a precautionary measure at once attach the village under Sec. 144 L. R. Code and take it under the management of himself or his agent (Japtidar).

Where the village is attached and taken under Government management (*e. g.* where the Khot fails to take up the management as provided for in Sec. 27 or where he fails to furnish security, (*Vide* Sec. 145 L. R. Code), the khot naturally cannot recover rents from the privileged occupants. A Civil Court will also have no jurisdiction to entertain any such suit(2). The Collector however must not interfere with the internal arrangements made by the Khoti-sharers, relating to their rights in the village, so long as one or other of them undertakes to be responsible for the proper management thereof(3).

(1) G. R. 6857 15-7-1909.

(2) *Taka v. Pandurang*, S. A. 625 02 (1-5-05), Jenkins C. J. & Batty J.

(3) G. R. 3508 30-6-76.

28. [\*]THE Collector's nomination or selection under section 27 shall be made by a written order, which shall not be open to appeal; and no suit shall lie against Government or against any officer of Government in respect of any such nomination or selection [\*].

Collector's nomination or selection not to be disputed.

But it shall be lawful for any of the co-sharers at any time to sue for a decree *inter se* to declare which of them is entitled to the management, or the order in which they should respectively have the management, if more than one of them be entitled to the same; and from the commencement of the revenue year next after an application (accompanied by a certified copy of any such decree) is duly made to him for the purpose, the Collector shall nominate the managing khot in accordance with such decree.

But suits in respect to the right of management not barred amongst the khots themselves.

### *Old Section:*

[a-a] This paragraph was substituted for the original paragraph 1 by Bom. Act III of 1904, Sec. 6. It ran as follows:—

8. 28. A managing khot nominated by the Collector under the last preceding section shall continue in that capacity throughout the year for which he is so appointed, and no suit shall lie against the Collector or against Government, or any Government officer in respect of such nomination.

Collector's nomination not to be disputed.

### NOTES.

1—"Shall not be open to appeal".—It will be noticed that the words used in Sec. 21 are "shall not be open to appeal or revision". The word "or revision" are not used in Sec. 28. It would therefore appear that the nomination or selection of the Managing khot by the Collector although not appealable, can be challenged in revision. (Sec. 211-2 L. R. Code).

Further the aggrieved party can, it is submitted, sue the co-sharer or co-sharers interested in denying his right to manage and ask for a declaration that he himself is entitled to manage the village for any particular year, or in a particular order of rotation. If he succeeds in obtaining a decree, the Collector on an application will be bound to give effect thereto.

**2—Appeal against Assistant Collector's order.**—An Assistant Collector acting under Sec. 10 of the L. R. Code passed an order appointing a certain khoti sharer as the Managing khot, *held*, an appeal would lie against the order to the Collector under Sec. 203 L. R. Code(1).

**3—Certificate under the Pensions Act not necessary**—A suit by a co-sharer for damages in connection with the management of the Khoti village or for a declaration that he is entitled to manage the village, does not require a certificate under the Pensions Act (Bom. Act XXIII of 1871), as any such suit has nothing whatever to do with any "grant of money"(2).

29. [a] THE mámlatdár shall furnish every managing khot [b] nominated or selected under section 27 [b] with a certificate under his hand and seal to the effect that the holder thereof is the recognized managing khot for the year to which such certificate relates, and a certificate so signed and sealed shall be conclusive evidence of the right of the khot therein named to manage the village to which it relates for the year therein specified.

Managing khot's certificate.

### *Old Section.*

[a] The words, "except as is hereinafter provided", were repealed by Bom. Act III of 1904, Sec. 7.

[b—b] These words were inserted by Bom. Act III of 1904, Sec. 7.

(1) G. R. 4491/4-5-08 ; 4205,1-5-09.

(2) *Vide* G. R. 1842/18-3-82.

## NOTES.

**1—Certificate conclusive evidence of the right to manage.**—When once a certificate(1) is issued rightly or wrongly although it may be in direct contravention of the provisions laid down in Sec. 27, a Civil Court cannot go behind it and enquire into the legality or otherwise of the reasons which may have led the Collector or the Mamlatdar to issue the certificate. (*Vide* note 1 to Sec. 20). And even if a decree be obtained under Sec. 23, it cannot affect the rights of the co-sharer who holds the certificate to act as Managing khot for the year for which it is issued (*Vide* para 2 to Sec. 28).

**30. WHEN** a village is held by a khot in his own sole right, he shall be deemed to be the managing khot thereof for all the purposes of this Act, and it shall not be necessary to furnish him with any such certificate as is described in the last preceding section.

Managing khot when there are no co-sharers.

## NOTES.

**1—A sole Khot need have no Certificate.**—The object of issuing a certificate seems to be to hold one out of the several co-sharers responsible for the proper discharge of the rights and duties of a khot, as also to set at rest for the year for which the certificate is issued all possible disputes between the co-sharers as to their right to manage the village. When however a village(2) is held by one single khot, there is no object that can be gained by issuing any such certificate. Sec. 30 therefore declares such a Khot to be the Managing khot and dispenses with the issue of a certificate.

**31. WHEN** a managing khot has been duly appointed under any of the foregoing provisions he alone shall be entitled to assistance for the recovery of rent from privileged

Exclusive power of managing khot.

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(1) For the Form, *vide* App. I Form 4.

(2). *Vide* Sec. 3 clause 1.



occupants under sections 86 and 87 of the Bombay Land-Revenue Code, 1879, (Bom. V of 1879).

## NOTES.

**1—Exclusive power of the Managing Khot.**—When one of the khoti co-sharers is selected as the Managing khot and the necessary certificate issued to him under Sec. 29, it is he or his agent (Sec. 31-A) who alone is entitled to manage the village. He will be held responsible for the payment of the Jama (Sec. 4 and 24) and the Local Fund Cess (Sec. 36). He must keep accounts (Sec. 15). He alone is on the other hand entitled to recover rents from all the privileged occupants although they may have fallen to the share of another Khoti co-sharer (1). He is also entitled to recover rent from the khoti co-sharers for the khoti khasgi lands in their occupation. Further he alone is entitled to grant valid receipts (Sec. 15) and to obtain "assistance". (2)

**2—Managing khot entitled to recover Land Revenue from mortgagees in possession of the privileged occupants or khoti co-sharers.**—A Kabulayatdar khot sued the mortgagee in possession of a privileged occupant for the Government assessment, although the mortgagor's name was entered in the Survey record. The Sub-Judge held that the mortgagee cultivated the land and was therefore liable to pay. On appeal the District Judge reversed the Sub-Judge's decision on the ground that there was no privity between the mortgagee and the Kabulayatdar khot. *Held*, that the Reg. 17 of 1827, Sec. 5, enables the Government and the holder of the rights of Government *e. g.* a Kabulayatdar khot on failure of Superior holder to pay the land revenue, to realize it from the inferior holder. It is obvious if the occupant whose name is entered as such in the Government books, only could be made answerable for the rent or revenue due to Government, it would only be necessary to effect a mortgage in order to defraud the State of its due. To obviate any such result, the law for realising the land revenue thus establishes a kind of privity of estate

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(1) *Amruta v. Kashinath*, P. J. 1899 p. 58, Parsons and Ranade JJ. An assignee of the Managing khot can sue to recover *thal*. *Vasudeo v. Dhaku*, S. A. 88 of 1902 (11-12-02), Chandavarkar and Aston JJ.

(2) G. R. 657/25-1-90.

between the superior and inferior holder, by which the latter taking the profits of the land must satisfy this obligation of the former to Government, independently of and even in opposition to, any agreement between the two contracting parties. The liability to pay adheres to the occupation and enjoyment and cannot be got rid of, except through its resignation by the Sovereign or the Sovereign's representative. Held, accordingly that when a person who is an "occupant" of certain land within the meaning of Act I of 1865, failed to pay the revenue due thereon, the *Kabulayatdar* khot could recover that amount from that person's mortgagee in possession(1).

The same rule would hold good under the law as it now stands. (*Vide* Sec. 136 L. R. Code).

**2—Managing khot is bound to distribute the khot Faida.**—Although it is the managing khot who alone is entitled to collect the rents etc., it must not be understood that he alone is entitled to pocket the whole of the Khot Faida, if any, for himself. He is bound to distribute it amongst his khoti co-sharers according to their shares. A co-sharer who does not so get his share can sue the *Vahivatdar* khot to recover his share of the profits of certain years, without bringing a general suit for accounts and without making all the co-sharers parties thereto(2). The *Vahivatdar* khot can, however, properly claim to *set off* against the plaintiff's claim, the amounts paid by him as assessment and expenses of *Abhavni* or appraisalment etc. of the plaintiff's share(3).

It may however be arranged by agreement between the co-sharers that whoever manages the village, should take the whole of the profits for himself and should not claim his share of the profits when it is the turn of the other co-sharer to manage the village(4).

**4—The system of Watani Warakh.**—The khoti co-sharers

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(1) *Krishnaji v. Ramechandra*, 1 Bom. 70, 1875. West and **BOMBAY** J.J.

(2) *Keso v. Ganesh*, P. J. 1891 p. 323, *Jardine and Parsons J.J.*

(3) *Gorind v. Trimbak*, P. J. 1896, p. 728, *Farran C.J. and Hosking J.* [*See* however *Vinayak v. Kashinath*, S. A. 72 1900 (12-1)-1900) where *set off* was disallowed for want of necessary parties, *Jenkins C. J. and Whitworth J.*]

(4) *Vide* note 7 to Sec. 17, p. 75.

instead of distributing the Khot Faida sometimes distribute the tenants between themselves according to their respective shares and each one of such sharers is authorized to recover rent from the tenants assigned to his share. This system known as Watani Warakh is illegal at least in respect of those villages to which Part IV of the Act applies. The very object of appointing a Managing Khot and holding him responsible for the proper administration of the village is frustrated and there is nothing to support this system or custom under the Khoti Act. A co-sharer holding a Watani Warakh (lit. an allotment sheet) is not entitled to assistance under Sec. 31. Nor is he entitled to recover rent in a Civil Court, as none but the Managing Khot or his Agent appointed under Sec. 31-A has a locus standi to maintain such a suit(1).

**5—Suits of a Small Cause Court nature:—No Second Appeal.**—(a) A suit by a co-sharer to recover his share of the profits of a khoti taxim recovered by another co-sharer, is a suit cognizable by a court of Small Causes; and if the claim in such a suit is below Rs. 500, no Second Appeal will lie under Sec. 586 Civ. Pro. Code(2).

(b) Where the suit is to recover an ascertained sum not exceeding Rs. 500 as being the value of the profits due, a mere question of title that may be incidentally raised therein, or a mere prayer for accounts of such profits, would not alter the original nature of the suit or make it the less a suit of a Small Cause Court nature. Thus certain co-sharers sued to recover Rs. 339, as their share in certain Dhara and Khoti property or any other sum which may be found due to them from the Managing khot on taking accounts between them; *held*, that the suit was of a Small Cause Court nature and no Second Appeal lay. The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. Further by merely asking in the alternative for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature(3).

(c) Plaintiff sued in a court having both Ordinary and Small Cause Court jurisdiction to recover Rs. 75 as being the Utpanna or profits of

(1) See however foot note 1 to Note 1 *ante* p. 112.

(2) Vasudeo v. Damodar, 6 Bom. L. R. 370, Jenkins C. J. & Batty J. 1904.

(3) Narayen v. Balaji, 21 Bom. 248, Farran C. J. & Parsons J. 1895, followed in Keshav v. Balkrishna, C. A. 229/1899 (21-6-1900), Candy and Banade, J.J.

certain lands which the plaintiff contended were his own *Kowli* lands. Defendants contended that the lands were *Khoti*. *Held*: the suit was of a Small Court nature and no Second Appeal lay. "It is clear that a Small Cause Court cannot entertain a suit for the determination or enforcement of any right to or interest in immoveable property, but the authorities decide that having regard to Sec. 23 of the Provincial Small Cause Courts Act a Court of Small Causes can entertain a suit, the principal purpose of which is to determine a right to immoveable property, provided that the suit in form does not ask for this relief, but for a payment of a sum of money".

"What is the result of this? A sues B for a sum of money under Rs. 500, his right to which depends exclusively on his establishing his ownership of a piece of land. According to the cases a Court of Small Causes can itself hear the case, and in the course of it, determine the issue of ownership. There would be no Second Appeal, but, on the other hand, the decision on the issue of ownership would not be *res-judicata* in a subsequent suit to determine the ownership, because the Small Cause Court would not be competent to try the subsequent suit(1)".

(d) In such cases it is not the amount which is provisionally claimed, but it is the amount which is found actually due at foot of accounts which will determine whether an appeal would or would not lie(2).

**6—Managing khot alone not entitled to benefits accruing under Sec. 10.**—If a privileged occupant resigns the land, in any particular year, the then Managing khot is certainly not entitled to claim it all for himself simply because he was then acting as the *Vahivatdar Khot*(3). Similarly if the land lapses or is forfeited in any particular year, the land so lapsed or forfeited will be at the disposal of all the *Khoti* co-sharers including the *Vahivatdar Khot*(4).

(1) *Vinayak v. Krishnarao*, 3 Bom. L. R. 239 : S. C. 25 Bom. 625, *Jenkins C. J.* and *Chandavarkar J.* 1901.

(2) *Gangadhar v. Vinayak*, P. J. 1896 p. 417, *Farran C. J.* and *Hosking J.*

(3) *Vide* note 2 to Sec. 10, p. 48.

(4) *Vide* however *Faki Ismail v. Faki Mahamed*, 12 Bom. 595.

**7—Managing khot alone not entitled to confer rights under Sec. 11.**—A Managing khot is no doubt entitled to manage the village to the exclusion of the other co-sharers, but he is certainly not authorized to do acts which would prejudicially affect the other co-sharers and which he is not *required* "to perform by this Act or by any other Law or rule having the force of a law". He is not bound to perform any of the acts referred to in Sec. 11. He has no power without the concurrence of his co-sharers, "to give up rights which belong to them as well as to himself"(1). If he therefore confers on any privileged occupant of one class, the rights of a privileged occupant of a superior class, without the concurrence of his co-sharers, such act of his will not be binding on the latter(2).

But for the efficient discharge of his duties even the lessee of the Khot, "ought, without any express authorization, to be able to create tenancies in land", which is vacated or is lying waste "even though the reversionary interest in it is vested in the person whose lessee he is". And if he himself takes up such land, "he can do so consistently with the conditions of the *Khoti* tenure"(3).

**8—Assistance for the recovery of rents from privileged occupants.**—Sec. 31 re-enacts the previous practice of rendering assistance to the khot either under Chap. VII of Reg. 17 of 1827 or Sec. 44 of Bom Act I of 1865. Whatever the attitude of the Government towards the Khots in the early years, assistance was invariably given to them. This is a very valuable right, as it affords speedy and inexpensive remedy to recover rents or land revenue from the inferior holders.

Under Sec. 31 the Vahivatdar or the Managing khot *i. e.* the *Khoti* co-sharer who holds the certificate under Sec. 29, will alone be entitled to claim assistance for the recovery of the rents from the privileged occupants. He can make the application during the year for which he holds the certificate and "within the revenue year or within the year of tenancies in which the said rent or land revenue became payable".

(1) Collector of Ratnagiri v. Vyankatrao, 8 Bom. H.C.R. 1 at p. 5, Westropp C. J. and Melvill J. 1871.

(2) *Vide* Note 3 to Sec. 11 and Proviso to Sec. 33 (c) Rule II.

(3) Faki Ismail v. Faki Mabamed, 12 Bom. 595 at p. 611, West and Birdwood JJ. 1887.

**9—Whether assistance can be granted against Khoti co-sharers and Ordinary tenants.**—Under Sec. 31 as it stands, it would appear that the Managing khot would not be entitled to assistance for the recovery of the rents from the Khoti co-shares or Ordinary tenants. The term ‘privileged occupant’ does not include an Ordinary tenant nor a Khoti co-sharer [Sec. 3 cl. 5](1). The Legislature does not even use the word “inferior holders” in Sec. 31, which would include at least the Ordinary tenants. In Sec. 15 cl. (e) the terms “privileged occupant”, “tenant” and “co-sharer” are used side by side and in one and the same clause; but the latter two expressions are expressly omitted in Sec. 31.

It is however submitted that, the Managing Khot would be entitled to claim assistance both against the khoti co-sharers and the Ordinary tenants under the general rent-law of the Presidency as laid down in Secs. 86 and 87 L. R. Code, if not under Sec. 31 of this Act.

**10—Assistance for the recovery of the value of crop share: Repeal of Sec. 13**—Section 13 empowered the Collector in giving assistance under Sec. 86 L. R. Code to fix Commutation rates for rents payable in kind and direct the recovery of money-value of such rents as estimated at the rates so fixed. By the repeal of the Section, the Collector ceases to have power under the Khoti Act of granting assistance for the *commuted value* of rents payable in kind. In such cases the Collector will have to proceed under the general provisions of the L. R. Code and thus he may either grant assistance for the recovery of rents in kind, or if he considers that the question at issue is of a *complicated* or *difficult nature* he may refuse the assistance asked for altogether or grant it to the extent only of the assessment fixed upon the land.

It must however be remembered that the giving of assistance under Secs. 86-7 is not necessarily limited to survey assessment only; the crop-share rent can be definitely ascertained and there is nothing to prevent the Collector from granting assistance in respect thereof under the L. R. Code(2).

(1) *Krishnaji v. Krishnaji*, 21 Bom. 467, Parsons and Candy JJ. 1896.

(2) G. L. No. 3158, 8-4-1910.

**11—Application for assistance how to be made.**—(a) The application must be in *writing*, but it need not be presented in person as no verification or examination of the applicant is made obligatory. It can even be sent by Post(1). The application must be made to the Collector or to the Mamlatdar or Mahalkari when the latter are empowered under Sec. 12 or 13 L. R. Code.

(b) The application requires a Court-fee *stamp* of one anna when the amount of the claim is less than Rs. 50 and 8 annas when it is Rs. 50 or more(2). It is not however necessary to make separate applications on separate stamps for each tenant's case. One single application can be made against several inferior holders, provided the total amount of rent for the recovery of which the application is made is sufficiently covered by the stamp(3).

(c) It must also be made *in time i. e.* before the expiry of the Revenue year (31st of July) or the year of tenancy, whichever gives him a longer period within which the rent or land-revenue becomes payable(4).

**12—Execution in Assistance cases.**—The orders contemplated by Secs. 86 and 87 are not in the nature of decrees for specified amounts, execution of which can be taken out by the judgment-creditor at his discretion, but are orders for rendering assistance towards recovery of such amount as may appear to be lawfully due on account of the current year's rent. Such orders should obviously themselves constitute the authority for the necessary action and when that action has been taken *i. e.* 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 Ch. XI, it is open to the superior holder to make a fresh application, on which, provided it is made within the year in which the balance is due, a fresh order can be given at the discretion of the Collector(5).

(1) G. R. 8027/12-11-1890.

(2) G. R. 1880/20-3-1888.

(3) G. R. 8721/23-12-1887.

(4) G. R. 3617/23-5-1899.

(5) G. R. 1117/12-2-1894.

**13—Civil suits not barred.**—The order of the Revenue Court under Sec. 86, will not prevent the Managing Khot or the privileged occupant “ 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 ”. (Sec. 87 L. R. Code).

**14—Rent and Res-Judicata.**—A previous decision declaring the liability to pay certain Thal for any particular year or years will not operate as Res-Judicata, if the question of the liability of the tenant to pay the same not only for the particular year or years but for *all years* is not alleged and therefore not directly and substantially in issue in the previous suit(1).

[<sup>a</sup>] 31-A. IT shall be lawful for the managing khot to delegate, subject to the approval of the Collector, the performance and exercise of all duties and powers, imposed or conferred upon him either by section 15 or by section 31, to any person duly empowered in writing by him in this behalf; and the person so appointed shall, in respect of the performance of the duties prescribed in section 15, be subject to all the liabilities to which the khot is subject under the said section.

Delegation of duties and powers by managing khot.

## NOTES.

1—“Subject to the approval of the Collector”.—When the Managing Khot wishes to delegate his duties and powers under Sec. 31-A(2), it is not necessary to obtain the previous consent of the Collector thereto. Thus the Select Committee observe “ we consider the delegations of duties and powers of the Managing Khot

(1) Vishnu v. Ramling, 26 Bom. 25, Fulton and Chandavarkar JJ. 1901.

(2) *Vide* G. R. 1383/18-2-1895, where a point was raised as to whether the Managing Khot could or could not delegate his rights and duties.

[a] Section 31-A was inserted by Bom. Act III of 1904, Sec. 8.



do not need the previous consent of the Collector and that this requirement might give rise to inconvenience in practice. We have therefore substituted words making such delegation lawful *subject to his approval*". The Collector can however decline to ratify or recognise the delegation.

To prevent inconvenience, it was suggested by the Khoti Association that the words " unless the Collector orders otherwise" be inserted immediately after the words " It shall ", instead of the words " subject to the approval of the Collector ". The Hon'ble Mover however has assured the Association that both the expressions would have precisely the same effect in practice.

### *Separated Sharers.*

**32. WHEN** the khots have divided their khotki or a partition thereof has been effected by the Civil Court, or otherwise, and the co-sharers hold their respective shares in severalty, the Collector shall determine the amount of jámá payable in respect of each separate share, and the holders of the said shares shall be held severally liable for the portions of the jámá so fixed on their respective shares, and all the provisions of this Act shall apply to them respectively as if they were independent holders of entire khotkís.

Separated sharers to be severally responsible for their respective shares.

### NOTES.

**1—Partition of the Khotki.**—Section 32 contemplates three cases in which the Khoti co-sharers may effect a severance of interests :-

(a) They may divide the Khotki (Sec. 3 cl 3) amicably without going to a Court of law, or

(b) if there is no dispute as to their shares, they may get their Khoti estate partitioned by the Collector under S. 114 L.R. Code(1), or

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(1) G. E. 3056 9-5-98.

(c) they may bring a regular suit for partition of all the joint family property, if any, including the Khotki.

### 2—Onus of proof in suits for partition of Khoti estates

—The plaintiffs sued for partition of a Khoti estate, alleging that they and the defendants were joint proprietors thereof. The defendants admitted that the estate was originally joint but set up the plea that a partition had taken place. *Held*, that the onus of proof that partition had been made lay on the defendants and the fact that the plaintiffs and defendants have each a certain portion of the village lands in occupation and that there has been a certain distribution of tenants among them, in no way proves that any formal partition of the Khoti estate in the village has ever been actually made. “It is the normal condition of a Khoti estate held in co-parcenary in the South Konkan that the parceners should be in occupation of particular portions: and this circumstance alone will not establish that any division of the land intended to be permanent has been made; and if it be shown...that there has been nothing more than a temporary allotment of lands and tenants, such as is usual while a Khoti estate continues to be held in co-parcenary, the plaintiffs will be entitled to the formal partition which they sue for”(1).

**3—Details to be entered in Settlement Records on a partition of the Khotki.**—*Rule* note 9 to Sec. 17.

**4—Separated sharer treated as independent holder of an entire Khotki.**—So long as the co-sharers are not properly divided in interest they are all jointly and severally responsible for the payment of the Jama. (Sec. 26). If they mean to manage the village, they must nominate one of their member to act as the Managing Khot who alone will be entitled “to perform all acts required by this Act or by any other law or rule having the force of law to be performed by the Khot”.

When a proper Watap or division has been made each separated sharer is an independent Khot in himself in respect of the share so separated. To the extent of his share, he will be treated as though he was a sixteen annas Khot and will be liable to pay the Jama which is properly payable in respect of his own share.

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(1) *Balashet v. Jirshet*, 5 H. C. R. 71, Tucker and Warden JJ, 1868.

**5—Position of the Sub-sharers under a separated sharer.**—Although separated from the main stock, the position of a separated sharer will continue to be that of a co-sharer so far as the sub-sharers in his own branch are concerned and the provisions laid down in Secs. 26 to 29 will apply. Thus the sub-sharers will have to nominate one of their number to act as the Managing Khot to recover rents from the privileged occupants that have been assigned to their share, pay the Jama and generally to perform all other acts required to be performed by the Khot(1).

Of course if there are no sub-sharers under him he himself will be deemed to be the Managing Khot and the provisions of Sec. 30 will apply.

### *Privileged Occupants' Rents.*

#### **33. THE** rent payable to the khot by privileged

Nature and amount of rent payable by privileged occupants. occupants shall be as follows (namely):—

- (a) by a dhárekari : the survey-assessment of his land;
- (b) by a quasi-dhárekari : the survey-assessment of his land and in addition thereto the amounts of grain or money respectively set forth in the schedule [a];
- [b](c) by any occupancy-tenant : in each case according to the terms of the entry in the survey-record made in

(1) See however G. R. 7170/27-10-1888, where the Legal Remembrancer seems to think otherwise : " If the village is undivided there *must* be a Managing Khot. If the village is divided there *cannot* be a Managing Khot ". Thus if the village is divided the only proper course, in his opinion, is for the Collector to ascertain the shares and for the system of nominating Managing Khots to cease at once. Because the responsibilities of each sharer and of each tenant are then ascertained and there can be no further dispute.

[a] Words, " hereto annexed " were repealed by Bom. Act III of 1886.

[b] Clause c was substituted for the original clause by Bom. Act III of 1904, Sec. 9. It ran as follows :—

" by an occupancy-tenant : such fixed amount, whether in money or in kind, as may have been agreed upon or as may at the time of the framing of the survey

respect thereof, and for the time being applicable thereto, under the following rules :—

*Rule I.* Every such entry shall show whether any rent is payable and, if so, whether it is payable as

Entry to show form of payment.

- (a) an amount fixed : that is to say, a certain amount, irrespective of the crop, payable in money or kind, or both ; or
- (b) a crop share : that is to say, a fixed proportion of the gross annual produce of the land, and of the produce of fruit-trees (if any).

*Rule II. (1)* Amounts fixed shall be entered as determined by agreement of the parties—

How and what entries are to be entered as determined by agreement.

- (a) at the time of framing the survey-record, if the Recording-officer is satisfied that they have then or at any time previous agreed that such amounts shall be the rent payable during any period subsequent to the introduction of the survey ; or
- (b) at any other time, on the parties appearing in person or by duly authorized agent before the Recording-officer and consenting to such entry.

record, or at any subsequent period, be agreed upon between the khot and the said tenant ;

or on the expiry of the term for which any such agreement shall have been, or shall be made, or if no such agreement have been, or be made such fixed share of the gross annual produce of the said tenant's land, not exceeding one-half in the case of rice-land, nor one-third in the case of warkas-land and such share, if any, of the produce of the fruit-trees on the said tenant's land, as the survey officer who frames the survey record shall determine to be the customary amount hitherto paid by occupancy tenants in the village in which the said land is situate ”.

(2) No crop-share shall at any time be entered as determined by agreement.

No crop-share to be entered as determined by agreement.

(3) In this rule the word 'parties' means, with reference to an agreement, the tenant and the person who at the time of the agreement is the managing khot:

Meaning of the word 'parties'.

Provided that if any sharer in a khotkí whose interest, or any number of such sharers the aggregate of whose interests, exceeds three-eighths of the entire khotkí, shall declare in writing delivered to the Recording-officer at the time of the nomination or appointment of a managing khot, or at any time during the tenure of his office by such managing khot, that the managing khot shall have no power to bind such sharer or sharers by an agreement with any tenant specified in such writing, no agreement entered into after the delivery of such declaration, between such managing khot and such tenant, shall be binding on such sharer or sharers, unless—

How far, in an agreement with a tenant, a managing khot can bind a sharer or sharers in a khotkí.

- (a) such sharer or sharers shall appear before the Recording-officer and assent thereto, or
- (b) written notice of an intention to execute such an agreement has been sent at the cost of such managing khot or tenant through the Recording-officer by post in a registered cover addressed to such sharer or sharers, and such sharer or sharers shall, for a period of not less than three months after such notice has been sent as aforesaid, fail to appear before the Recording-officer and object to such agreement.

*Rule III.* If at the framing of the survey-record there appears to be no amount fixed by agreement of the parties, the Recording-officer shall,

How entries other than those of amounts fixed by agreement are to be determined.

(a) if he finds that a crop-share has theretofore been paid in accordance with the general custom of the village in respect of similar lands,

enter such crop-share ; or,

(b) if he finds in any case that the rent theretofore paid has been different in description or amount from that payable under the general custom of the village in respect of similar land therein, or that no such general custom is ascertainable,

enter the rent theretofore paid in such case, or, if such rent has not been uniform, the average of the rent paid or payable for such land during the twelve years last preceding his enquiry ; or

(c) if he finds that a commuted-value of a crop-share has become payable under sub-rule (1) of rule V, enter the commuted-value payable under sub-rule (3) of the same rule :

Provided that no crop-share shall in any case be entered exceeding in the case of rice land one-half and in the case of warkas land one-third.

Limits of crop-shares.

*Rule IV.* (1) If in any case—

(a) no entry has been made at the introduction of a survey-settlement, or

Power to make or alter entries in case of omission of entry at settlement or on account of entry ceasing to be applicable ;

(b) the entry made has, by reason of a decree of a competent Court or of any change in tenant's mode of

cultivation or otherwise, ceased to be applicable, wholly or in part, to the land in respect of which it was made,

and no amount fixed by agreement has been subsequently entered,

the Recording-officer may determine and enter, or alter the entry already made in respect of, the rent payable, as if he were acting under rule III.

(2) If any land is held wholly or partly in consideration of services to be rendered by the tenant to the khot or to the village community, or for the benefit of any class thereof, the Recording-officer shall, upon proof that such services are no longer rendered, determine and enter the rent which would have been leviable, but for such total or partial exemption.

or when tenant holding on special conditions of service ceases to render such service ;

(3) If in respect of any land, other than land which is entered as held rent-free, the amount fixed, or in the case of crop-shares the commuted-value which has been, or might be, under rule V entered as payable, is less than the total sum representing the survey-assessment and local fund cess recoverable from the khot in respect thereof, together with twenty-five per centum of such assessment and local fund cess (hereinafter called "the percentage"), the Recording-officer shall, on the application of either of the parties, raise such amount fixed or commuted-value to such total sum or the equivalent thereof in kind, and shall alter the entry accordingly:

or when amount fixed is not equal to sum of survey-assessment and local fund cess together with a percentage thereon,

Provided that the Governor in Council may, during the period of the survey-settlement in force at the commencement of the Khoti Settlement Act Amendment Act, 1904, (Bom. III of 1904.) by general or special orders in this behalf, direct that the whole or part of the percentage shall during the remainder of such period be defrayed by Government ; and so long as such defrayal continues, the rent payable by the tenant to the khot under the provisions of this sub-rule shall be reduced to the extent of the amount so defrayed, and a note shall be inserted by the Recording-officer in the altered entry accordingly.

subject to proportionate reduction, if Government defrays whole or part of the percentage ;

(4) If the survey-assessment fixed on any survey-number has been reduced or struck off on account of diluvion, deterioration by floods or other cause beyond the control of the occupancy-tenant, the Recording-officer shall reduce the total amount fixed, or in the case of crop-shares the total commuted-value (if any), which has been entered as payable for the portion of that number in such tenant's occupancy, by an amount bearing to that total amount or commuted-value the same proportion as the amount of assessment remitted or struck off bears to the total assessment for the entire area in his occupancy, and shall make an entry in the record specifying—

or when the assessment has been remitted or reduced on account of injury to the land.

(a) the reduced amount, and

(b) the limit of time for which it is without further entry to hold good.



*Rule V. (1)* On an application made on or before the first day of May in any year by any tenant,

When entry of 'commuted-value of crop-share may be made, and effect of such entry.

whose rent is payable wholly or partly as a crop-share, the Recording-officer shall fix and enter the commuted-value

of the whole of such crop-share, and such commuted-value shall thenceforth, subject to the provisions of sub-rule (3), be payable, with effect from the commencement of the next ensuing revenue-year, by the tenant in lieu of the whole crop-share hitherto payable by him.

(2) In this rule 'commuted-value' means the average money-value of the produce payable, and the Recording-officer shall, in the absence of any satisfactory evidence to

Meaning of 'commuted-value' and how fixed.

the contrary, take, as a standard for estimating such money-value, a half crop-share as equivalent to three multiples of the survey-assessment fixed on the land, a third crop-share as equivalent to two multiples of such assessment, and any other crop-share as equivalent to a proportional multiple of such assessment:

Provided that the commuted-value of the produce payable

Proviso as to warkas land used for rāb manure.

on any warkas land entered in the records existing on the day when this rule comes into operation, as land actually used for the purpose of rāb manure in connection with rice cultivation, shall not exceed an amount equal to the survey-assessment on such land.

(3) Where a commuted-value has become payable under

Commuted-value subject to revision at a revised survey-settlement.

sub-rule (1), the Recording-officer shall at a revised survey-settlement revise the commuted-value in accordance with the

provisions of sub-rule (2) with reference to the revised survey-assessment fixed on the land, but shall not alter the description of the rent so payable.

### NOTES.

**1—What lands are to be entered as Dhara land.**—An inferior holder can prove that the lands in his possession are Dhara, by the production of receipt books showing Dhara payments for a sufficient number of years. If he can only prove that *some* at least of those lands were Dhara, he will be entitled to have the whole of the land entered as Dhara, unless the Khot proves otherwise. The presumption in favour of the land being Dhara becomes stronger when entries are found to that effect in the Pahani Kharda or in Goshwara. Thus an entry in the Pahani Kharda or in Goshwara that a particular *Thikan* or certain *area* is Dhara, is conclusive proof of such *Thikan* or *some* part at least of such area being Dhara, until it is rebutted by the Khot, by the production of his accounts showing that he did receive from the holder thereof Thal or Makta for three consecutive years within the 12 years precluding the introduction of the Survey(1).

**2—Dhara and the Khoti Khatpati allowances.**—A Khot in a Dhara village gets almost nothing for his trouble in collecting the revenue. (*Vide* Notes 10 and 11 to Sec. 3)

Under the Native Rule such Khots were considered to a certain extent as Public servants and they were therefore given Khoti Khatpati cash allowances for their Khatpat or trouble in collecting the revenue. These were continued in the early years of the British Rule. In 1872 Col. Francis introduced in the Northern Talukas a system of payment calculated on the Dhara collections, and the Dhara scale thus introduced absorbed the Khoti Khatpati allowances. But the Dhara scale had to be stopped after this Act came into force(2), and the old Khoti Khatpati allowances wherever they existed *ipso facto* revived(3).

These allowances are considered by Government as no longer useful either to Government or to the community. Such allowances,

(1) *Vide* Rules I to IV under cl. (b) to Sec. 49.

(2) G. R. 3077 26-4-1889.

(3) G. R. 8032 16-11-1901.

wherever they exist, will therefore be continued in whole amounts for life, in case the Khot does not choose to forego his claim thereto by accepting ten times their value(1).

**3—The old and the new clause (C).**—The old clause (c) to Sec. 33 has been replaced by the new clause (c) with its five set of Rules by the Amending Act III of 1904. Rules III (c), IV and V are entirely new, while the Rules I, II and III clauses (a) and (b) substantially reproduce the old clause (c), but with certain explanations and limitations. Thus in paragraph 1 to the old clause (c) :—

(a) the words “ fixed amount ” are explained in Rule I (a) as “ a certain amount, irrespective of the crop, payable in money or kind, or both ”.

(b) the words “ as may have been agreed upon or as may at the time of the framing of the records...be agreed upon ”, have been explained to mean that such agreement must have been intended to take effect “ during any period subsequent to the introduction of the survey ”. Rule II (a).

(c) the subsequent agreement referred to, in the clause “ or at any subsequent period be agreed upon ”, can be given effect to under Rule II (b) only “ on the parties *appearing* in person or by duly authorized agent before the Recording Officer and consenting to such entry ”.

(d) the word “ khot ” in the expression “ between the khot and the tenant ” is explained in the new clause to mean “ the person who at the time of the agreement is the Managing khot ”. Rule II (3)

Similarly in paragraph 2 to the old clause (c) :—(a) For the cumbersome expression “ or on the expiry of the term for which any such agreement shall have been, or shall be made, or if no such agreement have been, or be made ”, we have now a simple and unambiguous statement, “ no crop-share shall at any time be entered as determined by agreement ”. Rule II clause (2).

(b) For another cumbersome expression “ such fixed share of the gross annual produce of the said tenant's land...and such share, if any,

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(1) G. R. 6407, 4-7-1906.

of the produce of fruit-trees on the said tenant's land", the new clause uses a short and suggestive expression "crop-share", explaining it to mean "a fixed proportion of the gross annual produce of the land and of the produce of fruit-trees (if any)". Rule I clause (a).

(c) "Not exceeding one-half in the case of rice land, nor one-third in the case of Warkas land"—this limitation is retained in the new clause. *Vide* Rule III Proviso.

(d) To determine "the customary amount hitherto paid by the occupancy tenants in the village" specific rules have now been laid down. *Vide* Rule III clauses (a) and (b).

**4—"For the time being applicable thereto".**—An entry in respect of rent payable by an occupancy-tenant is liable to alteration *e. g.* (1) at Revision Survey Settlement, or (2) for any reasons specified in Rule IV, or (3) on appeal to the Governor-in-Council, or (4) by way of amendment for reasons specified in Sec. 18.

It is thus obvious that before such alteration or amendment is actually made, it is the original entry which would determine the description and amount of rent payable by the occupancy-tenant to the khot. Where therefore no rates were fixed by the Settlement Officer at the revision, the Civil Court will have to award rent according to the Mamul or old rates as entered in the old Botkhat(1).

**5—"Every such entry shall show whether any rent is payable".**—In *Vithal v. Yesa* it was held that a Settlement Officer had no authority to enter any land rent-free under the old clause (C) to Sec. 33, as it required that *some* rent at least be paid. Such an entry was accordingly treated as not conclusive or final evidence of the fact therein recorded(2).

Under the new clause (C) however such power is expressly reserved to that officer and if he now enters that any particular land is held rent-free for any of the reasons mentioned in clauses (2) or (4) to Rule IV, such entry will be perfectly within his jurisdiction and will be conclusive on the point. It is to meet these cases that the words

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(1) *Bapujirao v. Gann*, 24 Bom. 487; S. C. 2 Bom. L. E. 376. *Parsons and Ranade JJ.*, 1900.

(2) 22 Bom. 95. *Parsons and Candy JJ.*, 1896. *Vide* also Note 5 to Sec. 17, p. 74.

“ if any ” in clause (a) to Sec. 17 and the words “ whether *any* rent is payable and, if so ” in Rule I have been advisedly inserted by the Amending Act III of 1904.

The party pleading exemption from paying any rent must, of course, prove why he claims to hold the land rent-free as every Thikan in a Khoti estate is *prima facie* liable to pay rent(1).

**6—Each entry must show whether the rent is payable as “ an amount fixed ”, or as “ a crop-share ”.**—An occupancy-tenant is no more liable, as of old, to render any services or pay any cesses to the Khot. These are all abolished under Sec. 35. He has now only to pay rent as entered by the Recording Officer in the form of “ an amount fixed ” or in that of “ a crop-share ” as the case may be.

Where the occupancy-tenant is required to pay “ an amount fixed ” *i. e.* a fixed sum of money or a fixed amount of grain, fruit, etc. or both (*i. e.* a part as a fixed sum of money and a part as a fixed amount of grain etc.), his liability to pay the same will remain unaffected, whether the actual yield of the land is abnormally high or abnormally low or is different in kind from what he is otherwise required to pay.

Where however the tenant is required to pay “ a crop-share ”, the amount which the Khot can ultimately realize from him must depend on the actual yield of the land as appraised under the Rules framed under Sec. 40 clause (a).

**7—An “ amount fixed ” can be entered only if there is an agreement between “ the parties ”.**—The Recording Officer can enter an “ amount fixed ” only if there is a clear agreement to that effect between the parties *i. e.* between the tenant and the person who then happens to be the Managing khot.

At the time of the framing of the Survey Record and before he enters such an agreement therein, the Recording Officer must satisfy himself if the parties did really agree, whether before or at the framing of the record, that the rent payable should be paid as an ‘ amount fixed ’, and whether they intended that it should be so paid for some period subsequent to the introduction of the Survey.

(1) *Muhamad v. Mubamad*. 9 Bom. H. C. R. 278, Gibbs & Kembhall JJ. 1872.

There is of course nothing to prevent the parties from so agreeing even subsequent to the framing of the record. The Recording Officer's decision is thus susceptible of modification by any subsequent agreement between the parties(1). But the Recording Officer cannot make such an entry after the Record is once framed unless the parties or their authorized agents *personally* appear before him and give their consent thereto, or unless the tenant applies under Rule V.

**8—The power of the Managing khot to agree to receive rent as “ an amount fixed ”.**—Any Khoti co-sharer who is acting as a Managing khot can during his term of office enter into an agreement with the occupancy-tenants, agreeing to receive fixed amounts under Rule II clause (1), so as to bind his co-sharers. His power in this respect is unlimited where his interest in the Khotki is  $\frac{5}{8}$ ths or more. Where however his interest is less than that, the sharer or sharers whose interest exceeds  $\frac{3}{8}$ ths, will have a right to lodge a protest in writing with the Recording Officer objecting prospectively to the exercise of such power by the Managing khot generally, or in the case of a particular tenant. They can lodge the protest at the time of his nomination or appointment under Sec. 27, or at any time during his term of office; but if it is sent subsequent to an agreement already made by the Managing khot, the protest, it is submitted, would be useless.

Once however the protest is duly lodged the Managing khot cannot enter into any such agreement so as to bind the protesting co-sharers, except as provided for in sub-clauses (a) or (b).

This proviso to Rule II is added with a view to protect the interests of the dissentient minority, against the possibility of collusive agreements by the Managing khot.

**9—No crop-share to be entered as determined by agreement.**—The parties are at liberty at any time to fix the rent payable by an occupant-tenant at an amount fixed. It is however otherwise in the case of a crop-share. The Government was always against the crop-share system and the Bill No. IV of 1898, which was subsequently withdrawn, was deliberately introduced for the total abolition of

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(1) Waman v. Ramchandra, S. A. 557, 01, Batty & Aston JJ. 16-6-02; Parsharam v. Ganesh, S. A. 26, 02, Crowe & Batty JJ.

this system. Under the crop-share system, there is generally an unequal contest between the khot and the tenant. Further with its elaborate rules of inspection and appraisement, it is evidently fraught with difficulties and as observed in *Antaji v. Antaji*(1) it is really "a fruitful source of dispute".

With all its drawbacks Government however could not totally do away with it. But provisions are inserted in the Act and in the Rules framed thereunder, which clearly show how this system is regarded with disfavour. Thus clause (2) to Rule II prohibits the Recording officer from making an entry of a crop-share as determined by agreement between the parties. Clause 2 is thus inserted by way of an exception to the general rule laid down in Rule II. Further under Rule V, the tenant is allowed an option of getting the entry of a crop-share changed into its commuted value.

**10—Rule III : Entries other than those of amounts fixed by agreement how to be determined.**—If the Recording Officer finds that there is no clear agreement entered into between the parties—either at or before the time of the framing of the record—under which he could enter "an amount fixed" under Rule II, then he must proceed as laid down in Rule III. He must first of all ascertain in the case of each field "the rent theretofore paid" i. e. the rent paid in the past till the framing of the record, as it is such rent which he will have ultimately to enter in the Survey record. Thus :

(A) If he finds that a crop-share was *uniformly* paid and that it is also in accordance with the general custom of the particular village—and not of neighbouring villages(2)—in respect of similar lands, he must enter such crop-share ;

(B) If he finds that rent was uniformly paid,

(a) in *kind* but the general custom was to levy cash-rent in respect of similar lands in the village, or

(b) in *crop-share* though the general custom was to recover an amount fixed, or

(1) 2: Bom. 430 at p. 491.

(2) G. R. 2231 '3-3-1908.

(c) that it was different in *amount* from that allowed by the general custom. of

(d) even where there is no general custom one way or the other *e. g.* in the case of rent for fruit-trees : in all these cases the Recording Officer must enter what was theretofore uniformly paid, although the same may differ from the customary rates, if any, of the village subject of course to the limits laid down in the proviso.

If the rent theretofore *paid* has not been uniform in any of the cases referred to above, then he must enter the average of the rent paid or payable during the 12 years last preceding the enquiry.

11—"The average of the rent paid or payable".—The Select Committee observed "we have inserted the words 'or payable' to meet the case where, by agreement or remission less has actually been paid than the amount which can be shown to have been legally payable".

*Prima facie* and particularly looking to clause (b), it seems that the Recording Officer will have to take into consideration in striking the average what is proved to have been theretofore actually paid and not what may have been payable under the general custom or otherwise. Further as regards the rents "payable" there must naturally be disputes on both sides and there can be nothing to help the Recording Officer, to ascertain the same except the actual payments made. But the Recording Officer is not bound to be guided by actual payments only, he may *e. g.* take into consideration the rent "payable", where the rent actually paid for any particular year or years cannot be ascertained for want of proof of payment, or where he is satisfied that the actual payment is less for any particular year or years, on account of remission that may have been granted by the Khot, or as a result of some temporary arrangement between the parties to accept less than what was otherwise legally payable.

Whether therefore the Recording Officer takes the average of the rent *paid*, or of the rent *payable*, or both, the matter is left entirely to his discretion.

12—Rent for fruit-trees.—No difference is made in the Act between the produce of fruit-trees and the ordinary produce of the field. [ *Vide* Rule I (b) ]. "In the case of fruit-trees particularly, there might be no general custom in a village as to the rent payable on their account".



In such cases, the Recording Officer must enter what he finds to have been theretofore paid, in respect of each kind of trees. Thus where the Recording Officer determined that the Khot was entitled to a share in the Jack-fruit trees and made no entry in respect of Hirda (myrabolams) : *held*, that the khot could not successfully sue to recover a share in the latter. *Expressio unius est exclusio alterius*. A Civil Court can only award what the Settlement Officer has determined to be payable(1).

**13—"Limits of Crop-share".**—This proviso gives legal recognition to the old Ardhel and Tirdhel system, under which the Khot recovers  $\frac{1}{2}$  crop-share in the case of Kharip or rice land and  $\frac{1}{3}$ rd in the case of Varkas land. The proviso explicitly prohibits the Recording Officer from exceeding these limits. As the crop share includes the produce of fruit-trees, it would appear that these limits must not be exceeded in the case of fruit-trees also.

It does not appear why no limits are fixed as regards crop-share that may be entered in the case of Bagayat or Rabi land or fruit-trees standing thereon.

**14—Rule IV and Sec. 18 compared.**—Sec. 18 lays down the general powers of amendment of the Recording Officer in connection with of the entries that could be made under Secs 16 or 17 of the Act. Rule IV is strictly limited to his powers of insertion or amendment, in connection with entries of rents payable by occupancy-tenants only under any one of the sub-rules thereto.

**15—No entry made at the introduction of a Survey Settlement.**—This may be due to a mistake, misapprehension or inadvertence of the Recording Officer; or as a result of the inadequate provision in the old clause (C) to Sec. 33. The Recording Officer may also have left the entry unfilled for want of evidence of the customary amount of rent "hitherto paid"(2).

Whatever however the ground why no entry was made, if the Recording Officer finds, that a particular land ought to pay rent, he is not required to wait for the expiry of the Settlement then in force or

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(1) Hari v. Balaji, P. J. 1895 p. 519, Farran C. J. and Parsons J.

(2) G. R. 12625/19-12-1907 ; G. R. 393/13-1-1908.

for the introduction of a Revision Settlement. Thus if the parties have not already agreed upon the rent payable under Rule II, he can at once proceed to determine such rent under Rule III and make the necessary entry in the Survey Record.

**16—Entry ceasing to become applicable by reason of a decree.**—No suit will lie to set aside any entry purporting to record the description and amount of rent payable by an occupancy-tenant (Sec. 20). Such a suit is of course not contemplated in the sub-clause (b). But the entry may cease to become applicable to the land by reason of other decrees of a Civil Court, *e. g.* the party may get a declaration that he holds it as a Dharekari and not as an occupancy-tenant. Thus an entry which might have shown that a crop-share was payable in respect of such land will naturally cease to become applicable thereto by reason of the declaratory decree referred to above.

**17—Entry ceasing to become applicable by reason of tenant's mode of cultivation.**—An entry originally made in respect of any particular land on the basis of its being Varkas, will have to be altered if, after the date of the entry, the Varkas land is converted into a good arable Khari land. Similarly where the entry makes a particular kind of grain or fruit payable as rent, which can no longer be raised by the tenant, the entry will have to be altered to that extent(1).

**18—Land held for services no longer rendered.**—In almost every village in the Deccan, one comes across with what are called the Bara Balutdars(2) or the twelve village officers, each one of whom is responsible for the particular duties assigned to him. Each one has to render certain services and in lieu thereof each one has some lands assigned to him or is entitled to recover Balutas or perquisites from the villagers. Of the twelve Balutdars, the Sutar who also does the work of the Lohar, the Nhavi, the Parit, the Ghadi and the Mahar are still recognised as the persons entitled to their Balutas in many of the villages in the Konkan. They still render services to the

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(1) Vide Note 13 *ante* p. 136. Cultivation in the Ratnagiri District is of four kinds. Rice, Rabi, Bagayat, and Varkas.

(2) These are Patil, Kulkarni, Sutar, Lohar, Chambhar, Kumbhar, Nhavi, Parit, Joshi, Gurav, or Ghadi, Sonar, and the Mahar.

Khot and the villagers, and the lands which they may hold as occupancy-tenants, may be entered as rent-free wholly or partly as the case may be. Of the other Balutdars the Sonar, Joshi, etc., render little or no service at all. If therefore there be any of these Balutdars or such other persons who have ceased to render services, for which they originally held the land rent-free, the Recording Officer is empowered to enter such rent as would be properly payable by them under Rule II or Rule III as the case may be

It should be noticed that it is only when the services are "no longer rendered" and not when they are "no longer required" that the Recording Officer can alter the original entry.

**19—Alteration in the entry on the ground of inadequacy of the Khot Faida.**—The sub-rule (3) lays down the limit of the Khot's profit to be recoverable from the occupancy-tenants at 25 per cent. Where it is shown to be below this limit, the Recording Officer is empowered to enhance the rents and alter the original entries accordingly. But before the entries are so altered, the following points must be noticed :—

(a) that the land is held by an occupancy-tenant and not by a Dharekari, Quasi-Dharekari or a Khoti co-sharer(1) ;

(b) that the land is not already entered as being held rent-free(2) ;

(c) that the rent entered for the land, whether as an amount fixed or in the case of crop-shares the commuted-value which has been or which might be entered as payable, is less than the survey assessment fixed thereon and the Local fund cess plus the percentage (i. e. 25 per cent. on the sum of these two items) ;

(d) that there is an application made for such an enhancement by "either of the parties". (Vide Note 21 post p. 139).

**20—The commuted value which "might be under Rule V entered as payable".**—The words in inverted commas

(1) Because Sec. 33C deals with occupancy-tenants only. Nor has that clause anything to do with Khoti co-sharers. Vide *Krishnaji v. Krishnaji*, 21 Bom. 467. Parsons and Candy JJ. 1896.

(2) Vide Note 5 to Sec. 17. p. 71.

have been added "to cover the possible case of a crop-share not commuted under Rule V sub-rule (1), in order to prevent evasion by deliberate omission on the part of the tenant to exercise the option conferred on him by that sub-rule".

It appears that it is not necessary that the crop-share need necessarily be entered in its commuted-value. Under Rule V, it is of course the tenant who applies for commutation of rents. But if the tenant chooses not to exercise that option, the Khot will not be prevented from claiming to have the necessary enhancement made under Rule IV.

**21—"On the application of either of the parties".—**This would mean on the application of the Khot or of the tenant. Unless the Recording Officer receives any such application, he has no power to raise the recorded rent. When he however once receives such an application, he is not bound under the Act to hear any objections of the parties.

When the rent is payable in an amount fixed, the Khot would naturally apply to have it raised; but when it is entered as payable in crop-shares, it is found that the Khot is very often reluctant to do so. In such cases the tenant can apply to have it commuted and enhanced, if necessary, so as to get rid of the doubtful payments in crop-shares.

It should be noticed that the word "parties" does not include Japtidars, because they are only the agents of the Collector. They are certainly not the khots nor the authorized agents of the Khot. They cannot therefore take advantage of their temporary appointments by putting in applications under sub-rule (3), so as to prejudice the Khots(1).

**22—"The Recording Officer shall raise such amount"**  
—The sub-rule (3) is mandatory and not merely permissive. Neither the Recording Officer nor Government have any *other* power of interference except in the case laid down in the proviso. Even in that case, there can only be a proportionate *reduction* in the rents payable by occupancy-tenants to the Khot if the Government undertakes, as laid down in the proviso, to bear a part or whole of the proposed enhancement.

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(1) G. N. 1995 9-3-1905; and G. R. 2967 13-12-1904

**23—Whether the recorded rents can be raised in alienated Khoti villages.**—Part IV would apply to alienated Khoti villages in which the Survey Settlement has been introduced. [*Vide* Sec. 23](1). In such alienated villages (for *e. g.* Kasarde in Devgad Taluka) the Recording Officer must, on the application of the parties (Khot or the tenant), raise the amount fixed or in the case of crop-shares the commuted-value which has been or might be entered as payable, to the total of Survey assessment plus the Local fund cess *plus* the percentage(2).

**24—Why the Government has undertaken to defray the percentage.**—“ A sudden enhancement of rent is felt as severely as a sudden enhancement of assessment and for the past 10 years (1893 to 1903) tenants in villages brought under Government management whose recorded rents are less than the assessment have been required to pay only the Government assessment. It is therefore intended that during the rest of the term of the current settlement such tenants should be required to pay only the assessment, of which 25 per cent will be credited to the Khot and the amount due to Government reduced to that extent”(3).

**25—“ General or special Orders ” : Devgad Khots.**  
—The proviso to sub-rule (3) has been inserted particularly with a view to give a sort of relief to the Devgad Khots. The following “ special order ” has been issued in their favour :—

“ When in accordance with the Clause 3, the amount of recorded rent of any land in the khoti villages in the Devgad Taluka which have been brought under Government management is raised to the total sum representing the survey-assessment and Local fund cess, recoverable from the khot in respect thereof, together with 25 per cent of such assessment and Local fund cess, so much of this percentage as cannot be met from the rent as it stood before it was raised in accordance with

(1) The introduction of Survey rates (Ch. VIII L. R. Code) in an alienated Khoti village, without the consent of the Inamdar who is the owner thereof, will not affect the Inamdar's right to recover rent from the Khot at the Mamul rates. *Vide* Gangadhar *v.* Morbhat, 18 Bom. 525.

(2) G. R. 3601, 13-4-1909.

(3) G. L. No. 6156/7-9-1903 to Government of India.

the clause, shall be paid to the khot by Government during the remainder of the current settlement and that during that term the limit of enhancement of rent payable by the tenant shall be the assessment together with Local fund cess. Thus if the rent as it stood before it was raised is equal to the assessment *plus* the Local fund cess plus, say, 12½ per cent.—Government will only pay 12½ per cent. The rest will remain as it is, if it is equal to the assessment and Local fund cess *plus* anything upto 25 per cent more. Only if the reduced rent is less than the assessment plus the local fund cess, will it during the settlement be raised. This principle should be applied with retroactive effect so that the Khots who have had to relinquish management as an alternative to bearing losses, which must be admitted to have been brought by the action of the Survey and Khoti Settlement Officer, should receive compensation for the past on the same scale as they will receive relief for the future”(1).

The following points may be noticed in connection with this “special order” :—

(a) That the benefit of this order was meant only for villages actually attached, on account of relinquishment in consequence of the settlement and not for those which were not so relinquished or were relinquished for other purposes. Government however intended to pay such compensation, not only for the years during which a village has been under attachment, but also for the year after it has been resumed by the Khot and until the end of the existing settlement ;

(b) that the compensation was to be calculated with reference to each particular *land* of which the rent is below the standard and not with reference to rents payable for the *village* as a whole ;

(c) that no compensation would be allowed in respect of the Thal-settled land, unless the Thals are commuted under Rule V or unless the khot applies for permanent—not only for the past years—enhancement of the commuted-value thereof(2) ;

(d) that such compensation was not to be paid in respect of Khoti Kha-gi lands, when the rents payable by the khot sharers for

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(1) G. R. 6852, 8-9-1904.

(2) G. R. 1998 9-3-1905.

separate portions of Khoti Khasgi lands fall below the limit of the survey assessment and local fund cess plus the percentage, except in the case of lands acquired by khoti-sharers from occupancy-tenants(1).

**26—Remission of assessment of lands held rent-free**

—“ The Survey-assessment paid by the Khot on lands held rent-free for religious purposes or other service in all the Talukas of the Ratnagiri District should be remitted ”(2).

**27—Reduction of rent on account of diluvion etc.—**

Every holder of land paying revenue therefor is entitled to a decrease of assessment, if any portion thereof “ not being less than half an acre in extent, nor less than one-tenth of the holding ” is lost by diluvion. (*Vide* Sec 47, and Rules 45 and 47 to Sec. 214 L. R. Code). Whenever such reduction in the assessment is made, the occupancy-tenant will also be entitled to a reduction in the rent payable by him in respect of such land and the Recording Officer will have to make the necessary alterations in the record, stating the period for which the altered entry is to remain in force.

Mere deterioration of land on account of floods, is no answer to khot's demand for rent in a Civil Court(3), unless and until a reduction in rent is *actually* made by the Recording Officer under cl. 4 to Rule IV.

**28—Change from crop-share to commuted-value.—**

The following points should be noticed in connection with applications\* under Rule V :—

(a) that the application must be preferred by the occupancy-tenant† —not by the khot—on or before the 1st of May ;

(1) G. R. 2719/31-3-1905.

(2) G. R. 6552/8-9-1904.

(3) Hari Ramchandra v. Ganesh Dbhodu, S. A. 61/1908 (20-7-08). Bachelor and Chouhal JJ.

\* Rule V does not require like Rule II (b) that the tenants should be present in person. A mere application in writing is sufficient. To prevent fraud being practised on the tenants, who are generally illiterate, it is always desirable that they should be asked to be present in person before the Recording Officer, before any final order is made under this Rule.

† A khoti co-sharer who may be liable to pay rent in crop-share, will not be

(b) that the commutation must be asked for in respect of the whole of the crop-share, payable by him and not in respect of a part thereof i. e. in respect of the whole of his holding liable to pay crop-share and not any particular Survey number or numbers therefrom ;

(c) that the tenant cannot claim to pay the commuted-value in the year in which he makes the application. He can claim to do so only from the 1st of August of the ensuing revenue year<sup>(1)</sup> ;

(d) that once the rent in crop-share is entered into its commuted-value, it is "*thenceforth*" so payable and the tenant can never claim to pay it again in crop-share, as the option is exerciseable only once and when made it is final ;

(e) that although the *amount* of the commuted rent may be varied at the Revision Survey-assessment, the *description* thereof must never be altered.

29.—" Shall thenceforth...be payable ".—The Select Committee observe with reference to the word " payable ", " we have however by the substitution of the word " payable " for " paid " shown that the provision relates only to what is recoverable and does not preclude the parties from reverting to crop-share payments by private arrangement ".

This construction of the clause would not militate against the principle laid down in sub-rule 2 to Rule II, because what is forbidden in that sub-rule is the *determination* of crop-share by agreement. If the crop-share is already determined, there is nothing to prevent the parties from foregoing the right to pay the commutation rates and reverting to crop-share payments.

30—Standard for estimating such money-value.—  
" Statistics show that on the average, and making due allowance for fallows, the value of the crop of a field is equivalent to six times the assessment on that field, or in other words the assessment represents as

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entitled to apply for commutation under this or under Rule II clause (b), as a khoti co-sharer is not an occupancy-tenant within the meaning of these Rules. Vide Note 5 to Sec. 5, p. 28.

(1) Vide G. R. 11095, 3-11-1908.



a rule a sixth part of the produce "(1). It is on this basis that the sub-rule 2 is framed. Thus an occupancy-tenant, who is liable to pay as rent half of the crop of his land, would under the Rule have to pay rent amounting to three times the assessment fixed thereon. Similarly the commuted-value of a  $\frac{1}{3}$ rd crop-share would be two times the assessment. In other words six times the crop-share, in whatever fraction it may be payable, would ordinarily represent the commuted-value thereof in multiples of the assessment.

31—"In the absence of satisfactory evidence to the contrary"—The Recording Officer can fix the rent payable at a multiple of the survey-assessment, only if there is no satisfactory evidence of the average money-value of the produce. He must therefore first examine the accounts, if any, and fix the commuted-value after fully taking into consideration the actual collections so far as they can be ascertained(2). This does not mean that he must necessarily restrict himself to the evidence produced by the Khot. It is his duty to fix a true cash-value of the crop-share upon such satisfactory evidence as is available(3). It is wrong to exclude the Abhavis, if they are properly kept, but at the same time the Khot should not be compelled to stand or fall by the Abhavis. If the Recording Officer finds that the Abhavis do not afford satisfactory evidence of the average produce, he must endeavour to obtain satisfactory evidence from other sources, such as actual collections, court decrees, orders in assistance cases or the like. He is also at liberty to take oral evidence to prove the average produce of the field. The Standard Multiple can be decreed only when satisfactory evidence of the nature described above, of the average produce and its value is unobtainable(4).

For the purposes of fixing the average money-value of the crop-share under the sub-rule, it is not necessary to produce evidence for full twelve years as required under Rule III. Evidence of ten years rents is sufficient(5), and in special cases evidence for even a lesser

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(1) *Vide* the report of the Select Committee, Bill IV of 1898.

(2) G. R. 883/28-1-1909.

(3) G. R. 1119/3-2-1909.

(4) G. R. 3045/25-3-1909 ; 7967/14-8-1909.

(5) G. R. 9391/24-9-1907.

period may be sufficient to strike the average(1). In fixing the average money-value(2), the Recording Officer should ascertain the *market rates* approximately at the time of payment of rents and should not rely on the average rate of the year(3).

**32—Proviso : commutation rates in the case of Varkas land used for Rab manure.**—No crop-share can be entered exceeding, in the case of Varkas land, one-third. (*Vide* the proviso to Rule III). Where therefore *e. g.*  $\frac{1}{4}$ th or  $\frac{1}{3}$ rd crop-share is entered as rent payable for such land, the commuted-value that can ordinarily be entered in lieu thereof would be  $1\frac{1}{2}$  times or two times the survey-assessment. An exception is however made in the case of Varkas land used for rab manure, in which case the commuted-value must not exceed the survey-assessment fixed thereon, whatever crop-share may otherwise be payable therefor. Such exemption can be claimed, if the following particulars are proved :—

- (a) The land should already have been entered as Varkas in the Records existing on the 21st of June 1904,
- (b) as land actually used for the purpose of preparing rab manure, required in connection with rice cultivation(4).

**33—Revision of commutation rates : Sub-rule 3.**—If different rates of assessment are settled at a Revision Survey Settlement, naturally the Commutation rates must also be varied, as they are more or less the multiples of the ordinary assessment rates. Although

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(1) G. R. 4937 21-5-1909.

(2) "The money value means the market value, that for which the grain would actually sell, not a merely arbitrary value called auction rates. The receipt of this for some years would not create a right and duty as to that precise mode of commutation, and it could not at all overcome the adjudication between the parties as properly construed". *Motibat v. Gangadhar*, 8 Bom. 234 at p. 238. West and Nanabhai JJ. 1883.

(3) G. R. 344 13-1-1909.

(4) Varkas lands are an invariable accompaniment of rice cultivation throughout the Konkan, as they afford a supply of brush-wood or Tahal for rab or wool-ash dressing for the rice fields.

however, there may be a change in the *amount* of the original commutation rates at each successive Settlement, the Recording Officer must never alter the *description* thereof.

**34. THE** rents due by privileged occupants shall be payable on such dates, in such instalments and subject to such rules not inconsistent with the provisions of this Act as may from time to time be prescribed in this behalf by the Governor in Council.

Privileged occupants' rents how and when to be paid.

### NOTES.

**1—The dates of payment.**—The dates on which the privileged occupants must pay their rents to the khot are shown in the following table(1) :—

| Privileged occupants.                                                             | The dates on which they must pay their rents.                                    |          |          |         |          |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|----------|----------|---------|----------|
| Dharekaris, and Quasi-Dharekaris (excepting the payments in grain by Duptekaries. | 15th Dec                                                                         | 1st Feb. | 15th Mar | 1st May |          |
| Occupancy-tenants paying Makta.                                                   | "                                                                                | "        | "        |         |          |
| Occupancy-tenants paying Thal and Daptekaries making payments in grain.           | "                                                                                | "        | "        |         | 1st June |
| Occupancy-tenant's rent for Bagayat.                                              | Such dates as the Mamlatdar or Mahalkar considers reasonable in case of dispute. |          |          |         |          |

(1) See Rule VI to Sec. 40 clause 'f'.

**2—The place of payment.**—The Managing Khot is bound to provide a convenient place within the boundaries of the village itself to which the rayats may bring their payments whether in cash or kind. He is not entitled, on any pretence whatever, to require a tenant to pay his rent in any other place except the village in the survey papers of which the tenant's name is entered. [Rule VI to Sec. 40 (c)].

### *Cesses, etc.*

**35.** It shall not be lawful for any khot to levy *phaski*, *vetb*, *nāngarvetb*, *wartāla*, or any other cess, rate, tax or service of any description or denomination whatsoever, from any privileged occupant other than the rent lawfully leviable under the provisions of this Act.

Abolition of all cesses,  
etc.

### NOTES.

**1—Cesses etc.**—In addition to the cesses etc., mentioned in the section, the following cesses etc. used to be levied by the khots: Karsai, Pendi, Fad-Farmas, Dahi Handi, Lagna Tacca, Potdari Patti, Amsul Patti, Hakdar Patti, Gramkharch Patti, Phanas Poli, Nakta Patti, Galle Patti, Panchotra, Kharedi Katha, Kharedi Halad, Dharekari Karkun Patti, Ghar Patti etc.

The Khot used to levy from his tenants one thing or the other, either in kind, labour or otherwise, but he did so under different heads and different denominations and these demands had almost assumed the force of law. Sec. 35 now does away with all these cesses etc., and the Khot can now lawfully recover from them nothing more than what is entered as rent in the survey record.\*

**2—Penalty for exacting cesses etc.**—The Act makes the levying of the different cesses, rates, taxes etc. unlawful, but it does not lay down the penalty for the breach of the rule. An infringement of

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\* For the abolition of such cesses etc. in Non-Khoti villages. Vide Bom. Acts XX of 1839 and XIX of 1844.

the rule however can be criminally dealt with under some section or other of the Indian Penal Code. Thus for example exacting service by way of Veth or Nangar Veth, against the will of the tenant, will be punishable as being "unlawful compulsory labour" under Sec 374 of the I. P. Code. The aggrieved party may also have a remedy in a Civil Court either to recover back what was illegally exacted or for damages as the case may be.

*Local Fund Cess.*

**36. LOCAL** fund cess at such rate as shall from time to time be fixed by Government under section 6 of the Bombay Local Funds Act, 1869, (Bom. III of 1869) shall be leviable by Government from the khot on every rupee of his jámá.

Khot's liability for local fund cess.

The khot shall be entitled to assistance under sections 86 and 87 of the Bombay Land-Revenue Code, 1879, (Bom. V of 1879) for recovery of the said cess at the said rate from dhárekaris and quasi-dhárekaris on every rupee of the survey-assessment of the lands in their respective holdings.

Dhárekaris and quasi-dhárekaris to what extent liable for the cess.

Inferior holders of khotí lands shall not be liable to local fund cess, anything contained in section 8 of the Bombay Local Funds Act, 1869, (Bom. III of 1869) to the contrary notwithstanding.

Other inferior holders not liable for the cess.

**NOTES.**

**1—Levyng of Local Fund Cess.**—Under Sec. 6 of the Bombay Local Funds Act (III of 1869), such cess cannot exceed one anna on every rupee of the land-revenue or Jama payable by the Khot.

The Khot is of course primarily responsible for the payment of this cess (*vide* Sec. 136 L. R. Code), but he can recover it in the same proportion from the Dharekaris and Quasi-dharekaris, if any, in the village and will be entitled to remuneration for collecting the same, according to the scale sanctioned therefor(1).

No Local Fund Cess can be recovered under Sec. 36, before a Survey Settlement is introduced in the village. (*Vide* Sec. 23). But the Khot can recover the cess in such cases under Sec. 8 of the Local Fund Cess Act not on the amount of rent that he recovers, but on the proper proportionate amount of the Government assessment on the land in dispute(2).

**2—Occupancy-tenants and ordinary tenants not liable.**—The other inferior holders of the Khoti land *i. e.* the occupancy and ordinary tenants (as such) are not liable to pay this cess under Sec. 36, as they would otherwise be under Sec. 8 of the Local Funds Act.

It will however be observed that although Sec. 36 exempts the occupancy-tenants from the payment of such cess, they have indirectly to bear a part of the burden, as the Khot's percentage is calculated on the assessment *plus* the Local Fund Cess. [*Vide* Rule IV sub-rule(3)].

## PART V.

### MISCELLANEOUS.

**37. EXISTING** survey-settlements of the land-revenue of any village to which this Act extends, made, approved and confirmed under the authority of the Governor in Council, shall be deemed to have been lawfully made, and, except as is hereinafter otherwise provided, shall continue

Existing survey-settlements confirmed.

(1) *Vide* G. Rs. 6183 15-12-70 ; 1650 22-3-73 ; 3497 21-6-75.

(2) G. R. 4180 7-7-1887 ; Shaik Sileman *v.* Yesoo, P. J. 1874 p. 29. Melvill and West JJ.

in force for the terms for which they have been respectively guaranteed, subject to all the provisions of law which would be applicable thereto if this Act had not been passed, and anything in this Act which is inconsistent with any of the said provisions shall be deemed not to apply to such settlements.

38. UPON the expiry of the period of any such guarantee, or, if it shall appear to the Governor in Council that a majority of the land-holders affected by any such guarantee so desire, at any time previous to the expiry of the said period (such time being fixed by the Governor in Council), a new survey-settlement shall be introduced into the village in which such guarantee was in force, and the provisions of this Act shall thenceforward apply to the said settlement, anything in any other law to the contrary notwithstanding.

New settlements may be substituted for existing settlements.

## NOTES.

1-Existing Survey-Settlements "shall be deemed to have been lawfully made".—Sec. 37 gives legislative sanction to the Survey-settlements which had already been introduced prior to the passing of this Act and which were then in force under the guarantee given therefor. Such earlier settlements must of course have been "made, approved and confirmed" by the Government; but whether they were introduced under its Administrative capacity or by Legislation (Act I of 1865) they are all declared to be valid and lawful, for the full period for which they were originally guaranteed. (*Vide* S.2).

2—"Subject to all the provisions applicable thereto".—So long as the guaranteed period of an existing survey-settlement has not expired, all questions in connection with the rights, liabilities and duties of the Khots and their inferior holders, will have to be determined under the provisions of the law which would otherwise

have been applicable thereto but for the passing of this Act. Further if any of the provisions of this Act were to come into conflict with such earlier provisions, the latter will have to be given effect to, in determining any point that may arise for consideration. (Cf. Sec. 112, L.R. Code).

Thus Sec. 37 is in a sense retrospective, inasmuch as it gives legislative sanction to the earlier settlements from the date of their introduction and suspends the operation of this Act, until the expiry of the guaranteed periods of such settlements so far as its provisions are inconsistent with the earlier law or usage having the force of law. (Cf. Sec. 23).

**3—“ Except as is hereinafter otherwise provided”.**— This refers to Sec. 38. The provisions laid down in Sec. 38 follow as a natural corollary to Sec. 37. Because (a) when the guaranteed period of any existing survey-settlement is over, or (b) even prior to its expiry when the majority of “the land-holders affected by such guarantee” so desire, it is but meet that Government should have the power to introduce a new survey-assessment in place of the old one. The new settlement so introduced will have naturally nothing whatever to do with the earlier provisions of law; it must be regulated entirely by the provisions as laid down in this Act.

On the introduction of a new survey-settlement in any village under Sec. 38, precisely the same procedure must be followed as on the introduction of a survey-settlement whether original or revised in any other Khoti village(1).

**39. NOTHING** in sections 68, 72, 73, 74, 99, clause (b), 104, para. 2, [\*] 109, 110, [\*] 112, 150, clause (b), and 153 of the Bombay Land-Revenue Code, 1879, (Bom. V of

Bombay Land-Revenue Code, 1879, how far inapplicable to Khoti villages.

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(1) G. E. 5379, 12-10-1880.

[a—a] These words were inserted by Bom. Act III of 1904, Sec. 10.



1879) shall be deemed to apply to any village to which this Act extends.

The provisions of the said Code when applied to any such village shall be subject to the following modifications (namely) :—

- (a) when a survey-settlement is being introduced under section 103, the rent payable by each privileged occupant, and the amount of *jámá* payable by the khot shall be announced in lieu of the assessment fixed on each survey-number ;
- (b) sections 118, 119 and 123 shall be read and understood as if the word “ khots ” were substituted for the words “ patels and other village-officers”, and the words “ village-officers ” and the words “ village-officers and servants”, wherever they occur ;
- (c) the khot shall for the purposes of section 136 be deemed to be the person primarily responsible to Government for the *jámá* of his village ;
- (d) the word alienated ” in clause (f) of section 150 shall be deemed to be omitted ; and,
- (e) if such village is under attachment at the date of this Act coming into force, applications may be made under section 162 for the restoration thereof at any time within twelve years from the first day of August next after such date.

## NOTES.

1—Land-Revenue Code how far inapplicable to Khoti villages.—Special provision having been made in this Act for

the settlement and the revenue administration of the Khoti villages in the Ratnagiri District, certain provisions in the ordinary Revenue Law of the Presidency (L. R. Code) are made wholly inapplicable thereto. These are in respect of the rights and liabilities of the occupants, the lapse, resignation or forfeiture of the occupant's lands, the custody and amendment of the Settlement records and the maintenance of the existing Settlements.

The following Sections of the Code are made inapplicable to Khoti Villages :—

| Sec. of the L. R. Code. | What it deals with.                                                     | The corresponding special provisions under this Act. |
|-------------------------|-------------------------------------------------------------------------|------------------------------------------------------|
| Sec. 68 ...             | The liabilities of an occupant. ...                                     | Secs. 4 and 7                                        |
| Sec. 72 ...             | Disposal of occupancy on failure of heirs                               | Sec. 10                                              |
| Sec. 73 ...             | Transferability and hereditability of the rights of occupancy.          | Sec. 9                                               |
| Sec. 74 ...             | Relinquishment of occupancy. ...                                        | Sec. 10 •                                            |
| Sec. 99b ...            | Relinquishment of a recognized share of a survey number.                | Sec. 10 •                                            |
| S.104 para 2            | Resignation of a survey number on the ground of increase of assessment. | Sec. 10                                              |
| Sec. 109 ...            | Correction of Settlement Register. ...                                  | Secs. 18, 19 & 23 C                                  |
| Sec. 110 ...            | Custody of Survey records and the framing of village records.           | Secs. 18, 15 and Rules VI & VII under Sec. 40 (e)    |
| Sec. 112 ...            | Maintenance of existing Settlements...                                  | Secs. 37 and 38                                      |
| Secs. 150b & 153        | Forfeiture of occupancy for arrears of land-revenue.                    | Sec. 10 & Rule- I & II under Sec. 40 (f)             |

With the exception of the Sections referred to above, the Code would ordinarily be applicable to Khoti villages, unless any particular provision therein, is in direct conflict with the one under the Act, in which case the latter will of course be determinative on the point. [ *Vide* also Sec. 3 clause 12 and Sec. 40 (d) ].

**3—Clause b: Maintenance of village and field boundaries.**—Under Secs. 118 and 119 of the Code the Khot has a right to

be asked to settle the village and field boundaries under the limitations laid down in those Sections. There is however a corresponding duty imposed upon him under Sec. 123 to prevent the destruction or unauthorized alteration of the boundary marks.

**3—The Boundary dispute or “ Vaven ” lands.**—The land about which there is, or has been, a boundary dispute between two villages is entered in the name of the occupant as follows :—

- (a) If both villages are Niwal Dhara, as dhara land.
- (b) If both villages are Niwal Khoti, as occupancy-tenant's land paying ardhel and tirdhel.
- (c) In any one other case, as occupancy-tenant's land paying survey assessment and local fund cess only(1).

It should however be noticed that if such ‘ Vaven ’ lands which ought to have been entered as ‘ khoti ’ are wrongly entered as “ Sarkari ” or as held by Survey occupants(2), the Khot or the party aggrieved by any such decision can of course sue to set it aside(3).

**4—The period of limitation for applications for restoration of villages under attachment.**—Ordinarily all applications under Sec. 162 for restoration of khoti villages placed under attachment for arrears of Jama or land-revenue must be made within twelve years of the date of attachment. Clause (e) however extends this period in the case of villages which were under attachment at the date of this Act coming into force (6th of May 1880). Applications for restoration of such villages, could therefore be made within 12 years of the 1st of August 1880.

The rule of limitation introduced under Sec. 39 (e) was not intended to operate—retrospectively so as to revive rights *already* extinguished. It seems therefore that Sec. 162 would apply to Khots, whose villages were under attachment at the time when the Khoti Act came into force or which might thereafter come to be attached ; but it has no application to Khots whose dispossession under the attachment has become complete

(1) Rule IV under Sec. 40 (e).

(2) G. R. 1854/29-2-1884 ; 2514/19-5-1877.

(3) *Krishnaji v. Nilo*, P. J. 1894 p, 82, Bayley and Candy JJ.

before that date. Such last mentioned Khots had such rights only, as they might be able to prove against Government under the Law as it stood before the Khoti Act. But in the case of non-Sanadi and other Khots who are mere farmers of land-revenue, such restoration could not be claimed as a matter of right; while in the case of others who lay claim under Sanads or other grounds to an estate in the lands and allege illegal dispossession, the Legislature apparently intended that they should assert any right of suit they might have, within 12 years of dispossession and should not be admitted without contest to possession by the Executive Officers of Government. A suit in such a case if not brought within twelve years of the date of dispossession will be barred by limitation(1).

**5—Khoti villages not redeemed within 12 years, treated as Khalsa.**—Khoti villages which are attached under Sec. 159 for arrears of Jama or land-revenue, lapse to Government under Sec. 163 as Khalsa or Government villages, if the Khot concerned does not apply for restoration in time, and does not pay the balance that may still be legally due by him to Government. Presumably the villages which so lapse to Government will be treated as Dhara villages, but “without prejudice to the rights of the actual occupants of the soil”. (*Vide* Sec 163).

**6—Government orders with reference to holdings in lapsed villages.**—The khoti villages that lapse to Government, will be treated as Government Rayatwari villages, each one liable to pay nothing more than Government assessment and Local Fund cess. As regards however the right of transfer, those occupancy-tenants who had not that right under the Khots, do not get it after such lapse. The holdings of Khots, Dharekaris, Quasi-dharekaris and also the Khoti tenants whose right of alienation is recognized in the *Botkhat* of the village, will be entered as Survey occupancies, ordinary tenure; and the lands of all other Khoti tenants as Survey occupancies, restricted tenure(2), unless they had already been entered prior to the Resolution referred to above (G. R. 740/12-9-05) as ordinary Survey occupancies under the signature of the Maulatdar in the Botkhat or Settlement Register(3).

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(1) G. R. 675 25-1-1890.

(2) G. R. 7400 12-9-1905.

(3) G. R. 5346 1-6-1906.

**7—Surplus profits of villages under attachment under Sec. 144 or 159 of the Code.**—When a khoti village or a portion or share thereof is attached and taken under Government, the surplus profits, if any, that accrue during such period must be handed over to the khot as he is the superior holder or the person lawfully entitled to the same(1). An attachment under Sec. 144 however differs from an attachment under Sec. 159 in certain important particulars :—

| Attachment under Sec. 144.                                                                                                            | Attachment under Sec. 159.                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) It is only a precautionary measure to <i>secure</i> punctual payment of land-revenue.                                             | (1) It is a remedial measure to <i>recover</i> the arrears of land-revenue.                                                                                                                                                                                   |
| (2) No time is specified within which the application for restoration need be made.                                                   | (2) The application for restoration must be made within 12 years of the date of attachment, or else the village lapses to Government.                                                                                                                         |
| (3) No period is specified for which or beyond which the superior holder will or will not be entitled to receive the surplus profits. | (3) The superior holder will be entitled to the surplus profits for one year only i. e. those which accrue in the year in which he makes the application for restoration. The surplus receipts for the previous years would be at the disposal of Government. |

(1) *Vide* Bhikaji v. Alikhan, P. J. 1885 p. 155, Sargent C. J. & Birlwood J. (A Gaokar who only gets a fixed cash allowance from the Government Treasury as remuneration for the management of the village is not such a person, as the village held by him is in no sense his property or "holding". G. L. 2260 13-4-88. He is simply a farmer of revenue. He recovers survey assessment and Local Fund cess and pays the same to Government. There are many such Gaokars in the Malwan and Vengurha Talukas).

A Khot in any such village in the Kolaba District to which the Act has not been extended, and who is not shown to be the Vatandar or Sanadi Khot would not however be entitled to recover the profits from his co-sharers or from the Government under the Code, even if it had collected the same while the village was under attachment(1).

Further in any such village in the Kolaba District, in which ownership in the soil is not proved to have passed to the Khot, the Khot will be bound to "observe the engagements entered into between the Government and the tenants through the Survey" during such *interim* management by the Government, "whether as regards the rates of assessment or the rights of tenancy"(2).

**8—Restoration of villages attached under Sec. 144: Limitation.**—Clause (c) deals with the attachment of villages in respect of which there is an arrear of revenue(3). It can have no application to attachments made under Sec. 144 or for such other causes, as for example where the Khot does not take up the management (Sec. 27), or where he fails to execute a *Kabulayat* wherever such practice may still be in vogue,\* or where he fails to furnish security. (*Vide* Sec. 145 L. R. Code).

As a matter of practice and perhaps as a precautionary measure, the Khots who do not wish to lose their villages do apply and take up the management of the village, at least once in every 12 years from the date of the attachment made under Sec. 144. But it is submitted that there is nothing in the Statutes, to compel them even to put in such formal applications.

**9—A Khoti village attached for mutiny.**—An attachment of a Khoti village on account of mutiny does not fall under Section 39 (c), nor can Government be said to hold such a village in trust under Sec. 10 of the Limitation Act(4).

(1) *Bhikaji v. Nizamalli*, 8 Bom. 525 *Kemball & Birdwood JJ.* 1884.

(2) *Tajulai v. The Sub-Collector of Kolaba*, 3 H. C. R. 132 at p. 151 (1866).

(3) *Vide* Secretary of State v. *Sakharam*, 1 Bom. L. R. 472 at p. 477, *Jenkins C. J.* and *Candy J.* 1899.

\* *Vide* Secs. 23 and 25 of the Act and Note 1 to Sec. 25, p. 103.

(4) *Secretary of State v. Sakharam*, 1 Bom. L. R. 472, *Jenkins C. J.* and *Candy J.* 1899.

**10—Liability of Khoti co-sharers to be assessed for Khoti profits during attachment.**—The khoti co-sharers are liable to be assessed for khoti profits in respect of khoti lands in their private occupation during the time that the khoti village is under attachment by Government ; “ and if the rate of Khot’s profits has not been fixed for the lands in the Khot’s own occupation, it must be what was customary before the Survey ”(1).

**11—Khot not a Public Officer : Khot Faída not “ salary ”.**—A khot is not a “ Public Officer ” and the Khot Faída or the percentage received by him is not “ salary ” within the meaning of Sec. 266 (h) of the Civil Procedure Code (1882)(2). *Vide* Sec. 60 clauses h and i of the New Code V of 1908.

**12—Costs of management of khoti villages under attachment.**—The costs of management of khoti, Khoti Kichadi and Dhara villages under attachment should be considered to be the first charge on the revenues thereof. After defraying such costs the Government demand should be satisfied. If it can be satisfied only in part, the amount of land-revenue not paid should be held as balance unrealized in the revenue accounts.

The income and expenditure should be recorded in the Public Accounts under “ Personal deposits ” in accordance with Rule II of Chapter XV of the Civil Accounts Code(3).

In Khoti Kichadi villages, the land liable to pay Khoti-Faída, *i. e.* the Khoti-Nisbat land, should alone be charged with its proportionate share of the expenses of management while under attachment, the proportion falling on the Dhara land being remitted(4).

Where however villages attached as a result of “ the workings of the Department under Government ”, the expenses of attachment “ will not be recovered from the owners ”(5).

(1) Ramchandra *v.* the Collector of Ratnagiri, 7 H. C. R. 41, Couch C.J. and Melville J. 1870 ; G. R. 3111, 25-5-1876.

(2) Ravji *v.* Sayajirao, P. J. 1889 p. 91, Sargent C. J. and Candy J.

(3) G. R. 7178 26-9-1883 ; 5141 5-8-1887.

(4) G. R. 3487, 14-6-1876.

(5) *Vide* the speech of H. E. the Governor at the time of the first reading of the Bill No. VI of 1903 ; G. R. 1136, 4-2-1911.

40. THE Governor in Council may, by notification in the *Bombay Government Gazette*, from time to time frame, and from time to time vary or rescind, rules\* not inconsistent with the provisions of this Act—

Rules to be made by Governor in Council.

- (a) for the inspection and appraisalment of crops when the rent payable to a khot consists of a share of the produce of a privileged occupant's land ;
- (b) for determining what land is dhára land ;
- (c) for allotting to each privileged occupant, when the exact limits of his warkas holding are not ascertainable, such portion of the entire warkas land of the village or such rights or privileges in respect of any warkas land, or both a portion of the entire warkas land and such rights or privileges in respect of any other such land as may be fair and reasonable ;
- (d) determining to what extent, if any, any rule, or order made under section 214 of the Bombay Land-Revenue Code, 1879, (Bom. V of 1879) shall be applicable to villages to which this Act extends ;
- (e) for the furtherance of the objects of this Act in matters not expressly provided for therein ;
- (f) generally for the guidance of all persons in matters connected with the enforcement of this Act. .

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\* Such rules have been framed under clauses a, b, c, f, and d. Vide " Rules under the Khoti Act " *post*.



41. AND whereas it is necessary in the general interests of the people to enable Government to promote the extension of forests in villages held by khots ; it is hereby enacted that Government may at any time constitute any uncultivated land in any village to which this Act extends, or may hereafter be extended, a reserved forest<sup>[a]</sup> in accordance with the procedure enacted in Chapter II of the Indian Forest Act, 1878<sup>[a]</sup> (VII of 1878). But nothing in this section contained shall derogate from any rights conferred by any sanad or other grant made by any lawful authority.

*Explanation.*—For the purposes of this section “uncultivated land” means land which has not been tilled for a period of twenty years next before the 1st June, 1879, or the date of the order constituting such reserved forest.

## NOTES .

1—The right to constitute an uncultivated land a reserved forest.—Section 41 expressly reserves to the Government the right to constitute any *uncultivated* land in a khoti village, a reserved forest under Chapter II of the Indian Forest Act (VII of 1878). This reservation assumes that *prima facie* a khot has no proprietary right to such lands. In other words such uncultivated land is assumed to be “the property of Government, or over which the Government has proprietary rights” within the meaning of Sec 3 of the Forest Act, because ordinarily “grants made by former Native Government to these khots included the *cultivated* land—either land then under cultivation or which had been tilled within some reasonable time and was therefore likely to be taken up for cultivation again—and that the said grants did not extend to forest land”. Unless therefore it is otherwise

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[a—a] These words were inserted by Bom. Act III of 1904, Sec. 11, with retrospective effect from the date of the commencement of this Act.

proved, a khot will not be considered to have proprietary rights over such uncultivated lands, and thus any question about afforestation will be determined under Chapter II of the Forest Act and not under the Land Acquisition Act (Act X of 1870). In other words such khots are not entitled to any compensation as they would otherwise be, if the land had been acquired under the Land Acquisition Act, and the only concession that is made in their favour is, that they are entitled to a certain share in the produce of the reserved forest so constituted as laid down in Sec. 42.

Another important distinction between the acquisition of lands under the Land Acquisition Act and the Forest Act lies in this :— “ That whereas in the Land Acquisition Act the Legislature has expressly constituted the Local Government the sole arbiter as to what land shall be acquired for a public purpose, the Indian Forest Act gives the power to afforest subject to conditions as to the fulfilment of which the Local Government is given no power to decide. This will be at once apparent on comparing Sec. 4 of the Land Acquisition Act with Sec. 3 of the Indian Forest Act. The former runs ‘ whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose’. That is to say it suffices for the exercise of the power that the Local Government is satisfied as to the existence of the condition precedent to the exercise of its power. But Sec. 3 of the Indian Forest Act does not make the exercise of the power conferred dependent on the opinion or decision of the Local Government but upon a question of fact. It runs ‘ the Local Government may constitute any forest or waste land which is the property of Government etc.’. If the land actually fulfils that condition Government can exercise that power, not otherwise. The test is, not what appears to the Local Government, but what is the actual fact. And as the enabling Section gives the Local Government no power to decide that fact, it can only be decided by recourse to the Courts which have authority finally to decide on questions of law and fact wherever their jurisdiction is not expressly barred by the Legislature ”(1).

2—“ In accordance with the procedure enacted in Chapter II of the Indian Forest Act ”.—These words have

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(1) • *Barvaat v. Secretary of State*, 7 Bom. L. R. 497, at p. 519.

been newly added by the Amending Act III of 1904, with retrospective effect from the date of the commencement of this Act (6th May 1883), as it was necessary to validate the *procedure*—and the consequences ensuing therefrom—that was adopted to constitute reserved forests in Khoti villages. Under Sec. 41 as it stood before this amendment, uncultivated lands could be constituted reserved forests *at once* i. e. without following the procedure as laid down in Chap. II of the Forest Act. Further there was room for contention that under Sec. 42 “the provisions of the Forest Act could not be applied *until* the land had *actually* been constituted reserved forest”. As a matter of fact however the Authorities concerned had always understood that the afforestation contemplated in Sec. 41 was to be carried out as laid down in Chap. II of the Forest Act although it was not so specifically stated in Sec. 41 of this Act, and thus before any such uncultivated lands “were constituted reserved forests enquiries *were* made under Chap. II of the Forest Act and the procedure which is prescribed in that Act was carried out”. The difficulty however was felt on account of the wording of Sec. 42, whether these *preliminary* enquiries(1) were in the circumstances valid and whether *all* the consequences ensuing therefrom and as specified in the Forest Act Secs. 5 and 9 *at once* followed.

It is with an object to clear away this difficulty, that the new clause is inserted with retrospective effect. It must not however be understood that it in any way affects private *rights* at all or that it validates any illegal afforestation(2). All that it does is to validate the *procedure* that was theretofore adopted under Chapter II of the Forest Act and to give legal sanction to the consequences that necessarily ensued from the adoption of that procedure.

**3—Rights conferred by any Sanad or other grant not affected.**—Sec. 41 does not over-ride Sanads or other lawful grants, which expressly confer on the khots proprietary rights over the waste or uncultivated land. Thus if the khot proves that the uncultivated land in respect of which afforestation is contemplated, is his own private property—not qua-Khot—but under an express Sanad or grant, the Forest Officer must proceed to acquire it, if he wants to, under the Land Acquisition and not under the Forest Act.

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(1) *Vide* Secs. 4, 6, 7, 8 and 10 of the Forest Act.

(2) *Vide* Note I *supra*.

4—"Next before the 1st of June 1879".—This clause is inserted "to prevent the provisions of Sec 41 being frustrated by the Rayats at once cultivating Varkas land", and thereby depriving Government of their right to constitute a reserved forest.

5—"The date of the order constituting such reserved forest"—This would refer to the date of the final notification issued under Sec. 19 of the Forest Act. The clause appears to have been inserted to provide for the changes in the cultivation that might occur after the 1st June 1879, because "some land would have come into cultivation and some gone out of it" by the time the final notification is issued.

6—The right to timber trees under the Dunlop's Proclamation.—In the early years of the British Rule, it was considered that "all trees on even the cultivated land of the rayat belonged to Government; no man could touch a tree, particularly timber, on his field, or on the waste ground adjoining the fields, without permission, which was given only under certain circumstances". Naturally the rayats would not care to rear or preserve timber or even jungle trees. In 1823-24 therefore Mr. Dunlop, then Collector of the Southern Konkan, issued the following Proclamation:—

"Whereas the Government has observed that the former Government used to take the teak, blackwood, and other good timber grown on the lands, situate in the aforesaid Zillah belonging to any person whatever, the people did not take the trouble of raising (such timber trees); and (whereas the Government) thinks that it would be to the advantage of all if from this day forth teak, blackwood, and any other kind of good timber (trees) were raised in the country, it is proclaimed to all the people that the Government has no intention (eye) towards the trees that may be growing on the lands of any person whatever, situate beyond the frontiers (limits) of the Jungles preserved by the Government in the Band and Tudil Vinhera in the Suvarndurg taluka (and) Mahan, taluka Malwan; (and) that those who may own and may grow hereafter (such trees) may (i.e. have the liberty to) deal with them in any manner they like; and that no obstruction whatever will be made by the Government (to their so doing)". Dated 1st March 1824.

. This is a very important Proclamation and it has been finally settled that it is not a mere promise by an irresponsible Officer but that

it is an actual grant or gift, by or on behalf of Government, of timber trees to those, on whose lands they were then actually growing, or might thereafter grow, and that the grant or gift so made could not be resumed or revoked by any subsequent proclamation(1), or notification without the consent of the donees(2).

(1) Dunlop's Proclamation was sought to be rescinded by a subsequent Proclamation issued in 1851 which ran as follows :—

“ Proclamation regarding Teak and Sissu in the Collectorate of Ratnagiri.”

“ 1 ”. Be it known that in 1823 (Sic.) Mr. Dunlop, when Collector of the Southern Konkan, put forth a proclamation wherein he conditionally made over, on behalf of Government, the royalty rights heretofore exercised in regard to teak and Sissu trees growing in certain places.

“ 2 ”. The object of the said proclamation, as stated in the 1st paragraph thereof, was the extension of the growth of useful timber.

“ 3 ”. As, however, from past experience it is clear that the continuance of the permission to cut teak and Sissu on such terms throughout the Collectorate will speedily lead to the complete annihilation of such useful timber.

“ 4 ”. The Right Hon'ble the Governor in Council is pleased to declare that the proclamation of 1823 is rescinded, and that the Government resumes, in regard to forest, all the seigniorial rights which it possessed previous to 1823.

“ 5 ”. At the same time, as it is understood that a few persons, taking advantage of the liberal offer made by Government in 1823, did attend to the teak and Sissu timber growing in their own grounds (Jagih), Government is prepared to grant full benefit, present and prospective, to such persons, provided they establish to the satisfaction of the Collector and Conservator of Forests, within six months from 1st June next, that the wood in their lands has been attended to and nurtured since 1823, such benefit to be contingent on their continuing their care to the trees now in course of growth.

“ 6 ”. The forest preserves in the Taluka Suvarnadurg in the Subba of Malwan to remain, as at present, exclusively Government preserves, subject to such future orders as Government may see fit to issue in regard to them ”.

(2) Collector of Ratnagiri v. Vyankatrao, 8 B. H. C. R. p. 1, Westropp C. J. and Melvill J. 1871 ; In Re Antaji, 18 Bom. 670, Telang and Fulton JJ. (1893) ; Secretary of State v. Narayan, 1 Bom. L. R. 19, Parsons and Ranade JJ. : (S. C. Secretary of State v. Sitaram, 23 Bom. 518). *Vide* also the letter of the Secretary of State No. 11/5-8-79, printed at page 16 of Government Selection CCCCXLVI—New series.

**7-Khot's right to cut timber trees standing on waste or forest land.**—A Khot has no right to cut timber standing on waste or forest lands, either as a khot or by virtue of the Dunlop's Proclamation, unless he can prove the grant of a proprietary title in respect of such lands(1). Unless therefore the khot is the proprietor of the land Dunlop's Proclamation confers no right upon him to cut timber trees growing thereon(2).

**8-Khot's right to cut timber on Khoti Khasgi lands.**

—There is no presumption in the case of timber standing on waste or forest land, that they belong to the Khot. But it is otherwise in the case of such trees standing on khoti-khasgi lands(3). Thus where the Government sued to recover the value of the teak trees which grew on khoti-khasgi lands but which were cut down by the khot, it was held, disallowing the plaintiff's claim, that in the case of waste or forest land it is no doubt necessary to prove a grant of the soil, before the khot can claim the benefit of the Dunlop's Proclamation; but it is otherwise in the case of khoti khasgi lands, because his "proprietary title in them is proved by the very term itself"(4). Forest lands were expressly excluded from the protection of the Proclamation, but there can be no analogy between such forest lands and the khoti-khasgi lands so far as the khot's right to timber standing thereon is concerned. For the same reason it was held that it is no offence under Sec. 75(C) of the

(1) Collector of Ratnagiri *v.* Raghunathrao, P. J. 1875 p. 324, Melvill J. Government, however, will not interfere with Khot's right to trees in occupied Gavthan lands: *Vide* Collector's Order No. 4213 of October 1908 and Vernacular Order No. 1808, 26-6-10.

(2) Conservator of Forests *v.* Nagardas, P. J. 1875, p. 325, Westropp C. J. and Kemball J.; Nagardas *v.* Conservator of Forests, 4 Bom. 264, P. C. 1879; Trimbak *v.* Narayan, P. J. 1881 p. 276 Westropp C. J. and Nanabhai J.; Moro *v.* Narayan, 11 Bom. 680, West and Nanabhai J.J. (1887); Collector of Ratnagiri *v.* Antaji, 12 Bom. 534, Sargent C. J. and Nanabhai J. (1888); Secretary of State *v.* Narayan, 1 Bom. L. R. 19 S. C. 23 Bom. 518). Parsons and Ranade J.J. 1899. *Vide also* G. R. 4285, 15-6-1886.

(3) Collector of Ratnagiri *v.* Venkatrao, 8 Bom. H. C. R. p. 7, Westropp C. J. and Melvill J. 1871.

(4) Secretary of State *v.* Narayan, 1 Bom. L. R. 19. (S. C. Secretary of State *v.* Sitaram, 23 Bom. 518), Parsons and Ranade J.J.

Indian Forest Act, if the khot fells timber standing on his khoti-khasgi land(1).

**9—Khot's right to cut trees other than timber.**—As observed above a khot has no right to cut timber standing on waste or uncultivated lands whether by virtue of his khotship or under the Dunlop's Proclamation, unless he proves grant of the soil. As regards the ordinary jungle trees as distinguished from timber it is however held that "in the absence of evidence to show that the right to the jungle produce was intended to be reserved to Government, it is to be presumed that a person having a hereditary khotship of the village with a right of cultivation is entitled (although not perhaps exclusively) to cut down jungle i. e. brushwood, whether as a source of revenue or for the purposes of bringing the land into cultivation"(2).

**10—Dunlop's Proclamation how far applicable to alienated Khoti villages.**—The Proclamation could only affect villages which belong to Government. It could not therefore apply to villages which had already been alienated by Government in favour of the Inamdars before its date(3).

**11—Timber trees standing on Dhara lands.**—The holders of Dhara lands are under the Dunlop's Proclamation proprietors of the trees growing thereon. Government will not therefore interfere with their rights to cut or otherwise dispose of "teak and blackwood or any other trees growing on Dhara land"(4).

A Khelta Dharekari has however no right to cut trees. [Vide Rule V to Sec. 40 (e)].

**12—Khot's right to cultivate waste or uncultivated, alluvial or Khajan lands.**—Certain khots of the village of Bele Budruk brought a suit against Government for a declaration that they were entitled to occupy and cultivate lands left dry in the river bed as

(1) In re Antaji, 18 Bom. 670 Telang and Fulton JJ. 1893.

(2) Collector of Ratnagiri v. Antaji, 12 Bom. 534 at p. 548. Vide also G. R. 2588/20-6-65.

(3) Gajanan v. Nilo, 6 Bom. L. R. 854 at p. 863 Chandavarkar & Aston JJ. 1904.

(4) G. R. 1240, 28-3-1868; 4720/21-7-87; Government Circular 27-3-1866.

far as the middle of the bed opposite their khoti village, the river being neither tidal nor navigable, on payment of survey assessment only. They also prayed for an injunction to restrain the defendant from leasing such lands for cultivation or from obstructing the plaintiffs in recovering the Vasul by Thal (rent) of all such lands. Held, awarding the plaintiffs' claim, that though the khots may not be the proprietors of such soil, they have nevertheless as farmers of the village, the right to cultivate any waste or uncultivated land of the village, as the recognized mode of their remuneration for the services rendered. Thus when the bed of the stream is left dry, the land formed by alluvion would be waste or uncultivated land, which they are entitled to let out for cultivation or to cultivate it themselves. Even according to the Common Law, bed of a river neither tidal nor navigable belongs to riparian owners, to each upto the middle of the bed on his side. Further even if the Government be regarded as the owner of all such lands, and the holders as occupants, "there was nothing to prevent the Government from appropriating such lands to any person and creating private rights derogating from their ownership or right as the State landlord". "Such appropriation to the khots of the soil must be held to have been made when they were constituted hereditary farmers of *the whole village* with the right to bring into cultivation *all* waste or uncultivated lands in the village". Held further that Sec. 37 of the Land Revenue Code is declaratory and does not take away rights which existed when it became law(1).

The Government is prepared, it seems, to concede that the khot, who has a right to cultivate or to give out for cultivation such waste or Khajan lands, is entitled to hold the same without paying any additional assessment therefor during the currency of the settlement then in force. But it appears that it is not yet prepared to concede without contest the khot's right to cut trees, or to cut or collect even such ephemeral produce as Lava (a rush-like grass commonly found on mud banks) growing on such waste or Khajan lands(2).

**13—Construction of Sanads and Kowls.**—So far as the Ratnagiri Khots are concerned, the consideration of the point as to

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(1) Secretary of State v. Wasudev, 9 Bom. L. R. 719 Chandavalkar & Pratt JJ. 1907.

(2) G. R. 10164 7-10-08 ; 3789 26-4-1910.



whether proprietorship in the soil did or did not pass to the grantee assumes importance in the case of waste or forest lands only. In the case of the cultivated lands whether they are the Khot-Nisbat or Khoti-Khasgi, khot's position is quite independent of any grant or Sanad and it is now quite secure under Sec. 4 and the other provisions of this Act(1).

The following rules of construction may however be noticed :—

(a) In respect to Crown grants upon a question of the meaning of words "the same rules of common sense and justice must apply, whether the subject-matter of construction be a grant from the Crown or from a subject", and thus "it is always a question of intention, to be collected from the language used with reference to the surrounding circumstances". If those guides to a satisfactory construction fail, *but not otherwise*, the ancient rule is that "if the King's grant can endure to two intents it shall be taken to the intent that makes most for the King's benefit"(2).

Thus in a case where a khot claimed to occupy unoccupied waste land against the Government, *on the strength* of a clause in a Kowl, which recited that should the khot encroach upon unoccupied land, outside the boundaries specified in the Kowl, the Government would impose full assessment thereon, it was *held* that the mere reservation of one particular right namely to levy full assessment in the event of encroachment, did not take away the other right which the Government had in the same event namely to evict the khot under Sec. 61 of the L. R. Code(3).

(b) "Where the State grants a village, *eo nomine*, without further words, the proprietorship in the soil does not necessarily or even ordi-

(1) For the probative value of the Khoti Sanads and orders of the Peshwa's time: *Vide*, Balseth v. Lakshuman, 2 Borr. 211; Naro v. Madhow Rao, 2 Borr. 473; Appajee v. Naro, 2 Borr. 513.

(2) Conservator of Forests v. Nagardas, P. J. 1875, p. 325 at p. 331 followed in *In re Antaji*, 18 Bom. 670 at p. 676. The Collector of Ratnagiri v. Antaji, 12 Bom. 534 at p. 544.

(3) Babaji v. Secretary of State, S. A. 136/1905 (9-4-07) Chaudavarkar and Beaman JJ.

narily, pass to the grantee, who only takes the royal share in the produce of the village, or so much thereof as the Sanad may purport to grant (1).

(c) Where the grant contains no such words as Jal, Taru, Trin, Kashta, Pashan, Nidhi etc. (waters, trees, grass, wood, stones, mines, etc.), it has been held that such a grant must be construed strictly in favour of the Crown as it is *prima facie* a grant only of the revenue(2). It is however otherwise in the case of a Sanad which contains such words, and in such a Sanad the mere saving of the rights of Hakdars and Inamdars (खेरीज हकदार व इनामदार) does not prevent the property in the soil, so far as it can be regarded as vested in Government, from passing to the grantee(3).

**14—Inamdar's right to trees as against the Khot in alienated Khoti villages.**—In alienated khoti villages, the Inamdar may be the grantee of the land-revenue only or he may be the grantee of the soil as well.

(a) Where the Inamdar is the grantee of the land-revenue only, the khot will presumably be entitled as a khot to all timber standing on khoti-khasgi land. He will also be entitled to timber on waste or forest land under the Dunlop's Proclamation, if he proves grant of the soil. *Idem* note (7) *supra*.

(b) Where however the Inamdar is proved to be the owner of the soil, including the soil of the forest, it is the Inamdar and not the khot who is entitled to timber and jungle trees. The khot or his tenants in such villages are at the most entitled "to cut and use so much *Jungle* wood as may be necessary for their agricultural and domestic purposes only, in accordance with the custom of the country, but not to cut or take away the same for sale or gift or other purposes". Previously how-

(1) Conservator of Forests v. Nagardas. P.J. 1875, p.325 at p. 331, Westropp C. J. and Kemball J.

(2) Bhatouji v. The Collector of Thana. 11 M. L. A. 297; Varman v. The Collector of Thana. 6 Bom. H. C. 191; Krishnarao v. Rangrao, 4 Bom. H. C. R. 1; Balvant v. The Secretary of State. 7 Bom. L. R. 497.

(3) Rajji v. Dalaji, 1 Bom. 523; The Secretary of State v. Halbatrao 6 Bom. L. R. 43.

ever to cutting so much Jungle wood as may be necessary for agricultural and domestic purposes, the khot or his tenants must ask permission to do the same from the Inamdar, who on the other hand will be bound to grant such permission and so to maintain the jungle trees in the forest as to have there at least a sufficient quantity of jungle wood for the khot and his tenants for such agricultural and domestic purposes aforesaid(1).

Further Government, after having alienated a village to the Inamdar and assigned to him by a Sanad all their rights, could not deal with it and confer rights on the khots or their tenants in that village which they had not previously. Dunlop's Proclamation 1824 cannot thus apply to villages which had been alienated by Government in favour of the Inamdar before its date(2).

Inamdars in such villages, as laid down in *Gajanan v. Nilo*(3), are thus the owners of all timber trees in lands permanently occupied, and of all trees and Jungle in all other lands in the village subject to the following explanations and conditions, namely,

- (A) "Lands permanently occupied" mean lands held on a permanent tenancy whether, Bagayat, Jerait, Rice, or Varkas such as those held by privileged occupants and Khoti-Nisbat including khoti-khasgi lands.
- (B) "Timber trees" mean trees whose wood is ordinarily used for building purposes and include teak, black-wood, ain, kinjal, khair, mana, taman, arjun, asana, bhendi, babul, etc. but do not include jack trees, cocoa-palms, betel-nuts, plantains and similar trees planted and reared for the sake of their flower or fruits.
- (C) This general declaration does not affect the rights of individuals to particular trees which they may have lawfully acquired by grant, agreement, limitation or otherwise.

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(1) *Narayan v. Trimbak*, P. J. 1881 p. 276, Westropp C. J. and Nanabhai J.

(2) *Gajanan v. Nilo*, 6 Bom. L. R. 864 at p. 868, Chandavarkar & Aston JJ. 1904.

(3) *Ibid* at p. 869. Batty and Aston JJ.

- (D) It does not also affect the rights of the cultivators of the village to take *without permission* brush-wood, leaves, grass and small branches of trees lopped consistently with their growth and preservation, for rab, fuel and similar domestic and agricultural purposes, according to custom and right(1).
- (E) Further it does not affect the rights of occupants including Khots holding Khoti-Khasgi or Khoti-Nisbat lands to obtain free of charge timber within reasonable limits for their own buildings and agricultural implements from their own permanently occupied lands, but no timber trees wherever situated is to be cut even for this purpose without the permission of the registered Inamdar or his agent. Such permission must be given as a matter of course for the purpose just mentioned without any charge.
- (F) It does not also affect the rights of the khots to enjoy the fruit and similar produce of the trees in lands not permanently occupied.

**15—Khot's right to levy thal for lands reclaimed and cultivated by the Inamdars in alienated Khoti villages.**—Khots being subject to settle with the Government for the whole land-tax of the village which tax was in theory variable according to the produce of its lands, had obviously even as farmers an interest in every cultivated plot, not specially exempted, to the extent of the thal or contribution properly leviable upon it. "This was the right by which as Khots settling for the village revenue as an aggregate they were compensated for the obligation they thus accepted. Without this right every extension of cultivation would but tend to make them poorer. With it they would be rewarded for their augmented pains by an increase of the difference between the moderate aggregate payment to the Government under their annual Kabulayat and the sum of the rents levied in detail from the occupants of the soil".

Thus the Inamdars who are the grantees of the village and are owners of the forest land could, no doubt, prohibit its application to

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(1) For the custom in the Konkan to cut and collect Thal for rab manure, *vide* Saha *lev v. Shambhuroo*, 1 Bom. L. R. 499. *Candy and Cross JJ.* 1899.

cultivation. But if the Inamdars, instead of forest land-owners turned themselves into cultivators or the landlords of cultivators raising produce, they become immediately subject to the khot's rights to levy thal. The khots would have to pay so much the more, in theory at any rate, for every field newly brought under cultivation, and the occupant is in his turn equally bound to pay to the khots.

The fact that the Inamdars took the Government's dues arising from the Inam village from the khots would not alter the legal relations subsisting between them on the point under consideration(1).

**42. EVERY** reserved forest constituted under the last preceding section shall be subject to all the provisions of the Indian Forest Act, 1878, (VII of 1878) and of any other law relating to forests for the time being in force : provided—

Reserved forest constituted under last preceding section to be subject to provisions of Indian Forest Act.

- (1) that, upon the condition of duly performing such service connected with such forest as shall from time to time be prescribed by Government, the khot shall be entitled to a share of one-third of the net profits derived by Government from such forest after deducting the cost of management ;
- (2) that, in the event of the service prescribed by Government as aforesaid not being duly performed by the khot, the provisions of section 80 of the Indian Forest Act, 1878, (VII of 1878) shall be applicable.

## NOTES.

**1—Khot's share in the produce of a reserved forest.**  
—The management of forests in khoti villages should in all cases be vested in the Khot and when the khot is a minor, his guardian or the

(1) *Moro v. Narayan*, 11. Bom. 689 at pp. 686-88, West & Nanabhai JJ. 1887.

member of his family appointed to the general management of his estate should be entrusted with the management of such forests(1).

Further the Khot is entitled to a share—one-third of the net profits—in the produce of such forests in his village, upon the condition of duly performing certain services in connection therewith as may be prescribed from time to time by the Local Government(2).

Failure to perform these services or any proved neglect on the part of the Khot to carry out the conditions on which the payment was promised, will of course result in a confiscation of such share in part or whole under Sec. 89 of the Forest Act(3). But in the absence of express provision to that effect, mere disobedience of the orders of the Forest Officers, or even failure to engage watchmen, if such disobedience or neglect does not result in any damage to the forest, will not disentitle the khot from claiming such share(4).

### SCHEDULE.

(See section 3, clause 7, and section 33.)

| Denomination of quasi-dhāre-karis. | EXCESS AMOUNT OF RENT PAYABLE FOR EVERY RUPEE AND PROPORTIONATELY FOR EVERY FRACTION OF A RUPEE OF THE SURVEY-ASSESSMENT IN RESPECT OF |                                                                            |                        |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|------------------------|
|                                    | Rice lands.                                                                                                                            | Warkas lands.                                                              | Bāgāyat or Rābi lands. |
| Daspatkari ...                     | 2 annas ...                                                                                                                            | 2 annas ...                                                                | 2 annas.               |
| Dupatkari ...                      | $\frac{1}{2}$ maund of rice in the husk.                                                                                               | $5\frac{1}{2}$ pails of grain (half <i>nachani</i> and half <i>vāri</i> ). | 8 annas.               |
| Didpatkari or Didiwala.            | 3 pails of rice in the husk.                                                                                                           | 2 pails of grain (half <i>nachani</i> and half <i>vāri</i> )               | 3 annas.               |
| Pannedupatkari.                    | 6 pails of rice in the husk                                                                                                            | 4 pails of grain (half <i>nachani</i> and half <i>vāri</i> ).              | 6 annas.               |

(1) G. R. 4475 39-10-1865.

(2) G. R. 2588 20-6-1865 ; 2290 30-5-1865 ; 3363 1-5-1883 ; 3846 5-6-1891 ; 4720 21-7-1887 ; 4651 4-7-1890. For Thana Khot's rights See G. R. 2936 10-7-65. It is of course the Managing Khot of the year, in which the proceeds are actually paid, who is entitled to receive such amounts : but he does so for the benefit of all his co-sharers. G. R. 3377 25-4-84.

(3) G. R. 114 10-6-1866 ; 2531 28-5-70 ; 6288 28-8-85.

(4) G. R. 8626 3-9-1909.

## RULES UNDER THE KHOTI ACT.

*Section 40 clauses (a), (b), (c), (f), and (d).*

### *Crop Appraisalment Rules under Clause (a)(1).*

I. Whenever the rent payable to the khot consists of a share of the produce of the tenant's land, the amount of produce claimable by the khot shall be ascertained by a estimate of the probable yield of the crop of each field to be made by the khot on an inspection of the crop a reasonable time before the same is ready for reaping in the presence of the tenant, or a member of his family appointed by him in writing for that purpose, or his legally appointed agent, and of two respectable witnesses, one of whom is able to read and write, provided that unless the tenant otherwise desires the khot shall inspect and appraise the crops specified below on or before the dates entered below :—

*Halwa Nagli*—On or before the 10th September.

*Other Halwa crops*—On or before the 1st October.

*Late crops*—that is harik, kulith, udid, tag and tur. —On or before the 15th November.

*Table*—On or before the 31st December(2).

*Other late crops*—On or before the 1st November.

*Rabi, e. g., gram, &c.*—On or before the 1st March.

*Summer crops, e. g., pavta, &c.*—On or before the 20th March.

*Hot weather crops, e. g., rice (waigan), nachni, (gimves), jack-fruit, &c* —On or before the 20th May.

Provided further that in the case of bagayat crops the Mamlatdar or Mahalkari shall decide what constitutes a reasonable time within the meaning of this rule.

II. The days fixed by the khot for inspection and appraisalment of crops shall be notified by him in writing to all and every one of his tenants in the village, and the Police Patel shall be directed by the Collector to affix notices to the temples and by beat of drum and otherwise to make

(1) Rules I and III to VI, VIII and X as amended by G. N. 6720/22-9-86, B. G. G. 1886, Part I p. 808.

(2) G. N. 4985/24-5-11.

these dates known at least seven days previously, and if for any sufficient cause, (as that the crop is not ripe, &c.) any crop is not inspected or appraised on the days so fixed, the inspection and appraisal shall not, except with the consent of the tenant, take place until after a similar second notification has been made in the village. But the date fixed by the second notification must be within the limits specified in the preceding rule.

III. If notwithstanding that the days fixed for the inspection and appraisal have been notified as aforesaid, the tenant, or a member of his family appointed by him in writing for that purpose, or his legally appointed agent, is not present in his field on the days so fixed, the khot shall nevertheless proceed to inspect and appraise such tenant's crops and shall inform such tenant in writing of the appraisal so made within 24 hours of the same by sending him a copy of the entries relating to his fields by khot in the abhavni patrak mentioned in the rule immediately following.

IV. It shall be the duty of the khot to keep a book to be called the abhavani patrak in such form as the Collector may, from time to time, prescribe in which he shall at the time of every inspection and appraisal that he shall make, enter on the spot the particulars of such inspection and appraisal, or cause the same to be entered. Each entry in the said book shall bear the date on which it is made, and shall be signed by the khot making the inspection and appraisal, by both witnesses, and also, if the tenant or member of his family appointed by him in writing for that purpose, or his legally appointed agent be present and admit the correctness of the entry, by the tenant, such member of his family, or such agent, provided always, that such tenant, member or agent is able to write his name and does not use a mark.

V. The khot shall be bound, if the tenant, or a member of his family appointed by him in writing for that purpose, or his legally appointed agent is present, to give him then and there a signed copy of the entries relating to his fields made in the abhavani patrak. If the tenant admits the correctness of the entries and has brought his receipt book, the entries shall be copied on the debit side of the receipt book. In all other cases the copy shall be on a separate slip.

VI. An entry duly made in the abhavani patrak in accordance with the foregoing provisions, and signed with his name by the tenant or a



member of his family appointed by him in writing for that purpose, or his legally appointed agent shall be conclusive evidence of the facts therein recorded, and the appraisement shall be deemed to be final ; and an entry so made when the tenant, or a member of his family appointed by him in writing for that purpose, or his legally appointed agent fails to be present, shall be presumed to be correct until the contrary is proved in the manner prescribed in the next following rule, and provided the tenant has been informed of the appraisement in the manner prescribed in the last part of Rule III.

VII. A tenant who has not signed the abhavani patrak, or who has signed it with a mark only, may, if dissatisfied with the appraisement, petition the Mamlatdar or Mahalkari of the Taluka or Mahal in which the village is situate, within six days of the khot making the appraisement, and such officer shall forthwith nominate three respectable inhabitants of the village or its neighbourhood to inspect and appraise the crop within seven days. The appraisement made by such persons, or a majority of them, shall be final and shall be entered by the khot at the time it is made in the Abhavani Patrak, and the entry shall be signed by the said three persons or the majority of them.

VIII. If the khot fails to keep an abhavani patrak or to inspect or appraise the crop at the time and in the manner laid down in Rule I or to make an entry or to cause the same to be made therein in the manner hereinbefore provided, or to give information to the tenant in the manner provided in Rule III, he shall be entitled to recover from the tenant such rent only as may be due according to the yield of the crop admitted by the tenant\*.

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\* Rule VIII is, it is submitted, in direct conflict with Secs. 7 and 33. Under it the Khot is left entirely at the mercy of the tenant. Thus the rule provides only for two methods of appraisement of the crop. The crop may be appraised by the khot himself according to the provisions of the Rules I to VII ; but if the provisions of these rules for appraisement are not observed by the khot, then the only other method, which the khot can have regard to for the purpose of determining the gross annual produce, is the appraisement made by the tenant himself. If the gross annual produce has not been settled according to one or the other of these modes prescribed by Rule VIII, the khot can recover nothing, nor even a reasonable amount of rent from the tenant. A Civil Court cannot, under the provisions of the rule, settle the gross annual produce upon other materials—however reliable

IX. It shall not be lawful for a tenant to reap his crop until after the same has been inspected and appraised, or until the expiry of the dates mentioned in Rule I within which the inspections and appraisements of crops by the khot should be completed. If the tenant reaps his crop in contravention of the above rule every presumption on doubtful points shall be made in the khot's favour.

X. If the tenant without making a petition under Rule VII reaps his crop after it has been inspected and appraised by the khot in the presence of such tenant or a member of his family appointed by him in writing for that purpose, or his legally appointed agent, or after the khot has given such tenant information in the manner provided in Rule III, he shall be deemed to have admitted the correctness of the khot's estimate.

*Rules under Clause (b).*

I. An entry in the Pahani Kharda\* of *Dhara*, if not rebutted, shall be conclusive proof of *dhara*. If the Pahani Kharda only shows that a certain area was held as *dhara*, but gives no *thikans*, the land to be entered as *dhara* shall be chosen at the discretion of the Settlement Officer from the survey numbers in the rayat's possession; always provided that the area and the proportion of rice to Varkas land which may be given in the Pahani Kharda be not exceeded, and that if no information is available as to the said proportion, it shall be assumed to be 1 acre of rice to  $\frac{1}{4}$  acres of Varkas.

II. Where there is no Pahani Kharda but a Goshwara entry only, this entry if not rebutted, shall be conclusive proof that the Khatedar holds some *dhara*. To ascertain the area of his *dhara* it will be necessary to discover at what rates the land assessment of the village was fixed. Evidence of this may be obtained from the Pahani Khardas of surrounding villages or otherwise. The Settlement Officer shall then proceed as in the last clause of Rule I. If the land assessment rates cannot be ascertained to the satisfaction of the Settlement Officer, the highest rate known to have existed at the date of the Goshwara must be taken as a basis and the same procedure followed.

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they may be—and award even a reasonable amount of rent to the khot. The rule is, in this respect, clearly *ultra vires*. *Vinayak v. Sitaram*, 14 Bom. L. R. 1173. See C. J. and Chandavarkar J. 1912.

\* F = the Form see App. II *post*.

III. The evidence of entry in Pahani Kharda or Goshwara may be rebutted by the khot producing written proof from his accounts that he has taken "*Thal*" or *Makta* payments for three consecutive years within the twelve years preceding the introduction of the survey. In "*Thal*" he must show for Varkas land payments in successive years from the same land of the three crops of Nachni, Wari, and Harik.

IV. If there is no Pahani Kharda or Goshwara, the possession of *dhara* may be proved by the production of receipt-books showing *dhara* payments for a sufficient number of years to satisfy the Settlement Officer. If no thikans are given in the receipt-books, he shall proceed as in the last clause of Rule I.

V. If a rayat is proved to hold some *dhara*, and if it is not proved that any of the land in his possession has paid *thal*, the whole of the land in his possession shall be entered as *dhara*.

*Rules under Clause (e).*

I. When a khot sharer sells any of his private khoti land (Khoti Khasgi), the buyer thereof shall be entered in the survey papers in respect of that land as an occupancy tenant paying customary rates with the right to alienate his land.

II. A Khelta Dharekari shall be bound every year, on or before the 30th April, to give notice to the khot, stating what fields in the Khoti Nisbat Khata he intends during the ensuing season to cultivate at *dhara* rates. If he fails to do so, he will be presumed to have waived his right for that season and will have to pay "*Thal*" for any khoti land that he does cultivate.

III. The rent payable to the Managing khot by khot sharers for their private khoti land shall be the customary rates of the village for occupancy tenants, unless it is proved that before 1865 khot sharers paid a *Makta* or a lower rate of "*Thal*," in which case the ancient practice shall be followed.

IV. Land about which there is, or has been, a boundary dispute between two villages shall be entered in the name of the occupant as follows :—

(a) If both villages are Nival Dhara as *dhara* land.

- (b) If both villages are Niwal Khoti, as occupancy tenants' land paying ardhel and tirdhel.
- (c) In any other case, as occupancy tenant's land paying survey assessment and local fund cess only.

V. A Khelta Dharekari has no right to cut trees(1).

VI. The khot shall keep under Section 15 the following three accounts :—

1. The Appraisement Register.\*
2. The Ledger.
3. The Rayat's Receipt-books.

They shall be kept in the forms hereunto annexed (Appendix I).

The Appraisement Register shall be filled up at the time of the crop appraisement in the manner laid down in Rule IV of the Appraisement Rules under clause (a) Sec. 40.

The Ledger is to be kept in the ordinary form of debit and credit account, showing the amount due from and paid by each rayat in a separate khata for each khata of the Botkhat. The items of the debit side of the rayat's account relating to grain payments are to be written up within 15 days from the date which the appraisement of the crops to which the items severally relate must be made under the Appraisement Rules.

The rayat's receipt-book is to be written up on the debit side, in cases of grain payments, within one month from the several dates within which the appraisement of the crops must severally be made; in cases of dhara or quasi-dhara payments, before the 1st September.

Whenever a payment is made by a rayat, a receipt is then and there to be entered by the khot on the credit of the rayat's receipt-book and the book returned to its owner.

If the rayats do not bring their books to be written up on the debit side within the proper time, the khot shall immediately on the

(1) As amended by G. N. 6972/12-10-87. E. G. O. 1887 Part I p. 853.

\* For the form: Vide App. VII *post*.

expiry of the period make a report to the Mamlatdar or Mahalkari to that effect, who will then issue the necessary instructions to the rayats.

If a rayat brings grain or cash in payment of his revenue to the khot without bringing his receipt-book also, the khot shall accept the payment, but note the omission in the entry of payment in the rayat's khata and give a separate dated receipt.

All the account-books must be brought or sent by the khot to the kacheri of the Mamlatdar or Mahalkari to be sealed on or before the 1st July of the year preceding that for which they are to be used. This includes fresh rayat's receipt-books which must be handed over to the khot for this purpose by the rayat on or before the 1st June of the year preceding that in which they are to be first used.

Every page of every account-book shall be sealed. The books for the first two accounts shall be provided by the khot. Each rayat shall provide his own receipt-book. Besides the three accounts above mentioned the khot shall take a copy of the *Botkhat* at his own expense and shall keep it properly corrected, as the Mamlatdar or Mahalkari shall notify.

The copy of the *Botkhat* so made shall, if the village be attached, be delivered up by the khot to the Mamlatdar for the use of the Japtidar, and on the attachment ceasing shall be returned to the khot. The khot shall also take a copy of the "*Sud*"\* and "*Phalni*" books. If he does not do so, he will be responsible for any mistakes that might have been prevented by the use of those books, but shall not be subject to any other penalty.

The Managing khot shall be bound to provide a convenient place within the boundaries of the village itself to which the rayats may bring their payments whether in cash or kind. He shall not be entitled, on any pretence whatever, to require a tenant to pay his rent in any other place except the village in the survey papers of which the tenant's name is entered.

VII. The *Botkhat* shall be in the form hereto annexed. Appendix No. 1, Form No. 1). The customary rates of the village shall be recorded in full at the bottom of the *Botkhat*.†

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\* For the Form see App. V *post*.

† *Vide* Note 5 to Sec. 15 at p. 62 *ante*.

Any corrections ordered to be made in the *Botkhat* shall be signed by the Mamlatdar or Mahalkari.

If a proper *wantap* or division has been made, each khot sharer shall be denoted by a number and each rayat's khata containing khoti land shall have the said khoti land entered with the number denoting the khot sharer in whose share the land is affixed to the survey number, and all the survey numbers in the share of one particular khot sharer shall be entered consecutively.

In all cases in which the Settlement Officer has decided that khoti land is alienable by a tenant, the fact shall be entered in column 5 of the *Botkhat* by the Mamlatdar or Mahalkari.

*Rules under Clause (f).*

I. No forfeiture under Sec. X shall be certified in the case of an occupancy tenant unless he has failed to pay rent for two consecutive years, nor if the tenant is a minor, shall any forfeiture be certified until two years after he has attained his majority and has failed to pay rent.

II. If the khot is in actual possession when the minor attains his majority and refuses to vacate, the Collector shall, on the minor's application, put him in possession.

III. If from any cause whatever, except the necessity of keeping fallows, an occupancy tenant fails to cultivate his land, the khot may cultivate it for him during that season, just as if it were khot-nisbat land, but if he does so cultivate, he shall be entitled to no assistance under Sec. 14.

IV. The form of written application under Sec. 12 shall be as follows :—

TO THE COLLECTOR OF RAJNAGERI.

I (or we), the undersigned khot (or khot sharers) of the village of (—) do hereby certify that I (or we) have conferred on A. B., the rights and privileges of a dharekari (or quasi-dharekari, &c., as the case may be) in respect of the Survey numbers and Pot or Phalni numbers of the said village tabulated below :—

| Survey Number. | Pot or Phalni Number. | Area. | Assessment. |
|----------------|-----------------------|-------|-------------|
|                |                       |       |             |

and I (or we) do request that an entry to this effect may be made in the Botkhat of the said village.

(Signed)-----

(Dated)-----

All the known khot sharers or their duly empowered attorneys shall sign—otherwise the application will be rejected.

V. Under Sec. 27, if there is no agreement as to the order of rotation, the Mamlatdar or Mahalkari shall, on or before the 1st June in each year, issue a notice calling on the co-sharers to nominate one of their number on or before the 30th June to be Managing Khot for the following revenue year.

VI. The dates for the payments of instalments of the khot's jama shall be as at present, viz., 15th December, 1st February, 15th March 1st May.

The dates for payment of rents by dharekaris and quasi-dharekaris shall be the same as for khots; but a dupetkari shall pay his grain rents on the same dates as occupancy tenants do.

Occupancy tenants shall pay their grain rents as follows:—

On the 15th December—

Half the total *Thal* payment due in *Halwa* or early rice and *Mahan* or late rice and the total *Thal* payment due in *Halwa Varkas*.

On the 1st February—

The other half of the total *Thal* payment due in *Halwa* rice and *Mahan* rice and half the total *Thal* payment due in *Mahan Varkas*.

On the 15th March—

The other half of total *Thal* payment due in *Mahan Varkas*.

On the 1st June—

The total *Thal* payment due on account of all other crops, except Bagayat, the *Thal* payment for which must be paid within what the Mamlatdar or Mahalkari in each disputed case may consider a reasonable time.

If the occupancy tenant pays a *Makta* he shall pay it in three equal instalments on the 15th December, 1st February and 15th March.

VII. The certificate to be given to the Managing Khot under Sec. 29 is to be in the form hereto annexed (Appendix I, Form 4).

*Rules under clause (d) to determine the applicability of rules under Sec. 214 of the Bombay Land Revenue Code, 1879, to Khoti Villages(1).*

1. No rule or order which shall be hereafter made under Sec. 214 of the Bombay Land Revenue Code, 1879, shall be applicable to villages to which the Khoti Settlement Act, 1880, extends, unless it is expressly directed in such rule or order, or in some subsequent rule or order, that it shall be applicable thereto(2).

2. Of the rules and orders at present in force under Sec. 214 of the Bombay Land Revenue Code, 1879, Nos. 9 to 57, both inclusive, 58, 43, 46 paragraph 2, 53, 54, 57 to 70, both inclusive, 76 to 81, both inclusive, 86, 87, 88 paragraph 2, 89, 95 and 96 [proviso (a)] shall not be applicable to the said villages(3).

(1) G. N. 3459/2-4-08.

(2) Amendments made in Rules 40, 49. (b) and (i), 56, 56-II, 98A and 99 and the new Rules 71 to 75 and 98A and 99, have been expressly made applicable to villages to which this Act extends. Vide G. N. 2814/18-3-1900 ; 12022/24-11-08; 1359,9-2-09 and 6445,5-7-09.

(3) G. R. 3330/13-4-10 : The Rules 56, 71, to 75 should be applied to all Dharekari and Quasi-dharekari lands. It makes no difference whether the actual holder of such lands is khot or not. The holder will be liable to altered assessment leviable under the Rules and the khot will get the "Faida".

As regards khoti lands, the Rules need not be applied for the present. In case, however, any large development of building occurs in khoti lands, the question of their application should be further considered. If the Rules are then applied, measure should be taken to ensure that the khot does not lose. On the contrary, if Government gains in assessment, the khot should also gain proportionately in rent.



3. The rest of the said rules and orders shall be applicable to the said villages, subject in the undermentioned cases to the following modifications namely:—

| No. of rule.        | Modification.                                                                                                                                                                                                                                                                                    |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3                   | After the figures '16' in Article 18 insert the words 'and Japtidars appointed by the Collector to manage attached villages'.                                                                                                                                                                    |
| 45                  | For the words 'Village Officers' read the words 'Village Accountant or Japtidar, or of the Circle Inspector where there is no Village-accountant or Japtidar'.                                                                                                                                   |
| 46, sub-rule (1)... | Omit the figures and words '46 or' and for the last two words substitute the word 'section'.                                                                                                                                                                                                     |
| 99                  | After the word 'Village-accountant' wherever it occurs insert the word 'Japtidar.'                                                                                                                                                                                                               |
| 103                 | In clause (4) for the words 'Village Officer' substitute the words 'revenue patel, village-accountant or japtidar,' omit the figures '32,' '33,' '79' '80,' '88,' and the word and figures 'or 89', insert the word 'or' between the figures '45', and '46', and omit sub-clauses '(a) and (c)'. |

## APPENDIX No. I.

## FORM 1.

SETTLEMENT REGISTER.\*

FORM OF BOTKHAT.

BOTKHAT OF MAUZE , TARF , TALUKA , ZILLAH RATNAGIRI , A.D. 18

*Khoti Rights and Shares.*

| Khot Number. | Wantaps or Divisions of Shares held separately. | Divisions of Shares among the Wakalas or Families as finally settled. | Shares of Persons interested other than those mentioned in Columns 2 & 3 of their Sub-sharers. | Names of Persons having interest referred to in Columns 2 and 4 or 3 and 4, and the Names of their Mortgagees.                                                                                                                                   | REMARKS. |
|--------------|-------------------------------------------------|-----------------------------------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1            | 2                                               | 3                                                                     | 4                                                                                              | 5                                                                                                                                                                                                                                                | 6        |
|              | As.                                             | As.                                                                   | As. p.                                                                                         |                                                                                                                                                                                                                                                  |          |
| 1            | 4                                               | ...                                                                   | ...<br>1 0<br>1 0<br>2 0                                                                       | Hari Govind Sapkar.<br>1 Hari Govind himself.<br>2 Trimbak Narayan Sapkar<br>3 Babaji Shivram Sapkar.<br>mortgagee Ramchandra Govind Mule.                                                                                                       |          |
|              |                                                 | Total ...                                                             | 4 0                                                                                            |                                                                                                                                                                                                                                                  |          |
| ...          | ...                                             | 4                                                                     | ...<br>2 0<br>2 0                                                                              | Krishnaji Daji Joshi.<br>1 Krishnaji Daji himself.<br>2 Vishwanath Ganesh Joshi                                                                                                                                                                  |          |
|              |                                                 | Total ...                                                             | 4 0                                                                                            |                                                                                                                                                                                                                                                  |          |
| ...          | ...                                             | 8                                                                     | ...<br>1 0<br>1 0<br>1 0<br>1 0<br>2 0<br>2 0                                                  | Sadashiv Govind Diwekar.<br>1 Sadaskiv Govind himself.<br>2 Bapuji Govind Diwekar.<br>3 Venkatesh Narayan Diwekar.<br>4 Bhikaji Ganesh Diwekar.<br>5 Keshav Ramchandra Diwekar.<br>6 Vital Yeshwant Diwekar.<br>Mortgagee, Balaji Vasudeo Barre. |          |
|              |                                                 | Total ...                                                             | 8 0                                                                                            |                                                                                                                                                                                                                                                  |          |
|              | 4                                               | 12                                                                    | Rs. a. p.<br>1 0 0                                                                             |                                                                                                                                                                                                                                                  |          |

\* It is a mistake to call this form "Appraisement Register". It is therefore styled "Settlement Register" as suggested by the Collector. The better course would be, it is submitted, to style it simply as Botkhat.

| NUMBER.        |             |                 | NAME OF FIELD.            | Tenure, viz., Inam or Khalsa (Government), Dhara or Khoti and other Tenures. Whether a Khoti tenant has a right to sell Khoti land or not? If he has, to state that he has. | Khoti Number. | Share out of the whole Village on Khoti. | Kharif or Rice Lands. |           |
|----------------|-------------|-----------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------------|-----------------------|-----------|
| Survey Number. | Pot Number. | Phalhi Number.  |                           |                                                                                                                                                                             |               |                                          | Acres and Gunthas     | Amount.   |
| 1              | 2           | 3               | 4                         | 5                                                                                                                                                                           | 6             | 7                                        | 8                     | 9         |
|                |             |                 | <i>Sajana bin Pungoji</i> | <i>Bhogale No 1.</i>                                                                                                                                                        |               |                                          | A. g.                 | Rs. a. p. |
| 1              | 7           | ...             | Mhesonda ...              | Dhara                                                                                                                                                                       | ...           | ...                                      | ...                   | ...       |
| 6              | ...         | 10, 20, 21 & 22 | Kalacha Parya ...         | Do.                                                                                                                                                                         | ...           | ...                                      | ...                   | ...       |
| 8              | 1           | ...             | Do. ...                   | Do                                                                                                                                                                          | ...           | ...                                      | 0 6 1/2               | 0 11 0    |
| 12             | 1           | ...             | Kudete ...                | Do.                                                                                                                                                                         | ...           | ...                                      | 0 13 1                | 6 0       |
| 16             | ...         | 10, 11, 20 & 21 | Gottana ...               | Do.                                                                                                                                                                         | ...           | ...                                      | ...                   | ...       |
| 24             | ...         | 1               | Kargalmhos ...            | Do.                                                                                                                                                                         | ...           | ...                                      | ...                   | ...       |
| 37             | 1           | ...             | Wawalyachi Gottana.       | Do.                                                                                                                                                                         | ...           | ...                                      | ...                   | ...       |
| 43             | 5           | ...             | Wadache...                | Do                                                                                                                                                                          | ...           | ...                                      | 0 23 1/2              | 8 0       |
| 44             | ...         | 7               | Shivkala Batachi...       | Do.                                                                                                                                                                         | ...           | ...                                      | ...                   | ...       |
| 51             | 5           | ...             | Kharwat...                | Do.                                                                                                                                                                         | ...           | As S                                     | 0 30 3                | 12 0      |
| 77             | ...         | 9, 10 & 15      | Paryache...               | Do.                                                                                                                                                                         | ...           | ...                                      | ...                   | ...       |
| ...            | 6           | 13              |                           |                                                                                                                                                                             |               |                                          | 1 33 1/8              | 5 0       |
| 17             | ...         | 7 & 12          | Gawan ..                  | Occupancy Tenant.                                                                                                                                                           | 1             | ...                                      | ...                   | ...       |
| 50             | ...         | 4, 11 & 19      | Warkhadicha Mala          | Do.                                                                                                                                                                         | ...           | 1                                        | ...                   | ...       |
| 50             | ...         | 20              | Do.                       | Do.                                                                                                                                                                         | ...           | 1 As S                                   | ...                   | ...       |
| 77             | ...         | 5               | Parvache                  | Do.                                                                                                                                                                         | ...           | 1                                        | ...                   | ...       |
| ...            | ...         | 7               |                           |                                                                                                                                                                             |               |                                          | ...                   | ...       |
| 1              | ...         | 2               | Mhasonda ...              | Do.                                                                                                                                                                         | ...           | 2                                        | ...                   | ...       |
| 12             | ...         | 1               | Koodyat ...               | Do.                                                                                                                                                                         | ...           | 2                                        | ...                   | ...       |
| 17             | ...         | 13              | Gawana ...                | Do.                                                                                                                                                                         | ...           | 2                                        | ...                   | ...       |
| 29             | ...         | 3 & 4           | Dewalacha Sada...         | Do.                                                                                                                                                                         | ...           | 2                                        | ...                   | ...       |
| 35             | ...         | 1               | Devala Nageek ...         | Do.                                                                                                                                                                         | ...           | 2                                        | ...                   | ...       |

SURVEY ASSESSMENTS PAYABLE.

| Rabi Lands.       |           | Garden Lands.     |           | Varkas Lands.     |           | Assessment on Coconut Trees. | Total of Assessment |
|-------------------|-----------|-------------------|-----------|-------------------|-----------|------------------------------|---------------------|
| Acres and Gunthas | Amount.   | Acres and Gunthas | Amount.   | Acres and Gunthas | Amount.   |                              |                     |
| 10                | 11        | 12                | 13        | 14                | 15        | 16                           | 17                  |
| A. g.             | Rs. a. p. | A. g.             | Rs. a. p. | A. g.             | Rs. a. p. | Rs. a. p.                    | Rs. a. p.           |
| ...               | ...       | 0 10              | 1 4 0     | ...               | ...       | .....                        | 1 4 0               |
| ...               | ...       | ...               | ...       | 3 15              | 0 8 6     | .....                        | 0 8 6               |
| ...               | ...       | ...               | ...       | ...               | ...       | .....                        | 0 11 0              |
| ...               | ...       | ...               | ...       | ...               | ...       | .....                        | 1 6 0               |
| ...               | ...       | ...               | ...       | 9 2               | 0 3 6     | .....                        | 1 3 6               |
| ...               | ...       | ...               | ...       | 0 34              | 0 3 0     | .....                        | 0 3 0               |
| ...               | ...       | 0 4½              | 0 10 0    | ...               | ...       | .....                        | 0 10 0              |
| ...               | ...       | ...               | ...       | ...               | ...       | .....                        | 2 8 0               |
| ...               | ...       | ...               | ...       | 0 13              | 0 1 0     | .....                        | 0 1 0               |
| ...               | ...       | ...               | ...       | ...               | ...       | .....                        | 3 12 0              |
| ...               | ...       | ...               | ...       | 3 19              | 0 8 6     | .....                        | 0 8 6               |
| ...               | ...       | 0 14½             | 1 14 0    | 17 3              | 2 8 6     | .....                        | 12 11 6             |
| ...               | ...       | ...               | ...       | 3 28              | 0 9 0     | .....                        | 0 9 0               |
| ...               | ...       | ...               | ...       | 2 30              | 0 5 0     | .....                        | 0 5 0               |
| ...               | ...       | ...               | ...       | 1 5               | 0 2 0     | .....                        | 0 2 0               |
| ...               | ...       | ...               | ...       | 0 34              | 0 3 0     | .....                        | 0 3 0               |
| ...               | ...       | ...               | ...       | 8 17              | 1 3 0     | .....                        | 1 3 0               |
| ...               | ...       | ...               | ...       | 0 1               | 0 0 6     | .....                        | 0 0 6               |
| ...               | ...       | ...               | ...       | 0 2               | 0 0 6     | .....                        | 0 0 6               |
| ...               | ...       | ...               | ...       | 1 0               | 0 2 0     | .....                        | 0 2 0               |
| ...               | ...       | ...               | ...       | 1 2½              | 0 5 0     | .....                        | 0 5 0               |
| ...               | ...       | ...               | ...       | 2 0               | 0 5 0     | .....                        | 0 5 0               |

| NUMBER.        |             |                 | NAME OF FIELD.                                | Tenure, viz., Inam or Khalsa (Government), Dhara or Khoti and other Tenures. Whether a Khoti tenant has a right to sell Khoti land or not? If he has, to state that he has. | Khoti Number. | Share out of the whole Village on Khoti | Kharif or Rice Lands |          |
|----------------|-------------|-----------------|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-----------------------------------------|----------------------|----------|
| Survey Number. | Pot Number. | Phalnat Number. |                                               |                                                                                                                                                                             |               |                                         | Acres and Guntnas    | Amount.  |
| 1              | 2           | 3               | 4                                             | 5                                                                                                                                                                           | 6             | 7                                       | 8                    | 9        |
|                |             |                 |                                               |                                                                                                                                                                             |               |                                         | A. g.                | Rs. a p. |
| ...            | ...         | 6 & 9           | Dewalacha Sada...                             | Occupancy tenant                                                                                                                                                            | 2             | ...                                     | ..                   | ...      |
| 36             | ...         | 11              | Dhakta Sada ...                               | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 38             | ...         | 2 & 10          | Payarichi Pakhar.                             | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| ...            | ...         | 18              | Do. ...                                       | Do. ...                                                                                                                                                                     | 2             | As. 9                                   | ...                  | ...      |
| 40             | ...         | 4 & 8           | Tonk ...                                      | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 51             | ...         | 7               | Kharwat..                                     | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 75             | ...         | 9               | Tonk ...                                      | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| ...            | ...         | 16              |                                               |                                                                                                                                                                             |               |                                         | ...                  | ...      |
| ...            | 6           | 36              |                                               |                                                                                                                                                                             |               |                                         | 1 33 $\frac{1}{4}$ 8 | 5 0      |
|                |             |                 | <i>Subhanna bin Ganna Mhapadi<br/>No. 16.</i> |                                                                                                                                                                             |               |                                         |                      |          |
| 16             | ...         | 6 & 9           | Gawtana...                                    | Occupancy Tenant.                                                                                                                                                           | 1             | ...                                     | ...                  | ...      |
| 6              | ...         | 2               | Khalacha Parya...                             | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 17             | ...         | 4               | Gawana ...                                    | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 38             | ...         | 4               | Payarichi Pakhar.                             | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 42             | ...         | 6               | Khonda ...                                    | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 44             | ...         | 6               | Shivkala Batachi                              | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 50             | ...         | 14 & 17         | Warkhadicha Mal                               | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 74             | ...         | 1, 4 & 6        | Matacha Sada ...                              | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 75             | ...         | 5               | Tonk ...                                      | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| 77             | ...         | 14              | Paravache ...                                 | Do. ...                                                                                                                                                                     | 2             | ...                                     | ...                  | ...      |
| ...            | ...         | 12              |                                               |                                                                                                                                                                             |               |                                         | ...                  | ...      |
| ...            | ...         | 14              |                                               |                                                                                                                                                                             |               |                                         | ...                  | ...      |

SURVEY ASSESSMENTS PAYABLE.

| Rabi Lands.       |           | Garden Lands.     |           | Varkas Lands.     |           | Assessment on Coconut Trees. | Total of Assessment |
|-------------------|-----------|-------------------|-----------|-------------------|-----------|------------------------------|---------------------|
| Acres and Gunthas | Amount.   | Acres and Gunthas | Amount.   | Acres and Gunthas | Amount.   |                              |                     |
| 10                | 11        | 12                | 13        | 14                | 15        | 16                           | 17                  |
| A. g.             | Rs. a. p. | A. g.             | Rs. a. p. | A. g.             | Rs. a. p. | Rs. a. p.                    | Rs. a. p.           |
| ...               | ...       | ...               | ...       | 1 18              | 0 5 0     | .....                        | 0 5 0               |
| ...               | ...       | ...               | ...       | 0 22              | 0 2 0     | .....                        | 0 2 0               |
| ...               | ...       | ...               | ...       | 1 5               | 0 2 6     | .....                        | 0 2 6               |
| ...               | ...       | ...               | ...       | 0 20              | 0 1 0     | .....                        | 0 1 0               |
| ...               | ...       | ...               | ...       | 1 20              | 0 4 6     | .....                        | 0 4 6               |
| ...               | ...       | ...               | ...       | 0 2               | 0 0 6     | .....                        | 0 0 6               |
| ...               | ...       | ...               | ...       | 2 16              | 0 6 0     | .....                        | 0 6 0               |
| ...               | ...       | ...               | ...       | 12 2              | 2 2 6     | .....                        | 2 2 6               |
| ...               | ...       | 0 14 3            | 1 14 0    | 37 22             | 5 14 0    | .....                        | 16 1 0              |
| ...               | ...       | ...               | ...       | 1 20              | 0 3 0     | .....                        | 0 3 0               |
| ...               | ...       | ...               | ...       | 1 0               | 0 3 0     | .....                        | 0 3 0               |
| ...               | ...       | ...               | ...       | 0 20              | 0 1 0     | .....                        | 0 1 0               |
| ...               | ...       | ...               | ...       | 0 10              | 0 0 6     | .....                        | 0 0 6               |
| ...               | ...       | ...               | ...       | 0 12              | 0 0 6     | .....                        | 0 0 6               |
| ...               | ...       | ...               | ...       | 0 1               | 0 0 6     | .....                        | 0 0 6               |
| ...               | ...       | ...               | ...       | 1 7               | 0 2 6     | .....                        | 0 2 6               |
| ...               | ...       | ...               | ...       | 0 35              | 0 2 0     | .....                        | 0 2 0               |
| ...               | ...       | ...               | ...       | 9 35              | 6 2 0     | .....                        | 0 2 0               |
| ...               | ...       | ...               | ...       | 1 14              | 9 3 0     | .....                        | 6 3 0               |
| ...               | ...       | ...               | ...       | 6 14              | 1 0 0     | .....                        | 1 0 0               |
| ...               | ...       | ...               | ...       | 7 34              | 1 3 0     | .....                        | 1 3 0               |

| NUMBER.         |             |                | NAME OF FIELD.                    | Tenure, viz., Inam or Khalsa (Government), Dhara or Khoti and other Tenures. Whether a Khoti tenant has a right to sell Khoti land or not? If he has, to state that he has. | Khoti Number. | Share out of the whole Village on Khoti | Kharif or Rice Lands |          |
|-----------------|-------------|----------------|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-----------------------------------------|----------------------|----------|
| Survey Number.  | Por Number. | Phalmi Number. |                                   |                                                                                                                                                                             |               |                                         | Acres and Guntas     | Amount.  |
| 1               | 2           | 3              | 4                                 | 5                                                                                                                                                                           | 6             | 7                                       | 8                    | 9        |
|                 |             |                |                                   |                                                                                                                                                                             |               |                                         | A. g.                | Rs. a p. |
| <i>Details.</i> |             |                |                                   |                                                                                                                                                                             |               |                                         |                      |          |
|                 |             |                | Dhara Lands                       | ....                                                                                                                                                                        | ...           | ...                                     | 18 29                | 86 10 0  |
|                 |             |                | Khoti land belonging to Khot Nol  | ....                                                                                                                                                                        | ...           | ...                                     | 0 15½                | 1 4 0    |
|                 |             |                | Do.                               | Do.                                                                                                                                                                         | No. 11        | ...                                     | 0 15½                | 1 11 0   |
|                 |             |                |                                   |                                                                                                                                                                             |               | ...                                     | 0 31                 | 2 15 0   |
| 80              | 125         | 427            |                                   |                                                                                                                                                                             |               | ...                                     | 19 20                | 89 9 0   |
| 2               | ...         | 3              | Waste                             | ...                                                                                                                                                                         | ...           | ...                                     | ...                  | ...      |
| 82              | 125         | 430            | Waste & cultivated lands together | ...                                                                                                                                                                         | ...           | ...                                     | 19 20                | 89 9 0   |

The abovementioned Khatedars are to pay as follows :—

1. The holders of Dhara lands should pay the Survey Assessment and the
2. The quasi-dharekaris are to pay the Survey Assessment in addition to dule annexed to the Khoti Act.
3. The holders of the Khoti lands are to pay as follows :—
  1. The Khoti tenants except the Khoti sharers, and
  2. The Khoti sharers are to pay in accordance with the decisions Government Resolution No. 2474, dated the 24th April 1876.

SURVEY ASSESSMENTS PAYABLE.

| Rabi Lands.       |           | Garden Lands.     |           | Varkas Lands.     |           | Assessment on Coconut Trees. | Total of Assessment |
|-------------------|-----------|-------------------|-----------|-------------------|-----------|------------------------------|---------------------|
| Acres and Gunthas | Amount.   | Acres and Gunthas | Amount.   | Acres and Gunthas | Amount.   |                              |                     |
| 10                | 11        | 12                | 13        | 14                | 15        | 16                           | 17                  |
| A. g.             | Rs. a. p. | A. g.             | Rs. a. p. | A. g.             | Rs. a. p. | Rs. a. p.                    | Rs. a. p.           |
| ...               | ...       | 15 16½            | 71 13 0   | 59 29             | 9 3 6     | .....                        | 167 12 6            |
| ...               | ...       | 1 20¼             | 5 7 0     | 131 3             | 20 3 6    | .....                        | 26 14 6             |
| ...               | ...       | 0 19½             | 1 5 0     | 355 8             | 56 13 6   | .....                        | 59 13 6             |
| ...               | ...       | 1 39¼             | 6 12 0    | 486 11            | 77 1 0    | .....                        | 86 12 0             |
| ...               | ...       | 17 16¼            | 78 11 0   | 546 0             | 86 4 0    | .....                        | 254 8 6             |
| ...               | ...       | ...               | ...       | 0 28              | .....     | .....                        | .....               |
| ...               | ...       | 17 16¼            | 78 11 0   | 546 28            | 86 4 6    | .....                        | 254 8 6             |

Local Fund Cess at the rate of one anna for each rupee of assessment.  
 the excess amount of rent at the rates (to be mentioned below) given in the Sche-

to be confirmed at the Special Razavat and confirmed by the Settlement Officer under



FORM 2

*Khatawani or Ledger of Mauze*, *Tarf*, *Taluka* *Zilla Ratnagiri, for the Khoti*  
*portion of the village lands for A. D. 1878-79. being Shake 1800-1801.*

| <p>RICE IN HUSK.<br/> <i>Monsoon Crops.</i><br/>                     K. m. p.</p>                                                                                            | <p>GOPAL BIN RAMA NACHRA No.<br/> <i>Nagli.</i><br/>                     K. m. p.</p>                                                                                           | <p><i>Wari.</i><br/>                     K. m. p.</p>                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>0 2 0 Tikan Ratambi, being S. N. 125, Pot No. 6. 10 gunthas is estimated to yield 4 maunds, of which the khot's share is one-half, <i>vide</i> No of Abhavani Patrak.</p> | <p>0 2 0 Tikan Kawal-taimbi, being S. N. 128, Phalni, 4 2 acres is estimated to yield 6 maunds, of which the khot's share is one-third, <i>vide</i> No. of Abhavani Patrak.</p> | <p>0 1 0 Tikan Kawal-taimbi, being S N, 128, Phalni 4. 1 acre 5 gunthas is estimated to produce 3 maunds of which the khot's share is one-third <i>vide</i> No. of Abhawani Patrak.</p> |
| <i>Receipts</i>                                                                                                                                                              |                                                                                                                                                                                 |                                                                                                                                                                                         |
| <p>0 6 0 Tikan Sonambi, being S. N. 8, Pot No. 1. 20 gunthas is estimated to yield 12 maunds, of which the khot's share is one-half, <i>vide</i> No of Abhawani Patrak.</p>  | <p>0 2 0 Paid for the current year in person or through A on the 14th March 1880 at the rate of 45 rupees per khandi, Rs. 4-8-0.</p>                                            | <p><i>Receipts.</i><br/>                     0 1 0 Paid for the current year in person or through one maund of wari, at the rate of 40 rupees per khandi, Rs. 2-0-0.</p>                |
| <p>0 6 0 Balance.</p>                                                                                                                                                        | <p>0 0 0 Balance.</p>                                                                                                                                                           |                                                                                                                                                                                         |

*Fair weather Crops.*

0 5 0 Tikan Kamath, being S. N. 142, Pot No. 3. 25 gunthas is estimated to yield 10 maunds, of which the khot's share is one-half, *vide* No. of Abhawani Patrak.

0 2 0 Tikan Kudete, being S. N. 150, Pot No. 1. 20 gunthas is estimated to yield 4 maunds, of which the khot's share is one half, *vide* No. of Abhawani Patrak.

0 15 0

*Receipts.*

0 7 0 Paid in person or through for the current year on the 14th March 1886, seven maunds of rice in husk at the rate of Rs. 35 per khandi (Rs 2-4-0).

0 8 0 Balance for the current year.

KAD-DAN.

*Kadwe.*

0 1 0 Tikan Kamath, being S. N. 142, Pot No. 3. 25 gunthas is estimated to yield 2 maunds of Kadwe, of which the khot's share is one-half, *vide* No. of Abhawani Patrak.

*Receipts.*

0 1 0 Paid for the current year in person or through on the 28th May 1886, one maund.

0 0 0 Balance.

*Jack-fruit.*

No 250 Jack-trees in Gastan and S. N. 130 are estimated to yield 500 jack-fruit, of which one-half is the khot's share, *vide* No. of Abhawani Patrak.

*Betel-nut.*

K. m. srs.

0 0 4 Tikan Sonambi, being S. N. 8, Pot No 1. 20 gunthas is estimated to yield 8 sers of betel-nut, of which the khot's share is one-half, *vide* No. of Abhawani Patrak.

*Receipts.*

0 0 4 Paid for the current year on the 28th May 1886 in person or through 4 sers of betel-nut.

0 0 0 Balance.

*Cocoanuts.*

No

50 Two coconut trees in S. N. 130 are estimated to yield 100 coconuts, of which one-half is the khot's share, *vide* No. of Abhawani Patrak.

0

50 Balance. Fifty coconuts for the current year.

FORM 2 --continued.

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| <i>Til.</i>                                                                                                                                                                                 | <i>Receipts.</i>                                                                                                                      | <i>Harik.</i>                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| K. m. p.                                                                                                                                                                                    | No.                                                                                                                                   | K. m. p.                                                                                                                                                                                          |
| 0 2 9 Tikan Masawatwate, being S. N. 130. Phahi 2, 1 acre and 5 gunthas is estimated to yield six maunds of til, of which one-third is the khot's share, <i>vide</i> No. of Abhawani Patrak | 250 Paid for the current year on the 25th May 1880 in person or through two hundred and fifty jack-fruit.<br>---<br>0 Balance.<br>--- | 0 1 8 Tikan Kawal-taimbi, being S. N. 128, Pot No. 4. 25 gunthas is estimated to yield 4 maunds and 8 pylis of harik, of which one-third is the khot's share, <i>vide</i> No. of Abhawani Patrak. |
| <i>Sugarcane produce (Jaggery).</i>                                                                                                                                                         |                                                                                                                                       |                                                                                                                                                                                                   |
| K. m. srs.                                                                                                                                                                                  |                                                                                                                                       |                                                                                                                                                                                                   |
| 0 1 20 Tikan Kudete, being S. N. 150, Pot No. 2. 20 gunthas is estimated to yield 3 maunds of jaggery, of which one-half is the khot's share, <i>vide</i> No. of Abhawani Patrak.           |                                                                                                                                       |                                                                                                                                                                                                   |

KHAMRANI

| <i>Receipts.</i>                                                                                              | <i>Receipts.</i>                                                                                               | <i>Receipts.</i>                                                                                              |
|---------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| K. m. p.                                                                                                      | K. m. p.                                                                                                       | K. m. p.                                                                                                      |
| 0 2 0 Paid for the current year<br>----- on the 14th March 1880<br>in person or through<br>two maunds of til. | 0 1 0 Paid for the current year<br>----- on the 25th May 1880<br>in person or through<br>one maund of jaggery. | 0 1 0 Paid for the current year<br>----- on the 14th March 1880<br>in person or through<br>one maund of harik |
| 0 0 0 Balance.                                                                                                | 0 0 20 Balance for the current<br>----- year.                                                                  | 0 0 8 Balance.                                                                                                |

## FORM 3

FORM OF RAYAT'S RECEIPT-BOOK.

No of Ledger Account,

Ledger page,

Lakshman-Vishwanath Pettey, inhabitant of Mauze , Tarf , Taluka , Zilla Ratnagiri, for A.D 1879-80.

| Rs. a. p. |                                                                                                                                    | Rs. a. p. |                                                                                                                                 |
|-----------|------------------------------------------------------------------------------------------------------------------------------------|-----------|---------------------------------------------------------------------------------------------------------------------------------|
| 8 2 0     | Amount paid in cash in person or through<br>on the 5th of December 1879.                                                           | 6 8 0     | Balance—                                                                                                                        |
|           | Current year—                                                                                                                      |           | Account due as settled for the current year.                                                                                    |
|           | 7 12 0 Land Revenue.                                                                                                               |           | Assessment on Dhara lands.                                                                                                      |
|           | 0 6 0 Local Fund Cess.                                                                                                             |           | Land Revenue.                                                                                                                   |
|           |                                                                                                                                    |           | Name of Thikan. S.N. Pot Falmi Land. Assess-<br>No. No. ment.                                                                   |
|           |                                                                                                                                    |           | A. g. Rs. a.p.                                                                                                                  |
| 8 2 0     | Rupees eight and annas two only.                                                                                                   |           | Rewa .. 5 2 0 0 10 0 6 0                                                                                                        |
|           | (Signed) GOVIND KESHAV,<br>Khot.                                                                                                   |           | Fanshi 15 8 0 5 2 6 2 0                                                                                                         |
|           |                                                                                                                                    |           | 5 12 6 8 0                                                                                                                      |
| K. m. ps. |                                                                                                                                    | 1 6 6     | Assessment on Daspatha lands.                                                                                                   |
| 0 13 0    | Amount of rent in kind paid in person or<br>through on the 14th March 1880...                                                      |           | Rs. a. p.                                                                                                                       |
|           | Current year—                                                                                                                      |           | 1 4 0 Land Revenue.                                                                                                             |
|           | 0 7 0 Rice in husk at Rs. 35 per khandi. 12 4 0                                                                                    |           | Name of Thikan. S.N. Pot Falmi Land. Assess-<br>No. No. ment.                                                                   |
|           | 0 2 0 Nagli at Rs. 45 per do. 4 8 0                                                                                                |           | A. g. Rs.a.p.                                                                                                                   |
|           | 0 1 0 Wari at Rs. 40 per do. 2 0 0                                                                                                 |           | Ganiche 4 3 0 0 5 0 8 0                                                                                                         |
|           | 0 1 0 Harik                                                                                                                        |           | Shewre 8 2 0 0 10 0 12 0                                                                                                        |
|           | 3 2 0 Oil                                                                                                                          |           | 0 15 1 4 0                                                                                                                      |
|           |                                                                                                                                    |           | 0 2 6 Excess amount of rent fixed at the sur-<br>vey settlement according to Mamul<br>(old) custom in regard to Daspatha lands. |
|           | 18 12 0                                                                                                                            | 1 6 6     |                                                                                                                                 |
| 0 13 0    | Thirteen maunds of grain or three Mds.<br>of grain and the value of ten maunds,<br>viz., rupees eighteen and annas twelve<br>only. |           |                                                                                                                                 |
|           | (Signed) GOVIND KESHAV,<br>Khot.                                                                                                   |           |                                                                                                                                 |

K. m. srs  
0 1 0

Paid for the current year on the 25th May 1880  
250 (No.) jack-fruit in person or through Sugarcane produce (jaggery) in weight in person or through Two hundred and fifty jack-fruits and one maund of jaggery.

(Signed) GOVIND KESHAV,  
Khot.

0 0 1  
0 1 0

Paid for the current year on the 25th May 1880.  
Betel-nut weighing four sers in person or through Kad-dan - Kadwe, one maund. Four sers of betel-nut and one maund of kadwe.

(Signed) GOVIND KESHAV,  
Khot.

K. m. p.  
0 0 1

Remission.  
Amount of rent in kind remitted from the current year's khot's share in rice produce in S. N. 8, Pot No.1, viz, six pails.

(Signed) GOVIND KESHAV,  
Khot.

Rs. a. p.  
1 5 4

Assessment of Didpata lands  
1 5 4 Land Revenue.

|       | S. N. | Pot No. | Fahi No. | Land A. g. | Assessment. |       |
|-------|-------|---------|----------|------------|-------------|-------|
|       |       |         |          |            | Rs.         | a. p. |
| Dand  | 15    | 5       | 0        | 0 10       | 0 12        | 0     |
| Shinu | 20    | 4       | 0        | 0 0        | 0 9         | 0 9 4 |
|       |       |         |          |            | 0 19        | 1 5 4 |

Excess amount of rent in kind fixed at the survey and settlement according to the Mamul [old] custom in regard to Didpata lands.

K. m. p.

0 0 6 Rice in husk at the rate of  
Nagli do. do.  
Wari do. do.  
0 0 6

Local Fund Cess at the rate of one anna for each rupee of assessment on dhara and quasi-dhara lands.

Revenue on account of khoti lands in which this rayat is an occupancy tenant.

| Name of Thikan. | S. N. | Pot No. | Fahi No. | Land A. g. | Assessment. |       |
|-----------------|-------|---------|----------|------------|-------------|-------|
|                 |       |         |          |            | Rs.         | a. p. |
| Sonambi         | 8     | 1       | 0        | 0 30       |             |       |
| Ratambi         | 125   | 6       | 0        | 0 10       |             |       |
| Kawal-taimbi    | 128   | 0       | 4        | 4 9        |             |       |
| Masanwate       | 130   | 0       | 2        | 2 5        |             |       |
| Kamath          | 142   | 3       | 0        | 1 10       |             |       |
| Kudote          | 150   | 2       | 0        | 0 20       |             |       |
|                 |       |         |          |            | 9           | 4     |

*Abstract.*

| Nature of item               | Receipts during the year. |            | Balance at the close of the year. |            | Total.  |
|------------------------------|---------------------------|------------|-----------------------------------|------------|---------|
|                              | Rs.                       | a. p.      | Rs.                               | a. p.      |         |
| <i>In Cash.</i>              | 8                         | 2 0        | 1                                 | 10 11      | 9 12 11 |
| <i>In Kind.</i>              | K. m. ps.                 | K. m. ps.  | K. m. ps.                         | K. m. ps.  |         |
| Rice in husk                 | 0 7 6                     | 0 8 0      | 0 15 6                            |            |         |
| Nagli ...                    | 0 2 0                     | ...        | 0 2 0                             |            |         |
| Wari ...                     | 0 1 0                     | ...        | 0 1 0                             |            |         |
| Harik ...                    | 0 1 0                     | 0 0 8      | 0 1 8                             |            |         |
| Til ...                      | 0 2 0                     | ...        | 0 2 0                             |            |         |
| Kadwe ...                    | 0 1 0                     | ...        | 0 1 0                             |            |         |
| <i>In Weight</i>             | K. m. srs.                | K. m. srs. | K. m. srs.                        | K. m. srs. |         |
| Betel-nut ...                | 0 0 4                     | ...        | 0 0 4                             |            |         |
| Sugarcane produce (jaggery). | 0 1 0                     | 0 0 20     | 0 1 20                            |            |         |
| <i>In Number</i>             | No.                       | No.        | No.                               | No.        |         |
| Jack-fruit...                | 250                       | ...        | 250                               |            |         |
| Cocoanuts...                 | ...                       | 50         | 50                                |            |         |
| Bundles of rice straw        | ...                       | 300        | 360                               |            |         |

(Signed) GOVIND KESHAV,  
Khot.

*Details as to payments due on Khoti lands cultivated during the current year.*

K.m.ps.  
1 2 8 Assessment in kind.

| Name of Thikan.       | S.N. No.      | Pol. No. | Fidni No. | Grain Produce. | Khot's share. |
|-----------------------|---------------|----------|-----------|----------------|---------------|
| <i>Monsoon Crops.</i> |               |          |           | A              | G M p M p.    |
| K.m.ps.               |               |          |           |                |               |
| 0 8 0                 | Rice in husk. |          |           |                |               |
|                       | Ratambi ...   | 125      | 6 0       | 0 10 4 0       | 2 0           |
|                       | Sonambi ...   | 8        | 1 0       | 0 20 12 0      | 6 0           |
|                       |               |          |           | 0 30 16 0      | 8 0           |
| 0 2 0                 | Nagli.        |          |           |                |               |
|                       | Kawal-taimbi  | 128      | 0 4       | 2 0 6 0        | 2 0           |
| 0 1 0                 | Wari.         |          |           |                |               |
|                       | Kawal-taimbi  | 128      | 0 1       | 1 5 3 0        | 1 0           |
| 0 1 8                 | Harik.        |          |           |                |               |
|                       | Kawal-taimbi  | 128      | 0 4       | 0 25 1 8       | 1 8           |
| 0 2 0                 | Til.          |          |           |                |               |
|                       | Masunwate ... | 130      | 0 2       | 1 5 6 0        | 2 0           |

160 bundles of rice straw at the rate of twenty bundles per each maund of rice.

*Fine weather Crops.*

| K.m.ps. | S. N.         | Pot. |     | Candi |       | Kraff |    |
|---------|---------------|------|-----|-------|-------|-------|----|
|         |               | No.  | No. | Per   | share |       |    |
|         |               | A.   | g.  | M.    | p.    | M.    | p. |
| 0 7 0   | Rice in husk. |      |     |       |       |       |    |
|         | Kamathi...    | 142  | 3 0 | 0 25  | 10 0  | 5 0   |    |
|         | Kudete ...    | 150  | 2 0 | 0 20  | 4 0   | 2 0   |    |
|         |               |      |     | 1 5   | 14 0  | 7 0   |    |
|         | Kad-dan.      |      |     |       |       |       |    |
| 0 1 0   | Kadve         |      |     |       |       |       |    |
|         | Kamath        | 142  | 3 0 | 0 25  | 2 0   | 1 0   |    |

----- 110 bundles of rice straw at the rate of  
1 2 8 twenty bundles per each maund of rice.

K. m. srs.  
# 1 21 Assessment in weight,  
K. m. srs.

0 0 1 Half of the produce of betel-nut in  
S. N. 8, Pot No. 1, weighing 8 srs.  
0 1 20 Half of the sugarcane produce (jag-  
gery) in S. N. 150, Pot No. 2, weigh-  
ing 3 maunds.

0 1 21  
No.-----  
300 Fruits,  
No.  
250 Half of the jack-fruit in Gawtan houl  
and S. N. 130, numbering 500.  
50 Half of the coconuts from 2 cocon-  
nut trees in S. N. 130, in all 100 cocon-  
nuts.  
-----  
300  
-----



*Details of Payments due.*

| Nature of item. | Amount   | Nature of item.                         | Amount  |
|-----------------|----------|-----------------------------------------|---------|
| <i>In Cash.</i> | Rs. a.p. | <i>In Weight.</i>                       | K.m. s. |
| Cash ...        | 9 12 11  | Betel-nut ...                           | 0 2 4   |
|                 |          | Sugarcane<br>produce (jag-<br>gery) ... | 0 1 20  |
| <i>In Kind.</i> | K.m.ps   | <i>In Number.</i>                       | No.     |
| Rice in husk.   | 0 15 6   | Jack-fruit..                            | 250     |
| Nagli ...       | 0 2 9    | Cocoanuts...                            | 50      |
| Wari ...        | 0 1 0    | Bundles of<br>rice straw.               | 300     |
| Harik ...       | 0 1 8    |                                         |         |
| Til ...         | 0 2 0    |                                         |         |
| Kadwe ...       | 0 1 0    |                                         |         |

*Explanatory Notes.*

1. When value is paid in lieu of grain assessment, the quantity of grain is to be credited and the value paid is to be shown in the body of the entry.
2. The balance outstanding at the end of the year should be shown in detail for each year.
3. It will be only necessary to give full details of Survey, Pot, and Falni Numbers, acres and assessment once in five years, but in the meantime should any numbers, &c., be deducted or added on, then full particulars showing the additions or deductions to be given.
4. When value is recovered in lieu of grain assessment during the period of attachment of a village by Government, the amount should be shown on the debit side and the quantities of all kinds of grain for which the money is paid should be shown separately in the body of the entry. There is no necessity for showing similar details on the credit side. During the Khot's management remark No. 1 is to be followed.
5. In the case of a pure Khot village or a tenant-at-will, of course, no detail as to Diara, Dasputa, etc. need at all be given.
6. All receipt-books are to be written up as shown in this form, viz, Jama'andi on the debit side and the receipts on the credit side; or, if convenient, Jama'andi may be written in detail first and then receipts immediately below.

FORM 4.

No.

No.



\_\_\_\_\_ is appointed under Section 29 of Bombay Act I of 1880 by the Collector of the District of Ratnagiri to be Managing Khot of the village of \_\_\_\_\_ Taluka \_\_\_\_\_ in the aforesaid District for the revenue year 18

\_\_\_\_\_ is appointed under Section 29 of Bombay Act I of 1880 by the Collector of the District of Ratnagiri to be Managing Khot of the village of \_\_\_\_\_ Taluka \_\_\_\_\_ in the aforesaid District for the revenue year 18

Maulatdar.

Maulatdar.

Date \_\_\_\_\_

Date \_\_\_\_\_

APPENDIX II.\*  
PAHANI KHARDA.

*Siri.*

Pahani Kharda of the Revenue Survey of the lands fit for agricultural purposes in the village Virjoli Prant Ghosle for the year Samn Saban Maya and Alaf 1178 (1778-79 A, D.)

About the field " Mahar Wawade " by name.

For the last year the extent of this land had been under a mistake entered in the description of the " Kak " field ; and in consequence of that in the current year this field has been separately entered. For that reason, now the following account is freshly prepared for this field of " Mahar Wawade ". At the time of the present Survey this field stands entered in the name of the Khot himself, while the present tenant in occupation of the lands is Ramaji Ghosalkar in addition to Gharatkar.

|                                                                                                                                                                                       |                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| The portion of this land that has been now fit to be cultivated consists of $\frac{1}{2}$ Bigha and $3\frac{3}{4}$ Pands being made up of 16 Kathis in length and 11 Kathis in width. | The waste piece of the land abandoned is Nil. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|

The grand total of the whole of this field is that the extent in all is of  $\frac{1}{2}$  Bigha and  $3\frac{3}{4}$  Pands, out of which the waste piece of the land to be deducted is Nil and the remaining portion of the land that is still fit to be cultivated is of  $\frac{1}{2}$  Bigha and  $3\frac{3}{4}$  Pands, while the total quantity of rice that has been now fixed as the assessment for this land is of  $\frac{1}{2}$  Khandi and  $2\frac{1}{2}$  Payalis.

About the field " Bahule "

The extent of this field for the last year was of  $4\frac{1}{2}$  Pands, out of which the portion that was at that time fit to be cultivated was of  $2\frac{1}{4}$  Pands, the fallow ground that had been abandoned being then of  $1\frac{3}{4}$  Pands.

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\* Appendices II to VII are not sanctioned under the Khoti Rules. They are published with a view to give the readers an idea as to how these different Forms are kept. Pahani Kharda used to be kept in the time of the Peishwas. *Vide* p. iii *ante*. Its use is explained by the Rules framed under Sec. 40 clause (b). *Vide* pp. 177-8.

At the time of the present survey this field stands in the name of the Khot himself while his Ardheli tenant in occupation of this land is Navjee Kude, and at the present time the cultivable pieces are as detailed below :—

Bighas Pands.

0  $1\frac{1}{2}$  being made up of 7 Kathis in length and 5 Kathis in width, which make up  $1\frac{1}{4}$  Pands, out of which the stony portion to be deducted is of  $\frac{1}{4}$ th Paud and the remainder is entered here.

0  $1\frac{1}{4}$  being made up of 5 Kathis in length and 5 Kathis in width.

•  


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 0  $2\frac{3}{4}$

The waste piece that has been abandoned now out of this land is of  $1\frac{1}{4}$  Pands, it being the best part now out of the original waste ground.

The grand total in connection with the whole of this land is that the total extent is of  $4\frac{1}{2}$  Pands, out of which the waste piece to be deducted is of  $1\frac{1}{4}$  Pands while the remaining portion of this land that has now been fit to be cultivated is of  $2\frac{3}{4}$  Pands, while the total quantity of husk rice (Bhaut) that has been fixed as the assessment for this land is of 1 Maund and  $2\frac{3}{4}$  Payalis

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APPENDIX III.--KHOTI SETTLEMENT REGISTER.

Botkhat (of) \_\_\_\_\_ Tarf \_\_\_\_\_ Talukar \_\_\_\_\_ District \_\_\_\_\_ 19 \_\_\_\_ A. D.

| NUMBER.        |                |                   | Name of Field. | Tenure, <i>viz.</i> ,<br>Inam, or<br>Khalsa, Dhara<br>or Khoti. | Khata<br>Number. | Share held<br>jointly. | SURVEY ASSESSMENT PAYABLE. |                |                 |                |                 |                |                 |                | Total of assessment<br>Rupees. |
|----------------|----------------|-------------------|----------------|-----------------------------------------------------------------|------------------|------------------------|----------------------------|----------------|-----------------|----------------|-----------------|----------------|-----------------|----------------|--------------------------------|
| Survey Number. |                | Varkas<br>Number. |                |                                                                 |                  |                        | Kharip                     |                | Rabbi.          |                | Bagait.         |                | Varkas.         |                |                                |
| Pot<br>Number. | Akar<br>Rupees |                   |                |                                                                 |                  |                        | Acre<br>Gunthas            | Akar<br>Rupees | Acre<br>Gunthas | Akar<br>Rupees | Acre<br>Gunthas | Akar<br>Rupees | Acre<br>Gunthas | Akar<br>Rupees |                                |
| 1              | 2              | 3                 | 4              | 5                                                               | 6                | 7                      | 8                          | 9              | 10              | 11             | 12              | 13             | 14              | 15             | 16                             |
|                |                |                   |                |                                                                 |                  |                        |                            |                |                 |                |                 |                |                 |                |                                |

APPENDIX IV.—JANGAL-KHARDA

| NUMBER.        |             |                        | Name of Field. | Tenure, <i>etc.</i> ,<br>Inam, or<br>Khalsa, Dhara<br>or Khoti. | Name of (Kul)<br>occupant. | Khata<br>Num-<br>ber. | Share<br>held<br>jointly | ACCORDING TO SURVEY. |      |        |      |         |      |         |      | Total<br>assessment<br>Rupees. |
|----------------|-------------|------------------------|----------------|-----------------------------------------------------------------|----------------------------|-----------------------|--------------------------|----------------------|------|--------|------|---------|------|---------|------|--------------------------------|
| Survey Number. | Pot Number. | Varkas Falmi<br>Number |                |                                                                 |                            |                       |                          | Kharip.              |      | Rabbi. |      | Bagait. |      | Varkas. |      |                                |
|                |             |                        |                |                                                                 |                            |                       |                          | Acre                 | Akar | Acre   | Akar | Acre    | Akar | Acre    | Akar |                                |
| 1              | 2           | 3                      | 4              | 5                                                               | 6                          | 7                     | 8                        | 9                    | 10   | 11     | 12   | 13      | 14   | 15      | 16   | 17                             |
|                |             |                        |                |                                                                 |                            |                       |                          |                      |      |        |      |         |      |         |      |                                |

APPENDIX V.—PAKKA SUD.\*

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Sud of the village \_\_\_\_\_ Tarf \_\_\_\_\_ Taluka \_\_\_\_\_ District \_\_\_\_\_ 19 . A. D.

| Survey Number. | Name of Field. | DETAILS.        |                |             |               |             |                      |                   |                           |                                |                        | Name of Cultivator. |
|----------------|----------------|-----------------|----------------|-------------|---------------|-------------|----------------------|-------------------|---------------------------|--------------------------------|------------------------|---------------------|
|                |                | Inam or Khalsa. | Class of land. | Pot Number. | Falni Number. | Total A. G. | Deduct Kharaba A. G. | Remain- ing A. G. | Fixed assess- ment Rupees | Amount recover- able for Judi. | Deduct Inam Akar Judi. |                     |
| 1              | 2              | 3               | 4              | 5           | 6             | 7           | 8                    | 9                 | 10                        | 11                             | 12                     | 13                  |
|                |                |                 |                |             |               |             |                      |                   |                           |                                |                        |                     |

PAKKA SUD.

\* Two copies of this paper are prepared : one which is kept in the Survey Records is called the Kaccha Sud, the other which is sent to the Taluka for the preparation of the Settlement papers and the village accounts is called the Pakka Sud.

APPENDIX VI.—D. —PATRAN.

Mouze \_\_\_\_\_ Taluka \_\_\_\_\_

Appendix D. classifying the Ryots &c. under Act I of 1865 and Government Resolution No. 2174 of 26th April 1876,

| No. of Khata<br>in<br>Botkhat. | Name of Ryot. | What status<br>does he claim. | Do Khots<br>object. | If they object what is their<br>objection | My decision after<br>enquiry. |
|--------------------------------|---------------|-------------------------------|---------------------|-------------------------------------------|-------------------------------|
| 1                              | 2             | 3                             | 4                   | 5                                         | 6                             |
|                                |               |                               |                     |                                           |                               |



APPENDIX VII.--Appraisement Register of Mouze-----Taluka-----District-----for the year.

| 1              | 2              | 3                    | 4                 | 5                |    | 6                                      | 7                | 8                                       |    |     | 9                         |    |    | 10                    | 11                                                                                      | 12                             | 13                       |
|----------------|----------------|----------------------|-------------------|------------------|----|----------------------------------------|------------------|-----------------------------------------|----|-----|---------------------------|----|----|-----------------------|-----------------------------------------------------------------------------------------|--------------------------------|--------------------------|
|                |                |                      |                   | A.               | G. |                                        |                  | K.                                      | m. | p.  | K.                        | m. | p. |                       |                                                                                         |                                |                          |
| Serial Number. | Survey Number. | Pot or Phani Number. | Name of Thikan.   | Land cultivated. |    | Name of Cultivator and appointed date. | Kind of produce. | Estimated produce (16 pails = 1 maund). |    |     | Thal according to custom. |    |    | Date of appraisement. | Signature of Khot, making the appraisement or any other person making the appraisement. | Signature of two witnesses.    | Signature of Cultivator. |
| 1              | 5              | 2                    | Jambhaliche paut; | 1                | 10 | 1st August 1878                        | Rice             | ...                                     | 19 | ... | ...                       | 9  | 8  | 1st August 1878       | Narayan Krishna                                                                         | 1 Vinayak Daji<br>2 Moro Wamau | Gopal bin Rama Nachara   |

**PROCEEDINGS OF THE LEGISLATIVE COUNCIL.**

**(Bills 3 of 1879, 4 of 1898, 5 of 1898, 6 of 1903  
and 7 of 1911).**

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|                                                                                 |   |                                                      |    |
|---------------------------------------------------------------------------------|---|------------------------------------------------------|----|
| Bill 3 of 1879<br>which was subse-<br>quently passed as<br>Act I of 1880.       | } | I Statement of Objects & Reasons (Bill 3 of 1879)    |    |
|                                                                                 |   | II 1st Reading of                                    | .. |
|                                                                                 |   | III Report of the Select Committee                   | .. |
|                                                                                 |   | IV 2nd and 3rd Reading of                            | .. |
| Bills 4 & 5 of 1898<br>which were subse-<br>quently dropped.                    | } | V Statement of Objects & Reasons (Bill 4 of 1898)    |    |
|                                                                                 |   | VI Statement of Objects & Reasons (Bill 5 of 1898)   |    |
|                                                                                 |   | VII Report of the Select Committee (Bill 4 of 1898)  |    |
| Bill 6 of 1903<br>which was subse-<br>quently passed as<br>Act III of 1904.     | } | VIII Statement of Objects & Reasons (Bill 6 of 1903) |    |
|                                                                                 |   | IX 1st Reading of                                    | .. |
|                                                                                 |   | X Report of the Select Committee                     | .. |
|                                                                                 |   | XI 2nd and 3rd Reading of                            | .. |
| Bill 7 of 1911<br>which was subse-<br>quently passed<br>as Act VIII of<br>1912. | } | XII Statement of Objects & Reasons (Bill 7 of 1911)  |    |
|                                                                                 |   | XIII 1st Reading of                                  | .. |
|                                                                                 |   | XIV Report of the Select Committee                   | .. |
|                                                                                 |   | XV 2nd and 3rd Reading                               | .. |

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## I—STATEMENT OF OBJECTS AND REASONS\*

OF THE BILL 3 OF 1879.

It has long been the desire of Government to effect a satisfactory settlement of the large number of villages in the Ratnagiri District which are held by khots. An attempt to do so was made before the Survey and Settlement Act of 1865 (Bom. Act I of 1865) was passed, but it did not meet with success and it was temporarily postponed. When the above-named Act was before the Council, two sections (Nos. 37 and 38) were inserted in it which, it was hoped, would enable the Survey Officers to surmount the difficulties which the peculiarities of the khoti tenure presented, and renewed orders were given by Government for the carrying on and completion of the settlement.

2. The survey of a large portion of the Ratnagiri District has thus already been completed, and survey settlements have been actually introduced, and are at the present moment in force in several villages in the northern talukas. But in a very large number of cases the proposed settlement proved, for various reasons, unacceptable either to the khots, or to the ryots, or to both, and as the khots refused to hold their villages on the terms of the settlements offered to them, they have been attached, according to the local custom, and managed by Government.

3. In the course of several years, during which repeated endeavours were made to carry out the existing law and to fulfil, by its aid, the wishes of Government, a considerable amount of litigation arose in the local District Court against Government. The result of the suits, so far as they have gone (for many of the more important ones have been postponed and never yet heard on appeal by the High Court), has been in some instances favourable, and in some unfavourable to the Government. But upon the whole it has gradually become evident that the general provisions of the Survey and Settlement Act are unsuited to khoti villages and that Sections 37 and 38 of that Act fail to meet all the difficulties of the case.

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\* For the purposes of ascertaining the intention of the Legislature in passing an Act where that intention, so far as can be gathered from the Act itself, appears doubtful the "objects and reasons" may be referred to. It is not however permissible to refer, for this purpose, to the various forms in which the Bill was brought before the Legislature.

Shaik Moosa c. Shaikh E-sa, 8 Bom. 241. Sargent C. J. and Bayley J.

4. In the end Government appointed a competent Commission to make local inquiries and to report upon the reasons of the want of success of the attempted settlements, and to suggest what remedies could be applied. Government also obtained the opinions of all their officers who had had any experience in the Ratnagiri District, and eventually, after full consideration, a Resolution (No. 2474, dated 24th April) was issued in 1876, finally disposing of all the principal questions at issue and sanctioning terms for future settlements, which whilst they were liberal to the khots yet aimed also at securing the just rights and privileges of the actual occupants of the soil.

5. But the contemplated terms differed so materially from those of an ordinary survey settlement that it was found that it would be necessary to resort to special legislation in order to adopt the Survey and Settlement Act to the proposed new settlements. The first draft of the present Bill was accordingly at once prepared, but before introducing it into the Legislative Council it was deemed expedient to test the suitability of its provisions by tentative settlements to be made under the special direction of the Collector. The experience thus gained appears to the Government to have established both the need for the proposed measure and the likelihood of its leading, if passed into law, to a satisfactory conclusion of the many difficulties with which the revenue administration of the Ratnagiri District has been beset from the time, it may almost be said, when the country first came under British rule. Temporary settlements have been effected by the Collector and his assistants of a large number of villages in accordance with its provisions, and proof that these settlements are giving satisfaction is to be found in the facts that all litigation against Government has ceased, that almost all the pending suits have been either withdrawn, or compromised, and that the relations between the khots and their tenants, and the other holders of land in khoti villages, are reported to be becoming of a much more friendly well-disposed character.

6. In the meantime the Survey and Settlement Act has been included in the repealing schedule of the Bombay Land Revenue Code, 1879, except as regards Sections 37 and 38. But the said Code, to a considerable extent, re-enacts the provisions of the Survey and Settlement Act as part of the general law of the Presidency, so that it is still necessary to pass a special Act to legalize the proposed new settlements of khoti villages and to modify certain portions of the Bombay Land Revenue Code so far as they would apply to such villages. This Bill.

amended by the light of the experience gained in the experimental settlements of the last three years is, therefore, introduced for this purpose.

6th September 1879.

## II—1st READING OF THE BILL 3 OF 1879.\*

The Honourable Mr. Ashburner in moving for leave to introduce a Bill to amend the law relating to the settlement of villages held by Khots said :—For the last sixty years the anxious attention of Government has been directed to the unsatisfactory state of those ryots of the Konkan who pay their revenue to Government through the agency of the Khots. The Konkan may be called the nursery of the Bombay Army, and supplies a very large proportion of its recruits and it is very necessary that it should be kept in a loyal state, and should be deprived of any grievances, whether real or imaginary. In order to understand the relations of the Khots with Government and the ryots, it is necessary to consider their origin and position under the Peishwa. The country was in a very disturbed state, and it was absolutely necessary that there should be in each village of an outlying district like the Konkan an official representative of the Poona Government to collect the revenue and to organize measures of protection against the bands of marauders which infested the rural districts. The Peishwa therefore delegated certain of his powers to Court favourites, usually Brahmins, sometimes by formal *sanaad*, but more often by mere verbal order, to go to a certain village, take measures for its defence and cultivation, protect the ryots, collect the revenue, and remit the money to headquarters at Poona—for this was by far the most important part of their functions. Much valuable time has been wasted in endeavouring to show that *sanaadi* Khots held office on a more favourable and stronger tenure than those who had received no *sanaads*; but the fact is there was no real difference between them. Both held office only during good

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\* For the purposes of construing an Act, the debate upon the Bill when before the Legislative Council is not to be referred to.

Gopal v. Sakhojirao IS Bom. 133. (1893) Sargent C. J. and Bayley J.

conduct, or so long as they gave satisfaction, and were liable to ejection and were frequently ejected, on very frivolous pretexts.... We have never made any distinction between *sanadi*, and non-*sanadi*, *mirasi* or *matindari* Khots, and we do not propose to make any now; all Khots will be treated alike, as hereditary farmers of the revenue with certain defined rights over their subordinate ryots.... So long as land was abundant and the population scanty, the Khots could not oppress their tenants; but as population increased, all the available land was occupied, and the demands of the Khots then became more extortionate. They gradually encroached on the rights of the Darakeris and reduced them to the position of inferior tenants of various denominations as Ardilis, Tirdilis, Daspatkaris, Dopotkaris, and so on, according to the proportion of produce which they paid as rent, while the terms exacted from the inferior tenants left them a bare subsistence.... Many expedients have been devised to protect the tenants from extortion; and if they have not been successful it has not been for want of careful inquiry and research... In 1851, the operation of the Survey had effected great improvements in the condition of the agricultural classes, and the Survey Settlement came to be looked upon as the panacea for all the abuses to which they were liable. Accordingly an experimental Survey was undertaken in a few villages, but it met with so much opposition from the Khots that it was abandoned in 1857 till an Act could be passed giving legal sanction to its operations. It was resumed in 1859, but it failed to satisfy either party, and gave rise to so much litigation and ill-feeling, that it was again suspended. I need not here follow the whole vicissitudes of the Survey; it is sufficient to say matters remained in this unsatisfactory state until Mr. Arthur Crawford was deputed to this district as Collector, two years ago. He, by his tact, ability, and personal influence, has succeeded in effecting a compromise which has given so much satisfaction to all parties that litigation has ceased, and land which has been unsaleable for the last twenty years, owing to uncertainty of title, is now freely bought and sold, and mortgaged at 5 or 6 per cent interest.... The Bill which is now before the Council, will, in the hands of the Select Committee, no doubt, undergo considerable changes in detail, but its principles will, I feel confident, meet with the approval of this Council. Its main provisions are—(1) To confirm the Khots in the hereditary enjoyment of their khoti rights on payment of the amount to be fixed from time to time by the Survey; (2) to secure tenant rights to all who can prove occupation previous to

1845 ; (3) to declare what classes of tenants have a heretible and transferable right to their lands and those who have only a heretible but not a transferable right ; (4) to vest in the Khots the right of creating *daras*, that is, granting the conditions of the Darakeri tenure to inferior tenants ; (5) to provide a procedure for the recovery of rents, and their commutation into cash when payable in kind ; (6) to vest the Settlement Officer with the power to adjudicate in disputes connected with the preparation of survey records ; (7) to fix the rents payable by the Khots and all classes of tenants ; (8) to abolish all irregular cesses, which have been a fruitful source of oppression and dispute ; (9) to confirm past settlements with the option of relinquishing them and accepting the settlement under the present Act. I request the permission with these remarks to introduce the Bill.

6th September 1879.

### III.—REPORT OF THE SELECT COMMITTEE.

BILL No. 3 OF 1879.

The Select Committee appointed to report upon Bill No. 3 of 1879 (a Bill to amend the law relating to the settlement of villages held by khots) have the honour to state that they approve of the Bill as now amended by them.

2. The more important changes made by the Committee are the following :—

- (1) Except the khots of Kolaba there are no persons possessing a tenure similar to that of the khots of Ratnagiri, and the Committee have therefore restricted the application of the latter part of Section 1 to the Kolaba District.
- (2) In Section 3, Clause 7, a more exact definition has been given of the word "quasi-dharekari" by enumerating in a Schedule the different classes of land holders coming under that denomination.

The same Schedule has been used to elucidate Section 34 of the original Bill (Section 33 of the amended Bill) by showing the excess over the Survey rates payable to the khot by each class of quasi-dharekaris.

- (3) Section 5 has been omitted, and its provisions with slight modification embodied in Section 40.
- (4) Two new sections (Sections 41 and 42) have been added to the Bill to provide for the creation and management of Reserved Forests in khoti villages.

3rd October 1879.

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#### IV.—2nd and 3rd READING

##### OF THE BILL 3 OF 1879.

The Honourable Mr. Ashburner in moving the 2nd reading of the Bill No. 3 of 1879, a Bill to amend the law relating to the settlement of villages held by Khots, said:—...One branch of petitioners complain that full proprietary rights have been given to the Khots; the Khots, on the other hand, complain that their rights have been entirely ignored... I will now make some observations on Mr. Vishwanath Narayan Mandlik's objections. Mr. Mandlik objects that "section 4 suggests a wrong theory"—of the proprietary rights of the Khots, I presume. To that I reply that we have to deal, not with theories, but with facts. All the trouble, and confusion, and heart-burning of the last half century has been due to our listening to the "irresponsible chatter," I may call it, of theorists. But I deny that there is any error of principle in the section to which this gentleman refers. Government, throughout the whole of this controversy on the Khoti question, have denied the proprietary title of the Khots, and we are not going to stultify ourselves at the last moment. We have always consistently held that the Khots are mere farmers of the revenue; and I have, on a former occasion, shown that, under the Peishwa's Government, Khots had no proprietary rights, and were very frequently ejected on the most frivolous pretexts. It is quite possible that certain opinions may have been expressed in opposition to this view, but with great respect for some of the officers who have expressed them, I would observe that they are, after all, mere opinions, and have never been accepted by Government. The fact is that we have now arrived at a contrary conclusion, and it has been generally accepted by both ryots and Khots. The history of the Khoti controversy may be described as a struggle on the part of the Khots to secure full proprietary rights, and a persistent rejection of such claim



by Government. It is a relinquishment of this claim on the part of the Khots which has enabled us to introduce the present Bill with the approval of all parties. The next objection

\* But the right of further transfer of such land otherwise than by inheritance shall absolutely cease.

taken by Mr. Mandlik is to Section 7. He objects to the words quoted in the margin\* being omitted, but he suppresses the fact that

many of the holders whom he seeks to deprive of the right of transferring their superior holdings, derive their rights from a period long prior to the arrival of the Khots from the Court of the Peishwa to manage and farm the revenue of the village. Many of them are the descendants of the original settlers in the village. If any class has a proprietary right it is the actual cultivator of the soil, and it is these humble tenants whose rights have been gradually encroached upon by the Khots. The very language of the definition, which Mr. Mandlik objects to, shows that he seeks to deprive the occupancy tenant of a right which he has always enjoyed. The words are that the *further* transfer of such lands shall cease. Why should we deprive them of the few rights which remain to them from the encroachments of the more powerful Khots? The next objection is to section 8. He objects to the limitation of the power of the Khots to take a maximum rent from privileged occupants. In other words, he seeks to deprive the privileged occupants of their privileges. Why should this be? The best answer to this is that the Khots as a body have willingly accepted this limitation, and that to relinquish the right to fix a maximum rent now would be virtually admitting the proprietary rights of the Khots to their villages, which Government have so persistently rejected. With regard to section 11. Mr. Mandlik seeks to deprive Government of its claims against the privileged occupants on a lapse by failure of heirs; that is to say, that if a tenant dies without having paid his rent for the season Government is to submit to the loss, and the land is to revert to the Khot free of the debt. That is most unreasonable, and will hardly meet with the approval of this Council. With regard to section 12. Mr. Mandlik demands unlimited power to destroy the forests of the Konkan. Really, to look at the almost irreparable injury that has been done to the forests, one would almost suppose that the Khots had actually enjoyed this right; for, owing to the neglect of our officials, they have been allowed to cut almost indiscriminately, but it is time to put a stop to this mischief. The High Court long ago had ruled that even an Inamdar has no proprietary rights to the forest unless they are

expressly conveyed to him in his *sanacl*, and if an Inamdar has no forests, *a fortiori* a mere farmer of the revenue has none. However, we have, as a compromise, and on certain conditions granted the Khots one-third of the revenue derived from forests, but not a proprietary rights in them. The rest of the objections are unimportant, and do not appear to me to call for any comment. They all presuppose the right of the Khot as the proprietor of these villages, and that is a point we have resisted to the utmost. The whole principle of the Bill is that the Khot is not a proprietor; the object is to give him certain limited proprietary rights, and nothing more, and we define the rights of the ryots and the sub-tenants. If we once concede the proprietary principle, then we may listen to Mr. Mandlik; but as we intend to stick to our own principle, I think we may reject all further consideration of his objections.

The Honourable Morarjee Goculdas :—It is now a well-known fact that the application of the Survey Act of 1865 to a district where a tenure different from the Ryotwari tenure prevailed, created the evils which this Bill now seeks to remedy, and I congratulate your Excellency's Government on being able to effect a compromise between the Government on the one hand and the Khots and the tenants on the other. Before stating my opinions on the Bill, I will crave your Excellency's permission to remove some of the erroneous impressions which the Hon'ble Mr. Ashburner's speech on the first introduction of the Bill into the Council was calculated to create. Unfortunately certain unavoidable circumstances prevented me from being present at that meeting. The Honourable Member spoke at the time as if the Khots were no more than intruders, and had no business to contend for their rights. The history of this Khoti question itself does not bear out this statement. For Government have not only made many searching enquiries into the rights of the Khots, and found those rights to be valid, but the *sanacls* granted to the Khots, not only by the earlier rulers, but by the East India Company through the Government of Bombay themselves, are conclusive proofs that the Khots are not intruders. It was also stated by the Hon'ble Mover that the Khots were at first generally Brahmins, who being the favourites of the Peishwa's court were thrust upon the cultivators of the Konkan. The fact, however, is that the Khots existed previous to the times of the Peishwas and some of them hold *sanacls* granted by the Bijapur Kings and were never all Brahmins—as even at this day we find Gajars, Purbhus, Mahomelans, Kolis, Bhandaris, and even as I am informed, one or two Mahars

amongst the number. Then, again, if the Khots were merely the favourites of the Peishwas, how is it that the Khoti estates in the Konkan were in their time so heavily assessed, that even the present Government has found it, in many cases, difficult to raise those assessments? And how is it that we find very few alienations in those estates? If they were given to their favourites by the Peishwas as the caprice of favoritism induced them, surely the estates could not have remained in the same families for a long time, but would have been granted and re-taken at pleasure. All this is, I think, enough to show that the Khots obtained their rights legitimately. To come to the Bill, I am of opinion that the Khots are entitled to be treated as owners of their villages subject to the just and equitable rights of the tenants or actual cultivators of the soil under them. I understand it is the recognition of this ownership of the Khots which the present Bill has for its object. Considering the matter from the above point of view, I feel bound to say that the Bill in some of its features appears to me objectionable. I think that as between the Government and the Khot, the latter is entitled to the full enjoyment of his ownership, subject to the right of the Government to levy such assessment as the custom of the country and the just requirements of the State sanction. I am sorry to observe that some of the provisions of the Bill, if passed into law, will have the effect of depriving the Khots of some of the most material privileges of ownership. The first point to which I beg to call attention is that contained in section 4, which lays a Khot's estate open to so many risks and uncertainties that it would be difficult to say that the Bill, if passed into law, would finally put an end to the differences between the Khots and Government which have so long prevailed and have led to so much litigation. The restrictions with which the said section fetters a Khot's estate are so numerous that it is difficult to conceive whether the Government is all disposed to recognize any rights of property in favour of the Khots. Nor can I find any justification for section 15, which compels a Khot to keep accounts and produce them when required. Sections 16 and 17, to which I do not object, provide for all reasonable safeguards. I submit, therefore, that section 15 is not only inconsistent with what has been hitherto the practice, and with the Khots' rights of ownership, but will expose them to unnecessary vexation and annoyance on the part of subordinate revenue officers. Then, again, section 39 of the Bill indicates that most of the sections of the Revenue Code which apply to the Government lands, are sought to be made applicable to the estates of the Khots—the result of which will be to reduce them

to the position of an ordinary tenant under Government. Another noteworthy feature of the Bill is the introduction of provisions for the appointment of a Managing Khot, as in sections 26 to 31. There is no occasion for appointing a Managing Khot, as unlike the village patel, he has not any other responsibilities except that of paying the assessment, and he is the owner of his *watan* and not a mere officer of Government. If the Khot sharers cannot agree to a nomination from among their own body, the village should, as at present, be placed under attachment. The holding of a certificate for a Managing Khot derogates from his superior rights as a proprietor, and it will be enough if a *takid* is given to the village by the Mamlatdar, mentioning the name of the Khot to whom Government looks for the payment of the *jamat*. Besides this, no inconvenience has been proved to have been hitherto caused from the absence of any such system of nomination, and the only result of introducing such a novel practice will be to disturb the harmony which exists among the different members of a Khot's family, and lead to litigation. In regard to forests, I think, the Khot should be considered as owner of all the forest growing in his village; otherwise the Government would, in the eyes of the people, be guilty of a breach of faith. It will be recollected that in the year 1824 the Government were pleased to issue a Proclamation renouncing all their rights if they had any, over private forests in the Konkan; and I think it would not be fair and just to sanction any departure from the promise held out in the said Proclamation. And by a despatch of 5th August 1869, the Duke of Argyll, then Secretary of State, directed that the promise or engagement contained in the Proclamation should be adhered to. Now, I submit, whether it would not be improper if the Government were to violate its own engagement after having pledged itself to it and after the assurance given by the Secretary of State that it should be adhered to? If uncultivated lands are really required for the growth of forests, then the best course, I think, would be to call upon the owners of those lands to grow forests on them, or to take the lands under the Land Acquisition Act and fairly compensate the owners. When such courses are available I think it unjust to embody a provision in this Bill, which allows Government to take the uncultivated land of a Khot and reserve it for forests. The Bill appears to me to contain certain provisions which are calculated to work to the detriment of the Khots. In the first place, the rights of the Khots to take rent from tenants are restricted, while the rights of the Government to increase

the *jama* or assessment payable by the Khots are not restricted. This, I venture to think, places the Khots in an uncertain position, and it would be doing a bare act of justice to them to add some provision in the Bill which will place the rights of Government to increase the amount of the *jama* payable by the Khot within certain limits. I do not see any reason why the general principle which Government has always followed should not be expressly laid down in this Bill, as that will minimise the uncertainty of the Khots' liabilities and set some reasonable bounds to the exercise of discretion which it is found expedient to give to the revenue officers. The right of Government to assess lands is not without limits. Bombay Act I. of 1865, section 25, recognized this. The power to assess was by that section made subject to general and local rules. This principle has been recognized by the High Court in the case of Parshotam Keshavdas against Kalayan, reported at page 348, Indian Law Reports, Bombay Series, Volume 3.

The Hon'ble Mr. Ravenscroft :—I entirely concur in the principle of this Bill...My friend Mr. Morarjee is apparently under the erroneous impression that some of the sections of this Bill will infringe a promise which has been, at some time or other, made, either by the local Government or the Secretary of State for India ; but I am quite sure this is an erroneous impression. The Bill sacrifices no promise that has ever been made by the local Government or by the Secretary of State ; and I have no hesitation in saying that not only the Khots but their tenants will, when this Bill is passed, be in a position of comfort and security which they never have enjoyed, and which they have no idea that they could enjoy. This is shown by the report which Mr. Crawford, the energetic Commissioner of the Southern Division, has placed before us. The fact that the Khots and tenants of so many villages have voluntarily petitioned that the guarantee, which is supposed to be a great advantage to them, should be cancelled, and that they should be allowed to enjoy the privileges which will be conferred by this Bill is, I think, one of the strongest proofs we can have that the Bill is a good one.

The Bill was then read a second time, and the Council proceeded to consider it in detail.

With regard to section 1, the Honourable the Acting Advocate-General said he observed that power was given to the Governor in Council to extend the working of the Act to the Kolaba District only, the Select Committee believing that there were no Khot villages in other Districts.

From matters that had come before him in a private capacity, he had reason to believe there might be such villages in the Thana District.

The Hon'ble Mr. Ashburner explained that the Select Committee had thoroughly investigated this point and finally decided that the Bill, as it stood, was sufficient. It was only in the Kolaba District that the particular class of Khots to whom the Act was intended to apply, were to be found.

His Excellency the President :—I understand there are Khots in the Thana District, but they are Khots of a different character....

The Hon'ble Mr. Ashburner :—The Salsett Khots objected to the Act being extended to them, because they stood on a different footing. It was on that account the power to extend the Act was limited....

The section was then passed as drafted.

With regard to section 3, para 5, the Hon'ble Mr. Mowat said the ryots asked in their memorial that instead of the words "occupancy tenants" the words "permanent occupants" should be used.

The Hon'ble Mr. Ashburner explained that the term "occupancy tenant" was advisedly used in the Bill after due consideration. The word was found in the Revenue Code, and had a peculiar meaning of its own, which was there defined, and could not be altered without creating the greatest confusion. The Marathi version of the term was Watandari Kul, which was thoroughly understood. To change that now would create great confusion, and, as far as he could learn, the petitioners had not given any good reason why the change should be made. The term used in the Bill was accepted throughout the whole revenue legislation of the country.

The Hon'ble Mr. Mowat :—After hearing the Honourable Member's explanation I am quite willing that the words should stand as they are.

The Hon'ble Morarjee Goeklass moved that for section 4, as drafted, the following should be substituted :—“ All Khoti holdings are liable to the payment of land revenue, assessed under such general and local rules as may be in force, and due on account of the *jama* of the same, according to the provisions of this Act and of the Bombay Land Revenue Code, 1879, and of any rule for the time being in force made under this Act or under the said Code ”.

His Excellency the President remarked that the proposal really amounted to the omission of the last part of the section as drafted—

“and subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure”—which he thought was a very proper provision.

The Hon'ble Mr. Morarjee Goculdass said “lawfully” was a very broad term, and might mean anything.

The Honourable the Acting Advocate-General said it meant according to the law as it existed at present, or as it might be modified hereafter by the Legislature.

His Excellency the President said the amendment proposed a restriction. It might turn out that there would be some liability which would be lawful but for this restriction, and which would be a perfectly proper liability. He thought the wording of the section adopted by the Select Committee was eminently safe. It was safe as affecting the rights of all parties, because the word “lawfully” was used, which he thought was about the safest term that could be adopted.

The amendment was lost.

The Hon'ble Morarjee Goculdass moved that for section 25 the following be substituted :—“The Khot shall give a written receipt for every plying of rent or land revenue made to him, whether by a privileged occupant or tenant, or by a co-sharer in his Khoti. For any infraction of the provision of this section the Khot shall, on conviction before the Collector or the Assistant or Deputy Collector in charge of the Taluk in which such Khoti village is situated, be liable to a fine not exceeding double the sum for which the receipt was refused”.

His Excellency the President said the meaning of this amendment was to absolve the Khot from the duty of keeping and producing accounts.

The Hon'ble Mr. Ashburner :—To that I reply that these provisions have been very carefully considered by the Select Committee, and they follow logically from the position which we assign to the Khot throughout this Bill. He is in fact a Government officer, collecting the Government revenue, and he must not only give receipts but keep accounts and produce them when called upon. One of the greatest difficulties in settling disputes between landlord and tenant is the power which the landlord sometimes enjoys of withholding accounts and declaring that there is no written record of the transaction between them. It is with a view of obviating the difficulty that we have carefully introduced the provisions as to accounts. It is moreover, in accordance with

the arrangements already in vogue amongst the Khots of the Konkan, and it is quite hypercritical to object to it now.

The Honourable the Acting Advocate-General :—Section 15 is not introduced so much for the benefit of Government as for the benefit of the inferior holders.

His Excellency the President :—Certainly.

The Hon'ble Mr. Mowat :—I think, looking at the number of disputes that have already taken place, it is highly desirable that a system of accounts should be kept.

The amendment was then put to the vote and lost.

In the marginal note and in line 13 of section 18, the word "respective" was substituted for the word "mutual".

When section 21 was reached the Honourable the Acting Advocate-General remarked that he had some difficulty in understanding it in relation to section 17. It did not seem quite clear whether the Court would be able to interfere or not, but was open to argument; and he thought it might be as well that the conclusion arrived at by the Select Committee should be clearly defined.

The Hon'ble Mr. Ashburner said he should be glad to accept any amendment the Honourable Acting Advocate-General could suggest with that view.

On the motion of the Honourable the Acting Advocate-General it was accordingly resolved that section 17 should be amended by the introduction of the words "and final," so that the latter portion of the section will read—"and any entry in any record duly made under this section shall be conclusive *and final* evidence of the liability thereby established".

The Hon'ble Mr. Mowat asked if it was not necessary to define what was a "competent court".

The Hon'ble Mr. Ashburner said that was a legal phrase meant to indicate the ordinary courts of the district.

The Hon'ble Mr. Morarjee Goculdass moved that sections 26 to 31 should be omitted. He said the appointment of a co-sharer to act as manager of an estate would create ill-feeling and confusion. A better plan, he considered, would be for Government to place estates requiring the appointment of a manager under attachment.



The Hon'ble Mr. Ashburner,--These sections appear to be indispensably necessary for the administration of the village. Take sec. 26. If the sharers refuse or fail to appoint a manager, surely it is the part of Government to do so. It is absolutely necessary that there should be managers; and how they are to be nominated is prescribed in sec. 27. This mode of selecting a manager is nothing new, but is the present custom of the villages throughout the Konkan... If we had taken power to attach villages on every trifling dispute between the co-sharers we should have deservedly laid ourselves open to the charge of harshness.

The Hon'ble Mr. Morarjee Goculdass :—I understand the custom has been to place estates under attachment. Why should you say you will appoint so and so?

The Hon'ble Mr. Ashburner :—We cannot leave a village without a head; you must have a manager, and this is the way the managers are appointed at present. I hardly think these sections require any elaborate defence; their advantage appears so very obvious that they hardly call for any remark.

The Hon'ble Mr. Ravenscroft :—I object to the amendment. There must be one man appointed who shall be responsible. These sections are really in the interests both of the Khots and their tenants. Instead of allowing villages to slide into confusion, which would be the result of adopting the Hon'ble Mr. Morarjee's amendment, we have definite men to keep the villages and the sub-tenants' holding under the Khots in order, and to prevent what it is the main object of this Bill to prevent confusion and uncertainty.

His Excellency the President said that, for the Collector to have to attach an estate and enter into the management of it, might be necessary perhaps some times, but it was rather a harsh and perhaps a violent measure. He considered that the form of appointment contemplated by the Bill was a much milder and more merciful procedure.

The amendment was lost.

Section 26 was altered by striking out the word "himself" in the 16th line and the words "if he thinks fit, may", in the 17th and 18th lines.

The Hon'ble Mr. Morarjee Goculdass moved that section 41 should be amended by the substitution of the word "take" for "constitute" in the 8th line, the insertion of "under the Land Acquisition Act" after the word "extends" in the 9th line, and the omission of the last

words of the section as drafted, "or may hereafter be extended a reserved forest;" and also that, in event of this amendment being carried, clauses 1 and 2 of section 42 should be omitted.

The Hon'ble Mr. Ashburner said the adoption of this amendment would be a concession of the principle that the forests were the property of the Khots instead of Government. It proposed that Government should take up and pay for land which belonged to them already, and we entirely objected to such an arrangement. Government had always held that the forests were the property of the state, and that view of the case had been supported by innumerable decisions in the Courts of Law.

His Excellency the President :—I believe the contention of the Hon'ble Mover is this, that grants made by former Native Governments to these Khots included only the cultivated land—either land then under cultivation or which had been tilled within some reasonable time and was therefore likely to be taken up for cultivation again—and that the said grants did not extend to forest land. This question has been brought repeatedly before the Civil Courts and afterwards by appeal before the High Court, and has been decided in favour of Government. Therefore, it is contended that this section is founded on a principle which has been thoroughly discussed, and has been decided finally.

The Hon'ble Mr. Morarjee Goeldass called attention to the Dunlop Proclamation of 1824.

His Excellency the President :—I should like to explain; before the Dunlop Proclamation it was held that all trees on even the cultivated land of the ryot belonged to Government; no man could touch a tree on his field, or on the waste ground adjoining the fields, without permission, which was given only under certain circumstances. Mr. Dunlop, either with or without the permission of Government issued a proclamation, whereby the ryots were to have the right of cutting trees on their own land, that is to say on their own cultivated or recently cultivated land. And that proclamation has been steadily recognized; it has never been reversed. But that proclamation applied only to land held by the ryots; never applied to waste lands. I don't suppose that this section is of any extreme importance, because the right over forests pertains to Government under the new Forest Act. This section is in accordance with the Indian Forest Act, and it is as well to have it in the present Bill; it is perfectly unobjectionable. Even

if it is not inserted here, Government will constitute a reserved forest under the Forest Act. A Khot might bring a suit to defend his supposed rights, which would be disputed by the Collector, and the decision, no doubt, would be in accordance with the decisions already passed. The Counsel for the Crown would immediately refer the Court to previous decisions.

The amendment was lost.

The Honourable the Acting Advocate-General asked how sec. 41 would affect the holders of sanads.

The Hon'ble Mr. Ashburner :—Claims made under a sanad would have to be decided according to the language of the sanad.

The Hon'ble the Acting Advocate-General :—I apprehend it is not intended in this section to override sanads.

The Hon'ble Mr. Ashburner :—No, we cannot interfere with the wording of the sanads.

The Honourable the Acting Advocate-General proposed that the following words should be added to the section :—“ But nothing in this section contained shall derogate from any rights conferred by any sanad, or other grant, made by any lawful authority ”.

The amendment was accepted.

With regard to the “ explanation ” appended to section 41, the Honourable the Acting Advocate-General said that at present, and for years to come, the definition as drafted was all that would be required; but supposing the Act remained in force till, say, the year 1900, many changes would have occurred, some land would have come into cultivation and some gone out of it. He suggested that it would be well to fix the period at “ 40 years next before the order constituting such reserved forest,” instead of “ before the 1st June 1879 ”.

The Hon'ble Mr. Ashburner said the intention was to settle now, and once for all, what were to be forests and what were not to be forests. One object of the present wording of the Explanation Clause was to prevent the provision of this section being frustrated by the ryots at once cultivating *warkas* land.

The Honourable the Acting Advocate-General suggested that the following words might be added to the clause : “ or the date of the order constituting such reserved forest ”.

The addition was made accordingly.

The Schedule was amended, on the motion of the Hon'ble Mover, by the insertion, after the words "for every rupee", of the words "and proportionately for every fraction of a rupee".

On the motion of the Hon'ble Mover it was resolved to amend section 40 by the insertion, after the word "village" in the 18th line, of the words "or such rights or privileges in respect of any *warkas* land, or both a portion of the entire *warkas* land and such rights or privileges in respect of any other such land".

The Bill was then read a third time and passed.

6th January 1880,

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## V—STATEMENT OF OBJECTS AND REASONS.

(Bill No. 4 of 1888).<sup>\*</sup>

The object of this Bill is to put an end, if possible, and with as little modification of the existing law as may be, to the difficulties which have arisen under the Khoti Settlement Act, 1880, in connection with the determination and the recovery of rents payable by occupancy-tenants.

2. An entry once made under section 17 of the Act is not only final and conclusive so as to shut out any other evidence that might be brought or adduced before a Civil Court, (*Gopal v. Sakhojirao* 18 Bom. 134) but cannot, it would seem, be cancelled or altered until the next settlement.

3. Thus, in some cases rents settled by agreement or by custom prior to the introduction of a settlement have proved smaller in amount than the assessment subsequently made recoverable from the khot.

4. In order to render an equitable re-adjustment possible in such cases, it is necessary to amend both section 17 and clause (c) of sec. 28 of the Act so as to admit of the necessary revision of the record after due enquiry made in each case.

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\* This Bill was subsequently withdrawn. (Ibid. p. xi. a. c.)

5. Section 9 of the Bill will validate such revision when effected under the powers to be conferred by section 5 of the Bill amending clause (c) of section 33 of the Act.

6. Further amendments are, however, necessary to render more simple and more certain both the ascertainment and the recovery of rents payable by occupancy tenants.

7. The effect of the Act has been to discourage agreements and rents payable in fixed amounts, even where they had previously been customary.

8. For section 33 (c), in accordance with which entries in the survey record must be made under section 17, leaves no alternative in the absence of an agreement but to declare a crop-share payable as the rent of an occupancy-tenant.

9. Rents based on crop-shares necessitate inspection and appraisal, for the regulation of which section 40 (a) empowers the Governor in Council to frame rules.

10. It has however been found most difficult to frame rules for this purpose sufficiently exhaustive and at the same time entirely free from complexity.

And it is almost impossible to carry out, in the scattered areas and in the brief season available for the purpose, any inspection that would prevent disputes and litigation as to the facts alleged to have been thereby ascertained.

11. It has therefore been considered that disputed claims for a share in a crop should no longer be recoverable by summary process under the Bombay Land Revenue Code, 1879.

Section 3 of the Bill accordingly substitutes for the recovery of such disputable amounts a right to assistance for the recovery in those cases of an amount which shall not exceed twice the assessment fixed on the land in respect of which a claim is made.

12. In order to remove all doubt as to the delegation by Managing khots of their duties and powers (under sections 15 and 31 respectively) to duly appointed agents, it is proposed to insert a new section in the Act (as section 31A) by section 4 of the Bill.

13. This section will render unnecessary clause (a) of section 40 of the Act which it is proposed therefore in section of the Bill to repeal.

14. The special encouragement afforded to rents on the crop-share system having thus been removed, section 5 of the Bill is drafted with the express object of giving every possible facility for the entry at any time of agreements for rents payable in fixed amounts whether of money, produce, or both.

The section however as drafted will require that after a settlement has been introduced the consent of the parties to a modification of the rent should be placed beyond doubt by their personal appearance before the officer making the entry.

15. In section 5 provision is also made for the entry in the record of rents payable as fixed amounts in accordance with the general custom of a holding though there may be no agreement to that effect.

16. Further provision is made in the section for the correction of clerical errors, for the decision and entry of customary rents omitted at the time of settlement, and what is more important, for increase or decrease within certain limits of the rent in cases in which it is, owing to a fall in the market rate of produce or other causes, below, or owing to remissions for dilution and the like disproportionately above, the assessment recoverable.

17. Section 7 of the Bill is intended to remove all questions as to certain technical difficulties arising from the wording of section 42 of the Act in rendering the Indian Forest Act, 1878, applicable to waste land in a khoti village.

30th November 1898.

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## VI—STATEMENT OF OBJECTS AND REASONS.

(Bill No. 5 of 1898)

The object of this Bill is to meet a difficulty which has arisen under the following circumstances.

The Khoti Settlement Act (Bombay Act I of 1880) was passed with a view once for all to settle the rights of the Khots and the tenants about which there existed many disputes and uncertainties. Under

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\* This Bill was introduced by Mr. Daji Abaji Khare, but it was subsequently withdrawn.

that Act an officer called the Khoti Settlement Officer was created, whose duty it was to specify under Part 3 the tenure on which a survey number is held, and the nature and amount of rent payable to the Khot by each privileged occupant. Under Secs. 17 and 21 of the Act these specifications and decisions of the Settlement Officer are final. Some of them only, *i. e.* those made under Sec. 16, can be set aside by a Civil Court. No superior Revenue Officer, nor the Bombay Government itself can interfere with any of them. As is well-known the Khot pays the assessment of the village out of the rents he receives from the tenants and the balance is his profit.

However, in 1890-93 there was a survey, and in the Devgad Taluka the assessment was raised far in excess of the original. At the same time the Khoti Settlement Officer fixed the rents which remained at the old figure, and in some instances were reduced. The result was that the Khots were called on to pay to Government larger sums by way of assessments than the amount of the rents they were adjudged to receive, and since that time they have been obliged to either hold their villages at a loss or to give them up. These Khots petitioned the Government. In reply the Government stated that it was true that the combined effect of the new rates and the fixing of the rents by the Khoti Settlement Officer was to make the holding of a khoti village a source of loss in some instances to the khots; but the law as it stood gave them no power to interfere.

This Bill is designed to supply this desideratum without disturbing any of the substantial features of the Khoti Act. It provides for retrospective action, because unless it dealt with the settlements in Devgad Taluka, the grievances at present existing could not be removed. The Bill also contains provisions which would obviate the possibility of such difficulties arising in the future.

The Bill also contains a provision for making the specifications and the decisions of the Settlement Officer public, so that the parties concerned may come to know about them within a reasonable time.

*12th December 1898.*

## VII—REPORT OF THE SELECT COMMITTEE.

## BILL No. IV OF 1898.\*

We have carefully considered the Bill and have obtained valuable information and opinions from a large number of Government Officers and private gentlemen conversant with the subject

We submit our recommendations in the form of the Bill as amended by us.

2. The most essential feature of the amended Bill is the abolition of crop-shares and the annual appraisements and the substitution of rents fixed on a simple and equitable principle.

3. Statistics show that on the average and making due allowance for fallows, the value of the crop of a field is equivalent to six times the assessment on that field or in other words the assessment represents as a rule a sixth part of the value of the produce.

On this basis we have proceeded to substitute for the variable rents hitherto payable in the form of a share of the crop, rents payable in cash, the amounts of which will bear to the sum six times the assessment, the same proportion which the crop-share bore to the gross annual produce.

Thus a tenant who is now liable to pay as rent half of the crop as estimated by annual appraisalment, would under our proposal, pay rent amounting to three times the assessment.

Clause 10 of the Bill as amended contains a new section (33A); by sub-section (4) of which effect would be given to this proposal.

The adoption of this principle would remove all occasions for disputes as to the necessity for land lying fallow and thus admit of the repeal of section 14 of the Act as proposed in clause 2 of the Amended Bill.

We consider that it is desirable that rents should be ordinarily payable in cash, and provide accordingly in the Bill as amended Sec. 33A, but in case the tenant should prefer to make payment wholly or partly in kind, we have inserted (as sub-section (2) and (3) of the new Section 33(A) provisions which would reserve to the tenant the option, on due notice given of making payment in kind at such commutation rate as the Collector may determine.

\* Vide footnote at p. 231 ante.



This proposal, we have ascertained from the Secretary of the Khots' Association (Mr. Dodas) would meet with the approval of the Khots.

4. In clauses 3 and 4 we would provide that the entries made in the Survey Record should be final and conclusive evidence on questions of tenure, and the nature and amount of rent payable. The right of appeal to the Governor in Council should however, we consider, be given to persons dissatisfied with any such entry made by a Recording Officer, and we also propose that proceedings pending at the date when these provisions come into force should be unaffected thereby.

5. In clause 5 we propose that the Collector's nomination or selection of a Managing Khot should be final for the year for which it is made, and thus avoid the uncertainty, confusion and loss which have in practice occasionally arisen from the cancellation of such orders in appeal.

6. Clause 8 is intended to remove all doubt as to the extent to which, and the manner in which, a Managing Khot should be permitted to delegate his power and responsibilities in connection with the collection and recovery of rents. We do not propose that he should be authorised to appoint an agent with power to make agreements with tenants as to rent.

7. In clause 9, which contains the rules by which Recording Officers are to be guided in making entries in the Survey Record, we propose an addition to Rule II which would give express power to decide whether in any case land is to be held rent-free, and this power, we consider, should be supplemented by provisions which we have embodied in paragraph (5) of Rule V, which would enable the Recording Officer to withdraw the privilege of total or partial exemption where it is claimed in consideration of services that are no longer performed.

8. In Rule IV, to the first paragraph of which we have added a direction as to the principle on which crop-shares should be calculated, we have also attached provisos limiting the proportions payable in respect of Varkas land as well as rice land and fruit trees, and in the case of Varkas entered in existing records as held for the purpose of rabbit manure, the assessment payable is proposed as the limit of the rent.

9. As indicated in paragraph (2) of Rule V, we consider that though power should be given to correct clerical errors in any entry, no such correction should be made without due notice to the parties.

10. In paragraph (4) of the same Rule, we have considered the minimum rent which should be claimable by the Khot in all cases where the land is not held rent-free, and propose that the rent should be enhanceable 25 per cent in excess of the assessment when it is below the amount. The limit (12½ per cent) as proposed in the Bill as introduced we have after full discussion deemed insufficient.

11. In paragraph 7 of the same Rule authorising the Recording Officer to cancel entries made by mistake, or obtained by fraud, misrepresentation or other offence we insert the condition that the parties should first be given an opportunity of hearing.

12. Rule VI of the original Bill would have required that in order to restrict the Managing Khot's power in making agreements with tenants, a proportion representing not less than one-half of the entire interested khotki sharers should enter a protest not later than the date when the Managing Khot is nominated.

This we consider affords insufficient protection to a dissentient minority against the possibility of collusive agreements by the Khot to their disadvantage. We, therefore, propose to extend the right of veto by enabling sharers who represent three-eighths of the total interests of the Khotki, to restrict, prospectively, the Managing Khot's power in this respect by entering a protest at any time during his tenure of office.

### VIII—STATEMENT OF OBJECTS AND REASONS.

(BILL NO. 6 OF 1903).

In 1893 a Bill (No. 4 of 1893) was introduced in the Legislative Council of the Government of Bombay with the object of remedying defects in the Khoti Settlement Act 1880. The foremost among these defects was the fact that in some cases rents settled by agreement or custom proved smaller in amount than the Government assessment subsequently made recoverable from the Khot. Much of the trouble with the Khoti tenures in Ratnagiri has been attributed to disputes about the appraisement of crop-share (produce) rent and the Bill gave facilities for commuting produce-rents into cash-rents, while it laid down that the rents recoverable from the occupancy-tenant should not exceed *twice* the Government assessment fixed on the land in respect of which rent was due. The Bill was read for the first time in the Council and was referred to a Select Committee, who revised some of its provisions.

2. The Bill, as revised by the Select Committee practically made the commutation of produce-rents into cash-rents compulsory. It further directed that for the purpose of reckoning the cash value of a produce-rent the annual produce of any land should be assumed to be six times the Government assessment thereon. It omitted the provision contained in the original Bill which limited an occupancy-tenant's rent to twice the Government assessment.

3. The Secretary of State, however, expressed some doubts in respect to certain provisions of the Bill as revised by the Select Committee and called for further information. In reply the Secretary of State was informed that this Government on reconsideration preferred to make the substitution of a fixed rent dependent on application from a tenant, and were inclined to think that it should not be imperative to fix a rent of three multiples of the assessment for a half crop-share and two multiples for a third crop-share, but that that should be prescribed as a standard which should be adopted in the absence of sufficient reasons being shown to the contrary. As these changes modified in material respects the Bill as revised by the Select Committee, the Secretary of State directed that it should be withdrawn and a fresh Bill prepared. The present Bill is introduced to give effect to these changes. Power has been taken to enhance recorded rents up to such limit as will allow the Khot, after he has defrayed the assessment together with Local Fund Cess, a profit of twenty five *per cent.* of these payments. All the provisions relating to compulsory commutation of crop-shares in the Bill as amended by the Select Committee have been omitted.

4. The Bill also provides for the repeal of section 13 of the Khoti Settlement Act 1880, but does not contain any provision for the repeal of section 14 of the said Act as in the Select Committee's Bill. The former provision merely empowers the Collector in giving assistance under section 86 of the Land-Revenue Code to fix commutation rates for rents payable in kind and direct the recovery of the money value of such rents, as estimated, at the rates so fixed. If this section be repealed the result will be that the Collector will cease to have, this power of granting assistance for the *commuted value* of rents payable in kinds and in such cases will, under section 87 of the Land-Revenue Code, either have to grant assistance for the recovery of the rents in kind or if he considers that the question at issue is of a *complicated or difficult nature* have the alternative of refusing the assistance asked for

altogether or of granting assistance to the extent only of the assessment fixed upon the land. In the case of rents payable in kind as an amount fixed by agreement, dispute would scarcely be likely to arise; but in the case of rents payable as a crop-share, questions as to the appraisement of the crop and the quantity of produce payable therefrom to the khot might well be deemed to be "of a complicated or difficult nature," so as to allow the Collector to limit the assistance in such cases to the survey assessment fixed on the land. There appears to be no reason why such cases should not be left to the operation of the general provisions of the Land-Revenue Code, and if there is thus created an inducement to substitute fixed rents for crop-shares it will be in accordance with the policy which has dictated some of the important provisions of the Bill.

The Select Committee proposed to repeal section 14, because the adoption of the principle of compulsory substitution of cash rents for crop-shares would remove all occasions for disputes as to the necessity for land lying fallow, but the necessity for some provision of the kind contained in section 14 is not removed, if crop-shares are to be still recognised as now proposed. In the present Bill therefore the provision for the repeal of section 14 has been abandoned.

5. These are the only alterations in the substance of the Select Committee's Bill, but the form has been to a large extent recast so as to make it, it is believed, clearer and less cumbrous without the sacrifice of any direction necessary to give effect to the intentions. The main drafting change has been the deletion from the Rules in clause 9 of the Select Committee Bill of all *general* provisions as to amendment of entries, such as those contained in Rule I, and Rule V (2) and (7), and the revision of sections 17 to 22 of the Act (*vide* clause 4 of the Bill) on lines similar to those followed in the analogous case of the Gujarat Taluqdars' Act, 1888 (Bom. VI of 1888), so as to provide in a comprehensive and logical way for the amendment, and finality or otherwise, of entries in the settlement records. The Rules under new clause (c) of section 33 have, as a complementary amendment been confined, as they should be, to rules determining how entries shall be made as to the nature and amount of rent payable by an occupancy-tenant. Such further details of the revised draft as appear to call for explanation or remark are mentioned in the following *Notes on Clauses*.\*

23rd August 1903.

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\* For these Notes *vide* B. G. G. 1903 Part VII pp. 57-64 and 178-193.

## IX—1st Reading of the Bill No. 6 of 1903.

His Excellency the President :—The Select Committee on the previous Bill may fairly be said to have had the different interests represented on it and the members of it unanimously adopted conclusions which form the basis of the existing Bill, although in regard to certain points it has been necessary to make some modifications in the Bill as revised by them. It will be enough, I think, to take up the subject at the point at which the Select Committee on the previous Bill left it. I may therefore assume it will be accepted on the one hand that, whatever may have been the original position and original rights of the Khots, they are now in regard to such lands managed by them as are not held by dharekaris, superior holders, and entitled to rents from tenants, and on the other hand that it is necessary to protect the tenants from the enforcement of demands which they cannot meet without difficulty. The former point indeed is not likely to be now disputed by anybody. The latter will probably not be accepted by all Khots, but the necessity of such protection is now, I think, recognised by all or almost all students of political science... Under the existing law rents may be either amounts fixed in cash or in kind or specified shares of crops. The amounts fixed are determined by agreement and for the present at any rate we do not propose to alter materially the law regarding them... There are doubtless objections to interference with deliberate agreements, and this Bill does no more in regard to this matter than to define the conditions in which agreements will be recognised. The class of rents for which we require to make new provision is the share of crops. This kind of rent is based on an utterly wrong and inequitable principle. You need scarcely be told that a man who cultivates a piece of good land may be able to give up half the produce and have a very handsome profit left after meeting all cost of cultivation. A man who cultivates a bad piece of land may not get enough out of it to keep him alive till the next harvest. To require from the latter a share of his crop is to suck his life blood, and between these two extremes there are infinite gradations in the iniquity of taking a uniform share of the produce. Such a system is also fatal to improvement, for we cannot expect a sensible man to spend either money or labour in making land permanently more productive if a large share of the advantage has to go to another who does nothing for it at all. But the strongest objection to the crop-share system is that it leaves to the Khots a power of oppression. At the beginning of British rule the *ardhalis*—

which term literally means half-crop sharers, but was applied generally to all crop-sharers—were in a state of villanage, and all efforts since made have failed to effect much improvement. It is of course impossible when very large numbers of tenants are concerned to have actual division on the threshing floor, more particularly in the case of inaccessible warkas lands amongst which the crop-share system most largely prevails, and a system of estimates or appraisements was resorted to. But that leaves everything in the hands of the Khotas, for even if Government could frame approximately correct estimates of their own, they could not do so in a large number of cases before the crops had to be reaped. As a matter of fact, however, nobody can estimate with any accuracy the produce of a standing crop, and the appraisement rules have been found to be of little utility.

But notwithstanding the very strong objections to a system of crop-share rents which I have indicated there are cases in which it might be undesirable to force on the parties a change in their arrangements. In places difficult of access and remote from markets, where cash is not readily procurable, there are advantages in payment in kind and in making the amount of rent vary with the season and the outturn. In such cases the Khot may be the only person from whom the tenant can get cash, and if the tenant had no option but to pay the rent in money his last might be worse than his first... We think therefore that the conversion of crop-share rents should depend on an application from a tenant, and this is the principal alteration we have made in this Bill as amended by the Select Committee... We however consider that there should be no inducement given by Government to continue crop-shares, and therefore that assistance should not be given by the Collector to recover amounts which are calculated to be the value of them. Indeed the difficulty or rather the impossibility of calculating such value is one of the main reasons why the amendment of the law is considered necessary, and it would not be consistent to retain section 13 of the existing Act, which we therefore propose to repeal. Cases will then be dealt with under the general provisions of the Land Revenue Code, and a Khot who applies to the Collector for the recovery of the value of the crop-share will get assistance only to the extent of the assessment, and for anything more will be referred to the Civil Court, as the case will be of a complicated and difficult nature with which it is improper that the Collector should further deal..

...In determining what multiples to prescribe we have taken into

account the fact that an assessment of the value of the gross produce is traditionally a fair assessment and is generally accepted as such... we however thought it best not to prescribe invariable rates, but only standards which may be departed from for sufficient reason shown by either party.

...One of the principal grounds for the legislation was the need of rectifying an injury which has resulted to some Khots from the fact that certain assessments in the Devgad Taluka were higher than the rents which the Khoti Settlement Officer had recorded as due to them. There are still recorded rents which are less than the assessment, and it is clear that the assessment could not in the public interest be so lowered as to make a legislative remedy unnecessary... We have therefore no option but to take power by legislation to raise the rents in such cases so as to give the Khot some profit... We have not thought it expedient to throw the whole of this burden at once on the tenants. The management of all the villages in which recorded rents are less than the assessment has been in some years or other relinquished by the Khots; in other years the management was no doubt found profitable on the whole. When the villages were under (Government) management the tenants referred to, voluntarily paid the assessment and the Local Fund Cess. We propose making this the limit of the enhancement of the rent during the current of the existing settlement; in other words where the recorded rent is not in excess of the survey assessment and Local Fund Cess the Government will for the period provide by a reduction of their demand for the profit of the Khot. And where the rent is above the survey assessment and Local Fund Cess but less than 125 per cent, Government will provide the Khot's minimum profit by a reduction of their demand to the extent needed. This principle will be applied retroactively while villages have been under management. There will be refunded to the Khots 25 per cent of the assessment and Local Fund Cess where these have been paid by the tenants during the period of management. We propose making one other minor concession to the Khots by executive order. There are some lands held free of rent on condition of religious or other services to the community, and provision is made in the Bill for recording rents when services are no longer rendered. We purpose directing that so long as such lands are held free of rent, the assessment will also be remitted. This concession will of course not extend to lands held free of rent for services to the Khot themselves.

10-12-1903.

**X—REPORT OF THE SELECT COMMITTEE.****BILL No. VI OF 1903.**

We, the undersigned members of the Select Committee to which the Bill to amend the Khoti Settlement Act, 1880, was referred, have carefully considered the Bill and have now the honour to submit this report with the Bill as amended by us annexed.

2. We approve generally of the re-arrangement of section 17 to 22 proposed in clause 4 of the Bill; but consider there is no sufficient ground for restricting the jurisdiction of the Civil Courts to the extent provided in sub-section (1) of the substituted section 20 in the Bill as introduced. We have accordingly deleted three of the five clauses of that sub-section, and have amended clause (d)—new clause (b)—to make it quite clear that no question of tenure can be excluded from the jurisdiction of the Civil Court under that clause. We have also made some changes with a view to defining more precisely the limits of the jurisdiction of the Recording Officer and Civil Courts respectively. Thus in section 21, as substituted by clause 4, we have, in view of the ruling of the High Court in *Gopal v. Dashrathshet* (1895), I.L.R. 21 Bom. 244 inserted words to make it clear that decisions by the Recording Officer are not subject to the ordinary appellate and revisional jurisdiction created by Chap. XIII of the Bombay Land Revenue Code, 1879 (Bom. V of 1879). We have also, with reference to the ruling in *Alisabeb v. Vitthal Ramchandra*, P. J., for 1896, page 309, inserted a proviso (1) to prevent a party in civil suit, whether as defendant or otherwise, being allowed to impeach a decision or entry of the Recording Officer after the expiration of the period of limitation prescribed for bringing a suit to reverse or modify it: and (2) make it clear that no fresh cause of action shall accrue by reason merely of amendments under section 18 or fresh entries in a revision-survey, where no material change is effected. We have further made the provision as to giving all parties affected notice and opportunity of being heard (sub-section (4) of the substituted section 18 in the Bill as introduced and sub-section (2) of the substituted section 19 in the Bill as amended by us) applicable to all decisions of the Recording Officer under section 19, as well as amendments made by him under the substituted section 18, and have inserted an additional sub-section (viz., sub-section (3) of the substituted section 19 in the Bill as amended by us) which we consider, affords a more suitable remedy in case of absence of notice or opportu-



nity of being heard than any afforded by the words "unless a failure of justice has in fact been occasioned thereby," contained in the proviso originally drafted.

3. In section 31A, inserted by clause 7, we consider that delegations of duties and powers by the Managing Khot do not need the previous consent of the Collector, and that this requirement might give rise to inconvenience in practice. We have, therefore, substituted words making such delegations lawful, *subject to this approval*.

4. We have inserted words in rule (1), clause (b), of the rules under section 33, clause (c), as substituted by the clause 8, to make it clear that "crop-share" may refer to the produce of fruit-trees as well as to the produce of land.

5. In clause (b) of the III of the same rules we have inserted the words "or payable" to meet the case where, by agreement or remission less has actually been paid than the amount which can be shown to have been legally payable. We have also deleted clause (b) of the proviso to the same rule, as we consider there is no reason why a share of the produce of fruit-trees should be in any respect treated differently from a share of any other crop. Since, however, it is possible that, in the case of fruit-trees particularly, there might be no general custom in a village as to the rent payable on their account, we have inserted words in clause (b) of the rule to meet this case.

6. In Rule IV, sub-rule (3), of the same rules we have retained the proposed limit of the amount of Khot's profits to be recoverable from their tenants at 25 *per cent.* as being on the whole a reasonable compromise between the views of those who would fix it higher and those who consider it too high. We have, however, made the provisions of the sub-rule mandatory instead of merely permissive, and have deleted the words contained in it which gave the Recording Officer and Government a discretionary power of interference with the general rule so laid down for the purpose of meeting the special circumstances under which Government during the existing survey-settlement have undertaken to bear the whole or part of the proposed enhancement. This latter case can, in our opinion, be more appropriately met by a special proviso such as we have inserted. We have also deleted the words "unless the khot is proved to have expressly and deliberately waived all right to further increase" as unnecessary and likely to give rise to vexatious disputes: and have added words to cover the possible case of

a crop-share not commuted under Rule V, sub-rule (1), in order to prevent evasion of the enhancement by deliberate omission on the part of the tenant of exercising the option conferred on him by that sub-rule.

7. We have considerably amended Rule V, sub-rule (1), of the same rules. We think that the option of change from crop-share to commuted-value should not be exercisable from time to time but once and for all, and that the amount, but not the description, of the rent so payable should be subject to revision at a revised survey-settlement. We have, however, by the substitution of "payable" for "paid" shown that the provision relates only to what is recoverable and does not preclude the parties from reverting to crop-share payments by private arrangement. We think, too, that the change, if made, should embrace the entire holding under crop-share of the tenant applying, and that definite periods for the making of such applications and for the commencement of the operation of the change ought to be fixed. Without these amendments, we are of opinion that the sub-rule would prove inconvenient in practice and unduly disadvantageous to the khot.

8. We have put the amendment proposed in clause 10, with regard to the constitution of reserved forests, into a form which seems to us preferable, in order to avoid any possibility of the validation in question being held to override rights expressly saved in sections 41 and 42 of the Khoti Settlement Act, 1880.

9. We approve of the other clauses of the Bill, with the few drafting amendments which have been made in them at the suggestion of the Remembrancer of Legal Affairs, and recommend that the Bill as amended by us be passed into law.

... ..

Minute of dissent by the Hon'ble Mr. Khare:—

I do not like clause 10 of the amended Bill. It takes away the jurisdiction of the Civil Courts. Sub-section (2) makes it retrospective in operation and I object to such a provision on principle.

8th February 1904.

### XI—2nd and 3rd Reading of the Bill No. 6 of 1903.

The Hon'ble Sir James Monteath in moving the second reading of the Bill said :—

The Khoti Association may be taken as representing the interests of the Khots. Some nine Khots have urged that there is no need of the Bill at all. But the Association regards it with general favour. But it submits that the present Khoti Settlement Act Amendment Bill No. VI of 1903 even as revised by the Select Committee, requires several changes of which the following are the most important, viz :—

“ The proviso to clause (2) and clause (3) of the new Sec. 19 are quite unnecessary and cumbrous. They should be omitted and the ordinary procedure of Civil and Criminal inquiries of requiring previous notice to all parties be made compulsory.” The Bill, I need scarcely point out, does make previous notice compulsory. The proviso to sub-section (2), and sub-section (3) of the New Section 19 merely say on the one hand that decisions shall not be deemed invalid merely on account of an oversight which harms nobody and on the other hand that any body who is affected by such oversight will have his remedy. All this is, I think, reasonable enough.

The second suggestion is “ in the new Section 20 the words ‘ and of sub-rule 4 of rule 5 of Sec 33 (c) ’ shall be inserted after the figure ‘ 18 ’ in last but one line ”. There is no rule 4 of rule V of Sec 33(c) and to understand this suggestion we have to turn to the 7th suggestion which is as follows :—“ In the same rule V a new sub-rule (4) shall be added as follows :—‘ (4) any order or entry made by a Recording Officer under sub-rule (3) may be set aside by a decree of a competent Civil Court.’ The intention of these suggestions is that entries of the cash amounts of crop-shares should be made subject to an appeal to the Civil Courts. It is a suggestion to which I cannot accede. At the first reading I stated that I did not think the section as it then stood went much beyond the existing Act in regard to the exclusion of the jurisdiction of Civil Courts. As I anticipated, there have been several decisions of the High Court on the point, but the latest authoritative decision is to the effect that under the law as it stands, questions of tenure are subject to the jurisdiction of the Civil Courts. As a matter of principle, I think, it is quite right they should be, but if there had been room for such questions to be generally raised, I think it would be inexpedient that the cultivators should be allowed to spend

their substance in contesting them and that the Courts should be swamped with them. As a matter of fact, however, these questions have been practically settled and we have made it clear that they cannot be re-opened on the occurrence of a future settlement. There will, therefore, be no practical difficulty or serious inexpediency in allowing any such questions as may still arise to be referred to the Civil Courts, and we have amended new Sec. 20 accordingly. But the reason I have mentioned would apply with the strongest effect to the questions of the amount of cash rents. They are the principal suggestions to which the measure will give rise. It is, I think, appropriate that they should be finally settled by revenue-officers as they are in all other parts of India, and it would, in my opinion, be to the interest of none of the parties concerned that they should give rise to an over-whelming mass of litigation.

The third suggestion is "in the new Section 31-A the words 'subject to the approval of the Collector' ought to be omitted altogether. If however some control by the Collector is deemed absolutely necessary the words 'unless the Collector orders otherwise' may be inserted after the word 'shall' in the 12th line of the section." Some control by the Collector is absolutely necessary. I think the Council will agree that it is reasonable that there should be such control and it seems to me that the words suggested by the Association to be substituted would have precisely the same effect as the words, "subject to the approval of the Collector" in the Bill.

The next suggestion is "in Sec. 33 (c) rule 3, sub-rule (b), line 12, the words "paid or" shall be omitted as being superfluous and misleading." The words, I think, are very necessary for often the Recording Officer will have nothing to go on but actual payments.

The next suggestion is "Rule IV, sub-rule (3) shall be omitted altogether and a sub-rule corresponding in language and principle to sub-rule (4) shall be substituted for it, in order that the same principle of a *pro rata* variation of Khot's profits may be made applicable in cases of both the increase and decrease of assessment. At any rate the present sub-rule (3) should be restricted to original surveys only, while a sub-rule drafted as suggested above may be added to provide for revision surveys and settlements". There is a good deal to be said for the suggestion and at one time I myself was in favour of the application of a similar principle. But on full consideration it was found that it would

be too complicated to be carried out in practice, and the principle which has now been adopted is simple and, I think, equitable and sufficient for all practical purposes. If this principle is once adopted there will be no case in which the suggestion of the Association would be applied at the revision settlement.

The next suggestion is "Rule V shall be omitted altogether, but, if that is impossible, then the words 'amount in kind of money value at market rates for the next 12 years' shall be inserted after the words 'average' in line 3 of sub-clause (2)." The application of this rule is one of the main objects of the measure and its omission is, I think, entirely out of the question. The addition of the words which have been suggested would, it seems to me, make the provision inconsistent and utterly unintelligible.

The eighth suggestion is "clause 19 of the revised Bill, amending Section 41 of the Khoti Settlement Act, shall be omitted altogether, as being highly objectionable in principle and harmful in operation."... Under section 41 of the existing Act uncultivated lands may be constituted reserved forest *at once*, and section 42 was held to imply that the provisions of the Forest Act could not be applied until the land had actually been constituted reserved forest. But with a scrupulous regard for the rights of individuals, which I am sure the Hon'ble Member (Mr. Khare) will regard as entirely laudable, before the lands were constituted reserved forest enquiries were made under chapter II of the Forest Act and the procedure which is prescribed in that Act was carried out. It has been questioned whether these enquiries were in the circumstances legally valid and whether all consequences specified in the Forest Act at once followed. I cannot myself see that any substantial doubt exists that at any rate the final notifications under the Forest Act cannot be impugned and are as good as notifications issued under the Khoti Settlement Act without enquiries. Moreover as 12 years have elapsed since the notifications were issued, except in regard to some waste land which has been planted with casurina trees at the public expense, I do not see how any private individual could establish any right to any existing forest. Nevertheless, I think the Council will agree with me that if the procedure which was followed had not the sanction of law it is desirable that it should be validated. I need scarcely say that the Government has no such design, as supposed of appropriating lands as forest with regard to which proceedings were begun and dropped, and if there were it could not be helped by the

provision in question. The explanation in section 41 of the Act that uncultivated land is land which has not been tilled for 20 years is not of course affected, and if any warkas land was wrongly constituted forest the illegality would not be cured by the clause, which does not affect rights at all but only validates the procedure. All that is done is to put it beyond dispute that the procedure followed was legal and that the same procedure will be followed in future if occasion arises. It is not intended to attempt any considerable afforestation in Ratnagiri, but there may arise cases like that of the Casurina plantation I have referred to.

The last suggestion is "In Section 10 of the Khoti Settlement Act of 1880, the word 'no' in line 3 from the bottom shall be omitted and the word 'unless' shall be replaced by the word 'for two years when.' It seems to me out of the question to consider this new suggestion at this state and I can see no *prima facie* reasonable ground for adopting it ..

The Hon'ble Mr. Khare said :—...As we know, that Act of 1880 was the result of a compromise arrived at between the Khots and the Government which served the purpose of settling in an amicable way various vexed questions. But as time elapsed and experience of the working of the Act accumulated, Government came to the conclusion that the system of payment in kind by way of a crop-share pressed very hardly on the tenancy and that it required either abolition or modification. In the meantime the Survey operations of Government pressed very hardly on the Khots so much so that in one taluka the majority of the Khots were placed in a dilemma in which they had to choose between holding the villages at the risk of being out of pocket by large amounts or giving them up altogether. Government after some hesitation ultimately recognized the position and came to the conclusion that the different hardships could not be redressed except by way of a change in the law. With that end in view a Bill to amend the Act was introduced in the Council in 1898 which reached the stage of second reading, when at the instance of the Secretary of State, it was withdrawn in January 1900. The present Bill was then introduced and it has now emerged from the hands of the Select Committee and is now before the Council. The present Bill is a much better one than the past Bill. Of course the substitution of cash rents in kind is the pivot upon which the whole thing turns. Although personally I was of opinion that the policy would cause in time to come hardships to the

tenants, I bowed to the experience of Government Officers who positively stated that instead of injuring the tenants it would do them much good...Nor can the provisions of this Bill be called one-sided as those of the former Bill could very well be called...Only those acquainted with the peculiarity of the tenure will be able to appreciate them. The chief of them is that under its provisions it is now impossible for a Khot to be obliged to give up his village because of the enhancement of Government assessment ; nay I may even go so far as to say that henceforward we may practically take it that there will be no enhancements of assessments at revision surveys in Khoti talukas. Then again there is the option kept to the tenant to choose whether he will pay in kind or cash with the wholesome limitation that once he makes the election he cannot turn back. The former Bill placed the Khot at the mercy of the tenant in this respect. Another important feature is the restoration of the jurisdiction of the Civil Courts over various important matters which was entirely ousted by the provisions of the old Bill. People in this country have much greater faith in the decisions of Civil Courts than in those of executive officers, and it is from that point of views that that this change will be welcomed...I am afraid the present clause will validate previous acts even though they were illegal.....In Act I of 1880 there was no provision of that sort That Act was the result of a compromise and consequently Government provided that they would create forests only in uncultivated lands. The object was not to touch the rights of the Khots which extended over all uncultivated land or land which could be brought under cultivation. If therefore under the old Act any land was declared a reserved forest erroneously the Khot or the tenant could go to the Civil Court and get a decision from a Civil Court in his favour. Now however the Civil Courts could not entertain that question. But what is more objectionable is the retrospective effect that is sought to be given Ever since 1880 Government have time to time issued proclamations taking up lands for reserved forests. Some of these have been dropped after notice of suit given by the parties affected, while others have not been followed up owing to protests by way of petitions or otherwise and even after the date of those proclamations the lands affected thereby have been in the possession of the owners and under cultivation. Some of these matters are more than 12 years old Now this provision will resuscitate all those proclamations which circumstance it must be admitted would be a very great hardship...I would therefore request that at

all events the consideration of this clause may be held over. There is agreement on all other portions and I think it would be certainly desirable to have one on this matter also...

The Hon'ble Mr. C. H. Setalwad said :—...It is indeed very gratifying to find that the Bill as amended by the Select Committee has restored the jurisdiction of the Civil Courts in those matters—relating to tenure and other important rights—and is therefore not open to the chief objection that I raised to the original Bill. Mr. Khare has pointed out that the clause (10) as worded may have the possible effect of validating certain notifications issued and certain proceedings taken about warkas lands but which were not enforced or further proceeded with owing to their illegality. The Hon'ble Mover has assured us that it is not the intention of Government to use the clause for any such purpose. I am prepared most readily to accept the assurance of Government as to their intentions. But Government after all are a fluctuating body, and the Government of ten years hence might take a different view of matters, and it is a question how far they might feel themselves bound by any assurance now given. If therefore the words of the clause are liable to be read in the manner indicated by Mr. Khare it is, I think, desirable to so modify them as to avoid such a result.

The Hon'ble Sir James Monteath said :—...The only point regarding which there is no unanimity is the retention of the clause 10...I have explained that the procedure in the Forest Act has been strictly followed and will be followed in future. If therefore any notifications such as the Hon'ble Mr. Khare has indicated—notifications regarding lands which have in fact been abandoned as forest—I do not think that they would be affected one way or other by the clause, but I will undertake to say that they will be cancelled. I hope that intimation will be sufficient.

The Hon'ble Mr. Khare said :—After the assurance from Sir James Monteath that all those proclamations to which I referred will be withdrawn or cancelled...I submit that I withdraw the request which I made for allowing the consideration of this clause to stand over.

The Bill was then read a second time and the Council proceeded to consider the Bill in detail....

The Hon'ble Sir James Monteath then moved that after clause 4, the following new clause be inserted :



“ 5. In the second paragraph of Sec. 27 of the said Act, the following shall be inserted, namely :—

(a) after the word ‘ agreement ’ the words ‘ or if the sharer whose turn it is to be nominated is for any reason unable to serve as Managing Khot, and fails to delegate his duties and powers under Section 31-A within such time as may be prescribed by the Collector in this behalf ’, and

(b) after the words ‘ year by year ’ the words ‘ or for the year as the case may be, ’ ”

The Hon'ble Sir James Monteath said :—The object of this amendment is to provide an omission which exists in the present Sec. 27 of the Act, and I think it is necessary that the words should be inserted so as to make the clause complete.

It was agreed to insert the new clause 5 after clause 4, and re-number the subsequent clauses.

The Hon'ble Mr. Khare withdrew his amendment to clause 10, which stood part of the Bill...

The Bill was then read a third time and passed.

27th Feb. 1904.

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## XII—STATEMENT OF OBJECTS AND REASONS.

(BILL No. VII of 1911)

The object of this Bill is to preclude the transfer of occupancy-tenancies without the consent of the Khot. Section 2 of the Khoti Settlement Act, 1880, declares that occupancy-tenants' rights are not transferable except in certain cases, but the Act attaches no penalty to an unauthorized transfer. It has further been held\* that the prohibition in section 9 extends only to the distinctive rights of an occupancy-tenant and that ordinary tenancy rights are transferable. It follows therefore that in the case of an unauthorized transfer the Khot has no remedy against the transferee, unless the land is resigned or lapses or is forfeited for one of the reasons specified in section 10. This result

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\* *Yesa bin Rama v. Sakharan Gopal*, I. L. R., XXX Bom. 290.

appears to be inequitable and contrary to the intention of the Act. At the same time the opportunity has been taken to remove an anomaly caused by the terms of the same sections. The first paragraph of Sec 9 makes the rights of a dharekari or quasi-dharekari heritable and transferable. Such transfer may take the shape of a lease or mortgage, but by virtue of section 10 the effect of a resignation by a privileged occupant of either of these demoninations is to defeat any encumbrance which such privileged occupant may have created and thus to allow a lessor or mortgagor to render null and void an encumbrance which the law has expressly permitted him to create

17th May 1911.

### XIII—1st Reading of the Bill No. VII of 1911.

The Hon'ble Mr. R. A. Lamb said :—Your Excellency, the short Bill further to amend the Khoti Settlement Act, 1880 is directed, as set forth in the Statement of Objects and Reasons, to correct two defects in the Act. The intention of the Act seems clearly to have been to impose on the transfer of an occupancy tenancy by the occupancy tenant the necessity of the consent of the Khot; but the intention is not carried into effect, owing firstly to the absence of any prescription of the effect of such a transfer without the Khot's consent and secondly to the High Court decision in I. L. R. XXX Bom. 290, which rules that an occupancy tenant may without the Khot's consent transfer all his occupancy rights except only his special status of occupancy tenant. The result of this is that an occupancy tenant may place in possession of the land comprised in an occupancy tenancy any person, without the Khot's consent, himself retaining the status of occupancy tenant; and the Khot cannot succeed in ousting the tenant in possession, notwithstanding the provision in the Act as it stands which requires his consent to the transfer of an occupancy tenancy. The first object of the Bill is therefore to render effective the prescription which requires the Khot's consent to the transfer of an occupancy tenancy. It is plain that the alteration in the law, though it gives effect to the original intention, makes a change in the actual law which is disadvantageous to the occupancy tenant without reference to the Khot; and it will therefore be proper in Select Committee, to which I intend with Your Excellency's permission to propose that the Bill shall be referred, if the first reading is carried, to consider

" 5. In the second paragraph of Sec. 27 of the said Act, the following shall be inserted, namely :—

(a) after the word 'agreement' the words 'or if the sharer, whose turn it is to be nominated is for any reason unable to serve as Managing Khot, and fails to delegate his duties and powers under Section 31-A within such time as may be prescribed by the Collector in this behalf', and

(b) after the words 'year by year' the words 'or for the year as the case may be,' "

The Hon'ble Sir James Monteath said :—The object of this amendment is to provide an omission which exists in the present Sec. 27 of the Act, and I think it is necessary that the words should be inserted so as to make the clause complete.

It was agreed to insert the new clause 5 after clause 4, and re-number the subsequent clauses.

The Hon'ble Mr. Khare withdrew his amendment to clause 10, which stood part of the Bill...

The Bill was then read a third time and passed.

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what provision, if any, should be made to protect occupancy tenants from any loss or disadvantage which might result from an inconsiderate or oppressive exercise of the power to enforce the necessity of his consent to a transfer, which the Act of 1880 intended to give the Khot, but which he has not in fact enjoyed. The second object of the Bill is described in the Statement of Objects and Reasons and does not, I think, call for further comment. It is believed that the sections 9 and 10 are so drafted as to secure the two objects of the Bill. I have the honour to move that the Bill be read a first time.

The Hon'ble Mr. W. D. Sheppard :—Your Excellency, this Bill arises from a request of the Khots who are all resident in the Ratnagiri district. The request was framed by the Association of the Khots who expressed their desire that the disabilities from which they are suffering should be removed by law, and the draft sections put forward in this Bill have been framed to meet their requirements. There is just a slight possibility that on the other side the occupancy tenants may have some case which has not been put fully forward, but I think that in the Select Committee the claims of the occupancy tenants can be fully considered. I therefore have much pleasure in supporting this Bill...

#### XIV—REPORT OF THE SELECT COMMITTEE.

BILL No. VII of 1911.

We, the undersigned Members of the Select Committee to which the Bill further to amend the Khoti Settlement Act, 1880, was referred, have carefully considered the Bill and have now the honour to report that we approve of the Bill as it stands and that no alterations are necessary in the Bill which we recommend may be passed into law.

2. As the Bill was published in Marathi in the *Bombay Government Gazette* of the 5th October 1911, we are of opinion that this report should be similarly translated and published.

29th January 1912.

# GLOSSARY.

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- Abad** : Cultivated, populous, prosperous.
- Abadani** : Cultivation, populousness, prosperity.
- Abhavni** : Appraisalment—**Patrak** : Appraisalment register.
- Abhaya** : Assurance, guarantee.
- Adalat** : Judicial Court.
- Adesri** : Grain allowance paid to a labourer.
- Adnapatra** : Written order.
- Adtala** : Testing the accuracy of an account.
- Agar** : Plantation ; salt pan.
- Ain** : Total ;—**Dast** or **Jama**—Total, ordinary or regular Revenue ;—**Galla**—Survey assessment in grain ;—**Jinnas**—Products of the soil, in kind as disting. from **Nakt** ; of that very kind.
- Aivaj** : Amount, cash or goods.
- Ajitpatra** : Written admission of failure by a litigant.
- Ajmas** : Budget, estimate.
- Akar** : Assessment ; amount ; estimate in general ;—**Band** Statement of the land assessment etc. framed at the time of Revenue Settlement.
- Akarni Kharda** : Memo of inspection or Survey.
- Akarnipatrak** : List showing commuted values of **Khands**.
- Akhtyarpatra** : Power of attorney.
- Ammal** : Rule, administration ; revenue, administrative right of share in the revenues of a village.
- Amanati** : Attachment.
- Amdani** : Rule, administration.
- Ardhel** : A half share of the crop or produce.
- Ardheli** : A cultivator or tenant paying generally a half of produce.
- Ashtadhikar** : The eight offices of a village (of a **Patil**, **Kulkarni**, priest, **Joshi**, &c.)
- Ath Weth** : Labour, exacted without remuneration one day in eight.
- Autbandi** : Assessment of revenue calculated at a fixed rate per plough.
- Awak** : Inward.
- Avalad Afrad** : Descendants male and female ; hereditarily.
- Avar** : An enclosure ; enclosed space.
- Avarja** : An abstract account of receipts and disbursements ; a distinct head of account.
- Awwal** : Original ; first rate (*vide* **Dum**, **Sim**).
- Bab** : Cess ; item.
- Babat** : Account, statement ; head or an item of an account ; of or pertaining to.

- Babati** : Any item of revenue ; any extra cess.
- Badhen** : Land without a proprietor ; land lying waste ; land not included in the Jamabandi of the village. (Der. **Bad**—deducted) ; —**Kari**—Waste—tillers who may or may not have acquired occupancy rights.
- Bagait** } Garden land (Agri  
**Bagayat** } or **Dongri**) : produce of such land.
- Bahal-karne** : To restore, confirm, credit.
- Baha Nakt** : The money-price of the grain revenue after the deduction of **Tasar** and **Farokt**.
- Bahut Varshiya** : Ancient, same as **Puratan** or **Kadim**.
- Baiten** : **Baluten** (*Vide*)
- Bajar Nirakh** : Market rate.
- Baluten** : Fee, perquisites payable to **Balutedars** (the 12 village officers or servants).
- Bamo (-u-)jib** : According to, in terms of.
- Bandhani** **Rabbi** land—embanked like rice land, but on which, on account of excess of water in the rains, rice cannot be grown This land is more productive than **Malkhandi Rabbi** land.
- Bar** : Deducted : entered.
- Bawul** : Soil in the hollows on the top of the rocky hills.
- Bedawapatra** : Deed of relinquishment.
- Beheda** : Established rate ; statement of disbursements ; a document showing the amount of all fixed receipts and disbursements of the State during the past year.
- Bekar** : Out of employ.
- Besmi, (Beshmi)** : In the name of.
- Bewara** : Clearance, liquidation.
- Bewarshi, Bewarsi** : Unclaimed, without known heirs.
- Bewaswasa** : Without fear or hesitation.
- Bhageli** : Tenant.
- Bhalerai** : Anarchy, disorderly procedure.
- Bhardi** : **Varkas** land, dry crop land ; uncultivable.
- Bharpai** : Receipt in full, full payment.
- Bhat** : A strip of land in the sea or river appearing at low water ; elevated strip of land fit for inferior grains.
- Bhatvada** : Rice land.
- Bhatena** : Rice straw.
- Bhatle** : Flat **varkas** land.
- Bhogawata** : Enjoyment, cultivation.
- Bi Kalam** : The words written by the executant himself with his own hands.
- Bin Thali** : Rent-free.
- Bi Tapshil** : In detail.
- Biyane (Bene)** : Grain etc. meant for seed.
- Botkhat** : The village land-register (*Vide* note 5 to Sec 15).

- B, Patrak** : (*Vide* note 5 to Sec. 15)
- Budit Khate** : A register of bad debts.
- Budruk** : Larger ; affixed at the end of the name of a village *e.g.* Harkul Budruk. *See* Khurd.
- Bujavani** : Explaining, settling, making up.
- Burat** : Thicket ; weedy land.
- Chadh** : Increases imposed under the farming system of the Peshwas.
- Chahotra ; Chahutra** : Interest at  $\frac{1}{4}$  p. c. p. m.
- Chahur** : Land-measure equal to 120 square Bighas.
- Charad** : Sterile hilly land.
- Chim** : Husk.
- Choutheli** : A cultivator or tenant paying  $\frac{1}{4}$ th crop share.
- Daphate** : A general memorandum book. — **Patra** : Memoranda.
- Dala Dawada** : Hilly ground.
- Dalap** : Piling up, heap.
- Dari bab** : All kinds of cesses.
- Darak, Darakh, Dark** : Office, higher hereditary public office.
- Dast** : Assessment.
- Dastak** : Deposition
- Dasti** : Taxed or taxable (land).
- Dastan** : Granary.
- Deh** : Village—**Zada** : A list or register of villages.
- Dehaya, Dehehaya** : (Plural of Deh) villages, all or several villages.
- Dev Dev aski** : Ceremonies in honour of a village deity ; right to officiate at such ceremonies.
- Devsu, Devsun** : Land appropriated to a village deity.
- Dhada** : Subdivision ; a weight of seers.
- Dhade Watap** : Partition.
- Dhara** : Assessment ; land liable to pay assessment ;—**Datt** : Land given in charity.
- Dharan** : Rate, market or current price.
- Dharan Karnara** : Holder of land.
- Dharan Karne** : To hold land.
- Didhotra** : Interest at the rate of  $1\frac{1}{2}$  p. c. p. m.
- Digar** : Further, besides ; alienated, given in Inam.
- Digar Badi** : Mutations, changes.
- Dil Dilasa** : Assurance, encouragement.
- Dimmat** : Care of.
- Diwan** : Government ;—**Dasta** : Assessment.
- Dohotra** : Interest at the rate of 2 per cent per month.
- D Patrak** : A patraka prepared by the Survey Department under Act I of 1865. *Vide* App. VI.
- Dubergi** : Lit. Twice brought to account ; regularly entered.
- Dulandi** : Outsider, cultivator residing in one village and cultivating land in another.
- Dum** : Second grade.
- Dumala** : Alienated.



- Dumaligaon** : Alienated village, village having two proprietors.
- Dumaldar** : Holder of an alienated land.
- Dupiki** : Double crop-producing (land).
- Ehasan, Ehasani** : Remission; favour.
- Ekotra** : Interest at 1 per cent per month.
- Eksa** : General.
- Ekunat** : The balance of an account, total.
- Fad** : Plantation, standing crop; also the place for collecting corn etc.—**Farmas, Farmash** : Fruits, vegetables and other petty articles exacted from the ryots.
- Falni number** : A subordinate survey-number of varkas land.
- Farmas** : Order, direction.
- Faski** : A toll of palmful of grain per maund exacted for himself by the collector of grain.
- Ferist** : A list.
- Fut Inam** : Inam grant of a specific portion of a village,—described by metes and bounds.
- Gaban** : Fertile soil.
- Gair Vilhes** : Out of place or order; improper use.
- Galla** : Grain payment; grain in general.
- Galle pati** : Cess on the grain produced (formerly exacted for public stables).
- Garwa** : Late rice ripening in November and includes all the finer description of rice, which have a small grain and are thus dearer than the Halwa.
- Gat Kuli** : Lapsed (land)
- Gavik** : Land belonging to or common to the whole village.
- Gayal** : Deserted (land);-**Jabta** : A list of deserted holdings
- Gayran** : Pasture ground; uncultivable land.
- Ghadni** : Paper kept by the Kulkarni in account of the families of the village; a detailed account
- Ghar Gharband** : Houses and house-sites.
- Gimvas** : Summer rice.
- Goshwara** : A list of Dharas; abstract of village account with a list of Dharekaris.
- Gujavis** : Error, inaccuracy.
- Haibat** : Fear, apprehension.
- Hajir Majalas (Majalis)** : Public assembly, Court; written complainant.
- Hakkwala Khatedar** : Privileged occupant.
- Halli Patti** : Present or current cesses.
- Halva** : Early rice having a large coarse grain ripening in September.
- Hardu** : Both.
- Harki** : Money given by a successful litigant to the Court in token of gratitude.
- Harsha-marsha** : Dispute.

- Hatarki** : Loppings, leaves spread over ground for being burnt.
- Hikayat** : Story, account.
- Hilla** : Pretence, sham ;—**Harkat** : Evasive tricks and actions.
- Himayat** : Help ; protection, patronage.
- Ijara** : Contract, monopoly ; a farmed item of the revenue.
- Ijardar** : A farmer of the village or public revenue or customs.
- Ijat Asar** : Honourable
- Ikhlasī** : Friendly, amicable.
- Ikrar** : Acknowledgment, deposition ;—**Nama** : Engagement in writing.
- Inam chitta** : List of Inams ; a written grant.
- Inam Izafat** : Additional grant ; additional concession in a grant.
- Irsal** : Remittance to treasury ; —**Patti** : List of remittances to treasury.
- Istakbil** : From (a certain date or event).
- Istava** : Annually increasing tax ;—**Kaul** : A lease of waste-land or salt water or tidal swamps at a rent progressively increasing for a term of year when it becomes fixed
- Itbari** : Confidential.
- Itlakh** : Any fixed payment from the State treasury.
- Izaphat** : Lit. addition ; **Dar** :—
- or **Khot** : The hereditary district revenue servant who holds for his services a rent-free village.
- Jabsal** : Questions and answers, conversation, statement.
- Jabta** : Assessment schedule, account, list, memorandum ; regulation.
- Jadid** : New, recent.
- Jalel** : Oppression.
- Jalwat** : Land in which, from excess of moisture, the crops are liable to rot.
- Jamabandi** : Revenue settlement ; lit. the fixing of the land-revenue to be levied during the year.
- Jangal Gark** : Covered with forest ; waste-land covered with weeds etc.
- Jangal Kharda** : Rough account of a revenue survey (drawn up on the spot) : a field book, *Vide* App. IV.
- Japtidar** : Agent appointed by the Collector to manage a khoti village under attachment.
- Jawak** : Outward.
- Jeva** : Corn etc. sufficient for one meal.
- Jirait, Jirayat** : Arable or cultivated land, corn fields ; produce of such fields.
- Jivan Mafik** : Proportionate to one's means, moderate.
- Judi** : The reduced assessment on Inam lands ; quit-rent.
- Jujabi** : Scanty.

- Kaccha dharekari** : Quasi-dharekari
- Kadba** : A deed, document.
- Kaddan** : Pulses such as Kulit. Tur, Mug etc.
- Kadha** : Interest.
- Kadi Kudi** : Miscellaneous.
- Kadim** : Ancient (opposite—Jadid).
- Kaili** : Of capacity ; prefixed to words expressing measures (maund, seer etc) as opposed to Vajani.
- Kamjasta Vasul** : Varying rent.
- Kamal** : Maximum, total ;—**Akar** : Total assessment.
- Kamath** : Land granted in remuneration for service.
- Kamavisa, Kamavis(h)i** : Collection of the revenues ; collected revenue ; land entered as Kamavisi is land which for some reason or other has come under the management of the Government or its assignee, for the purpose of collecting the revenue, but which has not been incorporated with the Khalsat land, which is the absolute property of the Government or its assignee. So long as such land continues to be entered in the accounts as "Kamavisi" and to be distinguished from 'Khalsat' the inference fairly arises that some reservation of the rights of the former holders of the lands must have been intended. *Vide* Ramchandra v. Bhisto P J. 1877 p 47.
- Kanag** : Corn-bin, a large bamboo basket for storing grain.
- Kanistha** : Inferior ;—**Dharankarnara** : Inferior holder (of land).
- Kanu Kayade** : Cesses and taxes ; the right of requiring from every man exposing things for sale in the market a portion of his goods.
- Karal** : Soft sandy stones ; clayey soil, which when dry turns very hard.
- Karda** : One who actually cultivates whether as a tenant or a proprietor.
- Karsai** : Impost of fodder, fruits etc. levied by a village officer.
- Kasar** : Excess, profit ; deficiency, loss.
- Katal** : Rocky land.
- Katuban** : Fixed rent ; tenure on fixed rent.
- Kawal** : Brushwood growing generally on hilly lands ;—**Kadh, Kathi** : Loppings of such bushes which are spread over and burnt on fields for rabbit manure.
- Khachar** : Rice land ; ground prepared for cultivation near hill side.
- Khajan** : Land lying along the shore of the sea or inlets ; ground recovered by an em-

- bankment from the sea ; salt marshes.
- Khalat** : Low lands.coast lands.
- Khalsa** : Lapsed to Government, forfeited.
- Khajgat ; Khasgat** : Private, personal, one's own.
- Khand** : Rent adjusted by agreement without reference to harvest.
- Khar** : Land reclaimed from the sea
- Kharaba** : Unassessed or waste land.
- Kharip (h)** : Autumnal harvest ; land producing autumnal harvest.
- Khafvat** : Salt rice-land.
- Khitar Jama** : Assurance, confidence, satisfaction.
- Khatavni** : Ledger.
- Khatedar kul** : Occupancy-tenant.
- Khatyacha hakk** : Right of occupancy.
- Khelta Dharekari** : Lit. A shifting dharekari ; a holder of land who is entitled to cultivate at dhara rates any year any particular fields he likes, in the Khot Nisbat Khata. *File Rules III and V to Section 40 Clause (c).*
- Kherij** : Extra, additional ;—**Dasta** : Extra assessment ; —**Jama** : Extra collection ;—**Makta** : Lands etc. let out by Government direct.
- Khot** : A farmer of land or revenue ; any contractor or monopolist ; **Baki** : Balance of rent due to Khot ;—**Kharaba** :—Waste or uncultivated land lying about a village, which a Khot has a right to cultivate ; **Fayada** : Khot's profits i. e. the difference between the rent and Jama—**Sajja** : Lands tenanted from the Khot (opp. **Rakmi Jamin**) ;—**Veth** : Service or articles exacted without payment by the Khot.
- Khotavdi** : Belonging to the Khot.
- Khoti** : The business, office or rights of a Khot ; of or pertaining to a khot—**Khajsa** : Land lapsed etc. to the Khot ; —**Khichadi** : Mixed Khoti (villages) i. e. those which are partly dhara and partly khoti.
- Khot Patra** : A written acknowledgment of failure from an unsuccessful disputant.
- Khurd** : Smaller, as opposed to Budruk.
- Kifayat** : Profits.
- Kird** : Cultivation (Kird Mamuri) ; an account book ;—**Khatavni** : Daily ledger ;—**Khatevahi** : Shows what amount was payable by a particular Kul, how much was paid and how much has remained due by him.
- Khist, Kist** : Instalment.
- Kitta** : Item ; ditto ; a word used in accounts to signify each item that is to be brought un-

- der a separate head or of which the particulars appear in other records;—**Bab** : An extra item or cess.
- Kosis** : Effort, exertion.
- Kowl** : Lease.
- Kudyat, Kuryat** : Terraced land on the slopes or a foot of a hill
- Kudav** : A measure equal to two paylis.
- Kulbab, Kulkanu** : All taxes and assessments and the right of receiving market dues ; all articles and items and all laws and usages.
- Kularag** : Land held by or belonging to a tenant or a cultivator.
- Kunbava** : Landed estate ; agricultural labour ; leasehold land.
- Lagandar** : Actual cultivator (landholder or tenant).
- Lajim** : Right, title.
- Lath** : A mechanism for drawing water ; a load.
- Lavajima, Lavajma** : Rentine.
- Lava, lavha** : Rush-like grass.
- Lavni, Lavni Mandani, Lavni Sachni** : Cultivation.
- Makjat** : Preserving, care-taking.
- Mafi Istawa** : Tenure under which the occupant at first holds the land free of assessment and then pays gradually increasing tax, which at last rises to the full assessment.
- Mafis** : Of the poor or labouring class.
- Mahajar** : Title deed ; award.
- Mahakubi** : Suspension stoppage.
- Mahamuri** : Abundance ; cultivation.
- Mahan** : Late rice.
- Mahasul** : Assessment, revenue.
- Mahine mah (mahal, mal)** : Monthly, per month
- Maji** : Former, preceding.
- Majkur** : Aforesaid ; account, statement.
- Majalas, Majlas** : Royal court
- Majmu** : Total, aggregate ; revenue ; office of Majmudar.
- Majmun** : Majkur, contents.
- Makhalasi, Makhalashi** : End or determination of a dispute.
- Majara** : Deduction, remission ; a hamlet.
- Makta** : Fixed rent without reference to harvest. (In Southern Konkan the corresponding term is Khand) ; a farm, contract.
- Msle jamin** : Garden land.
- Mali** : Open tracts suitable for a plantation ; a plot of land.
- Malkhandi** : Land watered by a water-wheel ; rabbi land which has no bandhs (as opposed to " Bandhani Rabbi ") but is open like Jirayat and is generally on the banks of creeks and nalas.
- Malni** : Thrashing of corn.

- Malran**: A large tract of ground generally on the side or top of a hill.
- Mamul**: Old, customary.
- Mana**: Purport; complimentary title of a person.
- Manoti**: A bonus to a creditor above the stipulated interest.
- Manpan**: Honours and presents offered at festive occasions; privileges of a village hereditary officer.
- Mansa, Mansha**: Wish, desire.
- Mansubi**: Inquiry, investigation.
- Map vartala**: See Vartala
- Maramat karne**: To preserve, grant or confirm.
- Maratab**: Title, dignity.
- Masala**: Any pecuniary imposition.
- Mashagat**: Labour (agricultural)
- Mashar nilhe**: Abovenamed (person).
- Mashrul Anam**: Honourable.
- Mehman**: Guest; a cultivator living temporarily in a village.
- Mer**: A short earthen wall or border of a field.
- Minhu**: In the aforesaid month.
- Minmekh**: Unconditionally, without reservation.
- Miras**: An hereditary office usually with lands attached thereto;—**Dar** or **Mirashi**: A landed proprietor; a person entitled to Miras rights.
- Miskin**: Destitute.
- Mobadla kimmat**: Commuted-value of a crop-share.
- Mogham Babat, Bakti**: Non-descript cess or tax
- Mogham kharaba**: The village waste or unassessed land.
- Moharir**: A writer working under a Deshpande.
- Mohatarfa**: A tax on shop-keeper or artificers in a village.
- Mojib**: According to (abridged from **Ba Mojib**).
- Mok (h) asa**: A village or land assigned to a person either rent-free or at a low quit-rent, generally on condition of service; the holder of such a village; the State share in the revenues of a village.
- Moos**: An outlet, a little channel.
- Mortab**: A seal.
- Mosaba**: Account.
- Motad**: Settled or limited allowance; want.
- Mouje**: A village.
- Muchalka**: Bond, written engagement.
- Mudi**: Rice-straw made up in a bundle for storing grain.
- Mulana**: A school-master, one of the twelve Balutedars.
- Mulki**: Relating to revenue.
- Murabbi**: A patron; the head.
- Musha (hi) ra**: Emolument, allowance, stipend.
- Mustamik**: Improvement (of lands).

- Musted** : Prepared, cultivated.
- Mutavik** : Corresponding to.
- Nagad** : Cash.
- Nakli** : Lapsed for failure of heirs, extinct.
- Nakird, Nakirdsar** : Uncultivable, uncultivated.
- Nakt** : Cash ; in cash ;—**Bab** : tax in cash—**Nemnuk** : Cash allowance.
- Noukirda** : Unassessed land newly brought under cultivation, or assessed land of one class converted into another of a superior class *e. g.* warkas into rice.
- Navsadhya** : Newly acquired or cultivated.
- Nibhavni** : Carrying through or accomplishing ;—**Sut** : Remission to the ryots in times of difficulty.
- Nidhi** : Mine.
- Nihaya** : Lit. extremity ; through-out, several (*e. g.* Dehe Nihaya)
- Nikshap** : Buried treasure.
- Nimtana** : Rough appraisal of the total produce of a field by cutting a few handfuls of a crop therefrom.
- Nisbat** : Charge of, belonging of appertaining to.
- Nivval Khoti** : Purely khoti as opposed to Khichadi Khoti.
- Niwade Patra** : Award.
- Nond** : An entry.
- Pad, Padit** : Waste, uncultivated, fallow.
- Pahani** : Survey, inspection.
- Pahan (i), Kharda** : A rough account of a revenue-survey of Peshwa's time.
- Paidast** : Profits, earnings.
- Paimash** : Survey, measurement ;—**Pahani** : Measurement of different fields.
- Paira** : A day labourer.
- Pairen** : A day's wages of a Paira.
- Paiwast** : Added to as an alluvial deposit ; additional lands, from any source, to those held in farm,
- Palat** : Turn.
- Paldar** : Person exempt from taxation.
- Palnuk** : Exemption from taxation ; bringing up.
- Panad** : A lane through a village or between inclosures.
- Pand** : A land measure equal to 20 square Kathis or rods *i. e.*  $\frac{1}{20}$ th of a Bigha ; A Viswa.
- Paramarsha** : Inquiry.
- Parangada** : Gone abroad, absconded.
- Pat, Patpani** : Water courses.
- Patasthal** : (Garden) land watered by a channel.
- Patta** : A lease.
- Pattedar** : Lessee.
- Patti** : Cess or tax ; collection in general ; a strip (of land).
- Pera, Perani** : The sowing of seed.
- Peshji** : Former ; formerly ; in advance.

- Pestār** : Future, next ; next year ;—**Patti** : Future cesses.
- Pota** : Accounts ; treasury ;—  
**Jama karne** : Credit to accounts.
- Potkharaba** : Bad and untilled land lying amidst cultivated lands.
- Pot Number** : A subordinate survey-number of Kharip, Rabbi or Bagayat land.
- Pot Pahani** : Detailed field inspection.
- Pulan** } Sandy soil ; sandy  
**Pulanwat** } plains in the immediate neighbourhood of the sea and tidal creeks.
- Puratan** : Ancient.
- Purshis** : Interrogatory.
- Pust dar pust** : Generation to generation.
- Rab** : Loppings, leaves etc. used for burning the ground in preparation for the seed ; refuse used for manure ; wood-ash dressing for the rice fields.
- Rabbi** : Alluvial soil near the banks of a river yielding pulse etc ; vernal crop or harvest.
- Rajatalabent Asane** : To be obedient.
- Rajinama** : Resignation.
- Raji Rajavatine** : With the free-will and full consent.
- Rakkamwar** : Item by item ; in detail.
- Rakmi** : (Land) bearing fixed assessment ; cultivable.
- Rajsum** : Taxes or perquisites
- Raya** }  
**Rayani** } Ryot.
- Rayatawa** : Peasantry, tenantry ; land belonging to ryots.
- Rayatwari** : The ordinary survey-tenure.
- Rayawal** : Jungli ; of inferior quality ; Jungle as opposed to timber tree.
- Retai** : Violence, impudence, heedlessness.
- Rojgudast** : Yesterday.
- Rojina** : Daily.
- Rubru** : Face to face, in the presence of.
- Rui** : Custom.
- Rujwat, Rujuwat** : The review of the Khots and villagers in whose presence the Survey-officer frames the register and other records, with a view to settle their rights and liabilities *inter se*.
- Sada** : Land on the top or side of a hill.
- Sahal** : Concession ; moderate (as opposed to jalel).
- Saha-bhagidar** : A co-sharer.
- Sajjewari** : Statement showing the expenses of attachment  
*File p. 64.*
- Salabad** : Annual
- Salayanda** : The coming year.
- Salbandi** : Settlement for successive years.
- Salgudast** : Last year.
- Samayik** : Joint ; jointly.
- Sanavat, Sanavad** :—**Baki** :  
 Arrears of revenue due through



- a course of years ;—**Padit** : (lands) lying fallow for years.
- Saranjam** : Grant of land for military services (Fouj saranjam) or for charitable purposes or for maintaining the dignity of the donee.
- Sarbarai** : Helping, supplying, promoting.
- Sard** : (Lit.) Damp; monsoon crop.
- Sarkati** : A partner—**Khoti** : A khoti village held by both Government and the Khot.
- Sarras** : Altogether, in the gross.
- Satta-prakar** : (Lit.) Current manner or mode; tenure.
- Savaijama** : Extra collections.
- Shart** : Turn, condition.
- Shel** : Embankment; land included in embankment.
- Sheri** : Crown land; land cultivated for the Khot by the village ryots gratis (Molesworth).
- Sheti** : Owner of a field; cultivator.
- Shetsari** : Fields collectively.
- Shillak baki** : Balance left.
- Shilotri** : Lands embanked and reclaimed from the sea also called Khars; tenure on which such lands are held in the Northern Konkan.
- Shivar** : (Ground) round the village.
- Shirasta** : Usage, practice.
- Shivaya Jama** : Extraordinary revenue (term used in Mafi-istava leases).
- Sim** : (Soil) of the third class or grade. (*Vide* Aval, Dum).
- Sod patra** : Deed of relinquishment or resignation.
- Sosti** : Fully taxed (land).
- Subatta** : State of peace and plenty.
- Sud** : An account abstracted from the village Khatavani; a patrak prepared by the Survey Department, showing the several survey-numbers in a village *ad seriatem*, with their maps and the area of the cultivated and the uncultivated portions of such survey-numbers. *Vide* App. V.
- Sugi** : Year or period of plenty.
- Sutidar** : A cultivator in the Northern Konkan, holding his land on the Suti tenure, which is analogous to that of Miras, but not so advantageous.
- Tagayat** : Upto, until. (*See* (Istakbil)).
- Tahal** : Loppings from trees generally used for Rab manure.
- Takshim** : Share.
- Takta** : List, sheet, schedule.
- Takvit or Takviyat Koul** : Lease or agreement issued to a party prior to the formal koul or agreement.
- Taleband** : A complete abstract of the receipt and expenditure of the revenues for the past month or year.
- Talik** : A copy.

- Tankha** : An assignment on the revenues ; assessment fixed by the Adilshahi kings. (Molesworth).
- Tanmod** : The clearing away of weeds etc. in bringing land under cultivation ; waste land given for a term of years free of assessment in consideration of the expense of clearing it.
- Tappa** : District ; distance (between two places) ; halting, halting place.
- Taram** : Class, sort ; classifier—**Akar** : Assessment ;—**Pahani** Classification of lands according to their productivity.
- Tarfa, Taraf** : Sub-division of a district or paragona.
- Tasar, Taser** : A fixed sum paid by the cultivator in lieu in part of the payment due in kind ; commuted-value of assessment in grain.
- Terij** : Extract (of accounts) ;—**Kul ghadani** : Abstract prepared from Botkhat of khatas of ryots ;—**Shet gana** : Abstract prepared from Pahan Kharda of fields.
- Thana, Thane** : Head station of a district ; revenue station.
- Thevanayit** : Appointed, nominated
- Tijai** : A third share.
- Tirdhal, Tirdhel** : A third of the produce (of a field) ; tenancy on such terms ;—**I** : A tenant paying one-third crop-share.
- Tirhayit** : Umpire.
- Turuk** : Lit. : a trooper.
- Udave, Udaven** : Rice stack-stack of gram and such other plants.
- Ugavni** : Collecting, recovering ; amounts collected or recovered.
- Ujad** : Desolate.
- Unchavla** : Hillock ; hilly ground.
- Udir Khaj** : Cess for making good the loss caused by rats in Government granaries.
- Ungil** : One without a vatan.
- Upari** : Yearly or shifting tenant having no right of occupancy.
- Ustavari** : Cultivation.
- Uthal** : Shallow or low lying watery ground.
- Vahata Kirda** : Cultivated.
- Vahivatdar Khot** : Managing Khot.
- Vairan** : Fodder for cattle.
- Vajab** : Fit, proper, correct.
- Valat** : Upland.
- Van Mhasi** : Cattle tax.
- Vant** : Share.
- Vapa, Vapha** : A plot of ground.
- Varand** : Bundle (for example of rice stalks).
- Varat** : Assignment or order upon a treasury
- Varga Karne** : To transfer, assign.
- Varkas, Varkasal, Varkashil** : Ground chiefly hilly fit

- for cultivation of pulses and inferior grains and assessed at few annas per acre; inferior cereal grains and pulses.
- Vartala, Vartavala** : Excess arising on certain measurements (**Map Vartala** : Such excess arising in grain as measured in particular measures or in particular ways).
- Vasla** : A plot of land.
- Vaslat** : Revenues; receipts; account of receipts and disbursements.
- Vatani Varakh** : Partition or allotment sheet.
- Vaven** : Land about which there is a boundary dispute between two adjoining villages (*vide* p.224); a narrow strip of land.
- Vayangan** : Dry weather rice-crops ripening about the end of March.
- Veth, Veth Begar** : Labour exacted without remuneration.
- Vidyaman** : Existing, current, present; in the presence of.
- Vilhe, Vilha** : A class, division, sub-division.
- Virad** : Forenoon or afternoon.
- Virda** : A young plant.
- Viswa** : Land-measure equal to one twentieth of a Bigha; also used to indicate the proportionate share or interest in a village which is conventionally taken as equal to one Bigha.
- Vopan Patra** : A deed of abandonment or resignation.
- Wantap** : Partition, division, share.
- Wasul-baki-yadi** : Balance sheet of revenues or moneys uncollected.
- Watan** : Hereditary estate, office or right
- Watni Terij** : A list or abstract of Watan.
- Zada** : A statement, list; a general clearance of accounts.
- Zadati** : Extract from accounts.
- Zad Pedh, Zad Zadotra** : All kinds of trees and bushes.
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(1) "The declared opinion of the Executive Government merely as such can have no more weight with the Court than that of the humblest of Her Majesty's subjects."

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# BOMBAY ACT NO. IV OF 1913.

*(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 28th May 1913).*

**An Act to amend the Bombay Land-revenue Code, 1879, the Khoti Settlement Act, 1880, and the Gujarat Talukdars Act, 1888, and to repeal the Bombay Land Record-of-rights Act, 1903.**

Whereas it is expedient to amend the Bombay Land-revenue Code, 1879, the Khoti Settlement Act, 1880, and the Gujarat Talukdars Act, 1888, in manner hereinafter appearing, and to repeal the Bombay Land Record-of-rights Act, 1903; and whereas the previous sanction of the Governor General required by section 5 of the Indian Councils Act, 1892, has been obtained for the passing of section 41 of this Act; It is hereby enacted as follows:—

## P A R T I.

### *General.*

1. This Act may be called the Bombay Land-revenue (Amendment) Act, 1913.  
Short title.
2. The Bombay Land Record-of-rights Act, 1903, shall be repealed.  
Repeal.
3. Whereas this Act amends an enactment which has previously been amended by an Act passed before the commencement of this Act, then any of the provisions of such previous amending  
Previous amending Acts

ii THE BOMBAY LAND-REVENUE (AMENDMENT) ACT, 1913.

Act which may be inconsistent with any of the provisions of this Act shall be repealed to the extent to which they are inconsistent therewith.

\* \* \* \* \*

PART III. †

*The Khoti Settlement Act, 1880.*

85. In the Khoti Settlement Act, 1880 (hereinafter  
Substitution of terms. in this part called "the said Act"),

(a) for the phrases "right of occupancy", "occupancy-rights", and "an occupancy-right", wherever they occur, the phrases "permanent tenancy", "permanent tenancies" and "a permanent tenancy" shall respectively be substituted ;

(b) for the phrases "occupancy-tenant", "occupancy tenants" and "an occupancy-tenant", wherever they occur, the phrases "permanent tenant", "permanent tenants" and "a permanent tenant" shall respectively be substituted.

86. In the proviso to section 6 of the said Act, for  
Amendment of section 6 the words "such right", the words  
"such permanent tenancy" shall be  
substituted.

---

† Part II amends the Bombay Land-Revenue Code 1879; while Part IV amends the Gujarat Talukdars Act, 1888.

87. (1) In section 9 of the said Act for the words  
"occupancy-tenants rights" the words  
Amendment of Secs. 9  
and 10. "permanent tenancies" shall be substituted.

(2) In section 10 of of the said Act—

(a) for the words "in the holding of" the words  
"held by";

(b) for the words "the land or any portion of the land  
in his holding" the words "his land or any portion of his  
land"; and

(c) for the word "such" the word "his" shall be  
substituted.

•88. For the second paragraph of section 16, of the  
Amendment of Sec. 16. said Act the following shall be substituted :

"If a survey number is held by one or more privileged  
occupants, the said register shall further specify the tenure  
on which such number is held, the names of the occupants  
thereof, and, in the case of a survey number held by a per-  
manent tenant, whether his interest therein is transferable  
otherwise than by inheritance or not."

89. In section 26 of the said Act, the words from  
the phrase "and shall for all the pur-  
Part repeal of Sec. 26. poses" to the end of section shall be  
repealed.

90. In section 33 of the said Act, for the word  
"occupancy", where it occurs twice in  
Amendment of Sec. 33. sub-rule (4) of rule IV, the word  
"occupation" shall be substituted.

THE BOMBAY LAND-REVENUE (AMENDMENT) ACT, 1913

91. In section 36 of the said Act, the words “the  
Amendment of Sec. 36. lands in ” shall be repealed.

92. In section 39 of the said Act

Amendment of Sec. 39. (a) for the portion from the phrase  
“ nothing in sections ” to the phrase  
“ this Act extends ” the following shall be substituted :—

“ Nothing in sections 68, 72, 73, 74, the second para-  
graph of section 104, sections 112, 117A, 117B, clause (b)  
of section 150, or section 153 of the Bombay Land-revenue  
Code, 1879, shall be deemed to apply to any village to  
which this Act extends ” ;

(b)<sup>c</sup> Clause (a) shall be repealed.

\* \* \* \* \*

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