THE MANUAL OF BOMBAY ACTS & REGULATIONS

(CIVIL, CRIMINAL and REVENUE)

IN TWO VOLUMES

IN FACT

An Encyclopædia of Bombay Statute

From 1827 to February, 1937

Volume II—L to Z

POONA

1937

PREFACE

—:o:—

The 4th edition of the Manual of Bombay Acts and Regulations in two volumes published in 1932, and kept upto date from time to time by the insertion of new Amending and Independent Acts, having been exhausted, the author feels no small amount of pleasure to bring out this 5th edition of the same.

This edition incorporates all the unrepealed Bombay Regulations and Acts assented to by the Bombay Legislature from 1827 to February 1937, with exhaustive annotations and Government Rules thereunder amended upto date.

As such voluminous works have their utility solely as reference books, not a single unrepealed Bombay Act or Regulation in force in the Bombay Presidency is omitted, which must be considered a speciality of this edition.

To enhance the utility of the publication and to make it a complete and thorough work of reference in all respects, all the Bombay Acts amending General (India) Acts in their application to the Presidency of Bombay are also included.

Regarding Sind, all the Bombay Acts (with the exception of the Karachi Municipal Act of 1933) solely applicable to the Province of Sind, are separately printed and supplied free to the customers from Sind.

Thus it will be seen that no pains have been spared to make this publication an exhaustive work of reference for the Bombay Presidency including Sind.

It is, therefore, earnestly hoped that the legal public, whose patronage has done so much to encourage this work, will continue to extend the same warm and generous support to this new edition, as of old.

LAW PRINTING PRESS OFFICE.
Poona, 15th February 1937.

D. G. KHANDEKAR

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LAND REVENUE CODE, 1879

HISTORICAL RECORD

Year.	No. of Regs. and Acts	Name of Regulations and Acts.	How affected.
		Bombay Regulations.	
1827	IV	Civil Courts (Law to be observed)	Rep. in part (locally), Bom. Act V of 1879
1827	XVI	Collectors of Land Revenue.	Residue rep. (locally), do.
1827	XVII	Land Revenue.	do. do.
1830	V	Revenue Commissioner ...	do. do.
1831	XV	Falsification of Records ...	do. do.
1832	II	Farmers of Land Revenue...	do. do.
1833	V	Hereditary Officers ...	do. do.
		Imperial Acts	
1838	XVIII	Sureties, Bombay ...	Rep. (locally), Bom. Act V of 1879.
1842	XIII	Revenue, Bombay ...	Residue rep. (locally) do.
1842	XVII	Revenue Commissioners, Bombay.	do. do.
1846	III	Boundary marks, Bombay...	do. do.
1850	XII	Public Accountants' Defaults	Rep. in part (locally in Bombay), Bom. Act V of 1879.
1852	XI	Titles to Rent-free Estates, Bombay	Application declared, Bom. Act V of 1879, S. 127.
1852	XXI	Deputy Collectors, Bombay.	Residue rep. (locally), Bom. Act V of 1879
		Bombay Acts.	
1863	II	Exemptions from Land Revenue in territories subject to Act XI of 1852.	Application declared, Bom. Act V of 1879, S. 127.

HISTORICAL RECORD—(*Concluded*)

Year.	No. of Regs. and Acts.	Name of Regulations and Acts	How affected.
1863	VII	Exemptions from Land Revenue in territories not subject to Act XI of 1852.	Appplication declared, Bom. Act V of 1879 S. 127.
1865	I	Bombay Survey and Settlement Act.	Rep. locally (except Ss. 37, 38), Bom. Act V. 1879.
1868	I	Deputy and Assistant Collectors.	Residue rep. (locally) Bom. Act V of 1879.
1868	IV	The Act for City Surveys and amendment of Bombay Survey and Settlement Act.	do. do.
1875	I	Survey and Settlement (amending Bom. Act I of 1865).	Rep. (locally), Bom. Act V of 1879.
1879	V	*Bombay Land Revenue Code.*	Rep. in part, Bom. Act III of 1886. " " and Am., Act XVI of 1895. " " Bom. Act VI of 1901. " " (locally), Bom. Act I of 1880, S. 39. " " Bom. Act VI of 1888 Ss. 3, and 33 as Am., Bom. Act II of 1905. Am., Bom. Act VII of 1879 S. 2. " " IV of 1886. " " I of 1910. " " IV of 1913. Ss. 3 (1), 38, 43, 52, 80, 187, 214, heading above S. 40 Sch. B, Am., S. 144 rep. in part, Bom. Act IV of 1905. Rep. (in Coorg), Reg. I of 1899. S. 85 and part of S. 58 declared not to be in force in the Panch Mahals, Act VII of 1885. Am., Bom. Act XI of 1912. " " VII of 1914. " " II of 1919. " " I of 1920. " " III of 1921. " " V of 1930. " " III of 1932.

THE

Bombay Land Revenue Code, 1879

:o:

Bom. Act No. V of 1879 [a].

[17th July 1879

(As Amended and modified upto 1st June 1933)

An Act to consolidate and amend the law relating to Revenue officers, and the Land Revenue in the Presidency of Bombay.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Revenue officers, and to the assessment and recovery of Land Revenue, and to other matters connected with the Land Revenue Administration ; it is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

Short title.

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

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

The rules and orders under sections 213 and 214 do not apply to Khoti and Talukdari villages. Rules 7 to 10 inclusive, 21 cl. (2), 23, 25 to 27 inclusive, 38 and 70 shall not apply to Sind.

Ss. 38 to 40, 44, 60 to 67, 76, 82, 85, 109, 110, 116, 127 to 136, 163, 216 and 217 (all inclusive) of Bom. Act V of 1879 do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujerat Talukdars' Act, 1888, extends ; and ss. 3 cl. (1), 46,54, 79A cl. (a), 88, 89,94, 111, 113, 147, 150 cl. (f), 160, 162, 214 of the Act, and the words "occupant," "registered occupant" and "occupancy" throughout the Act, are subject to modification when applied to any such estate (see Bom. Act VI of 1888, ss. 1 and 33).

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

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[a] Sec. 85 and the last 15 words of s. 58 are not in force in the Panch Mahals (see Act VII of 1885, s. 2).

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

[a] (2) Save as otherwise provided by Chapter XA, this Act extends to the whole of the Presidency of Bombay, except the City of Bombay, Aden and the Scheduled District of the Mehwassi Chiefs' villages as defined in the Scheduled Districts Act, 1874.

Extent.

[b] (3) Provided that Chapter III also extends to the City of Bombay, subject to the modification that the expression "Revenue-officer" means every officer of any rank whatsoever appointed under section 5 or 6 of the Bombay City Land Revenue Act, 1876, and employed in or about the business of the land revenue in the City of Bombay, or of the surveys, assessment, accounts or records connected therewith, instead of as defined in clause (1) of section 3 of this Act.

Extension—The provisions of this Code have been made applicable to the **Akalkot** and **Jath** States (B. G. G., 1879, Pt. I. p. 966) and to the **Districts in Sind** (G. R. R. D. No. 4956—B, dated 30th June 1904).

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

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

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

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

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

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

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

Interpretation clause.

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

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

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

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

(1) "revenue officer" means every officer of any rank whatsoever appointed under any of the provisions of this Act, and employed in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith [a] and for the purposes of sections 25 and 26 includes a village-officer appointed or officiating under any of the provisions of the Bombay Hereditary Offices Act or the Matadars Act, 1887 [a];

"revenue officer;"

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

Revenue Officers.—Watandar village officers are not Revenue officers under sub-section (1) of this section. If a watan *lapses*, then Government succeed to the watan and the officer appointed by them would be a watandar for the purpose of ss. 85 and 94A. But when a watan is commutted, it has not yet been decided that the analogy holds. Talatis are executive and not ministerial officers for the purpose of C. S. R. 459 (*a*) (G. R. No. 7268 of 1918).

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

The District Inspector of Land Records is a revenue officer and can issue summonses for evidence or documents, but the Superintendent is a survey officer : supervising tapedars in Sind are survey officers, but Circle Inspectors are not. The District Inspector of Land Records has power to order measurement on the application of parties and to levy fees for it. Both Superintendent of Land Records and District Inspector of Land Records can levy fees under s. 135-F (*Anderson's L. R. Rules*, ed. of 1930, p. 8).

"survey officer;"

(2) "survey officer" means an officer appointed under, or in the manner provided by, section 18 [b];

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

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

"land;"

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

"estate;"

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

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

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

"survey number;"

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

"sub-division of a survey number;"

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

"chavdi;"

Chavdi.—In Sind 'Chavdi' includes a Tapedar's Dera.

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

"building site;"

(10) "boundary-mark" means any erection, whether of earth, stone or other material, and also any hedge, [f] unploughed ridge, or [f] strip of ground, or other object whether natural or artificial, set up, employed or specified by a survey officer, or other revenue officer having authority in that behalf, in order to designate the boundary of any division of land;

"boundary-mark;"

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

"to hold land" "land-holder" "holder;"

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

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

[b—b] These words were substituted by Bom. Act IV of 1913, s. 6 (*b*), for the words "survey records."

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

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

[e] This definition was added by Bom. Act IV of 1913 s. 6 (*d*).

[f-f] These words were substituted for the original word by Bom. Act VI of 1901, s. 2.

[g] This definition was substituted for the original definitions of "holder" or "landholder" and "holding" by Bom. Act IV of 1913, s. 6 (*e*).

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

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

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

"superior holder;" [b] (13) "superior holder" means a landholder entitled to receive rent or land revenue from other landholders (hereinafter called inferior holders"), whether he is accountable or not for such rent or land-revenue, or any part thereof, to Government: provided that where land has been granted free of rent or land revenue, subject to the right of resumption in certain specified contingencies, by a Jagirdar, Inamdar or other such holder of alienated land whose name is authorizedly entered as such in the land records, such Jagirdar, Inamdar or holder shall, with reference to the grantee, be deemed to be the superior holder of land so granted by him and the grantee shall, with reference to the grantor, be deemed to be the inferior holder of such land and for the purposes of section 8 of the Bombay Local Funds Act, 1869, shall, notwithstanding anything hereinafter contained in the definition of the word "tenant," be deemed to be the tenant of such grantor.

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

"Superior holder.—"We have had under consideration the case of Inamdars, Jagirdars and other holders from Government of alienated lands who have themselves made grants of portions of their lands for the maintenance of cadets and other similar purposes. These grants are made subject to resumption in certain contingencies, such as failure of lineal male heirs, and if they are made free of liability to pay rent or land revenue, the grantors have been held not to be the superior holders of such lands (*vide Gordhanlal v. Darbar Shri Surajmalji*, 6 Bom. 504). As the grantors have a reversionary interest in the land, it is desirable that the grantors should be included within the definition of superior holders (*Report of the Select Committee*).

An inamdar receiving rent or land revenue from cultivators in his inam village is a superior holder not accountable to Government for the same. A khot receiving assessment from a *dharekari* is a superior holder accountable to Government for the same. A village accountant receiving assessment from a cultivator is accountable to Government for the same but cannot be said to be a *superior*

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

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

holder, because he is not a holder and has no interest in the land of which he co lects the assessment (*Dandekar's Law of Land Tenures*, Vol I, pp. 42—43).

Where it appeared that defendants were liable to pay the assessment and loc fund to the plaintiff, who held a sanad under the Summary Settlement Act, 18t the lower Court came to the conclusion that the relationship of landlord ar tenant was not created between the parties, it was *held* that the plaintiff was superior holder within the meaning of this sub-clause and that the defendants wer in law the tenants of the plaintiff, whatever the nature of their holding might hav been (*Surshangi Naran*, 2 Bom. L. R. 855).

The Talukadari Settlement Officer may, with reference to a person holdin lands under a lease from him, be deemed to be a "superior holder" within th meaning of this clause (*Secretary of State for India v. Gordhandas Mohanlal*, 3 Bom. L. R. 815).

"Superior holder" and "inferior holder."—The expressio *"superior holder"* is wider including the expression *landlord*. The terms *superi holder* and *inferior holder* have reference only to payment of rent or land revenu whereas the terms *landlord* and *tenant* have reference only to the origin of th right to hold. A tenant has to pay to his landlord and is thus an inferior holder In addition to this fact he derives his right to hold from the man whom he pay or from his predecessor. Every tenant is an inferior holder, but every inferio holder is not necessarily a tenant [*Dandekar's Law of Land Tenures*, Vol. I p. 43]

"tenant;"

[*a*] (14) "tenant" means a lessee, whether holding under a instrument or under an oral agreement, an includes a mortgagee of a tenant's rights witl possession; but does not include a lessee holding directly under Government;

"landlord;"

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

"occupant;"

[*b*] (16) "occupant" means a holder in actual possession o unalienated land, other than a tenant: pro vided that where the holder in actual posses sion is a tenant, the landlord or superior land lord, as the case may be, shall be deemed to be the occupant;

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

"occupancy;"

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

Occupancy.—The term "occupancy" is subject to modification when ap plied to any estate in the districts of Ahmedabad, Kaira, Broach and Panc Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI o 1888, ss. 1 and 33).

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

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

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

"occupation;" (19) "occupation" means possession ;

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

"Alienated".—Though the grant of a land to an inamdar was of the entire property in the soil, still the lands were 'alienated' within the meaning of this sub-clause, and the defendants were entered in the settlement register as khatadars and who cultivated the lands and paid to the plaintiff only a sum equivalent to the annual assessment, were entitled to the rights of occupants in unalienated villages by virtue of s. 217 *post* (*Dadoo v. Dinkar*, 43 Bom. 77).

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

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

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

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

"Joint holders," "Joint occupants;" [b] (25) the term "joint holders" or "joint occupants" means holders or occupants who hold land as co-sharers, whether as co-sharers in a family undivided according to Hindu law or otherwise, and whose shares are not divided by metes and bounds ; and where land is held by joint holders or joint occupants, "holder" or "occupant," as the case may be, means all of the joint holders or joint occupants ;

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

"land records;" [b] (26) "land records" means records maintained under the provisions of, or for the purposes of, this Act ;

"Certified copy." [b] (27) "certified copy" or "certified extract" means a copy or extract, as the case may be, certified in the manner prescribed by section 76 of the Indian Evidence Act, 1872 ;

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

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

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

[*a*] (23) In Sind the word "Mukhtyarkar" shall be deemed to be substituted for the word "Mamlatdar" wherever it occurs in this Act.

[*a*] This definition was added by Bom. Act IV of 1913, s. 6 (j).

CHAPTER II.

CONSTITUTION AND POWERS OF REVENUE-OFFICERS.

Chief controlling authority in revenue matters.

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

Extent of territories under the Commissioners.

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

The territories under a Commissioner to be a division.

The territories under each Commissioner shall form, and be called, a division [*a*],

[*b*] and for the purposes of this Act the territories comprised in the Province of Sind shall be deemed to form a division and the Commissioner in Sind shall be deemed to be the Commissioner of that division [*b*].

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

Commissioners.—There are three Divisional Commissioners, at present besides the Commissioner in Sind, each in charge of a division, there being three divisions in the Presidency proper. These divisions are—(1) the Northern Divi-

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

[*b*—*b*] These words were added by Bom. Act IV of 1913, s. 7.

sion, (2) The Central Division, and (3) The Southern Division. These divisions comprise the districts as under :—

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

The Districts in Sind are :—(1) Karachi, (2) Dadu, (3) Hyderabad, (4) Sukkur, (5) Larkana, (6) Nawabshah, (7) Thar Parkar and (8) Upper Sind Frontier.

Appointments and duties of Commissioners.

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

Assistants to Commissioners.

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

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

Division to be divided into districts.

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

A district to consist of talukas comprising such mahals and villages as Government may direct.

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

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

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

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

N. D.		C. D.		S. D.	
Modasa	Ahmedabad	Bhadgaon	East Khandesh	Chandgaon	Belgaum
Gogha	Ahmedabad	Edlabad	East Khandesh	Murgod	Belgaum
Halol	Panch Mahals	Parola	East Khandesh	Bilgi	Bijapur
Jhalod	Panch Mahals	Navapur	West Khandesh	Mundargi	Dharwar
Hansot	Broach			Nargund	Dharwar
Valod	Surat			Bhatkal	Kanara
Mokhada	Thana	Mulsi	Poona	Supa	Kanara
Umbargaon	Thana	Ambegaon	Poona	Mundgod	Kanara
		Dhond	Poona	Uran	Kolaba
		Khadala	Satara	Khalapur	Kolaba
		Malcompeth	Satara	Nagothana	Kolaba
		Shirala	Satara	Guhagar	Ratnagiri
				Mandangad	Ratnagiri

[*Vide Sathe's L. R. Code, 4th ed., p. 13.*]

Collector of the District.

8. The Governor in Council shall appoint in each district an officer who shall be the Collector [*a*] and who shall be subordinate to the Commissioner of his division and may exercise, throughout his district, all the powers and discharge all the duties, conferred and imposed on a Collector or an Assistant or Deputy Collector by this Act, or any other law for the time being in force, and in all matters not specially provided for by law shall act according to the instructions of Government.

Assistant and Deputy Collectors.

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

To be subordinate to Collector.

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

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

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

Their duties and powers.

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

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

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII [a], perform all the duties and exercise all the powers conferred upon a Collector [b] by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge.

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

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

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

Powers of Collector.—While the Land Revenue Code gives all executive powers in the first place to the Collector (who signs sanads for most alienations, it reserves a few to the Commissioner. The Collector fixes irrigation rates under s. 55 within the maximum sanctioned by Government. The Collector hears appeals from Survey Officers below grade of Superintendent of Survey under s 37 (2), and read with section 203, this also gives him appellate power in respect of section 50A of the District Municipal Act. The Collector can make reductions for diluvion, and may postpone instalments but only with the Commissioner's sanction. He may transfer Government land to other Departments and make all assignments under s. 38 of Act IV of 1905.

While the Collector cannot sanction the employment of permanent establishment (section 21) he can make all appointments to sanctioned posts on the district staff, except Mamlatdars and Head Accountants : and he may in certain cases create and fill temporary appointments. The most important of these cases is in respect of the staff of Circle Inspectors, peons and labourers for partition and sub-division measurement work, and for repairing boundary marks when the cost is irrecoverable from the parties.

The Collector can write off amounts of irrecoverable revenue of all kinds not exceeding Rs. 100 in each case without reference to higher authority, and the Commissioner provided no defect of system or procedure requiring Government orders is disclosed and there has been no serious negligence which might require disciplinary action can write off without limit irrecoverable dues for boundary mark repairs (sections 122–23) and all kinds of revenue and tagai without limit

[a] Words repealed by Bom. Act III of 1886 are omitted.
[b] Words repealed by Act XVI of 1895 are omitted.

and irrecoverable value of stores or public money up to a limit of Rs. 500 and, unserviceable dead-stock to any amount, sending an annual statement to the Accountant General. The last power was extended to the Collector by G. R. No. 5941 of 1902.

Generally speaking all powers of the Collector under the Land Revenue Code or any other law are also exercised under s. 10 by the Assistant or Deputy Collector in respect of the talukas in his charge. But the Collector may always reserve any power he thinks fit. In particular, Government have directed that powers under Rules 81 and 82 should not ordinarily be delegated. There should be no "unnecessary" reservation. The power of arrest is to be exercised only when specially delegated. The Assistant or Deputy has certain powers of executing contracts and leases under Home Department Resolution 7119-II of 27-9-29 and sanads for tree planting in open sites in villages. He may fine watani village revenue officers and (in Ahmedabad) appoints, punishes, and dismisses mukhis and police patels (subject to the control of the District Magistrate) in talukdari villages.

The Collector will delegate by name the power to write off irrecoverable revenue upto Rs. 25 (G. R. No. 6042 of 3-4-1923).

To a Supernumerary or Personal Assistant, powers must be specifically delegated (G. R. No. 5941 of 1902 (*Anderson's L. R. Rules, ed. of 1930, pp.4-5*).

The powers conferred upon the Collector under the Bom. Irrigation Act are to be exercised by an Assistant Collector according to this section (*Nawazali Shah Pir Ali Gohar Shah v. Rustomali Shah*, 14 S. L. R. 53).

Collector of the district in case of temporary vacancy.

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

An officer whose principal office is different from that of an Assistant Collector, and who is an Assistant Collector for special purposes only, shall not be deemed to be an Assistant for the purposes of this section.

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

The powers and duties of a Collector may not be conferred by a Collector on any Assistant or Deputy Collector who has not passed the Departmental Examination according to the higher standard. This order does not refer to Deputy Collectors appointed before the issue of the Government order of the 10th April 1866, directing Deputy Collectors to undergo Departmental Examinations (B. G. G. 1868, Pt. I, p. 1196).

The Mamlatdar; his appointment.

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

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

His duties and powers.

His duties and powers shall be such as may be expressly imposed or conferred upon him by this Act, or by any other law for the time being in force, or as may be imposed upon, or delegated to, him by the Collector under the general or special orders of Government [a].

Delegation of powers to Mamlatdar.—The code provides that the Mamlatdar should exercise such powers as the Collector may delegate to him. But these delegations must be made "under the general or special orders of Government" and also they must be made in all cases by name and not merely in virtue of the office held. Therefore, it is desirable that a printed form should be used by every Collector as follows :—

" To Mr. A. B.

"Whereas you have been appointed to be (or to do duty temporarily as) Mamlatdar (Mahalkari) of—you are hereby authorized during the tenure of that office to exercise the following powers :—

(Here print the powers below detailed.) The Collector should strike out whatever powers reelect to reserve).

Collector of.....The powers which may be delegated are these —

Section	Extent of power	Authority
25, 26 ...	All ...	R. 5295 (9)-11.
32 and Watan Act...	To fine hereditary or stipendiary village revenur officers.	R. 2116 and 4100-83, 1953-93, 5891-03, 5595-08.
42, 43, 70 ...	All	R. 4347, (17)-02.
48 (4), 61 (6), 79A. and 202 ...	To sign eviction notices approved by the Assistant or Deputy.	R. 5295 (85)-11.
80, 86 ...	All. [Mukhtyarkars in Sind included. R. 8048 (1)-08.]	R. 2598 and 6024-83, 9901-06.
90 ...	To sanction sale of moveables in alienated villages.	R. 5295 (47)-11.
91 ...	To accept security from defaulting inferior holders.	*Under this order.*
117B ...	All	*Under this order.*
135F ...	Up to a limit of Rs. 15 ...	R. 7623—9-4-24 & 13-4-24.
135H (3) ...	All ...	*Under this order.*
141-143, 145 ...	All ...	R. 8046-08, 7773-13.
148 ...	All ...	R. 7176-12.
149 ...	To issue certificates direct to other Mamlatdars (apparently in the same or other districts of the Presidency).	R. 5295 (71)-11.
152 ...	To issue notices and remit notice fees levied *by mistake.*	R. 5295 (73)-11.

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

Section	Extent of power.	Authority.
153, proviso (*a*) ..	To issue notices threatening forfeiture	R. 5295 (74)-11.
154 ...	To distrain and sell moveables in unalienated villages.	R. 5954-91.
156 ...	To determine what property is exempt	R. 4347 (17)-02.
185, 166 (3) ...	All, in respect of such sales as he has himself power to make.	R. 5295 (78-9)-11.
181 ...	To put in possession and give certificate.	R. 5295 (80)-11.
186 ...	All ...	R. 8785-89.
190 (3) ...	All ...	R. 5295 (83-84)-11.
L. R. Rules—		
Rule 41 (and sec. 68)	All (eksali sales) ...	R. 5295 (36)-11.
Rule 58 ...	Permit tree cutting in watan land ...	R. 5295 (22)-11.
80 (and sec. 65) ...	To specially selected Mamlatdars ...	R. 3459-08, 5295-(32)-11.
37, 42, 64, 65, 66 (and sec. 170).	To confirm sale at any auction when the Collector has previously fixed (Rule 128) an upset price which is realized (For powers as to auctions, see Chapter XVIII.)	R. 3520-12.
Revised Rule 81 (and Sec. 65)	To All Mamlatdars and Mahalkaris. To grant permission to use land for N. A. purposes in Class II villages subject to the conditions laid down by the Collector.	R. No. 6406/28 of 11-11-31.
18, 19, 133, 61 and 202	To Huzur Mamlatdar of Surat and and Broach ...	G. R., R. D., No. 8587/28 dated 14-4-32
	Ahmedabad	G. R., R. D. No. 8587/28 dated 5-7-32.
	Dhulia, Jalgaon, Nasik and Bijapur	G. R. R. D., No. 8587/28 dated 30-8-32.
L. R. Rule 51 (2) ...	To Huzur Mamlatdar of Ahmedabad	G. R. R. D., No. 8587/28 dated 5-7-32.
	Bijapur	G. R., R. D., No. 8587/28 dated 30-8-32.
18, 19, 133, 61 and 202	To Huzur Mamlatdar of Thana ...	G. R. R. D., No. 8587/28 dated 1-10-32.

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

(1) to enter the heirs of Summary Settlement (Class II unstarred) Inams ;

(2) to appoint, give leave and determine heirs of inferior village servants (F. 595-07) ;

(3) to permit cutting of trees in uncommuted service lands [R. 5295 (22)—11.

IX. In issuing his delegation order to the Mamlatdar the Collector can reserve any power he thinks fit, which will then be exercised only by the Prant Officer.

[*Vide Anderson's Bombay Land Revenue Rules (1921), 1st ed. of 1930, pp. 6-8.*]

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

The Mahalkari;

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

his duties and powers.

Delegation of power to Mahalkari.—In delegating to a Mahalkari, the Collector will probably reserve more powers, and he will also specify whether the Mahalkari is to be considered the immediate subordinate of the Mamlatdar or of the Assistant Collector for the purposes of section 203 (appeals, etc.). The Collector can also appoint a Mahalkari and assign certain powers to him without specifying the local limits of his mahal (R. 6824-14), but the necessity of such appointment shall be reported to Government (sec. 13). In such a case he will be practically a Deputy Mamlatdar within the taluka, exercising such power as may be given to him; and he will not be "below the rank of an Aval Karkun" for the purposes of the Record of Rights. (6).

Survey Mamlatdars are appointed by the Commissioner of Survey (R. 113-16) ; but their powers are those of revenue officers under Chapter XA (Record of Rights), not of survey officers under sec. 18.

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

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

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

[*d—d*] These words were added by Bom. Act IV of 1923, s. 9 (1).

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

An Extra Aval Karkun is frequently treated as such a Mahalkari. He has power to try Assistance (sec. 86) (R. 8616-91) and Possessory suits (under section 3 of the Mamlatdars' Courts Act) (R. 72-00, 8269-06).

The powers of a Mamlatdar's First or Aval Karkun are regulated by sec. 14. He has been specially given power to sign notices of demand under sec. 152 and may remit the fees if wrongly charged [R. 5295 (72) and (73-11] and to receive rajinamas under sec. 74 (R. 1743-89, 7428-05). He can also levy fees up to a maximum of Rs. 15 in each case under sec 135 (F) (R. 7623-9-4-24 and 13-4-24). An Aval Karkun can exercise *in the absence of the Mamlatdar* any powers specifically given by the rules (7) to Mamlatdars [see Rules 54, 67-69, 74 (2), 96, 108 and 138]. A substitute appointed under sec. 15 can now exercise powers under the Mamlatdars' Courts Act by sec. 3 as amended by Act II of 1906 (I. L. R. 25 Bom 318, 36 Bom. 277), R. 8507-07 gave the Aval Karkun power to try rent suits up to a limit of Rs. 50 : which is now raised to Rs. 100 by Rs. 208-21. [N] The Collector may also delegate the power to selected *Treasury* Head Karkuns. R. (L C.) 541—22-9-23.

"Powers of Collector under section 154, Land Revenue Code, can be delegated to an Extra Aval Karkun either by name or by designation. An Extra Aval Karkun is not a Mamlatdar or a Mahalkari within the meaning of section 12 or section 13 of the Land Revenue Code. The powers of a Collector under section 156 cannot be delegated to him." (R. 6315-28 of 17th November 1930). (Anderson's L. R. Rules, ed. of 1930, p. 8).

Superior of Mahalkari.—Assistant or Deputy Collector in charge of the talukas was declared to be the immediate superior of the Mahalkari (G.R.R.D. No. 4258, dated 1st May 1906).

Mamlatdar or Mahalkari may depute subordinates to perform certain of his duties.

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

Mamlatdar or Mahalkari in case of temporary vacancy.

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

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

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

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

Stipendiary Patel and Village Accountant to be appointed where no hereditary Patel or Village-Accountant exists.

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

Saving the rights of holders of alienated villages.

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

"[1] For the purposes of sections 58, 85 and, 94A, the expression 'Hereditary Village Accountant' or 'Hereditary Accountant' shall be deemed to include a talati appointed by Government where the liability of such Accountant to perform service has been commuted [1].

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

17. Subject to the general orders of Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts and other records shall be kept by the Village Accountant [2]

and to prepare public writings.

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

Survey Officers.

18. For the purposes of Chapters VIII, IX and X [3] the Governor in Council may appoint such officers as may from time to time appear necessary. Such officers shall be designated "Commis-

[1-1] This paragraph was added by Bom. Act V of 1936.
[2] Words repealed by Act XVI of 1895 are omitted.
[3] Words repealed by Bom. Act III of 1886 are omitted.

sioner of Survey," "Superintendent of Survey," "Survey Settlement Officers" and "Assistant" or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Governor in Council may direct.

their duties and powers.

Subject to the orders of the Governor in Council, the officers so appointed are vested with the cognizance of all matters connected with survey and settlement, and shall exercise all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.

Combination of Offices.

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

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

Certain officers' appointments to be notified.

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

Acting appointments.

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

Establishments.

21. Subject to rules [a] made under section 214, the appointment of all members of the establishments of the undermentioned officers shall, unless otherwise directed by Government, be made by those officers respectively, *viz* :—

the Commissioners,
the Collectors,
the Commissioner of Survey,
the Superintendent of Survey,
the Survey Settlement officer.

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

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

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

Seals.

22. The Governor in Council shall from time to time by notification prescribe what revenue officers shall use a seal, and what size and description of seal shall be used by each of such officers. [*a*].

SEALS TO BE USED BY REVENUE OFFICERS

(1) The officers mentioned below shall have and use seals, *viz.*:—

(1) Commissioners of Divisions, and the Commissioner in Sind :

(2) Deputy Commissioners in Sind ;

(3) Collectors ;

(4) Assistant Collectors ;

(5) Deputy Collectors (including Treasury Officers of the Deputy Collectors Grade), and Superintendents of Land Records and Agriculture ;

(6) Mamlatdars ;

(7) Mahalkaris ;

(8) Mukhtyarkars (Sind) ;

(9) Huzur Treasurers (Central Division), (S. D.) and (N. D.);

(10) City Survey Officers (N. D.) ;

(11) Magistrate of Bandra invested with powers under Act III of 1876 (now Act II of 1906) ;

(12) District Inspectors of Land Records and Agriculture in the Northern, Central and Southern Divisions ;

(13) Assistants in charge, Head Quarters Offices, Agricultural Department, Dharwar and Poona, and in the Northern Division when appointed ; and

(2) that the seals shall be circular and of the following dimensions and material :—

(*a*) Silver seals of which the diameter should be 1¼ inches for the officers named at serial numbers (1) to (3) hereinbefore mentioned ;

(*b*) Seals of brass, copper or gunmetal (whichever may be the most durable material) of which the diameter should be 1½ inches for the officers named at serial numbers (4) and (5) hereinbefore mentioned ;

(*c*) Seals of brass, copper or gunmetal (whichever may be the most durable material) of which the diameter should be one inch only for the officers named at serial numbers (6) to (13) hereinbefore mentioned ; and

(3) that pending the preparation of the abovementioned seals, the seals hitherto used shall continue to be used by such of the officers hereinbefore mentioned as have used them. (B. G. G. 1896, pt. I, pp. 1161, 1340 ; *Ibid.*, 1897, p. 820).

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

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

CHAPTER III

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

Government to direct what officer shall furnish security, and to what amount.

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

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

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

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

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

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

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

"One Government servant should not be allowed to stand as surety for another for the purposes of section 23, Land Revenue Code." (R. 6064-28 of 1st November 1930).

After the issue of Resolution No. 4418 of 1916 all powers of Government under sec. 23 are delegated to the Commissioner in Sind under Act V of 1868.

"In Sind a Government servant serving in one department should be permitted to stand surety for a Government servant serving in another department, provided, in the case of Hindus, that they are not members of the same joint family.

2. Retired Government servants and servants of local bodies should not be debarred from standing sureties for Government servants."

(G. R., R. D. No. 6084-28 of 2-12-31).

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

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

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

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

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

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

A register of securities to be kept by Collector.—(1) The Collector shall keep a register of all securities furnished by each officer in his district in accordance with

Order 13 for scrutiny by the Commissioner during his tour, and shall submit annually to the Commissioner, on 1st October, a certificate that all such securities are good and sufficient.

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

(3) For the purposes of sec. 31 (2) an annual declaration of all landed property is required from all officers —*Anderson's L. R. Code Rules, 1921* (1st ed. of 1930, pp. 8–12).

Fresh or additional security.

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

Demands for money, papers, &c, to be made known in writing to the person concerned.

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

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

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

Limit to confinement.

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

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

Officers issuing warrants under ss. 25 and 26.—For form of warrant, see Schedule C. Mamlatdars and Mahalkaris are entitled to issue warrants under ss. 25 and 26.

26. The Collector of his own motion, if the officer or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land revenue from defaulters, and, for the purpose of recovering public papers or other property appertaining to Government may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1872.*

Public moneys may also be recovered as arrears of revenue;

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

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

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

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

Surety to be liable in the same manner as principal.

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

Extent of liability.

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

Sureties not liable to imprisonment, if penalty be paid.

* See now Act V of 1898.

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

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

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

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

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

Liability of heirs of deceased officer.

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

How surety may withdraw from further liability.

CHAPTER IV

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

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

Prohibited acts.

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

not to trade;

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

not to purchase at public sale;

(3) hold directly or indirectly any farm or be in any way concerned on his private account in the collection of payment of revenue of any kind in the district in which he is at the time employed;

not to be concerned in the revenue;

and no revenue officer shall—

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

not to make private use of public money or property;

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

not to make or receive undue exactions or presents.

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

Stipendiary village accountants not to hold land other than hereditary.—Clauses (1) and (2) of this section should be construed strictly in the case of stipendiary village accountants and permission should not be given to them to engage in money-lending or to purchase lands at public sales. Clause (3), if strictly enforced, would prohibit them from holding any lands paying revenue to Government. But there is no objection to the holding of hereditary lands by stipendiary village accountants or absolutely to their holding of lands purchased otherwise than at a public sale. This section requires that every revenue officer who holds land paying revenue to Government in the district in which he is employed should obtain permission to continue to hold it, and the Collector can give or withhold permission according to the merits of each case, taking care that his orders are not unduly harsh. If the Collector considers that the position of a talati as a holder of land in his own village, taluka or district conflicts, in any case with the proper performance of his duty as a village accountant, he can have him transferred (G. R. No. 5635, dated 31st July 1883).

Power of fining, reducing, suspending and dismissing in whom to vest.

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

A revenue officer, whose monthly salary exceeds Rs. 250, to be fined, &c., only by order of the Governor in Council.

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

Mamlatdars empowered to fine village officers.—The Collector may, under this section, delegate to a Mamlatdar the power of fining village officers (stipendiary as well as hereditary) subject to a right of revision and subject to any limitation, laid down by law or rule which the Collector may think fit to impose. There is no objection to the power being so delegated in any district in which the Collector thinks it expedient to adopt this course (G. R. No. 2116, dated 13th March 1883, and G. R. No. 4100, dated 30th May 1883). This last G. R. was obviously intended to apply to revenue officers only, and not to override in any way the provisions of the Village Police Act VIII of 1867, section 9 of which expressly limits the power of fining Police Patils to First Class Magistrgtes. If the resolution in question has been construed anywhere as empowering Mamlatdars to fine Patils for neglect of their Police duties, the practice is incorrect and should be discontinued (G. R. No. 1953, dated 15th March 1893).

Mahalkaris empowered to fine village officers.—Collectors are authorized to delegate to any Mahalkari in his district the power to fine hereditary village officers in sums not exceeding Rs. 2 subject to the conditions in the order (G. R. No. 5891, dated 23rd August, quoted in Sathe's Land Revenue Code, 4th Ed, p. 31).

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

All such orders to be made in writing.

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

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

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

Fine not to exceed two months' pay;

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

how recovered.

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

Appeals.

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

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

Modification of order.—No order passed by the Collector of the nature referred to in cl. (1) of this section should be reversed, modified or interfered with by the Commissioner. The object is to preclude all appeals to the Commissioner when the subordinate involved gets Rs. 35 or less. It is subject to revision by Government (*Modak's Land System and Viallge Administration*).

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

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

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

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

CHAPTER V.

OF LAND AND LAND-REVENUE

All public roads, &c., and all lands which are not the property of others, belong to Government.

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

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

[b] (2) Where any property or any right in or over any property is claimed by or on behalf of Government or by any person as against Government, it shall be lawful for the Collector or a survey officer, after formal enquiry of which due notice has been given, to pass an order deciding the claim.

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

[b] (4) Any person shall be deemed to have had due notice of an enquiry or order under this sectition if notice thereof has been given in accordance with rules made in this behalf by the Governor in Council.

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

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

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

Extinction of rights of public and individuals in or over any public road, lane or path not required for use of public.

[1] "37A. (1) Whenever it appears to the Governor in Council that any public road, lane or path which is the property of Government or part thereof, is not required for the use of the public, the Governor in Council may, by a notification published in the *Bombay Government Gazette*, make a declaration to such effect, stating in such declaration that it is proposed that the rights of the public as well as of all individuals in or over any such road, lane or path, or part thereof, as the case may be, shall be extinguished. On the publication of such notification, the Collector shall as soon as possible, cause public notice of such declaration to be given at convenient places on, or in the vicinity of, such road, lane or path, or part thereof, as the case may be. Such declaration and notice shall specify, as far as practicable, the situation and limits of such road, lane or path, or part thereof, and shall invite objections to the aforesaid proposal.

(2) Any member of the public or any person having any interest or right, in addition to the right of public highway, in or over such road, lane or path, or part thereof, or having any other interest or right which is likely to be adversely affected by the proposal may, within ninety days after the issue of the notification under sub-section (1), state to the Collector in writing his objections to the proposal, the nature of such interest or right and the manner in which it is likely to be adversely affected, and the amount and particulars of his claim to compensation for such interest or right :

Provided that the Collector may allow any person to make such a statement after the period of ninety days after the issue of the notification under sub-section (1) if he is satisfied that such person had sufficient cause for not making it within the said period.

(3) The Collector shall give every person who has made a statement to him under sub-section (2) an opportunity of being heard either in person or by pleader and shall, after hearing all such persons in such manner and after making such further inquiry, if any, as he thinks necessary, determine the amount of compensation, if any, which should, in his opinion, be given in any case in respect of any substantial loss or damage likely to be caused by the proposed extinction of the rights of the public as well as of individuals as aforesaid. The provisions of sections 9, 10, 11, 12, 13, 14 and 15 of the Land Acquisition Act, 1894, shall, so far as may be, apply to the proceedings held by the Collector for the determination of the amount of compensation under this sub-section :

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[1] Section 37A was inserted by Bom. Act XXXI of 1935.

Provided that no compensation shall be awarded for the extinction or diminution of the right of public highway over such road, lane or path or part thereof.

(4) The Collector shall submit to the Governor in Council the record of the proceedings held by him with a report containing his recommendations on the objections, if any, received by him and stating the amounts of compensation, if any, which, in his opinion, are payable to any persons.

(5) If the Governor in Council is satisfied, after considering the record of the proceedings and the report, if any, made under sub-section (4), that the public road, lane or path, or part thereof specified in the notification under sub-section (1) is not required for the use of the public, a declaration shall be published in the *Bombay Government Gazette* that all rights of the public as well as of individuals in or over such road, lane or path or part thereof are extinguished; and all such rights shall thereupon be extinguished, and such road, lane or path, or part thereof shall be at the disposal of Government with effect from the date of such declaration.

(6) The decision of the Collector regarding the amount of compensation and the person to whom such compensation, if any, is payable, shall, subject to any modification made by the Governor in Council, be final; and payments shall be made by the Collector to such persons accordingly."

Lands may be assigned for special purposes, and

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

38. Subject to the general orders of Government, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII [a], and at any other time for the [b] Collector, to set apart lands the property of Government and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be otherwise [c] used without the sanction of the [b] Collector, and in the disposal of land under section 37 due regard shall be had to all such special assignments.

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[a] Words repealed by Act III of 1883 are omitted.

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

[c] This word was substituted by Bom. Act IV of 1918, s. 11, for the original words "appropriated or assigned."

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

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

Regulation of use of pasturage.

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

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

Concession of Government rights to trees in case of settlements completed before the passing of this Act.

40. In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of Government to all trees in unalienated land, except trees reserved by Government, or by any survey officer, whether by express order made at, or about, the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after, such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlements completed before the passing of Bombay Act I of 1865 [*a*] this provision shall not apply to teak, black-wood or sandal-wood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

Ditto. in case of settlements completed after the passing of this Act.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land, except in so far as any such rights may be reserved by Government, or by any survey officer on behalf of

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

Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

Ditto, in case of land taken up after completion of settlement.

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

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

"Trees reserved."—

The accused were occupants of a Survey Number in a village in which the first survey settlement was introduced in 1865, and the revised settlement in 1889. Considerable time after the settlements, sandal-wood trees grew on the land. Those trees having been cut and removed by the accused, without the permission of Government, the accused were convicted of a breach of Rule 2 framed by Bombay Government under s. 75 cl. (*c*) of the Forest Act and punished under s. 76 of the Act. *Held*, reversing the convictions and sentences, that under this section the right of Government was confined to reserved trees existing at the date of the settlement and that all subsequent growth belongs to the occupant (*Emperor v. Yellappa*, 45 Bom. 110).

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

Government trees and forests.

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

[*a*] Bom. 1 of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

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

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

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

Road-side trees.

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

[*b*] * * *

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

43. Any person who shall unauthorizedly fell and appropriate any tree or any portion thereof or remove [*c*] from his holdings [*c*] any other natural product [*c*] whether of the like description or not [*c*] which is the property of Government, shall be liable to Government for the value thereof, which shall be recoverable from him as an arrear of land revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land or otherwise; and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Government property.

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

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

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

[*b*] The last two paragraphs repealed by Bom. Act IV of 1913, s. 12 (*b*), are omitted.

[*c*—*c*] These words were inserted by Bom. Act IV of 1905, First Schedule.

Regulation of supply of fire-wood and timber for domestic or other purposes.

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

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

The offence of unauthorized cutting of trees in Government waste land, and of reserved trees in occupied lands, can be tried under section 76 of the Forest Act. The ruling of *Koya Mavji* (Or. Rg. 49, dated 6th October 1896) is no bar to such a prosecution (G. R. No 3394, dated 25th May 1903, quoted in Sathe's Land Revenue Code, 4th Ed., p. 47).

All land liable to pay revenue unless specially exempted.

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

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

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

Assessment of revenue.—Strict proof must be given of any right set up in derogation of the inherent right of the sovereign to assess the land at his discretion ; and the facts that the lands in question were waste lands reclaimed from the sea which the inhabitants were invited to cultivate, or that a very small rent has been paid for many years, do not show that the Government has forfeited its right to enhance the assessment in respect of such lands (*Shapurji v. The Collector of Bombay*, 9 Bom. 483).

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

Liability of alluvial lands to land revenue.

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

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

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

Alluvion and Diluvion.—The subject of alluvion is one of the most difficult in the law of land. The references in ss. 37, 46 and 53 to 'any law for the time being in force' are vague; since so far as is known, there is no such law in force behind the Land Revenue Code except in the case-law or judge-made law based upon the common law and natural equity, and some special Municipal and Port Trust enactments outside Bombay Island. Alluvion must, according to these rulings, be interpreted to mean strictly gradual, slow, and imperceptible (imperceptible day by day as it occurs but of course perceptible enough in the long run (Halsbury's Laws of England, Vol. 28, p. 362) accretion by deposit of fresh soil by water upon existing riparian land (Justinian and 3 Beng. L. R. p. 525, 1870). Sand blown by the wind or a mass of shingle suddenly flung up after a storm, or new land left bare by a receding sea or a diverted river is not alluvion but derelict land. Nor would the deposits in a river-bed which raise their surfaces above the hot-weather water-level be treated as alluvion in respect of a holding terminating on the upper edge of the steep bank of a river high above the deposit; there is no physical connection between them, to which the term 'accretion' would be applicable (*Narendra v. Achhaibar*, 28 All. 647; see also 27 All. 655).

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

The riparian holder is not obliged to accept possession and pay assessment or judi for any accretion, alluvial or not, unless he wishes. If it is unprofitable, he can decline; though he would then run the risk of the land being allotted to some other person. In the case of alluvion there is a limit (in the case of unalienated

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

Assessment of land revenue in cases of diluvion.

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

[*b*] * * * *

Manner of assessment and alteration of assessment.

[*c*] 48. (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land—

Prohibition of use of land for certain purposes.

(*a*) for the purpose of agriculture,

(*b*) for the purpose of building, and

(*c*) for a purpose other than agriculture or building.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Governor in Council may prescribe in this behalf.

(3) Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

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

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

[*c*] This section was substituted by Bom. Act IV of 1913, s. 14, for the original section.

(4) The Collector or a survey officer may, subject to any rules made in this behalf under section 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.

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

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

"Used for any purpose."—Under cl (3) of this section where *mahars* held land rent-free of assessment for maharki service and used it for non-agricultural purposes, it was *held* that they could not be assessed (G. Rs. Nos. 31012 and 5115 of 1891). Evidently "used for any purpose" is not the same as "assessed for a use." They could still apply the profits to remunerate their service as mahars. But this would not debar action if pot kharab of class (*b*) in alienated land were diverted from the use for which it was held free (G. R. No. 3909 of 1916).

Non-application of L. R. Rules in khoti, or talukdari villages nor to Thana wood lands.—The Land Revenue Rules do not apply in Khoti or Talukdari villages, nor to Thana wood lands which are not held under settlement, but are forest lands.

Agricultural and non-agricultural use—Farm buildings (meaning the residence of a cultivator or his tenants, and his barns and cattle sheds etc. (44 Bom. 609) or even of a landlord for the purpose of cultivating or supervising the cultivation of his land, water-lifts and granaries and all that is inseparable from cultivation) are agricultural uses. 'Agriculture' means the ploughing, sowing, tilling and reaping of some crop or produce *for profit*. Letting a few trees or flowers grow for pleasure is not agriculture. There are some (market) gardens in which roses, etc., can be seen cultivated for the market, which is certainly agriculture. A dairy farm was held to be agricultural in G. R. No. 7307 of 1917. Storing manure is an agricultural purpose (G. R. No. 7702 of 1899). But a Co-operative dairy is non-agricultural. Cane crushing and Gul boiling are essantial to cane cultivation and are not non-agricultural uses (Anderson's L. R. Rules, pp. 78-79).

Land owned by or transferred or assigned to a Municipality for one purpose but then leased to non-agricultural uses (such as houses or Cinema Halls) is liable to assessment (*Ibid*).

Extra assessment.—Plaintiff converted his land from agricultural to non-agricultural uses by establishing a brick kiln in 1872. He was called upon by the Collector to pay this time the assessment as fine for the conversion under s. 35 of Bombay Act I of 1865. Plaintiff, thereupon, erected some huts on the land. At the revision of survey which took place in 1889 the land was assessed as agricultural. Sometime between 1897 and 1901, plaintiff erected

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

Altered assessment when leviable.—An occupant is not liable to pay altered assessment for his land so long as it is used for the performance of an operation necessary to put the crop of that land into *any ordinry* marketable form ; for anything beyond it, altered assessment is leviable (G. R No. 5321, dated 14-12-1922, quoted in *Joglekar's Supplement No. 2, p.* 7).

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

Commuted assessment of land indirectly taxed to the State ;

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

and of land liable to occasional assessment.

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

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

Superibr holder may recover commuted assessment from inferior holder.

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

Excess of assessment may be laid on land inadequately assessed held with it.

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

payment of revenue, the excess of revenue payable on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

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

Assessment by whom to be fixed.

[*a*] 52. On all lands which are not wholly exempt from the payment of land revenue, and [*b*] on which the assessment has not been fixed under the provisions of section 102 or 106, the assessment of the amount to be paid as land revenue shall, subject to rules [c] made in this behalf under section 214, be fixed at the discretion of the Collector, for such period as he may [c] be authorized to prescribe, and the amounts due according to such assessment shall be levied on all such lands:

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

Note.—This section gives authority to the Collector to assess unoccupied and unalienated lands which were within the operation of an order under s. 95, but which were left unassessed at the settlement (*Statement of Objects and Reasons*).

The effect of this section is to give the Collector the discretion to fix the assessment; and the effect of s. 217 of the Code is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But neither section takes away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay the land-revenue according to survey rates (*Laxman v. Govind*, 28 Bom. 74, at p. 80).

Register of alienated lands.

53. A Register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force; and, when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated land has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Governor in Council under section 213, grant to any person whom

[*a*] This section was substituted by Bom. Act VI of 1901, s. 4, for the original section.

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

[*c*] Words repealed by Bom. Act IV of 1913, s. 15, are omitted.

[*d*] The validity of past assessments purporting to have been fixed under s. 52 is saved by Bom. Act VI of 1901, s. 5.

he may deem entitled to the same a certified extract from the said Register, which shall be endorsed by the Collector, to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

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

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

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

Rates for the use of water.

55. The Governor in Council may authorize the Collector or the officer in charge of a survey, or such other officer as he deems fit, to fix such rates as he may from time to time deem fit to sanction, for the use, by landholders and other persons, of water, the right to which vests in Government, [b] and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879 [b]. Such rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land-revenue.

Notes.—This is a new law authorizing the imposition, and the recovering as land-revenue, of rates for the use of water the right to which vests in Government or which has been made available by Government works (*Report of the Select Committee*).

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

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

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

District	Rate per acre. Rs.
Thana	5
Kolaba	5
Dharwar	8
Belgaum	12 parennial crops. 8 other crops.

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

[a] The paragraph repealed by Bom. Act IV of 1913, section 16, is omitted.

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

use, by landholders and others, of water the right to which vests in Government, for the cultivation of rice on any land not assessed and entered in the Survey Registers as rice land.

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

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

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

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

Land revenue to be a paramount charge on the land.

56. Arrears of land revenue due on account of land by any land-holder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, [a] or may otherwise dispose of such occupancy or alienated holding under rules [b] made in this behalf under section 214, [c] and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding. [c]

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

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

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

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

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

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

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

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

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

Forfeiture of Occupancy.—Where an occupancy forfeited under this section has been disposed of by the Collector under ss. 32 and 62 of the Rules under s 214 (old rules), to a person signing a kabulyat in form B, the Collector cannot subsequently order the occupancy to be taken from that person and restore it to the occupant before forfeiture (*Dharma v. Bolamiya*, 36 Bom. 91).

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

Arrears of assessment.—Forfeiture ordinarily implies the loss of a legal right by reason of some breach of obligation. When arrears of assessment

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

Grant to one co-owner.—Where after amendment of this section, property is granted personally to one of several co-owners in the absence of circumstances contrary, it must be deemed to have been granted to him individually. If another co-owner wishes to take advantage of s. 90 of the Trusts Act, he must allege and prove that the former by availing himself of the position of a co-owner, had gained an advantage in derogation of the rights of other co-owners (*Uttamchand Manghirmal v. Salamatrai Khubchand*, A. I. R. 1931 Sind 27).

Forfeited holdings may be taken possession of and otherwise disposed of.

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

Receipts.

[*b*] 58. (1) Every Revenue officer and every hereditary patel and every hereditary village accountant receiving payment of land-revenue shall give a written receipt for the same.

(2) Every superior holder of an alienated village or of an alienated share of a village who is entitled to recover direct from an inferior holder any sum due on account of rent or land revenue shall give to such inferior holder a written receipt for the same.

(3) Every hereditary patel and hereditary accountant who receives, in behalf of a superior holder of an alienated village or of an alienated share of a village, any rent or land-revenue from an inferior holder shall give to such inferior holder a written receipt for the same. Such receipt shall be a full discharge to such inferior holder for such rent or land-revenue as against such superior holder. A copy of receipt shall in every case be sent to the superior holder by such patel or accountant.

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

[*b*] This was substituted by Bom. Act I of of 1910, 1st Sch., Part II, serial No. 3, for the original section.

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

The revenue should be paid to the Patil in the presence of the Kulkarni, and when the former is absent, the Kulkarni might receive it (G. R. No. 3845, dated 19th May 1883, quoted in *Sathe's Land Revenue Code*, 4th ed, p. 70).

Receipts exempt from stamp duty.—

Every receipt given under this section is exempt from stamp duty; but receipts given not only by Dumaldars but also by any Inamdar to the village officers for sums paid by such officers to the Dumaldar or Inamdar on account of land-revenue collections must be stamped, when the sum, in respect of which the receipt is given, exceeds Rs. 20 (G. R R D, No 2641, dated 27th March 1884, quoted in *Sathe's Land Revenue Code*, 4th ed., p. 70).

Village accountant bound to give receipt.—

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

Penalty for failure to grant receipts.

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

CHAPTER VI

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

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

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

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

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

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

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

Penalties for unauthorized occupation of land.

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

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

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

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

The Collector's decision as to the amount of assessment payable for the land unauthorizedly occupied shall be conclusive, and in determining its amount occupation for [e] a portion [e] of a year shall be counted as for a whole year.

The person unauthorizedly occupying any such land may be summarily evicted by the Collector, and any crop [f] raised on the land shall be liable to forfeiture, and any building or other construction [f] erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to ferfeiture, [g] or to summary removal. [g]

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

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

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

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

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

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

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

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

Note.—This section corresponds to sections 33 and 39 of Bombay Act I of 1865. It has been constructed so as to make penal the previsions and remedies common to the two cases of occupation without permission and occupation of lands set apart for a special purpose. This section provides distinctly for (1) the levy of assessment, (2) fine of five rupees or ten times the assessment, (3) eviction, and (4) forfeiture of crop The introduction of the panalty of fine up to a fixed amount as an alternative from fine by a multiplied assessment is made to meet cases in which the extent of the unauthorized occupation is trifling, but the occupation itself mischievous, as for instance, when a landholder ploughs up and incorporates in his field the strip of land dividing him from his neighbours (*Report of the Select Committee*).

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

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

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

Application of this section to cases of unauthorized occupation which commenced subsequent to this Act.—The use of the word "shall" in the first clause of this section does not restrict the application of this section to cases of unauthorized occupation which began subsequent to this Act coming into force. Although the assessment may not be leviable for a period anterior to the date of the enactment, an occupation is a continuous act (*Pranlal v. Secretary of State*, P. J. 1897, p. 366).

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

Encroachment on Inam Gurcharan land.—This section is not applicable to alienated villages or lands. The inamdar's proper remedy in such a case as that of encroachment on gurcharan in a surveyed alienated village is a suit in the Civil Court (G. R. No. 5205, dated 25th July 1885).

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

Encroachment on public road.—Under s. 37 *ante* all public roads being the property of Government, it must be taken that the public road encroached upon by the accused is in the possession of the Local Government officers on behalf of the Government. Hence a person who encroaches on such a road is guilty of criminal trespass, if the encroachment is made with such intent as is contemplated in s. 441 of the Penal Code (*Fakirgavda*, Cr. Rg. 49 of 1888).

Quarrying without permission.—The fine levied under this section for unauthorized occupation of land by quarrying it need not, on the one hand, be confined to the bare area of the pits nor, on the other, can it be extended to the entire area of the survey number. Occupation in the sense of the amount of area which has deteriorated for purposes of cultivation or for quarrying is the area contemplated by the Code as being occupied (*Sulleman v. Secretary of State*, 30 Bom. L. R. 431).

Unoccupied land may be granted on conditions.

[*a*] 62.* It shall be lawful for the Collector subject to such rules as may from time to time be made by the Governor in Council in this behalf, to require the payment of a price for unalienated land or to sell the same by auction, and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under section 60. The price (if any) paid for such land shall include the price of the Government right to all trees not specifically reserved under the provisions of section 40, and shall be recoverable as an arrear of land revenue.

Note.—Even the Collector cannot in the first instance require the grantee to pay a certain amount of occupancy price against the will of the grantee and without giving him the option to vacate the land and much less can the Commissioner pass such an order when the land had been granted to the plaintiff free from the occupancy price and assessment (*Anant Krishnaji v. Secretary of State*, 55 Bom. 165).

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

Grant of alluvial land vesting in Government.

[*a*] 63.* When it appears to the Collector that any alluvial land, which vests under any law for the time being in force in Government, may with due regard to the interests of the public revenue be disposed of, he shall offer the same to the occupant (if any) of the bank or shore on which such alluvial land has formed.

The price of the land so offered shall not exceed three times the annual assessment thereof.

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[*] As to the local repeal of sections 62 and 63, see paragraph 3 of notes on p. 1, *supra*.

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

If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictions as to the price to be asked.

For the purposes of this section, notwithstanding anything contained in section 3, if the bank or shore has been mortgaged with possession, the mortgagor shall be deemed to be the occupant thereof.

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

A suit by the plaintiffs for a declaration that the order by the Collector disposing of the occupancy to the second defendant was null and void and for possession of the land, on the ground that the plaintiffs being the owners of the adjacent land and the grant being of alluvial land the grant should have been made to the plaintiffs under this section is governed by Art. 120 of the Limitation Act and not art. 144. Because assuming the land to be alluvial, the plaintiffs cannot get an order for recovery of possession. All that they can get is a declaration that the case fell within this section and an injunction to restrain the Collector from dealing with the land in derogation of the plaintiff's rights (*Damodar Narayan v. Secretary of State*, 55 Bom. 447).

Temporary right to alluvial lands of small extent.

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

[*c*] * * * *

Non-riparian owner—Right to water.—The plaintiff who owned non-riparian lands, used from times immemorial to irrigate his lands by river-water which he took through the paddy fields belonging to defendants. The water did not flow in a definite channel but spread over the whole of the defendant's lands till it overflowed into the plantiff's lands. The defendants having obstructed the passage of water through their lands, the plaintiff sued to establish his right to the enjoyment of the river water. *Held*, that the plaintiff having acquired the right and enjoyed it from time immemorial was not prevented from enforcing it by any provision of the Easements Act by virtue of s. 2 (*c*) of the Act (*Janardhan v. Ruoji*, 20 Bom. L. R. 398, s. c. 42 Bom. 288).

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* As to the local repeal of s. 64 see para. 3 of notes on page 1 *supra*.

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

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

[*c*] The second paragraph was repealed by *Ibid.*

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

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

65. An occupant of land [*a*] assessed or held for the purpose of agriculture [*a*] is entitled by himself, his servants, tenants, agents or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient [*b*] use for the purpose aforesaid. [*b*]

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

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

[*e*] The Collector, on receipt of such application,

(*a*) shall send to the applicant a written acknowledgment of its receipt, and

(*b*) may, after due enquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application. [*e*]

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the [*d*] occupant.

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

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

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

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

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

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

Fine to be levied for such use in addition to special assessment.

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

Collector's permission must be express.—This section confers on registered occupants who have applied to the Collector for permission to appropriate land for certain purposes, the privilege of acting as if the application had been granted within three months after acknowledgment of its receipt, if no answer to that application has been received by the applicant.

This section does not require the Collector to grant the application within any stated period, but only limits his power to refuse in case he has given no answer within three months, he shall be deemed to have granted the application (G. R. No. 5893, dated 20th July 1892).

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

"**Farm buildings.**"—Buildings erected for the storage of agricultural implements or for sheltering cattle used in the cultivation of the land as well as houses occupied by occupants who themselves cultivate the survey number on which they stand, or by tenants who do the same or by servants of such occupants or tenants who are actually employed in the cultivation of the same land are held to be farm buildings (B. G. G. 1911, Pt. VII, p. 195).

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

Application to the Collector for permission to use land for any other purpose other than agriculture is required to be made by the occupant. The Collector's permission cannot be "presumed" in any such case on the strength of an arrangement made by the applicant with that officer in a similar case in respect of another land (G. R. No. 2310, dated 19-4-1923).

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

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

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

Penalty for so using land without permission.

66. If any such land be so [*a*] used without the permission of the Collector being first obtained, or before the expiry of [*b*] the period prescribed by section 65 [*b*], the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so [*a*] used and from the entire field or survey number of which it may form a part, and the [*c*] occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so [*a*] used, such fine as the Collector may, subject to the general orders of Government, direct.

Tenant responsible to occupant in damages.

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

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

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

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

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

[*d*] The words "co-occupant or any" were repealed by Bom. Act IV of 1913, s. 23 (*b*).

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

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

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

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

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

(1) In a village placed for the purpose of altered assessment under rule 81 in—

Class	I	...	Rs. 1,250	per acre of the land actually used for any purpose unconnected with agriculture and at the same rate in proportion for any fraction of an acre.
"	II	...	" 750	
"	III	...	" 500	
"	IV	...	" 250	
"	V	...	" 100	

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

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

Permission may be granted on terms.

[*a*] 67. Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid [*b*] on such terms [*c*] or conditions [*c*] as may be [*d*] prescribed by the Collector, subject to any rules made in this behalf by the Governor in Council. [*d*]

[*a*] As to the local repeal of section 67, see para. 3 of notes on p. 1 *supra*.

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

[*c—c*] These words were inserted in section 67 by Bom. Act VI of 1931 s. 8 (1).

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

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

Occupant's rights are conditional.

[c] Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to [d] rules made by the Governor in Council in this behalf [d], prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.

Proviso.

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

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

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

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

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

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

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

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

Reservation of right of Government to mines and mineral products.

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

Proviso.

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

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

Object of this section.—The object of this section is to reserve the rights of Government to all mines, mineral products and buried treasures with full liberty to work, and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector (*Report of the Select Committee*).

Mines and mineral products.—In construing the words "mines" and "mineral products" regard must be had to the fact that they occur in a statute as things reserved. Similarly regard must be to the purpose for which the occupancy is granted. The word 'mine' is derived from a Latin word of the lower ages, *minare*, signifying *ducere*, to lead. It is a subterranean cavity or passage, especially a pit or excavation in the earth, from which metallic ores or other mineral substances are taken by digging. It is distinguished from the pits from which stones only are taken, and which are called quarries. The term minerals includes everything except the vegetable surface, or everything except the mere surface, which is used for agricultural purposes.

Sanctioned rates per 100 cubic feet (not applicable to G. I. P., B. B. and C. I, or N. W. R.—R. 844-87)—

(All as measured on delivery, unless otherwise stated.)

	Rs.	As.	Ps.
(i) Building stone by cubic measure in the actual building	1	0	0
(ii) Surplus stone removed from quarry but not consumed (125 C. ft. reckoned as 100.) ...	1	0	0
(iii) Bullast, or concrete	0	8	0
(iv) Special stone used for pitching; measured as arranged by the Collector	0	4	0
(v) Kankar from cultivated land	0	8	0
(vi) Sand	0	2	0
(vii) Surface boulder stones	0	2	0
(viii) Kankar in unassessed waste	0	4	0
(ix) Muram or white earth	0	2	0

(G. R. R. D. No. 196-B, dated 14th February 1931, cited in Modak's Bombay Land System and Village Administration.)

[a] Words repealed by Bom. Akt IV of 1903, s. 28 (a) are omitted.

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

70 [a] In any case where [b] an occupancy [b] is not transferable without the previous sanction of the Collector, and such sanction has not been granted to [c] a transfer [c] which has been made or [d] ordered by a Civil Court [d] or on which the Court's decree or order is founded,

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

(b) the Court, on receipt of a certificate under the hand and seal of the Collector, to the effect that any such occupancy [e] is not transferable without his previous sanction and that such sanction has not been granted, shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such occupancy. [e]

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

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

Intestate occupancy or holding to be sold.

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

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

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

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

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

[b-b] These words were substituted for the original words "the occupancy or interest of the occupant in the land" by Bom. Act IV of 1913, s. 28 (b).

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

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

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

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

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

Occupancy to be transferable and heritable.

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

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

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

Power to restrict right of transfer.

[*d*] 73-A (1) Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, [*e*] occupancies shall not after the date of such Notification be transferable without the previous sanction of the Collector.

(2) Government may, by Notification in the *Bombay Government Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

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

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

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

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

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

[*d*] Section 73A was inserted by Bom Act VI of 1901, s. 11.

[*e*] This word was substituted for the original words "the occupancy or interest of the occupant in the land" by Bom. Act IV of 1913, s. 31.

1901 does not effect the right of transfer existing in occupants before the Act came into force.

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

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

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

Occupant's powers of transfer.—According to the terms of this section as it stood before the amendment of 1913 the occupant is not prohibited from transferring the trees apart from the land without the previous sanction of the Collector. But a transfer of the houses with the land thereunder (and stones and earth) includes the whole interest of the occupant in the land upon which the houses stand, and such a transfer without sanction is prohibited by this section (*Bapu Vithal Rajput v. Secretary of State*, 56 Bom. 278, s.c. 34 Bom. L. R. 780).

Notification declaring this section applicable to certain villages.

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

(*a*) 79 villages in Nandurbar Taluka, and
66 villages in Navapur Peta of Khandesh district (Notification No. 1116A).

(*b*) 17 villages in Shirpur in do. do. (Notification No. 1116B.
(*c*) 42 villages in Taloda in do. do. (Notification No. 1116C).
(*d*) 11 villages in Shahada in do. do. (Notification No. 1116D).
(B. G. G. 1902, Pt. I, p. 298.)

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

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

Relinquishment.

[a] 74. The occupant may relinquish his land, that is, resign it in favour of Government, but subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any person (other than Government or the occupant), by giving notice in writing to the Mamlatdar or Mahalkari before the 31st March in any year or before such other date as may from time to time be prescribed in this behalf by the Governor in Council, and such relinquishment shall have effect from the close of the current year:

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

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

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

Tenant remaining in occupation after passing rajinama.—The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of D. In 1883 the third defendant executed a Rajinama in the following terms, which he gave to the receiver who had been appointed by the Court to manage the village :—"Up to the present time my father and I have been cultivating the land, but the land belongs to the Inamdar. I have no title over it, and the Inamdar can give it for cultivation to any one he pleases." Shortly after the date of this Rajinama the Inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants who had remained in possession. *Held*, that the plaintiff was entitled to the land. The Rajinama operated as a relinquishment of the tenancy by defendant No. 3 under this section. *Held*, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land (*Bhutia a. Ambo*, 13 Bom. 294).

Rajinama.—Among alienated villages, this section applied only to those brought under a Survey Settlement. The Rajinama can be presented only to the Mamlatdar, unless the inamdar has a commission under s. 88 (*e*) (G. Rs. Nos. 3439, 5730 and 7045 of 1881 and 959 of 1882). Rajinamas may also be executed before a Forest Settlement Officer (G. R. No. 1708 of 1886) and then transmitted to the Mamlatdar and before Aval Karkuns when the Mamlatdar is absent (G. R. Nos. 1743 of 1889 and 7428 of 1905).

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

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

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

Rajinamas and kabuliyats—Registration if necessary.—A mortgagor agreed to abandon his equity of redemption and also executed a rajinama in favour of the Mamlatdar under this section and the mortgagee executed a kabaliyat. *Held* that the rajinama combined with the kabuliyat did not transfer the title of the mortgagor to the mortgagee as a transfer of the equity of a redemption must be registered under s. 54 of the Transfer of Property Act (*Sakharam v. Ramchandra*, 18 Bom L. R. 980 (note). But it was *held* in the case of *Narso v. Nagava* (42 Bom. 359) that rajinamas and kabuliyats, though in themselves documents of transfer, are fairly conclusive evidence that a transfer has in fact been made and as between the mortgagor and mortgagee extinguish the equity of redemption without the necessity of registration. An inamdar can receive notices of relinquishments under this section only where the survey settlement has been introduced or when the powers under s. 85 *post* have been given to him. These notices are exempt from registration under s. 90 of the Registration Act (*Shidraj Bhojraj Desai v. Dary Santram Mali*, 45 Bom 898).

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

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

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

Note.—The plaintiffs held plots in a talukdari estate free of rent and free also of assessment and local fund It appeared, however, that the talukdars of the estate paid assessment and local fund for the whole estate to Government in the form of *jama*. The talukdar having relinquished the said plots in favour of the Government, it was *held* that the Government could recover the local fund and the cess from the plaintiffs (*Nathuram v. Secretary of State* 32 Bom. L. R. 907.)

Notice-Exemption.—The notice, given under this section, of relinquishment of occupancy by an occupant does not require Court fee (Government of India's Notification No. 4650 at p. 807; B. G. G. of 19th September 1889), nor stamp duty (B. G. G., p. 1384 of 28th July 1909) and is exempt from registration (sec. 90 (*e*), Act XVI of 1908). It must also be written by a village Accountant without fee.

All notices under this section shall be kept in the records of the village accountant until the expiry of one year after the end of the year in which they were given and afterwards in the records of the Mamlatdar for at least 12 years. Entry will at once be made in the diary of mutations and certified in due course. This will ensure sufficient record (Anderson's L. R. Mannual, p. 73).

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

Relinquishment of land described in paragraph 1 of section 49.

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

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

Relinquishment of land described in section 51.

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

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

Right of way to relinquished land.

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

Saving of operation of section 74 in certain cases.

78. Nothing in [*b*] section 74 [*b*] shall affect—

[*c*] the validity of the terms or conditions of any lease or other express instrument under which land is, or may hereafter be, held from Government.

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

Summary eviction of person unauthorizedly occupying land.

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

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[*a—a*] These words were substituted for the original words "the two last sections" by Bom. Act IV of 1913, s. 33 (2).

[*b—b*] These words were substituted for the original words "sections 75 and 76" by Bom. Act. IV of 1913, s. 34.

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

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

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

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

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

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

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

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

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

(a) This clause was substituted for the original clause by Bom. Act III of 1921, s. 3.

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

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

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

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

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

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

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

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

Proviso.

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

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

Payment of land revenue by Khatedar creates no charge.—An unsolicited expenditure in respect of the property of another, even if made for the purpose of its preservation, gives no lien over the property, outside maratime law. Hence, a payment of land revenue by a person of property belonging to

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

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

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

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

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

another but included in his *khata*, does not create any charge over the property (*Shivrao v. Pundalik*, 26 Bom. 437).

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

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

82. It shall be lawful for the Governor in Council by Notification in the *Bombay Government Gazette* from time to time :—

(*a*) to suspend the operation of section 60 or 74, or of both within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and

(*b*) to cancel any such notification.

During the period for which any notification under the above clause (*a*) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

CAHPTER VII

OF SUPERIOR AND INFERIOR HOLDERS.

Amount of rent payable by tenant.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be presumed to hold at such rent as, having regard to all of the circumstances of the case, shall be just and resonable.

Duration of tenancy.

And where, by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

Presumption as to tenure.

And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, receives, holds or retains possession of the same, it shall be presumed that he is in possession as tenant.

Saving clause.

Nothing contained in this section shall affect the right of the landlord (if he have the same either by virtue of agreement, usage or otherwise), to enhance the rent payable, or services renderable by the tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid.

"Shall as against the immediate landlord.....of such landlord."—The words "shall as against the immediate landlord of the tenant be presumed to be co-extensive with the duration of the tenure of such landlord" have a prospective and not a retrospective effect. They mean that it shall be presumed that the tenancy is to last as long as the landlord's tenure may endure, but not necessarily that it was in existence when such tenure commenced. The mere fact, therefore, that the tenancy has come into existence since the beginning of the landlord's tenure does not prevent the application of this section in cases in which owing to the antiquity of a tenancy no satisfactory evidence of its commencement is forthcoming (*Hari v. Tukaram*, P. J. 1893, p. 3.3).

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

This section creates no new right; it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed (*Nahanchand v Modi Kekhushru*, 31 Bom. 183).

Tenancy from year to year —Where the plaintiff sued in ejectment, and the defendant sets up a right as a permanent tenant, it was *held*, that the setting up of this right was a repudiation of the landlord's title, and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year (*Baba v. Vishwanath Joshi*, 8 Bom. 228).

Burden of proof of annual tenancy.—The presumption is that a tenant is an annual tenant and the onus is on him to prove that he is something more if he sets up permanent tenancy ; in the absence of any document, he must prove antiquity of his tenure. If he succeeds, the burden is shifted to the landlord to prove the intended duration by agreement or usage In the absence of any proof, it is presumed that the tenancy is co-extensive with the tenure of the landlord (*Maneklal v. Bai Amba*, 45 Bom. 350).

Tenancy forty years old.—This section does not apply to a tenancy which commenced about forty years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of the tenancy (*Lakshman v. Vithu*, 18 Bom. 22).

Tenancy not more than forty years old.—This section is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming, will be the case (*Kalidas v. Bhaiji* 16 Bom. 646).

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

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

Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the Court ought to infer that the intention of the parties was to create such a tenancy, it was *held*, that the lease was not a prepetual lease (*Ramabaisaheb Patwardhan v. Balaji*, 15 Bom. 701). See also *Gangabai v. Kalapa*, 9 Bom. 419, and *Gangadhar v. Mhadu*, P. J. 1889, p. 321.

Ancient tenancy.—Where a particular year is indicated as that in which the tenancy began, the case is excluded from those in which a presumption can be drawn under this section (*Ramchandra v. Dattu*, 27 Bom. L. R 1258).

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

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

Under this section a tenancy cannot be presumed to be co-extensive with the duration of the tenure of the landlord, even though its commencement cannot be

traced to a particular year, provided it can be traced back to a defininte period, *e. g.*, from 1830 to 1850 (*Narayan v. Pandurang*, 24 Bom. L. R. 831).

To claim the benefit of the presumption created by this section it is not sufficient that there should be no satisfactory evidence of the commencement of the tenancy, but the absence of that satisfactory evidence must be by reason of the antiquity to the tenancy (*Vishwanath v. Tatya*, 6 Bom. L. R. 615).

The saving clause of this section seems to contemplate that though the commencement and duration of the tenancy may be lost in the obscurity of antiquity, still there may be vested in the landlord a right by agreement to enhance rent and evict for its non-payment. Permanency of tenure is not inconsistent with the absence of fixity in rent. The permanency of the tenancy and the fixty of the rent are distinct, and the latter may be the subject of agreement without touching the former (*Raghunath v. Lakshman*, 2 Bom. L. R. 93).

There is no need for a person who sets up a permanent tenancy to rely upon a grant; for the second para. of this section expressly provides that when by reason of the antiquity of a tenancy there is no evidence of its commencement or its duration, it shall be treated as co-extensive with the duration of the landlord's interest in the property. It lies on the parties, who wish to rebut the presumption arising from the antiquity of a tenancy, to establish first, that there is no evidence of the period of its intended duration and secondly, that there is no usage of the locality as to the duration of such tenancy. Where a tenant and his ancestors had cultivated the land as far as memory could go and paid the same amount of rent to his landlord and were in possession all along, the mere fact that he executed a rent note for one year in 1882 does not rebut the presumption of the permanency of the tenancy which arose from its antiquity (*Rama Ranchhod v. Sayad Abdul Rahim*, 22 Bom. L. R. 1214).

Some time between 1700 and 1850 the defendants became tenants under the plaintiffs. Regulation XVI of 1827 made the watan lands inalienable for the first time. In 1888 the defendants executed a rent note to the plaintiff, by which he agreed to vacate the land whenever called upon by the plaintiff to do so. Some of the tenants had been in occupation all along, but some others had been out of possession for some time and regained possession only on the execution of the rent notes. *Held*, that in the case of the tenants who were in unbroken possession, the execution of the rent note did not rebut the possession of permanency of the tenancy which arose from its tenancy; in the case of the other tenants, their possession had been broken and the origin of their present tenancies being traceable to the rent notes of a known date, the presumption under this section did not arise (*Ramchandra v. Adveppa*, 34 Bom. L. R. 1131). 2 Bom. L. R. 93 and 22 Bom. L. R. 1214 were followed in this case.

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

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

A permanent tenant who has planted trees on his land has the right of cutting down and making use of them. This principle has found legislative sanction in s. 108, cl. (*h*), of the Transfer of Property Act, 1882 (*Sitabai v. Shambhu*, 38 Bom. 716).

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

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

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

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

Under the last paragraph of this section if a tenant proves that he has fixity of tenure he is entitled to fixity of rent, unless the landlord can prove either by agreement, usage or otherwise that he has a right to enhance the rent. When it has been proved that he has such a right, then the question of the extent of the enhancement must be left to the Court as the final arbiter (*Giriappa v. Govindrao*, 27 Bom. L. R. 1331).

In the case of permanent tenants, under this section, the court allowed the ordinary landlord to enhance rent to the extent of three times the assessment. Where a permanent tenant improves the demised land by growing fruit trees, and the assessment on the land is consequently increased, the landlord is entitled to get rent based on the assessment but he cannot claim in addition rent for the fruit trees (*Ganagaram v. Ganesh*, 21 Bom. L. R. 1340).

There is nothing in the Bhagdari Act to prevent a permanent tenant of a Bhagdar from alienating the fruit of the trees on the land of which he is a tenant, in the same way as he could alienate the crops or grass upon such land. The position of a tenant of a Bhagdari land who is presumed to be a permanent tenant under this section is not affected in any way by the prohibition contained in the Bhagdari Act against alienation (*Nahanchand v. Kekhushru*, 9 Bom. L. R. 50; s. c. 31 Bom. 183).

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

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

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

The plaintiffs, who were landlords, gave notice to defendants, who were tenants of agricultural lands, on February 5, 1916, calling upon them to pay enhanced rent or else to quit possession within ten days. The defendants raised the plea that they were permanent tenants and claimed that they were in possession ever since the foundation of the village in 1655 A. D. Their names as tenants appeared in plaintiff's books from 1876, and in the earlier books though their names were not mentioned specifically, yet coupled with other evidence they showed that as far back as 1848 the defendant's ancestors were cultivating the lands. The plaintiffs having sued in ejectment, it was *held* (1) that under the circumstances the defendants were to be treated as permanent tenants by virtue of the presumption arising under this section; (2) that the notice to quit was bad as contravening the provisions of s. 84 *post*; and (3) that the plaintiffs had failed to make out a case for enhancement of rent (*Amarsangji v. Ranchhod*, 27 Bom. L. R. 267).

Where a tenancy is shown to have originated at some time between 1758 and 1857, a presumption can arise, under this section, that the tenancy is permanent. The period of a century is too long and indefinite a period to constitute satisfactory evidence of the commencement of a tenancy within the meaning of this section (*Shripadbhat v. Rama*, 29 Bom L. R. 274).

In a suit for ejectment the defendants pleaded they were permanent tenants. It was found that another person was the tenant in 1758, but there was no evidence as to who was in possession between 1758 and 1860. The defendants proved their tenancy from 1860. *Held*, that the plaintiffs failed to prove the commencement of the tenancy. There was neither any evidence of the period of the intended duration of the tenancy, if any, agreed upon between the landlord and the tenant nor any evidence of any usage of the locality as to the duration of such tenancy. So the presumption of permanent tenancy arose in favour of the defendants under this section (*Janardan Narayan v. Lakshman Mahadeo*, 33 Bom. L. R. 551).

The period of 150 years is too long and indefinite to constitute satisfactory evidence of the commencement of the tenancy within the meaning of this section (*Ramchandra v. Adiveppa*, 34 Bom. L. R. 1131).

In this case 29 Bom. L. R. 274 and 33 Bom. L. R 551 were followed.

When the finding of both the lower Courts is that defendant's ancestors were in possession of the land many years before 1863 when the Bombay Regulation XVI of 1827 was applied to Satara District and when watan lands were not made inalienable in Satara District, the statutory presumption of a permanent tenancy under this section can be raised (*Govind Vithu v. Vithal Laxman*, 33 Bom L. R. 210).

The possession of the tenant was traced back up to 1864. The tenant mortgaged the holding and the mortgagees who subsequently brought the holding to sale and purchased it were never entered as permanent tenants. *Held*, that under the law as then it stood, there was no prohibition of transfer of ordinary tenancy, so the mere fact that the landlord permitted the mortgage and the sale does not lead to an inference of permanent tenancy and with regard to this section it was difficult to say that in the case of cultivation in 1863 the antiquity was so great as to make the commencement of the tenancy difficult and obscure (*Vyankatesh Shivram v. Krishna Bal Chavan*, 33 Bom. L. R. 613).

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

Grantee of Royal share of revenue or of soil.—

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

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

Right of landlord to evict on tenant's denying his title.—A tenant repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord (*Vishnu v. Balaji*, 12 Bom. 352).

Suit by tenant to recover possession claiming as full owner.—A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were merely yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given. *Held*, the plaintiff could not recover; for his plaint and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claims to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit, which was not given (*Lalu Gagal v. Bai Motan Bibi*, 17 Bom. 631).

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

Annual tenancy terminates on the 31st March.

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

Three months' notice of termination of tenancy to be given by landlord to tenant, or *vice versa*.

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

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

The notice under this section ought to be of 3 months. One of 17th March 1887 to enhance the assessment for the year 1887–1888 is insufficient (*Bahiru v. Vinayak*, P. J. 1892, p. 298).

Necessity of notice to quit.—Where, in the case of agricultural land, the tenant entered into an agreement with the landlord that he would pay the amount of the annual rent every year as long as the landlord would keep the wadi (cart) with him, and would give back the same when the landlord would demand it, *Held*, that the contract between the parties took the case out of this section, and that, as the rent would not be payable until the end of the year, the landlord might put an end to the tenancy and demand the land at the end of any year without giving any previous notice of any particular period, but he could not demand immediate possession in the middle of a year (*Balkrishna v. Jasha*, 19 Bom. 150). An adverse possession of a khoti land of an occupancy tenant extinguishes the right of the occupancy tenant to actual possession but not right to relinquish his occupancy right to the knoti who, after due notice under this section, is entitled to eject the person in possession (*Vishnu v. Babla*, 45 Bom. 1001).

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

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

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

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

Order granting suspensions or remissions to inferior holders.

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

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

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

(2) In the case of land in respect of which no land revenue is payable to Government by a superior holder, whenever from any cause the payment of the whole or any part of the land revenue payable to Government in respect of any other land in the same neighbourhood has been suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of the first-mentioned land by the inferior holder or holders to an amount which shall not exceed double the amount

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

which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

Such order not to be questioned in any Court

(3) An order passed under sub-section (1) or under sub-section (2) shall not be questioned in any court.

Consequences following on such order.

(4) If the superior holder collects any rent or land revenue of which the payment has been remitted, or before the expiration of the period of suspension collects any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders, the whole of the land revenue remitted or suspended in favour of such superior holder shall, without prejudice to the rights of the inferior holder or holders to recover the rent or land revenue so collected, become immediately payable by the superior holder.

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

Crop-share fixed by custom or agreement.

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

(7) Explanation—

Meaning of assessment.

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

Sind excluded.

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

Object of this section.—The object of this section is to secure for tenants and other inferior holders a share in the concessions granted by Government under the rules for the suspension and remission of Land Revenue. The chief difficulty experienced in carrying out the policy of liberal suspensions and

remissions is that, though Government may grant a remission or suspension to the superior holder, the latter can recover the whole of the rent or land-revenue, at once from the inferior holders. This section will now remedy this defect in the Act (*Statement of Objects and Reasons*).

Recovery of superior holder's dues.

[*a*] 85. (1) Every superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, shall receive his dues on account of rent or land-revenue from the inferior holders through such patel and accountant.

(2) Where such patel and accountant fail to recover in behalf of such superior holder any sum due and payable to him on account of rent or land-revenue, such superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

(3) Where any such patel or accountant has recovered any sum in behalf of such superior holder and fails to account to him for the same, the Collector shall, on written application from the superior holder, recover such sum from such patel or accountant as an arrear of land revenue.

(4) Where any such superior holder demands or receives any rent or land revenue from any inferior holder otherwise than through such patel or accountant, he shall, on conviction in a summary enquiry before the Collector, be liable to a fine not exceeding three times the amount of the sum so demanded or received.

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

Applicability to Sheri lands in alienated Villages.—This section does not apply to the lands held as Sheri by an Inamdar (G. R. No. 1425, dated 5-2-1913, cited in Modak's Bombay Land System and Village Administration.)

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

Enhancement of rent.—A grant to an inamdar may be either of the Royal share of Revenue, or of the soil; but ordinarily it is of the former description. The burden rests on the inamdar to show that he is an alienee of the soil. Where an inamdar is an alienee only of the land revenue, then his relations towards those who hold land within the area of the Inam grant, vary according to certain well-recognized conditions. If the holding was created prior to the grant of the Inam, then the inamdar as such can only claim land-revenue or assessment

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

for he has no interest in the soil, in respect of which rent would be paid. If the holding is later in its origin than the inam grant, the inamdar even if only a grantee of revenue, would be entitled to place tenants in possession of the sheri lands, not by virtue of any interest in the soil, but as being entitled to make the most he can out of them by way of revenue. The difference between the two classes of holdings is obvious; in the last, direct contr actual relations would be established between the inamdar and the holder. It these contractual relations are defined by an express contract of which there is evidence, then the rights of the parties must be determined by that contract. If no such contract can be proved then the Court must have recourse to the criteria prescribed by law for determining their rights (*Rajya v. Balkrishna*, 29 Bom. 415).

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

Talati appointed to be Kulkarni not a hereditary village accountant.—A talati appointed to be a Kulkarni of a commuted inam village is not a hereditary village accountant for the purposes of this section (G. R. No. 6550, dated 10-1-1923, quoted in Joglekar's Supplement No. 2, p 19).

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

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

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

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

Applications may be sent by post.—An application by a superior holder for assistance for the recovery of rent under this section is not liable to rejection if sent by post (G. R. No. 5027) dated 12th November 1890, quoted in Sathe's Land Revenue Code, 4th ed., p. 162).

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

Inamdar's remedy for arrears of rent.—Inamdars can only obtain a money decree for arrears of assessment in the Civil Court. Relief by for-

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

feiture and sale of the tenants' lands must be had, if at all, through the Collector under this section (*Ratanji v. Sakharam*, P. J. 1884, p. 68).

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

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

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

The Collector how to proceed on such application being made.

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

[*a*] (2) On the day so fixed he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land revenue as appears to him upon the evidence before him to be lawfully due.

Assistance may be refused or granted to a limited extent only

[*a*] (3) But, if it appears to the Collector that the question at issue between the parties is of a complicated or difficult nature, he may in his discretion either refuse the assistance asked for, or, if the land to which the dispute relates has been assessed under the provisions of Chapter VIII...[*b*] or any survey settlement confirmed by section 112 grant assistance to the extent only for the assessment so fixed upon the said land.

Civil suit not to be barred.

[*a*] (4) Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due, as the case may be.

[c] (5) One appeal only shall lie from any order passed under this section.

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

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

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

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

Collector's power to refuse assistance.—Paragraph 1 of this section leaves the Collector no discretion as to withholding assistance for the recovery of rent or land revenue which after a summary enquiry he finds to be lawfully due. The truth is that in these enquiries under this section the Collector exercises in a summary way the jurisdiction of a Civil Court, and like those Courts he has no authority to go behind the liability and listen to appeals *ad misericordium*. Even should he do so, the 4th paragraph of this section enables the landlord to go to the Civil Court to recover from his tenant such amount as the Collector disallows, and the object of the Collector would thus be frustrated Even when the question at issue is of a complicated or difficult nature, cl. 2 of this section assumes that there can be no such question about the survey assessment (G. Rs. Nos. 8402, dated 25th October 1884, and 1339, dated 14th February 1885)

The power given to the Collector, in the 3rd paragraph of this section, of refusing assistance to a superior holder for the recovery of dues from his inferior holders when the question at issue between the parties appears to him to be of a complicated or difficult nature, is a discretional power; and the ordinary rule in appeals is not to interfere with the exercise by subordinate authorities, of their lawful discretion. But this rule is subject to the qualification that it is the duty of the appellate authority to see that the subordinate exercises a sound discretion (G. R. No. 168, dated 8th January 1884).

Rates of bhatta to witnesses—The rates of *bhatta* to witnesses as fixed by the High Court from time to time are applicable in the case of enquiries made under the provisions of this Code, and the orders regarding *bhatta* issued in G. R No. 880, dated 20th March 1888, are not binding (G. O. No. 3610, dated 28-2-1920 quoted in Joglekar's Supplement No. 2, p. 20).

Appointment of temporary clerks for assistance suits.—Collectors can appoint temporary clerks for assistance suits when required, with the approval of Government, subject to the condition that the expenditure thereof is recovered from the process fees (G R. No. 2515-31, dated 29-1-1925, quoted in Joglekar's Supplement No. 2).

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

(1) Land Revenue Code.

(2) The Income Tax Act,

(3) The Watan Act and other similar matters (*B G. G., 1920, Pt. V, p. 23*).

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

83. It shall be lawful for the Commissioner at any time to issue a commission to any holder of alienated lands, conferring upon him all or any of the following powers in respect of the lands, specified in such commission (namely):

(*a*) to demand security for the payment of the land-revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorised to take under sections 141 to 143 ;

(*b*) to attach the property of persons making default in the payment of such land revenue or rent, as aforesaid ;

(*c*) to fix from time to time the times at which, and the instalments in which, the land-revenue or rent due to him shall be payable ;

(*d*) to exercise the powers of a Collector under sections 65 and 66 ;

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

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

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

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

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

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

Form of such commission.

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

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

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

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

90. If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been made, appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of sections 165 to 186.

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

But if the holder of the commission is invested, under Regulation XIII of 1830, with civil jurisdiction and with power to execute his own or his agent's decrees, the sale shall be conducted by him and not by the Collector and his subordinates.

When compulsory process shall cease

91. All compulsory process shall cease:

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

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

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

Penalty for continuing compulsory process.

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

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

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

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

The person against whom any demand shall have been enforced in excess of the amount of which payment is lawfully enforceable shall be entitled to recover, on conviction of the holder of the com-

Penalty for so doing.

mission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land revenue.

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

94. Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or re-settle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

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

Recovery as revenue demand of dues of certain superior holders for specified period.

(*a*) 94A. (1) The superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, and to which a survey settlement has been extended under section 216, may by application in writing to the Assistant or Deputy Collector in charge of the taluka request that the rent or land revenue due to such superior holder may during a period named in the application be recovered as a revenue demand.

(2) The Collector may in his discretion sanction the application for a period not exceeding that named by the applicant, and in such case the following provisions shall apply :—

(*a*) Any rent or land-revenue that accrues or has accrued due to the superior holder during the sanctioned period or a period of six years previous thereto shall, to an extent not exceeding the assessment fixed on the land, be recoverable under the orders of the revenue authorities as a revenue demand during the sanctioned period.

(*b*) Where any proportion of the land-revenue that accrues or has accrued due to Government in respect of unalienated land in the same neighbourhood during the said sanctioned or previous period has been suspended or remitted by proper authority, the Collector may suspend or remit an equal or lesser proportion of the rent or land-revenue that accrues or has accrued due to the superior holder, during the corresponding period. Any such suspension or remission shall, notwithstanding anything in the Bombay Revenue Jurisdiction Act, 1876, be binding upon the superior holder in any subsequent proceedings in any Civil Court between the superior

(*a*) This section was inserted by Bom. Act IV of 1913, s. 41.

and inferior holders or their legal representatives, and any proceedings pending at the date of such suspension or remission shall abate to the extent of any claim that may be inconsistent therewith; and no Civil Court shall entertain any suit against the Secretary of State or Government in respect of any such suspension or remission.

(*c*) Where any such suspension or remission has been granted to an inferior holder, the land-revenue (if any) payable by the superior holder shall be suspended or remitted, as the case may be, to a proportionate extent.

(*d*) The balance of any sum recovered under clause (*a*) shall be paid to the superior holder after deduction of the costs, if any, of recovery and of any sum lawfully chargeable upon the sum recovered.

CHAPTER VIII.

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

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

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

Revenue survey may be introduced by Governor in Council into any part of Presidency.

95. It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land-revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose and such survey shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Governor in Council may direct; and subject to the orders of the Governor in Council it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

Control of revenue survey.

The control of every such revenue survey shall vest in and be exercised by the Governor in Council.

Survey Officer may require by general notice or by summons, suitable service from holders of land, etc.

96. It shall be lawful for the survey officer deputed to conduct or take part in any such survey, to require by general notice or by summons, the attendance of holders of lands and of all persons interested therein, in person, or by legally constituted agent duly instructed and able to answer all material questions, and the presence of taluka and village officers, who in their several stations and capacities are legally, or by usage, bound to perform service in

virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith, as may not be inconsistent with the position of the individual so called on.

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

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

Survey numbers not to be of less than a certain extent

98. Except as hereinafter provided, no survey number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the sanction of Government. A record of the minima so fixed shall be kept in the Mamlatdar's office in each taluka, and shall be open to the inspection of the public at reasonable times.

Exception.

These provisions shall not apply to survey numbers which have already been made of less extent than the minima so fixed, or which may be so made under the authority of the Commissioner of Survey given either generally or in any particular instance in this behalf ; and any survey number separately recognized in the [a] land records [a] shall be deemed to have been authorizedly made whatever be its extent.

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

Officer in charge of a survey to fix assessments

100. Subject to rules [b] made in this behalf under section 214, the officer in charge of a survey shall have authority to fix the assessment for land-revenue at his discretion on all lands within the local operation of an order made under section 95 not wholly exempt from land revenue, and the amounts due according to such assessment shall, subject to the provisions of section 102, be levied on all such lands.

Regard to be had to proviso to section 52.

In fixing such assessment, regard shall be had to the requirements of the proviso to section 52.

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

[b] Words repealed by Bom. Act IV of 1913, s. 45, are omitted.

But nothing in this section shall be deemed to prevent the survey officer aforesaid from determining and registering the proper full assessment on lands wholly exempt from payment of land-revenue or on lands especially excepted under section 95 from the survey settlement, or from dividing all such lands to which the survey extends into survey numbers.

Proviso.

101. The power to assess under the preceding section shall, in the case of lands used for purposes of agriculture alone, include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in respect of which no rate is levied [a] under section 55 [b] or under the Bombay Irrigation Act, 1879 [b], or in any other manner whatsover that may be sanctioned by Government.

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

102. The assessment fixed by the officer in charge of a survey shall not be levied without the sanction of Government. It shall be lawful for the Governor in Council to declare such assessments, with any modifications which he may deem necessary, fixed for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding ninety-nine in the case of all other lands.

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

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

[c] 103. When the levy of the assessment fixed under sections 100 and 101 upon any land has been sanctioned under section 102, and notice of the same has been given in accordance with rules made by the Governor in Council in this behalf, the settlement shall be deemed to have been introduced with respect to the lands of which the assessments have been sanctioned.

Introduction of settlements.

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

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

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

[c] This section was substituted by Bom. Act IV of 1913, s. 46, for the original section.

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

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

104. In the year in the course of which a survey settlement, whether original or revised, may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

nor in the following year if the number is resigned that year.

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

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

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

The fixing of assessment under section 102 limited to ordinary land-revenue.

105. The fixing of the assessment under the provisions of section 102 shall be strictly limited to the assessment of the ordinary land-revenue, and shall not operate as a bar to the levy of any cess which it shall be lawful for the Governor in Council to impose under the provisions of

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

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

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

any law for the time being in force for purposes of local improvement, such as schools, village, and district roads, bridges, tanks, wells, accommodation for travellers, and the like, or of any rate for the use of water which may be imposed under the provisions of section 55 [a] or of the Bombay Irrigation Act, 1879. [a]

Government may direct a fresh survey and revision of assessment.

106. It shall be lawful for the Governor in Council to direct, at any time, a fresh revenue survey or any operation subsidiary thereto, but no enchancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102.

[b] Provided that when a general classification of the soil of any area has been made a second time, or when any original classification of any area has been approved by the Governor in Council as final, no such classification shall be again made with a view to the revision of the asaessment of such area.

Principles of revision.—The revision of the settlement will depend entirely on changes in prices, including such local changes as result from improvement of communications and shifting of markets, although all indications of an increase or decrease in material wealth and general prosperity will be a guide as to suitability of the old assessment (G. R. No. 7494, dated 12th October 1897, quoted in Sathe's Land-Revenue Code, 4th Ed., p. 198).

Conditions applicable to revisions of assessment.

[c] 107. In revising assessments of land-revenue regard shall be had to the value of land and, in the case of land used for the purposes of agriculture, to the profits of agriculture:

Provided that if any improvement has been effected in any land during the currency of any previous settlement made under this Act, or under Bombay Act 1 of 1865, [d] by or at the cost of the holder thereof, the increase in the value of such land or in the profit of cultivating the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof.

"Value of land".—The term "value of land" does not refer to the intrinsic richness or quality of land. The vernacular equivalent of "value" is not "magdur" but "kimmat," *i. e.*, price (Joglekar's Supplement No. 2 to his Land Revenue Code, p. 24).

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

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

[c] This section was substituted for the original section 107 by Bom. Act IV of 1886, s. 2.

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

108. It shall be the duty of the survey officer, on the occasion of making or revising a settlement of land-revenue, to prepare a register, to be called "the settlement Register," showing the area and assessment of each survey number, [a] with any other particulars that may be prescribed [a] and other records, in accordance with such orders as may from time to time be made on this behalf by Government.

Preparation of statistical and fiscal records.

Records.—The records to be prepared by the Survey Officers for future administration are (1) the village map, (2) the settlement register, and (3) the detailed record of each holding (botkhat) (G. R. No 4084, dated 2nd November 1868, quoted in Sathe's Land-Revenue Code, 4th ed. p 204).

Entry in the survey Settlement Officer's record, finality of.—The Settlement Officer's record fixing the amount of rent payable to a Khot in respect of lands in the Khoti village, though prepared in the form of statement published at p. 584 of the "General Rules of the Revenue Department" (ed. of 1893) and labelled "botkhat," cannot be treated as a Survey Register under this section (*Vaidkhan v. Sakhya*, 20 Bom. 729).

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

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

111. In the event of any alienated village or estate, coming under the temporary management of Government officers, it shall be lawful for the Collector to let out the lands thereof, at rates determined by means of a survey settlement or at such other fixed rates as he may deem to be reasonable, and [b] to grant unoccupied lands on lease [b] and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands, so far as such rules may be applicable, and for so long as the said village or estate shall be under the management of Government officers : provided, however, that any written agreements relating to the land, made by the superior holder of such village or estate, shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of Government on the land.

Revenue management of villages or estates not belonging to Government that may be temporarily under Government management.

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

[a–a] These words were substituted for the original words "together with the name of the registered occupant of such survey number" by Bom. Act IV of 1913, s. 48.

[b—b] These words were substituted for the original words "to sell the occupancy of unoccupied lands by auction" by Bom. IV of 1913, s. 50.

Powers of Talukdari Settlement Officer.—A Government Officer in the temporary management of a talukdar's estate has, under s. 33 of the Gujrat Talukdars' Act, the same powers which the Collector has in an alienated village, to recover arrears of revenue inclusive of rent (*Jinabhai v. The Collector*, 28 Bom. L. R. 417).

Maintenance of existing settlements of land revenue.

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

Partition.

[a] 113. Expenses properly incurred in making partition of estates paying revenue to Government shall be recoverable as a revenue demand in such proportions as the Collector may think fit from the sharers at whose request the partition is made, or from the persons interested in the partition.

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

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

		Rs.	A.	P.
(*a*)	A Government servant of the *first* grade ...	6	8	0
(*b*)	A Government servant of the *second* grade on pay—			
(*i*)	Up to Rs. 250	2	4	0
(*ii*)	Above Rs. 250 up to Rs. 300	2	12	0
(*iii*)	Above Rs. 300 up to Rs. 350	3	2	0
(*iv*)	Above Rs. 350 up to Rs. 400	3	8	0
(*v*)	Above Rs. 400 up to Rs. 450	4	0	0
(*vi*)	Above Rs. 450 up to Rs. 750	4	8	0
(*c*)	A Government servant of the *third* grade on pay			
(*i*)	Up to Rs. 50	0	8	0
(*ii*)	Above Rs. 50 up to Rs. 75	0	12	0
(*iii*)	Above Rs. 75 up to Rs. 100	1	0	0
(*iv*)	Above Rs. 100 up to Rs. 125	1	4	0
(*v*)	Above Rs. 125 up to Rs. 150	1	8	0
(*vi*)	Above Rs. 150 up to Rs. 175	1	12	0
(*vii*)	Above Rs. 175 up to Rs. 199	2	0	0
(*d*)	A Government servant of the *fourth* grade ...	0	3	0

(*Bombay Civil Services Rules Manual, 1932, p. 129*).

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

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

[a] This section was substituted by Bom. Act IV of 1913, s. 51, for the original section.

Partition of certain estates by the Collector on application by co-sharers.

114. Whenever any one or more co-shares in a khoti estate, into which a revenue survey has been introduced, [a] or in a talukdari estate [a], consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him in this behalf, [b] to divide the said estate into shares according to the respective rights of the co-sharers, and to allot such shares to the co-sharers:

Provided that no such partition shall be made, unless :

(a) all the co-sharers are agreed as to the extent of their respective rights in estate, and

(b) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one-half of the assessment of the entire estate.

In such cases the expenses of partition shall be recovered [c] as a revenue demand [c] from all the co-sharers in the estate divided.

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

Division of survey numbers into new survey numbers.

[d] 116. When any portion of cultivable land is permitted to be used under the provisions of section 65 or 67 for any non-agricultural purpose or when any portion of land is specially assigned under section 38, or when any assessment is altered or levied on any portion of land under sub-section (2) or sub-section (3) of section 48, such portion may, with the sanction of the Collector, be made into a separate number at any time notwithstanding the provisions of section 98.

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

Bombay Act V of 1862 not affected.

117. Nothing in section [e] 116 shall affect the provisions of Bombay Act V of 1862.

Division of survey numbers into sub-divisions.

[f] 117A. (1) Survey numbers may from time to time and at any time be divided into so many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason.

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

(b) Words repealed by Bom. Act IV of 1913, s. 52, are omitted.

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

[d] This section was substituted by Bom. Act IV of 1913, s. 54, for the original section.

[e] Words repealed by Bom. Act IV of 1913, s. 55, are omitted.

[f] This section was inserted by Bom. Act IV of 1913, s. 56.

(2) The division of survey numbers into sub-divisions and the fixing of the assessment of the sub-divisions shall be carried out and from time to time revised in accordance with rules made by the Governor in Council in this behalf:

Provided that the total amount of the asssessment of any survey number or sub-division shall not be enhanced during any term for which such assessment may have been fixed under section 102, unles such assessment is liable to alteration under section 48.

(3) The area and assessment of such sub-divisions shall be entered in such land records as the Governor in Council may prescribe in this behalf.

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

[a] 117B. If any sub-division of a survey number is relinquished under section 74 or is forfeited for default in payment of land revenue, the Collector shall offer such sub-division at such price as he may consider it to be worth to the occupants of the other sub-divisions of the same survey number in such order as in his discretion he may think fit; in the event of all such occupants refusing the same, it shall be disposed of as the Collector shall deem fit:

Provided that until the said sub-division shall be occupied or until the entire survey number shall be relinquished, whichever event may first occur, the assessment of the said sub-division shall be levied from the occupants of the other sub-divisions of the survey number in proportion to the amount of assessment due from such occupants on account of their sub-divisions.

For the purposes of this section notwithstanding anything contained in section 3, if any of the other sub-divisions have been mortgaged with possession, the mortgagors shall be deemed to be the occupants thereof.

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

CHAPTER IX

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

Determination of village boundaries.

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

[a] This section was inserted by Bom Act IV of 1913, s. 56.

Village boundaries may be settled by agreement.

Rule 1.—When the patels and other village officers of any two or more adjoining villages, and, in the case of an alienated village the holder thereof or his duly constituted agent, shall voluntarily agree to any given line of boundary as the boundary common to their respective villages, the officer determining the boundary shall require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon. And any village boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means.

Procedure in case of disagreement or dispute.

Rule 2.—If the patels and other village officers, and, in the case of an alienated village, the holder thereof or his duly constituted agent, do not agree to fix the boundaries of their respective villages, in the manner prescribed in the preceding rule, or if it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means, or if there be any pending dispute, the said officer shall make a survey and plan of the ground in dispute, exhibiting the land claimed by the contending parties, and all particulars relating thereto, and shall hold a formal inquiry into the claims of the said parties, and thereafter make an award in the case. If either of the villages concerned be alienated, an award made by a survey officer shall, unless the officer making it be the Superintendent of Survey, be subject to his confirmation, and an award made by any other officer shall be subject to confirmation by such other officer as Government may nominate for the purpose.

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

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

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

Determination of field boundaries.

119. If, at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation, and, if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the [a] land record [a] and according to occupation as ascertained from the village officers and the holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time [b] after the completion of a survey [b] a dispute arise concerning the boundary of any survey number, [c] or sub-division of a survey number, [c] it shall be determined by the Collector, who shall be guided [d] by the land records [d] if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

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

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

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

Settlement of boundary disputes by arbitration.

120. If the several parties concerned in a boundary dispute agree to submit the settlement thereof to an arbitration committee, and make application to that effect in writing, the officer whose duty it would otherwise be to determine the

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

[b-b] These words were substituted for the original words "after the survey records have been handed over to the Collector" by Bom. Act IV of 1913, s. 57.

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

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

boundary shall require the said parties to nominate a committee of not leas than three persons, within a specified time, and if within a period to be fixed by the said officer the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the said officer, or if the said officer be a survey officer lower in rank than a Superintendent of Survey, by the Superintendent of Survey, shall be final :

When award may be remitted for reconsideration.

Provided that the said officer, or the Superintendent of Survey, shall have power to remit the award, or any of the matters referred to arbitration, to the reconsideration of the same committee, for any of the causes set forth in paragraph 14 of the Second Schedule to the Code of Civil Procedure, 1908.

If arbitration fail, survey officer to settle dispute.

If the committee appointed in the manner aforesaid fail to effect a settlement of the dispute within the time specified, it shall be the duty of the officer aforesaid, unless he or, if the said officer is a survey officer lower in rank than a Superintendent of Survey, the Superintendent of Survey, see fit to extend the time, to settle the same as otherwise provided in this Act.

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

(*a*) when the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred ;

(*b*) where the award is so indefinite as to be incapable of execution ;

(*c*) where an objection to the legality of the award is apparent upon the face of it.

Effect of the settlement of a boundary.

[*a*] 121. (1) The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative :

(*a*) of the proper position of the boundary line or boundary marks, and

(*b*) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

[*b*] (2) Where a boundary has been so fixed, the Collector may at any time summarily evict any landholder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

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

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

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

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

Decisions of revenue officers as to boundaries are final.—In 1887 a dispute arose between plaintiffs and defendant as to boundaries of certain land, being survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector and the piece of land in dispute was found to belong to the plaintiffs as occupants of Survey No. 88. Subsequently the defendant having encroached upon it and dispossessed the plaintiffs the present suit was filed. The Court of first instance awarded plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant applied, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court. *held*, that under the provisions of this section the decision of the Collector as to boundaries was conclusive and that the plaintiffs were entitled to possession (*Bai v. Valji*, 10 Bom 456).

Jurisdiction of Civil Court.—This section presents no bar to the cognizance of a suit by a Civil Court, to reconsider an order passed by a Survey Officer as to the site of some of the lands which does not involve any question of boundary line between two villages (*Narsangji v. Bai Achrat*, 26 Bom. L.R. 1264). The Civil Court has jurisdiction to entertain a suit for settlement of boundaries of fields, where subsequent to the filing of the suit the boundaries have been determined by revenue officers (*Kanhailal v. Ismailbhai*, 28 Bom L.R. 1498).

The settlement of a boundary by the Collector under this section does no more than establish where the boundary line lies, and the owners of the respective survey numbers are *prima facie* entitled to their property according to the boundary lines. But the Collector's decision does not prevent one of the disputing parties from filing a suit in the Civil Court on the ground that he has acquired a portion of his neighbour's survey number by adverse possession (*Bhaga Motiji v. Dorabji Sorabji*, 43 Bom. 67).

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

Settlement of boundary.—It is the duty of the enquiry officer, under this section, to settle the boundary between the lands of adjoining house owners, which can ordinarily be by means of a line drawn on a plan, and that line, according to the provisions of this section, is determinative of the rights of the land-holders on either side of the boundary so fixed. But it is not determinative of any rights which the holder of one number can claim to exercise over the land be-

longing to the holder of the adjoining number. This section does not give jurisdiction to the enquiry officer to decide, *e g.*, that a broad strip of land lying between two numbers is common to both the adjoining owners. This section applies to agricultural lands as also to the survey of land in a town (*Ganesh v. Ramchandra*, 23 Bom. L. R. 1209)

Construction and repair of boundary marks of survey numbers and villages.

122. It shall be lawful for any survey officer, authorized by a Superintendent of Survey, or Settlement officer to [*a*] specify or cause to be constructed, laid out, maintained or repaired [*a*], boundary-marks of villages or survey numbers [*b*] or sub-divisions of survey numbers [*b*] whether cultivated or uncultivated, and to assess all charges incurred thereby on the holders or others having an interest therein.

Requisition on land holders to erect or repair boundary-marks

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

A general notification to be good and sufficient notice of requisition

A general notification, issued in the manner aforesaid, shall be held to be good and sufficient notice to each and every person having any interest in any survey numbers [*a*] or sub-divisions [*a*] within the limits of the lands to which the survey extends.

Description of boundary marks.

[*d*] The boundary-marks shall be of such description, and shall be constructed, laid out, maintained or repaired in such manner and shall be of such dimensions and materials as may, subject to rules [*e*] made in this behalf under section 214, be determined by the Superintendent of survey, according to the requirements of soil and climate.

Note.—Unless unploughed boundary strips are declared as boundary marks by the Survey Officer or the Collector, the landholders will not be responsible to

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[*a—a*] These words were substituted for the original words by Bom. Act VI of 1901 s. 14 (1).

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

[*c—c*] These words were inserted by Bom. Act VI of 1901, s. 14 (2).

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

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

maintain or keep such marks in good repair (G. R. No. L. C. 1831, dated 11-9-1925 quoted in Joglekar's Supplement No. 2 to his Land Revenue Code, p. 26).

Responsibility for the maintenance of boundary-marks.

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

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

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

Collector to have charge of boundary-marks after introduction of the Survey Settlement.

124. When the survey settlement shall have been introduced into a district, the charge of the boundary-marks shall devolve on the Collector, and it shall be his duty to take measures for their [*a*] construction, laying out [*a*], maintenance and repair, and for this purpose the powers conferred on survey officers by section 122 shall vest in him.

Note—Sections 122-124 relating to boundary marks apply to all talukdari villages in which the duty of keeping boundary marks in order devolves on landlords (talukdars.) If they fail they are liable to make good reasonable expenses incurred by Revenue Officers in repairing or replacing these marks. But a Collector as such is not a Revenue Officer for the purpose of section 124 in a talukdari village as a survey settlement is not introduced in a talukdari village. The Collectors of Ahmedabad, Kaira, Panch Mahals and Broach have accordingly been appointed Superintendents of Survey for all talukdari villages in their districts for the purpose of enabling them to act under ss 122 and 123 (G.R. No. 7642-24, dated 24-4-1928).

Penalty for injuring boundary marks.

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

One-half of every fine imposed under this section may be awarded by the officer imposing it to the informer, if any, and the other half shall be chargeable with the cost of restoring the mark.

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

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

CHAPTER X

OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS AND CITIES.

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

126. It shall be lawful for the Collector, or for a survey officer, acting under the general or special orders of Government, to determine what lands are included within the site of any village, town, or city, and to fix, and from time to time to time to vary the limits of the same, respect being had to all subsisting rights of landholders.

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

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

127. Act XI of 1852 and Bombay Acts II and VII of 1863, shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 [*a*] which have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said Acts shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

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

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

Existing exemption when to be continued in case of certain lands in towns and cities in which Bom. Act IV of 1868 has been in operation.

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

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

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

[*b-b*] As to the local repeal of section 128, see para. 3 of foot-note [*a*] on p. 1, *supra*.

2nd.—if such lands have been held wholly or partially exempt from the payment of land revenue for a period of not less than five years before the application of Bombay Act I of 1865, [*a*] or IV of 1868 [*b*] to such town or city;

3rd—if such lands, for whatever period held, have been held wholly or partially exempt from payment of land revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed.

Right to exemption to be determined by the Collector.

[*c*] 129. (1) Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

[*d*] (2) Any suit instituted in a Civil Court to set aside any order passed by the Collector under sub-section (1), in respect of any land situate within the site of a village, town or city, shall be dismissed (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the order. [*d*].

Occupancy price payable in addition to assessment in certain cases.

[*c*] 130. In towns and cities to which section 128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been unauthorizedly occupied for a period commencing less than two years before Bombay Act I of 1865 [*a*] or IV of 1868 [*b*] was applied to the town or city in which the said lands are situate, shall be liable to pay [*e*] a price for the said lands [*e*] in addition to the land revenue assessed thereupon.

The said [*f*]price shall be determined according to the provisions of section 62.

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

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

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

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

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

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

Survey of lands in such sites how to be conducted.

131. If the Governor in Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town, or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII and IX of this Act: Provided that nothing contained in sections 96, 97, 101, [a] 104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

Proviso.

In certain cases a survey-fee to be charged.

[b] 132. When a survey is extended under the provisions of the last preceding section to the site of any town or city containing more than two thousand inhabitants, each holder of a building-site shall be liable to the payment of a survey fee to be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by Government, provided that the said fee shall in no case exceed [c] ten rupees for each building site or any portion thereof held separately [c]. The said survey-fee shall be payable within six months from the date of a public notice to be given in this behalf by the Collector after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.

[d]

Sanad to be granted without extra charge.

[e] 133. Every holder of a building-site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H, [f] or to the like effect [f] specifying by plan and description the extent and conditions of his holding:

Proviso.

Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the

[a] Figures repealed by Bom. Act IV of 1913, s. 62, are omitted.

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

[c—c] These words were substituted for the original words "rupees five for each survey number" by Bom. IV of 1913, s. 63 [a]

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

[e] As to the local repeal of section 133, see para. 3 of foot-note [a] on p. 1, *supra*.

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

date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

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

Inferior and superior holders entitled to get sanads.—Both inferior as well as superior holders are entitled to get sanads in respect of building sites in city surveyed areas provided the requisite survey fees are paid. Sanads in the form appended to G. R. No. 2307-24, dated 8th June 1925, should therefore be granted, on application (and not otherwise), to the tenants of all municipalities. The same form should be used with suitable modifications in the case of other tenants (G. Rs. Nos. 2307-24, dated 8-5-1925, 10-8-1926 and 6-5-1929).

Assessment of lands hitherto used for purpose of agriculture only used for other purposes.

[*a*] 134. If any land within the site of any village, town, or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provisions of any law for the time being in force, be *b*] used for [*b*] any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

Application of the Section.—In the absence of a specific condition precluding the levy of non-agricultural assessment, the summary settlement sanads, which must be read with section 45, do not debar Government from using this section. The section applies to all lands which have been summarily settled and are within the site of any village, town or city at the time when such lands are converted to non-agricultural use. The section is not applicable to a summary settled piece of land which is used for non-agricultural purposes while it is outside the gaothan and is subsequently included in the gaothan area under section 126 (G. R No L. C. 3686, dated 7-1-1931 and G. M. No. L. C. 3656-B, dated 3-8-1931, quoted in Correction Slips to Joglekar's Land Revenue Code).

Judi or quit rent.—Under this section judi or quit rent cannot be increased in respect of those inam lands settled under the Summary Settlement Act, which are not affected by the provisions of section 127 (G. R. No. 4690, dated 3-5-1922).

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

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

[*b-b*] These words were substituted for the original words "appropriated to" by Bom. Act IV of 1913, s. 65.

[a] CHAPTER X-A.

OF THE RECORD OF RIGHTS

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

Exemption from provisions of this chapter.

135A. The Governor in Council may, by notification in the *Bombay Government Gazette*, direct that this chapter, or any specified provisions thereof, shall not be in force in any specified local area, or with reference to any lands or any class of villages or lands, or generally.

The record of rights.

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

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

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

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

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

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

The Record of Rights—Its Origin.—The subject of the Record of Rights was first mooted by the Government of India in their letter 2770-369, dated 6-12-97 and it was intended purely for Settlement purposes. In April 1898 orders to make experiments were received. The first draft was prepared by Sir J. W. P. Muir Mackenzie, and the experiments were carried out in 1899 by Messrs. A. B. Forde, F. B. Young, H. B. Sathe. The first Act was passed in 1903 (IV of 1903), but this was repealed and incorporated in the Land Revenue Code of 1913. The Record has now also become the basis of the accounts of liability to pay land revenue: and also of the audit of alienations of land revenue. The first Act extended to all lands except those excluded by G. Rs. Nos. 263 and 3653 of 1904. It was extended to all Sharakati villages in G.R. No. 2568 of 1909, and to surveyed inam villages, even if the period of settlement has expired, except those in Ratnagiri by G. R No. 288 of 1913. All revenue survey numbers or parts thereof used for non-agricultural purposes within municipal limits are brought under the Act by G.R. No. 11581 of 1913 and agricultural lands in vari-

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

ous Municipalities by several notifications. All whole vanta villagees, and vanta blocks in Government villages, were excluded by G. R. No. 5668 of 1911. But in Broach and Kaira those summarily settled are now decided not to be "Talukdari Estates" and, therefore, come under the Record of Rights Act (G. R. No. 3180 of 1920). There is a special form for Kolaba khoti villages and some modifications for bhagdari and narvadari villages. It has not been applied to taluqdari villages where the Settlement Register, which is s sort of Record of Rights, is prepared; and not applied to Ratnagiri khoti villages (G R. 399 of 1919). It was extended to the surveyed cities of Ahmednagar, Barsi, Gadag and Godhra (G.R. No. 684 of 1916) without any obligation upon the Municipality and to all other city-surveyed areas by G. R. 6108 of 1917, except those cities surveyed long ago, which were in need of revision survey before the Act can be applied (Ahmedabad City proper, Surat, Broach, Rander, Bulsar, Hubli, Dharwar, Bijapur and cities in Sind). These cities have now been resurveyed. In pursuance of that policy cl. 5 of G. R. 263 of 1904 is amended : whenever a village, town or city site is surveyed under sec. 131, Chapter X-A is applied and sec. 135B is applied to all tenancies for 21 years and upwards : no register of tenancies is separately maintained (G. R. 13565 of 1918) (*Anderson's L. R. Rules, ed. of 1930, p. 96*).

Introduction of Record of Rights in Inam villages.—The Record of Rights can be introduced in any inam village whether it is surveyed or not, without the consent of the Inamdar (H. C. R.—Dharwar Suit No. 54 of 1922 and First Appeal No. 350 of 1924, quoted in Joglekar's Supplement No. 2, p. 29).

Application of the section.—Section 135 B (2) refers to tenancies existing at the time of introduction of the Record of Rights.

Acquisition of rights to be reported.

135C. Any person acquiring, by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land, or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the village accountant within three months from the date of such acquisition, and the said village accountant shall at once give a written acknowledment of the receipt of such report to the person making it :

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

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

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

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

Sections 135-C and 135-D apply to new tenancies which come into being after the introduction of the Record of Rights. In both cases the tenencies to be entered in the Record of Rights must either be perpetual or notified under s. 135-B (2). Tenancies which are not perpetual or not so notified should be entered in the Register of tenancies as prescribed in No. 113 of the Land Revenue Rules (G. R. No. L. C. 2865, dated 18-7-1931, quoted in Correction Slips to Joglekar's Land Revenue Code).

Report-Court fee stamp.—A report under this section regarding the acquisition of a right is not liable to court fee stamp under the Court Fees Act (G. R. No. 5366-28, dated 30-8-1930, quoted in Correction Slips to Joglekar's Land Revenue Code).

Register of mutations and register of disputed cases.

135D. (1) The village accountant shall enter in a register of mutations every report made to him under section 135-C and shall also make an entry therein respecting the acquisition of any right of the kind mentioned in [a] the first paragraph [a] of section 135-C which he has reason to believe to have taken place and of which a report has not been made to him under the said section.

(2) Whenever a village accountant makes an entry in the register of mutations he shall at the same time post up a complete copy of the entry in a conspicuous place in the chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

(3) Should any objection to an entry made under sub-section (1) in the register of mutations be made either orally or in writing to the village accountant, it shall be the duty of the village accountant to enter the particulars of the objection in a register of disputed cases.

(4) Orders disposing of objections entered in the register of disputed cases shall be recorded in the register of mutations by such officers and in such manner as may be prescribed by rules made by the Governor in Council in this behalf.

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

Entries in register of mutations how to be certified.

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

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

(7) The provisions of this section shall apply in respect of perpetual tenancies and also in respect of any tenancies mentioned in a notification under sub-section (2) of section 135B, but the provisions of this section shall not apply in respect of other tenancies, which shall be entered in a register of tenancies in such manner and under such procedure as the Governor in Council may prescribe by rules made in this behalf.

Tenancies.

A Mamlatdar holding an enquiry relating to record of rights under Chapter XII of this Code is a revenue Court under s. 195 (1) (*c*) of the Cr. P. C. (*Emperor v. Narayan*, 39 Bom. 310).

Chavdi.—Where there is no Chavdi in a village, the Collector should for purposes of section 135-D (2), direct under s. 3 (8) what place should be deemed to be a chavdi (G. N. No. 5055-B-28, dated 24-7-1930, quoted in Correction Slips to Joglekar's Land Revenue Code).

135E. (1) Any person whose rights, interests or liabilities are required to be, or have been entered in any record or register under this chapter shall be bound, on the requisition of any revenue officer or village accountant engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof as may be within his knowledge or in his possession or power.

Obligation to furnish information.

(2) A revenue officer or village accountant to whom any information is furnished or before whom any document is produced in accordance with a requisition under sub-section (1) shall at once give a written acknowledgment thereof to the person furnishing or producing the same and shall endorse on any such document a note under his signature, stating the fact of its production and the date thereof.

135F. Any person neglecting to make the report required by section 135C, or furnish the information or produce the documents required by section 135E within the prescribed period shall be liable, at the discretion of the Collector, to be charged a fee not exceeding twenty-five rupees, which shall be leviable as an arrear of land-revenue.

Penalty for neglect to afford information.

Note.—Mamlatdar's Head Karkuns and Extra Head Karkuns and District Inspectors of Land records are authorized to levy fees upto a miximum of Rs. 15 in each case (G. R. No. 7628, dated 9th April 1924, and 13th April 1924, quoted in Joglekar's Supplement No. 2, p. 30).

Requisition of assistance in preparation of maps.

135G. Subject to rules made in this behalf by the Governor in Council—

(*a*) any revenue officer or village accountant may for the purpose of preparing or revising any map or plan required for or in connection with any record or register under this chapter exercise any of the powers of a survey officer under sections 96 and 97, except the power of assessing the cost of hired labour under section 97, and

(*b*) any revenue officer of a rank not lower than that of an Assistant or Deputy Collector or of a survey officer may assess the cost of the preparation or revision of such map or plan and all contingent expenses, including the cost of clerical labour and supervision, on the lands to which such maps or plans relate, and such costs shall be recoverable as a revenue demand.

Certified copy of record to be annexed to plaint or application.

135H. (1) The plaintiff or applicant in every suit or application as hereinafter defined relating to land situated in any area to which this chapter applies shall annex to the plaint or application a certified copy of any entry in the record of rights, register of mutations or register of tenancies relavant to such land.

(2) If the plaintiff or applicant fails so to do for any cause which the Court or conciliator deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the Court or conciliator, and if such certified copy is not so annexed or produced the plaint or application shall be rejected, but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject-matter, with a certified copy annexed.

(3) After the disposal of any case in which a certified copy of any such entry has been recorded, the Court shall communicate to the Collector any error appearing in such entry and any alteration therein that may be required by reason of the decree or order, and a copy of such communication shall be kept with the record. The Collector shall in such case cause the entry to be corrected in accordance with the decree or decision of the Court, so far as it adjudicates upon any right required to be entered in the record of rights, register of mutations or register of tenancies. The provisions of this sub-section shall apply also to an appellate or revisional Court: provided that, in the case of an appellate or revisional decree or order passed by the High Court or the Court of the Judicial Commissioner of Sind, the communication shall be made by the Court from which the appeal lay or the record was called for.

(4) In this section—

(*a*) "suit" means a suit to which the provisions of the Code of Civil Procedure, 1908, or of the Mamlatdars' Courts Act, 1906, apply ;

(*b*) "application" means an application—

(*i*) for the execution of a decree or order in a suit;

(*ii*) for the filing of an agreement stating a case for the opinion of the Court under the Code of Civil Procedure, 1908;

(*iii*) for the filing of an agreement to refer to arbitration under paragraph 17 of the Second Schedule to the said Code;

(*iv*) for the filing of an award under paragraph 20 of the said Schedule;

(*v*) to a conciliator under section 39 of the Dekkhan Agriculturists' Relief Act, 1879;

(*vi*) of any other kind to which the Governor in Council may, by notification in the *Bombay Government Gazette*, direct that this section shall apply;

(*c*) an application shall be deemed to relate to land if the decree or other matter, with respect to which the application is made, relates to land;

(*d*) a suit, decree or other matter relating to land shall, without prejudice to the generality of the expression, be deemed to include a suit, decree or other matter relating to the rent or tenancy of land.

Copy not attached to plaint.—Where, in a suit relating to land, the plaintiff omits to annex to his plaint a certified copy of the entry in the Record of Rights, as provided in this section, but the Court passes a decree, it is not open to the Appellate Court to reject the plaint in appeal merely on the ground of the omission; but it should give an opportunity to the plaintiff to produce the entry within a fixed time (*Girijabai v. Hemraj*, 45 Bom. 1339).

Where in a suit relating to land, the extract from the Record of Rights required by this section is not produced in the trial Court, and in the Court of appeal the point about absence of the extract is not presssed in arguments, it is not proper to reject the suit only on that ground, but the Court can well exercise its discretion in allowing the extract to be put in in appeal. Where the extract from the Record of Rights is once so put in, no application for review of judgment based on the ground of the absence of the extract can be entertained (*Ganesh v. Vithal*, 23 Bom L. R. 745; s. c. 46 Bom. 345).

Certified copies of entries and their extracts exempt from Court fee stamps.—Certified copies of entries in Record of Rights and applications for such copies when required in filing in Court under this section are exempt from Court fee stamps. Certified copies of extracts from entries in Record of Rights when attached to applications for the execution of Civil Court decrees are also exempt from Court Fee Stamps (G. N. No. 590, dated 16-9-1921 quoted in Correction Slips to Joglekar's Land Revenue Code).

Refusal of assistance under section 87.

135I. Notwithstanding anything in section 87, the Collector shall refuse assistance to any superior holder under the said section, if his claim to such assistance is not supported by an entry or entries duly made in the record of rights, register of mutations or register of tenancies.

135J. An entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Presumption of correctness of entries in record of rights and register of mutations.

Retrospective effect.—This section is not retrospective with respect to the entries for the purpose of determining the rights of the parties which were till after 1913 innocuous (*Hathising v Kuber Jetha*, 44 Bom. 214).

Entries in record of rights.—Under this section entries in the record of rights shall be presumed to be correct, and, in the absence of any other evidence, a Civil Court is obliged to be guided by any facts so entered in the record of rights (*Anandibai v Narain*, 17 Bom L R. 49).

135K. Application for certified copies of entries in the record of rights, the register of mutations and the register of tenancies may be made to, and such copies may be given by, the village accountant, Mahalkari or Mamlatdar.

Certified copies.

Application for copy of entry exempt from Court fee stamp.—Applications made to village officers for copies of entries in the Record of Rights are exempt from Court fee Stamps (G. N. No. 590, dated 16-9-1921, quoted in Correction Slips to Joglekar's Land Revenue Code).

135L. (1) No suit shall lie against the Secretary of State or Government or any officer of Government in respect of a claim to have an entry made in any record of register that is maintained under this chapter, or to have any such entry omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this chapter.

Bar of suits and exclusion of Chapter XIII.

(2) The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof revised, by such Revenue officers and in such manner and to such extent and subject to such appeal as the Governor in Council may from time to time by rules prescribe in this behalf.

Appeal.

CHAPTER XI

OF THE REALIZATION OF THE LAND REVENUE AND OTHER REVENUE DEMANDS

[*a*] 136. (1) In the case of unalienated land the occupant, and in the case of alienated land the superior holder, shall be primarily liable to Government for the payment of the land-revenue, including all arrears of land-revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.

Liability for land revenue.

[*a*] This section was substituted for the original section by Bom. Act IV of 1913, s. 67.

(2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears as aforesaid, shall be recoverable from any person in posssession of the land :

provided that where such person is a tenant, the amount recoverable from him shall not exceed the demands of the year in which the recovery is made :

provided further that, when land-revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.

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

Occupant.—The term 'occupant' is subject to modification when applied to any estate in the Districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talokdars' Act extends (*Vide* Bom. Act VI of 1883, ss. 1 and 33).

Claims of Government to have precedence over all others.

137. The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment decree, execution, or attachment, or otherwise howsoever, against any land or the holder thereof.

Sale for recovery of abkari revenue.—This section in no way extends the right of forfeiture and sale to those lands of the defaulter in respect of which no land revenue is due. Although arrears of abkari licence fees are recoverable as land revenue under s. 34 of the Abkari Act, arrears of abkari revenue are not due upon any specific land owned by the abkari renter. Hence a sale by Government of the land of the renter for recovery of abkari revenue is a sale subject to any prior mortgage on the land (*Ahmed Haji Esmail v. Parmanand Menghraj*, 267 S. L. R. 390). In this case 7 Mad. 434, 28 Mad 420, 25 Mad. 572 and 26 Mad. 230 were followed.

The liability of the crop for the revenue of the land.

138. In all cases the land-revenue for the current year of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject to the same.

Recovery of land revenue how to be credited.—Land revenue recovered before the date of the first instalment should be credited against the arrears of past years, if any. Revenue recovered on or after the date of the first instalment, should be credited against the demand of the current year and the balance, if any, against the arrears of previous years (G. R. No. 5387-28, dated 16-3-1932, quoted in Correction Slips to Joglekar's Land Revenue Code).

139. The land-revenue shall be leviable on or at any time after the first day of the revenue year for which it is due; but, except when precautionary measures are deemed necessary under the provisions of sections 140 to 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

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

[a] 140. When the crop of any land or any portion of the same is sold, mortgaged or otherwise disposed of, whether, by order of a Civil Court or other public authority or by private agreement, the Collector may prevent its being removed from the land until the demands for the current year in respect of the said land have been paid, whether the date fixed for the payment of the same under the provisions hereinafter contained, has yet arrived or not.

Removal of crop which has been sold, &c., may be prevented until revenue paid.

But in no case shall a crop or any portion of the same, which has been sold, mortgaged or otherwise disposed of, be detained on account of more than the demands of the year in which the detention is made.

The powers contained in this section and the following do not authorise the detention of anything but the crops of the land or the seizure of the crop or any other goods after removal from the lands (*Gangaram v. Dinkar* 37 Bom. 542).

141. It shall be lawful for the Collector, in order to secure the payment of the land-revenue by enforcement of the lien of Government on the crop—

In order to secure the land-revenue the Collector may prevent the reaping of the crop, or

(*a*) to require that the crop growing on any land liable to the payment of land-revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him, in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt;

(*b*) to direct that no such crop shall be removed from the land on which it has been reaped, or from any place in which it may have been deposited, without the written permission of himself or of some other officer as aforesaid;

the removal thereof, or

(*c*) to cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of land revenue due in respect of the land to which such crop belongs.

place watchmen over it.

[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 68.

142. The Collector's orders under either clause (*a*) or clause (*b*) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village or to individual holders merely.

Collector's orders under last section how to be made known.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chavdi or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Any person who shall disobey any such order after the same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code, abet the disobedience of any such order, shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land revenue due on the land to which the crop belongs in respect of which the offence is committed.

Penalty for disobedience of order.

Removal of crops, though removal prohibited, does not become theft.—If a person removes his wheat, the removal of which is prohibited and over which watchmen have been placed under s. 141, he cannot be convicted of theft under s. 379 of the Penal Code, but can be dealt with under this section (*Daya Karson*, 1 Bom. L. R. 515).

Fine under this section is no arrear of land revenue of any occupancy.—A fine imposed on a person under this section for disobedience of an order passed under section 141 is not an arrear of land revenue in respect of any occupancy, and therefore forfeiture of the offender's land under s. 153 for recovery of the fine is not lawful. The ruling quoted in 15 Bom. 67 under s. 187 *post* does not apply to such a fine (G. R. No. 5908-28, dated 31-10-1930 quoted in Correction Slips to Joglekar's Land Revenue Code).

143. The Collector shall not defer the reaping of crop, nor prolong its deposit unduly, so as to damage the produce; and if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal cost, and release the rest.

Reaping, &c, not to be unduly deferred.

Crop when to be released.

144. If owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause

Temporary attachment and management of a village or share of a village.

the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Powers of manager, and disposal of surplus profits.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of the land revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector [a] may direct.

Grant of village lands rent free by Talukdar.—Plaintiff held rent free land from the talukdar of the village, who paid the Government assessment for the village in a fixed lump sum. The village was attached by the Government for non-payment of the jama by the talukar under this section. *Held*, that the Government had the right to levy the assessment on the lands of the plaintiff to the village, for, the grant of lands rent free by the talukdar did not affect the right of the Government to assess the lands (*Tulla v. The Collector v. Kaira*, 43 Bom. 6.

Precautionary measures to be relinquished on security being furnished.

145. The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which it is payable under the provisions hereinafter contained.

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

146. Land revenue, except when it is recovered under the provisions of the foregoing sections 140 to 144, shall be payable at such times in such instalments to such persons and at such places as may from time to time be determined by the orders of Government.

Arrear.

Defaulter.

147. Any sum not so paid becomes thereupon an arrear of land revenue, and the persons responsible for it, whether under the provisions of section 136 or of any other section, become defaulters.

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

[a] Words repealed by Bom. Act IV of 1905, Second Schedule, are omitted.

Liabilities incurred by default.

[a] 148. If any instalments of land revenue be not fully paid within the prescribed time, it shall be lawful for the Collector to impose as a penalty or as interest such charge on such instalments, and on the arrears, if any, of former years, as may be authorized according to a scale to be fixed from time to time under the orders of the Governor in Council, and further to proceed to levy at once the entire balance of land revenue due by the defaulter for the current year :

Provided that no such charge shall be imposed on any instalment, the payment of which has been suspended by order of Government, in respect of the period during which the payment remained suspended.

Applicability.—This section applies only in case of default of the payment of land revenue within the prescribed time and not for default of rent. The fact that the Talukdari Settlement Officer was during the period of his management vested with certain powers of the Collector under this Code did not *ipso facto* or necessarily make rent land revenue and the imposition of the penalty was invalid (*Secretary of State v. Gordhandas Mohanlal*, 32 Bom. L. R. 815).

Maximum penalty.—A maximum penalty not exceeding ¼ of the amount of land revenue over-due should be fixed and resort had to the provisions of this section in the case of the rayat who is known to be able to pay but wilfully delays to do so. The penalty imposed may be remitted if the officer imposing it afterwards finds that the rayat was not able to pay puncually (G. R. No. 6485, dated 27th March 1883, quoted in Sathe's Land Revenue Code, 4th ed., p. 243).

Interest or penalty under this section should be levied only in cases of proved contumacy (G. R. No. 194, dated 9th January 1884).

Certified account to be evidence as to arrears.

149. A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land revenue due, and of the person who is the defaulter.

Collectors may realize each other's demands.

On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this chapter as if the demand arose in his own district.

A similar statement of account certified by the Collector of Bombay may be proceeded upon as if certified by the Collector of a district under this Act.

Process for recovery of arrears.

150. An arrear of land revenue may be recovered by the following processes :—

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[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 69.

(*a*) by serving a written notice of demand on the defaulter under section 152;

(*b*) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153;

(*c*) by distraint and sale of the defaulter's moveable property under section 154;

(*d*) by sale of the defaulter's immoveable property under section 155;

(*e*) by arrest and imprisonment of the defaulter under sections 157 and 158;

(*f*) in the case of alienated holding consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

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

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

Recovery of arrears of land-revenue.—An arrear of land-revenue may be recovered by the several processes mentioned in this section. With regard to the process of sale of the defaulter's immoveable property other than the land on which the arrear is due, it should be noted that the sale is subject to all incumbrances, or tenures or alienations effected by the occupant before the sale. The sale is just like the sale in execution of a money decree of a judgment-debtor's immoveable property and the purchaser acquires only what the occupant could have honestly disposed of on the date of the sale. In this case the rights of incumbrancers are not touched (See *Venkatesh v Mhal Pai*, 15 Bom. 67). The surplus after deducting the expenses of the sale and the arrears due shall be paid to the occupant whose property is thus sold, as required by s. 183 *post*.

Revenue demands of former years how recoverable.

151. The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year:

Proviso.

Provided that any process commenced in the current year shall be entitled to the said perferences, notwithstanding that it may not be fully executed within that year.

When notice of demand may issue.

152. A notice of demand may be issued on or after the day following that on which the arrear accrues.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an

arrear of revenue, and direct by what officer such notices shall be issued.

Notes—Fees of notice under this section, the costs of arrest under sec. 158 and expenses of sale under s. 183 leviable under the existing rules are doubled (G. R. No. 7828, dated, 25-6-1923, quoted in Joglekar's Supplement No 2, p. 31).

Fees are levied even when the notice is unserved (G. Rs. Nos. 954 of 1896, and 1194 of 1898).

Inamdars, even if commissioned, cannot charge notice fees (G. R. No. 2901 of 1886).

Notice of demand when compulsory.—The issue of a notice under this section is not compulsory before any other kind of coercive process is undertaken (G. N No. 6557, dated 16-1-1931).

Notice of demand when to be served.—A notice of demand under this section may be served through the postal agency. But since practical difficulty is likely to arise if a notice sent by registered post is refused, the issue of a registered notice in such cases should be supplemented by the procedure prescribed in section 191 of the Code of affixing a copy of the notice to some conspicuous place on the land to which the notice refers (G. R. No. 5688-28, dated 15-9-1930, quoted in Correction Slips to Joglekar's Land Revenue Code).

Form of notice of demand.—For form of notice of demand to be issued under this section, see p 153 of Anderson's L. R. Rules.

The occupancy or alienated holding for which arrear is due may be forfeited.

153. The Collector may declare the occupancy or alienated holding in respect of which an arrear of land-revenue is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's account.

Proviso.

[a] Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited—

(a) unless previously thereto he shall have issued a proclamation and written notices of the intended declaration in the manner prescribed by sections 165 and 166 for sales of immoveable property, and

(b) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 166.

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

Proviso.—This proviso provides against the possibility of an occupancy or alienated holding being declared forfeited and disposed of without the fact coming to the knowledge of persons who might otherwise avail themselves of the remedies against forfeiture contained in ss. 80 and 81 (*Select Committee's Report*).

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[a] This proviso was added by Bom. Act VI of 1901, s. 16.

Occupancy or alienated holding cannot be alienated for recovery of arrears of local fund cess.—Although local fund cess is recoverable as an arrear of land revenue, it is not land revenue which is due in respect of an occupancy or alienated holding. Therefore an occupancy or alienated holding cannot be forfeited for recovery of arrears of local fund cess (G. R. No 5673-28, dated 28-8-1930 quoted in Correction Slips to Joglekar's Land Revenue Code).

Mere sale does not extinguish incumbrances.—It cannot be assumed that the Collector has declared under this section the holding to be forfeited from the mere fact that that would be the legal consequence of failure to pay assessment. If there has been no forefeiture, a mere sale does not extinguish existing incumbrances (*Govind v Bhiwa*, P. J. 1895, p 70).

When order of forfeiture is illegal.—When a talukdari village is attached under s. 159 of the Code for arrears of land-revenue, so long as the attachment subsists, an order of forfeiture, under this section, is illegal (*Samaldas v. Secretary of State*, 16 Bom 455).

Forfeiture not followed by sale.—A declaration of forfeiture under this section of the interests of a lessee holding under a permanent lease not followed by a sale, but by an order transferring possession of the holding to the lessor under s. 57, has not the effect of defeating prior incumbrances created by the lessee in favour of third persons (*Varayin v. Purshottam*, 22 Bom. 309).

When a registered occupant's tenancy is forfeited under s. 56 *ante*, and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the land), the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture and the lessee is still under liability to his landlord (*Ganparshibai v. Timmaya*, 24 Bom. 34).

Declaration of forfeiture before sale.—A sale of a holding for default of payment of assessment is not invalid, although prior to the sale there has been no declaration of forfeiture by the Collector The declaration is not so essentially a necessary preliminary of a sale that without it the sale is illegal and invalid. The fact that a sale has taken place is *prima facie* evidence that forfeiture had been declared (*Ganpati v. Gangaram*, 21 Bom. 381).

Distraint and sale of defaulter's moveable property.

154. The Collector may also cause the defaulter's moveable property to be destrained and sold.

By whom to be made.

Such distraints shall be made by such officers or class of officers as the Commissioner under the orders of Government may from time to time direct.

Distraints may be made by Taluka karkuns, Kulkarnis, Talatis and Patels, provided that they should be executed only by persons able to read and write. In special cases, however, the Collectors and their assistants may direct the warrant to any person whom they may consider competent to execute it (G. R. No. 7858, dated 23rd December 1881, quoted in Sathe's Land Revenue Code, 4th ed., p. 252).

Delegation to Mamlatdars and Mahalkaris of the power to distraint.—The Collectors may delegate the powers exercised by them under this section, to Mamlatdars and Mahalkaris (G. R. No. 5954, dated 31st August 1891, quoted in Sathe's Land Revenue Code, 4th ed., p. 254).

Defaulter's Property.—This section will apply only if the distrained property is the moveable property of the defaulter and the onus is on the officer who effects a seizure to prove it (*Gangaram v. Dinkar*, 37 Bom. 592).

Distraint of chattels how effected.—A seizure for distraint of chattels may be either actual or constructive. It is not necessary that the goods must be actually touched or handled (*Emperor v. Lallu Waghai*, 43 Bom. 550).

Seizure of account books.—An attachment of account books by an officer acting under this section is illegal, and the officer is liable to damages for doing so (*Daluchand v. Gulabai*, 18 Bom L. R. 323).

Cash and notes—Under this section cash and particularly currency notes (being moveable property and liable to sale) may be distrained and sold (*Emperor v. Gulabrai*, 83 I. C. 899). So also **ornaments** (18 Bom L. R. 323).

Sale of defaulter's immoveable property.

155. The Collector may also cause the right, title and interest of the defaulter in any immoveable property other than the land on which the arrear is due to be sold.

Defaulter's immoveable property.—The immoveable property of a defaulter which is put up for sale under the Land Revenue Code is not attached in execution and cannot, therefore, be transferred to a Co-operative Society for the recovery of its dues under section 59 (2) of the Bombay Co-operative Societies Act, 1925. A Co-operative Society should in such cases offer an adequate bid and purchase the right, title and interest of the defaulter in the property. In special cases, however, in order to set an example, the Collector may in the absence of outside bidders transfer the right, title and interest of the defaulter in immoveable property to co-operative society on a purely nominal bid (G. Rs. Nos. 4373-28, dated 23-4-1930, 8-12-1930 and 13-2-1932 quoted in Correction Slips to Joglekar's Land Revenue Code).

Exemptions from distraint and sale.

156. All such property as is by the Civil Procedure Code exempted from attachment or sale in execution of a decree, shall also be exempt from distraint or sale, under either of the last two preceding sections.

The Collector's decision as to what property is so entitled to exemption, shall be conclusive.

Exemption—The proviso to Section 60 (1) of the Civil Procedure Code (Act V of 1908) exempts the following articles from attchment or sale :—

(*a*) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;

(*b*) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood, as such, and such portion of agricultural produce or of any class of agricultural produce as may

have been declared to be free from liability under the provisions of the next following section (*re* special exemption by Government orders);

(*c*) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

(*d*) books of account;

(*e*) a mere right to sue for damages;

(*f*) any right of personal service;

(*g*) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions;

(*h*) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;

(*i*) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (*h*), while on duty, to the extent of—

(*i*) the whole of the salary, where the salary does not exceed forty rupees monthly;

(*ii*) forty rupees monthly, where the salary exceeds forty rupees and does not exceed eighty rupees monthly; and

(*iii*) one moiety of the salary in any other case;

(*j*) the pay and allowances of persons to whom the Indian Articles of War (V of 1869) apply;

(*k*) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act (IX of 1897), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(*l*) the wages of labourers and domestic servants whether payable in money or in kind;

(*m*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*n*) a right to future maintenance;

(*o*) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892, to be exempt from liability to attachment or sale in execution of a decree; and

(*p*) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation.—The particulars mentioned in clauses, (*g*), (*h*), (*i*), (*j*), (*l*) and (*o*) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in section 60 shall be deemed—

to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building site or land.

Agricultural produce not exempted from attachment under C. P. Code.—No kind of agricultural produce has been exempted from attachment under section 61 of the Civil Procedure Code.

Exemption from attachment and sale of houses and buildings occupied by agriculturists.—The expression "materials of houses

and other buildings belonging to, and occupied by, agriculturists" used in s. 266, cl. (*c*) (now s. 60 (*c*) of the new Code of 1908) of the Civil Procedure Code, is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such and the farm buildings appended to such dwelling (*Radhakrishna v. Balvant*, 7 Bom. 530).

Arrest and detention of defaulter.

157. At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a Mamlatdar or Mahalkari, unless the revenue due together with the penalty or interest and the costs of arrest and of notice of demand, if any, have issued and the cost of his subsistence during detention, is sooner paid.

Imprisonment in Civil Jail.

If, on the expiry of ten days the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C, for imprisonment in the civil jail of the district:

Defaulters not to be detained in custody longer than debtors may be detained by the Civil Court.

Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a Civil Court for a debt equal in amount to the arrear of revenue due by such defaulter.

Govt's priority over pledgee's rights.—S. was indebted to the Govt. on account of unpaid instalments of a foreign liquor licence, but the stock of wines was already pledged to P. Bank. *Held*, that Govt. had priority over P. Bank as pledgee. This section was applicable to this case although the priority of Govt. as stated in this section is over any claim against any land or holder thereof (*People's Bank of Northern India v. Shahani Brothers*, A. I. R. 1930 Sind 185).

Period of detention.—Every person detained in the civil prison in execution of a decree shall be so detained:—(*a*) Where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and (*b*) in any other case, for a period of six weeks (Civil Procedure Code (Act V of 1908), s. 58 (1)).

Agriculturist debtor when arrested and detained under this section.—An agriculturist debtor against whom action is being taken under s. 59 (1) (*b*) of the Co-operative Societies Act may be arrested and detained under this section. He cannot claim protection under s. 21 of the D. A. R. Act (G. R. No. 8281-28, dated 18-1-1931 quoted in Correction Slips to Joglekar's Land Revenue Code).

Power of arrest by whom to be exercised.

158. The Commissioner may, with the sanction of the Governor in Council, from time to time, declare by what officers, or class of officers, the powers of arrest conferred by section 157 may

be exercised, and also fix the costs of arrest and the amount of subsistence-money to be paid by Government to any defaulter under detention or imprisonment.

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

159. If the holding, in respect of which an arrear is due, consists of an entire village, or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Lands of such village to revert free of incombrances.

160. The lands of any village or share of a village so attached shall revert to Government unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as are interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals;

Powers of manager.

and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

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

Collector not to demand more (Local Fund) in addition to stipulated rent.—

The plaintiffs were tenants of the Thakor of G. The Collector undertook the management of his estate and had, under s. 144 of this Code, attached the village G. *Held*, that the plaintiffs as tenants of the Thakor were liable to pay the Collector the stipulated rent only and that this section does not entitle him to demand more (*Collector of Ahmedabad v. Mosan*, P. J. 1892, p. 323).

Right of Khot to sue for possession of Khoti Nisbat lands.—A Watandar Khot is entitled to institute a suit for possession of his Khoti Nisbat lands which are alienated by the tenant without obtaining his consent, although the Khot's lands have been attached by Government under this Code (*Purushottam v. Ganpati*, 50 Bom. 306).

Application of surplus profits.

161. All surplus profits of the lands attached, beyond the cost of such attachment and management, including the payment of the current revenue, and the cost of the introduction of a revenue survey, if the same be introduced under the

provisions of section 111 [a] shall be applied in defraying the said arrear.

Restoration of village so attached.

162. The village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the first of August next after the attachment:

if at the time that such application is made it shall appear that the arrear has been liquidated;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

Disposal of surplus receipts.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

Notes.—*Vide* note 1 under s. 160.

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

Khot's right to profits for one year when Khoti village under Government attachment.—The position of a Khot, in the villages to which the Bombay Khoti Act (I of 1880) has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of Khoti profits, on his resuming the management of the village, would be regulated by cl (1) of this section. Under this section the village, or share of a village so attached, shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from 1st August next after the attachment. The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village, or share of a village, is made, after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government. But this rule does not hold good where the village attached is one in the Kolaba district to which the Khoti Settlement Act (I of 1880) has not been extended, unless the Knots therein are Sanadi or Vatandar Khots (*Bhikaji v. Nizam*, 8 Bom. 525).

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

163. If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors-in-title, or in any wise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the [a] persons in actual possession of the land [a].

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

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

164. Any defaulter detained in custody, or imprisoned, shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector, or to such other person or officer.

But all processes to be stayed on security being given ;

And any person against whom proceedings are taken under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

or on amount demanded being paid under protest.

165. When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Procedure in effecting sales.

Such proclamation shall be made by beat of drum at the head quarters of the taluka, and in the village in which the immoveable property is situate, if the sale be of immoveable property ; if the sale be of moveable property the proclamation shall be made in the

Proclamation of sales.

[a-a] These words were substituted for the original words "actual occupants of the soil" by Bom. Act IV of 1913, s. 70.

village in which such property was seized, and in such other places as the Collector may direct.

Notification of sales.

166. A written notice of the intended sale of immoveable property, and of the time and place thereof, shall be affixed in each of the following places, *viz.*, the office of the Collector of the district, the office of Mamlatdar or Mahalkari of the taluka or mahal in which the immoveable property is situate, the chavdi or some other public building in the village in which it is situate, and the defaulter's dwelling place.

In the case of moveable property, the written notice shall be affixed in the Mamlatdar's or Mahalkari's office, and in the chavdi or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale whether of moveable or immoveable property to be published in any other manner that he may deem fit.

Sale by whom to be made.

167. Sales shall be made by auction by such persons as the Collector may direct.

Time when sale may be made.

No such sale shall take place on a Sunday or other general holiday recognized by Government, nor until after the expiration of at least thirty days in the case of immoveable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

Postponement of sale.

The sale may from time to time be postponed for any sufficient reason.

Sale of perishable articles.

168. Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by auction with the least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

When sale may be stayed.

169. If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale to the person appointed under section 146 to receive payment of the land revenue due, or to the officer appointed to conduct the sale or if he furnish security under section 164, the sale shall be stayed.

Date up to which defaulters may pay arrears.—Under this section a defaulter is only at liberty to pay the arrears in respect of which the

land is to be sold at any time before the day fixed for the sale. The arrears paid after the day fixed for the sale should be refunded to the defaulter (G. R. No. 6130, dated 20th November 1880, quoted in Sathe's Land-Revenue Code, 4th ed., p. 212).

Sales of moveable property when liable to confirmation.

170. Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.

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

171. When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

Mode of payment for moveable property when sale is subject to confirmation.

172. When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and said. The full amount of puchase-money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money, the purchaser shall be granted a receipt for the same, and the sale shall become absolute as against all persons whomsover.

Moveable property.—This section applies to moveable property only (*Govind v. Bhiwa*, P. J. 1895, p. 70).

Deposit by purchaser in case of sale of immoveable property

173. In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Purchase money when to be paid.

174. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immoveable property took place, or, if the said

fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

How to calculate fifteen days—When is the deposit to be paid.—The period of 15 days for the payment of the balance of purchase-money should be counted from the date of the conclusion of the sale by the Mamlatdar. The payment of a deposit of twenty-five per cent. to the Karkun before the conclusion of the sale is an irregularity (G. R. No. 809, dated 4th February 1898, quoted in Sathe's Land Revenue Code, 4th ed., p. 264).

Effect of default.

175. In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall be forefeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Liability of purchaser for loss by re-sale.

176. If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

Notification before re-sale.

177. Every re-sale of property in default of payment of the purchase-money, or after postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

Application to set aside sale.

178. At any time within thirty days from the date of the sale of immoveable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

but except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity, or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

Order confirming or setting aside sale.

179. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming

the sale : provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

Refund of deposit or purchase-money when sale set aside.

180. Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

On confirmation of sale purchaser to be put in possession.

Certificate of purchase.

181. After a sale of any occupancy or alienated holding has been confirmed, in manner aforesaid, the Colllector shall put the person declared to be the purchaser into possession of the land [a] and shall cause his name to be entered in the [b] land records [b] as occupant or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the [c] land to which the certificate refers.

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

Certificate of sale.—Certificate of sale granted by the Civil Courts as well as those granted by the Revenue Officers are liable to stamp duty under Art. 16, Sch. 1, of the Stamp Act (G. R. No. 3009, dated 15th June 1880, quoted in Sathe's L. R. Code, 4th ed., p. 267).

Every Revenue Officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1 (See sec. 89 (4) of the Registration Act, XVI of 1908).

Bar of suit against certified purchaser.

182. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

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[a] Words repealed by Bom. Act IV of 1913, s. 71, are omitted.

[b-b] These words were substituted for the original words "revenue records" by Bom. Act IV of 1913, s. 71.

[c] This word was substituted for the words "occupancy or alienated holding" by Bom. Act IV of 1913, s. 71.

Bar of suit against certified purchaser.—The provisions of this section and s. 317 (now s. 66) of the Civil Procedure Code are to be construed strictly, and they do not bar a suit where the plaintiff, although originally a benamidar, came honestly into possession (*Ragho v. Vishnu*, 5 Bom. L.R. 329).

Application of proceeds of sale.

183. When any sale of moveable property under this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land revenue,

and the surplus (if any) shall be paid to the person whose property has been sold.

Expenses of sale how calculated.

The expenses of the sale shall be estimated at such rates and according to such rules as may from time to time be sanctioned by the Commissioner under the orders of Government.

Surplus not to be paid to creditors, except under order of Court.

184. The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

Claims of Creditors.—After the arrears have been recovered from the sale-proceeds under s. 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors (G.R. No. 5,730, dated 27th October 1879, quoted in Sathe's Land Revenue Code, 4th ed., p 269).

Certified purchaser liable only for land revenue subsequently due.

[*a*] 185. Notwithstanding anything in section 136, the person named in the certificate of title as purchaser shall not be liable for land revenue due in respect of the land for any period previous to the date of the sale.

Claims to attached moveable property how to be disposed of.

186. If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice. If the claim be admitted wholly or partly, the property shall be dealt with accordingly. Except, in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as hereinbefore directed.

Delegation of powers to Mamlatdars and Mahalkaris.—The Collectors are authorized to delegate the powers exercised by them under this section to Mamlatdars and Mahalkaries when the adoption of such a course may appear to them desirable (G. R. No. 8785, dated 19th November 1882, quoted in Sathe's Land Revenue Code, 4th ed., p. 270).

[*a*] This section was substituted for the original section by Bom. Act IV of 1913, s. 72.

What moneys leviable under the provisions of this chapter.

187. All sums due on account of land revenue, all quit-rents, nazaranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines, and costs payable or leviable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue;

and all moneys due by any contractor for the farm of customs-duties, or of any other duty, or tax, or of any other item of revenue whatsoever and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement;

and also all sums declared by this or by any other Act or Regulation at the time being in force [a] or by any contract with the Secretary of State for India in Council [a] to be leviable as an assessment, or as a revenue demand, or as an arrear of land revenue;

shall be levied under the foregoing provisions of this chapter [b] and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto [b].

[c]

Sureties liable as revenue defaulters.

And all persons who may have become sureties under any of the provisions of this Act or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid for any sum of money shall on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to be proceeded against under the provisions of this chapter as revenue-defaulters [d] and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such persons [d].

On resumption of a farm no payments made to contractor in advance to be admitted.

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

The recovery of free grants as arrears of revenue in case of misuse.

[e] And any person who has received from Government a free grant of money for any agricultural purpose, subject to the proviso that he shall refund the same on failure to observe any of the conditions of the grant, shall, on failure to observe any such condition and to repay

[a-a] These words were inserted by Bom. Act IV of 1905, First Schedule.

[b-b] These were added by Bom. Act IV of 1913, s. 73 (1).

[c] The words inserted by Bom Act I of 1920, s. 2, have been repealed by Bom. Act VII of 1925, Schedule.

[d-d] These words added by Bom. Act IV of 1913, s. 73 (2).

[e] This paragraph was added by Bom. Act IV of 1913, s. 73 (3).

the said sum to Government, be liable to be proceeded against under the provisions of this chapter as a revenue-defaulter ; and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such person.

The effect of this section is to make the provisions of ss. 153 and 66, and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks. Such charges may be recovered either by forfeiture or the occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In the former case the land is freed from all incumbrances created by the occupant. In the latter case the rights of incumbrances are not touched (*Venkatesh v. Mhal Pai*, 15 Bom. 67).

CHAPTER XII.

PROCEDUE OF REVENUE OFFICERS.

Subordination of revenue officers.

188. In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time, and manner of performing his duties to the direction and control of the officer to whom he is subordinate.

Power to summon persons to give evidence and produce documents.

189. Every revenue officer not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct : provided that exemptions under [a] sections 132 and 133 of the Code of Civil Procedure, 1908 [a] shall be applicable to requisitions for attendance under this section ;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

This section does not empower a Mamlatdar to summon any person to attend before a Deputy Collector who is making

[a-a] These words were substituted for the original words "sections 640 and 641 of the Code of Civil Procedure" by Bom. Act IV of 1913, s. 74.

enquiries about the appointment of a patel for an inam village. A failure to attend in obedience to such a summons is not an offence under s 174 of the Penal Code (*Queen-Empress v. Vidya Dhar*, Cr. Rg. 52 of 1889).

Summons to be in writing signed, and sealed;

190. Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal:

how to be served.

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

Service in district other than that of issuer.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

Mode of serving notices.

191. Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any;

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

Notice not void for error.

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

Procedure for procuring attendance of witnesses.

192. In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the [a] Code of Civil Procedure, 1908, for parties applying for summons for witnesses. [a]

Procedure for procuring attendance of witnesses.—The procedure for parties applying for summonses for witnesses is given in Order XVI of the Code of Civil Procedure (Act V of 1908), which runs thus :—

"1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required to give evidence.

2. The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

[a–a] These words were substituted for the original words "Code of Civil Procedure, section 160" by Bom Act IV of 1913, s. 75.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

5. Every summons for the attendance of a person to give evidence shall specify the time and place at which he is required to attend.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required."

For other particulars, see Order XVI of the C. P. Code.

Officer holding summary enquiry to be deemed a Civil Court.—The officer or any authority holding a summary enquiry under the provisions of this Code is a Civil Court for the purposes of such enquiry, and such Court may direct by whom the costs of party are to be paid whether by himself or by any other party to the enquiry and whether in whole or in what part or proportions. Such costs can be levied under the provisions of Chapter XI of the Code (G. R. No. 4468, dated 10th July 1882, quoted in Sathe's Land-Revenue Code, 4th ed., p. 276).

Mode of taking evidence in formal inquires.

193. In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of, the officer making the investigation or inquiry, and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

Taking evidence given in English. Translation to be on record.

When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

Writing and explanation of decisions.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Summary inquiries how to be conducted.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in his language of the district, embracing the material averments made by the

parties interested, the material parts of the evidence, the decision and the reasons for the same :

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

Formal and summary inquiries to be deemed judicial proceedings.

196. A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219 and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Hearing and decisions. Notice to parties.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Ordinary inquiries how to be conducted.

197. An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion, deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Absence of judicial proceeding.—Where the entry in the revenue registers was due to a misunderstanding of a certain order, it was *held* that the cause of the error being of the same nature with "oversight" falling within the description of errors in s. 109 of the Code, the rectification of the Register so as to bring it in accord with the order made after hearing both the parties was not contrary to natural justice It was a case in which the Revenue officer concerned was authorized under this section to dispense with any judicial or quasi-judicial inquiry (*Vasudeo v. Govind*, 36 Bom. 315).

Mamlatdar—Revenue Court.—A Mamlatdar holding an enquiry relating to Record of Rights, under Chap XII of this Code, is a revenue Court within the meaning of s. 195 (1) (*c*) of the Criminal Procedure Code (*Emperor v. Narayan*, 16 Bom. L. R. 678).

Copies and translations, etc., how to be obtained.

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them or to persons claiming under them on due application being made for the

same, subject to such charges for copying, etc., as may, from time to time, be authorized by Government.

Scale of copying fees.—The following is the statement showing the rules for copying fees :—

No. of village form.	Description of form.	Rate of copying fee.
I	Land and Assessment Register.	One anna per entry of a survey number or pot-number.
III	Register of alienated land.	One anna per entry.
VIIIA	Khatas of holding.	One anna per Khata having 5 survey numbers or less and one and half anna for Khata of more than 5 survey numbers.
VIIIB	Annual Khatas of dues and recoveries.	One anna for each Khata.
IX	Day and Receipt book.	One anna for each entry in the day book.
XI	Trial balance sheet.	One anna per entry.
XII	Register of crops and tenancies.	Do.
XIII	Birth and death register.	Do.
XIV	Cattle census.	Do.

(G. R. No. 10809, dated 6th September 1917, quoted in Joglekar's Land Revenue Code, p. 527).

Arrest of a defaulter to be made upon a warrant.

199. Whenever it is provided by this Act that a defaulter, or any other person may be arrested, such arrest shall be made upon a warrant issued, by any officer competent to direct such person's arrest.

Power of revenue officer to enter upon any lands or premises for purposes of measurement, etc.

200. It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing, or inspecting boundaries, classification of soil or assessment, or for any other purpose connected with the lawful exercise of his office under the provisions of this Act, or of any other law for the time being in force relating to land revenue, any lands or premises, whether belonging to Government or to private individuals, and whether fully assessed to the land revenue or partially or wholly exempt from the same : Provided always that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry ; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Proviso.

Governor in Council to determine the language of a district.

201. The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

Collector how to proceed in order to evict any person wrongfully in possession of land.

202. Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person, wrongfully in possession of land, such eviction shall be made in the following manner, *viz* :—

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period not exceeding thiry days, as may be necessary to prevent the continuance of such obstruction or resistance.

Pasaita land settled as Pateli.—The right to hold Pasaita land rent free was allowed so long as the services of patelship were rendered by the same person but the only effect of the creation of the office of patelship was to take away exemption to pay rent and not to put an end to the right of possession. So long as he paid the assessment to the Government, the Government have no right to evict him (*Bhavan Morar v. Secretary of State*, 45 Bom. 894).

Mortgagee's eviction by Talukdari Settlement officer.—A portion of the Talukdari estate was granted by the original Talukdar to a cadet of his family as *jivai*. The grantee mortgaged one of such lands with possession to the plaintiff's father on April 19, 1889. In 1891, the mortgagor died and in 1895 the mortgagee died ; but the land mortgaged remained all along in mortgagee's possession. In November 1907, the Talukdari Settlement Officer sent a notice to the plaintiff under this section calling upon him to vacate the land in question ; and evicted him under s 79-A *ante* as amended by s. 33 of the Gujarat Talukdars' Act. The plaintiff sued to recover possession of the land. *Held*, that the plaintiff was entitled to succeed ; for he had been in adverse possession claiming title as an incumbrancer for more than twelve years since the

death of the mortgagor (*Talukdari Settlement Officer v. Rikhavdas*, 15 Bom. L. R. 378).

CHAPTER XIII

APPEALS AND REVISION

Appeal to lie from any order passed by a revenue officer to his superior.

203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

Appeal.—This Chapter does not apply to appeals under the Record of Rights. Applications for compassionate allowances from discharged Revenue Officers are treated as "appeals" (G. R. No. 4997 of 1908).

In dealing with Civil Court Darkhasts, the Collector is not subject to appeals to, or revision by the Commissioner, but only by the Court. The Collector cannot set aside a darkhast sale, but can confirm or refuse to confirm it (G. R. No. 2172 of 1915).

Decision or order.—A notice of demand by a Mamlatdar to pay assessment is not a 'decision or order' within the meaning of this section or the following section (*Nathuram v. Secretary of State*, 46 Bom. 811).

Order of Collector.—An order made by the Collector under section 23 of the Bom. Irrigation Act falls within the purview of this section and an appeal against such order lies to the Commissioner in Sind (*Secretary of State v. Jeramdas*, 6 S. L R. 241).

Orders passed by Collector in execution Proceedings transferred to him under s. 320, C. P. C.—Under this section the Revenue Commissioner or the Government are vested with the appellate power in respect of orders passed by Collector in execution proceedings transferred to him under s. 320 of the C. P. Code, 1882 (*Mancherji v. Thakurdas*, 7 Bom. L. R. 682).

Pleaders allowed to appear in proceedings under this section.—Government officers may allow representation by lawers, whenever such a course is likely to be helpful in appeal under this Code (B. G. G. 1920, Pt. V., p. 23).

Invalid order of forfeiture.—If the order of forfeiture is valid, dispossession is merely ancillary to the order and no suit for possession without appealiag against that order is maintainable having regard to s. 11. Where, however, the order of forfeiture is invalid, the plaintiff is not bound to appeal therefrom and his suit for possession after he is dispossessed in pursuance of that order is maintainable (*Anant Krishnaji v. Secretary of State*, 53 Bom. 165).

Commissioner's powers.—Secs. 203 and 211 empower a Commissioner to take action in appeal or revision as regards any orders passed by a Collector, who under s. 8 performs all his duties in subordination to the Commis-

sioner of the Division (G. R. P. W. D. 83 W. I.—934, dated 20th June 1897, quoted in Sathe's L. R. Code, 4th ed., p. 282).

Appeal when to lie to the Governor in Council.

204. An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

Periods within which appeals must be brought

205. No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

Admission of appeal after period of limitation.

206. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals, that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order passed under this section admitting an appeal.

Provision where last day for appeal falls on a Sunday or a holiday.

207. Whenever the last day of any period provided in this chapter for the presentation of an appeal falls on a Sunday, or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

Copy of order to accompany petition of appeal

208. Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

Powers of appellate authority.

209. The appellate authority may [1] [for reasons to be recorded in writing [1] either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence.

[2] [Provided that it shall not be necessary for the appellate authority to record reasons in writing

[1] These words were inserted by Bom. Act III of 1932, s. 2. (1)
[2] This proviso was added by Bom Act III of 1932, s. 2. (2)

(*a*) when an appeal is dismissed summarily, or

(*b*) when the decision or order appealed from is itself a decision or order recorded in appeal, or

(*c*) when an appeal is made to the Governor in Council under section 204.]

Note.—In the interest of justice it is quite essential that when an appeal under the Land Revenue Code is decided, reasons for the decision should be given by the appellate authority. Under the Code it is not obligatory upon the appellate authority to give reasons for any decision in the appeal (*Statement of Objects and Reasons*).

Power to suspend execution of order of subordinate officer.

210. In any case in which an appeal lies, the appellate authority may, pending decision of the appeal, direct the execution of the decision or order of the subordinate officer to be suspended.

Power of the Governor in Council and of certain revenue officers to call for and examine records and proceedings of subordinate officers;

211. The Governor in Council and any revenue officer, not inferior in rank to [*a*] an Assistant or Deputy Collector [*a*] or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely—[*b*] a Mamlatdar, a Mahalkari, an [*c*] Assistant Superintendent of Survey, and an Assistant Settlement Officer.

and to pass orders thereupon.

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit:

[*d*] Provided that an Assistant of Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

[*a-a*] These words were substituted for the original word "Collector" by Bom. Act IV of 1913, s. 76 (*a*).

[*b*] Words repealed by Bom. Act IV of 1913, s. 76 (*b*), are omitted.

[*c*] "An" was substituted for "and" by Act XVI of 1895.

[*d*] This proviso was added by Bom. Act IV of 1913, s. 76 (*e*).

Scope.—There is no time limit within which the Commissioner must modify, annul or reverse the order of the Collector. This section, however, entitles the Commissioner to pass an order which is a modification, annulment or reversal of the Collector's order and does not entitle him to make an entirely new order which the Collector himself could not have made. Where originally the Collector made an order granting certain lands to plaintiff free from occupancy price and assessment, a subsequent order by the Commissioner directing to pay the occupancy price and assessment without giving the plaintiff an option of vacating the land is no modification of the original order but a new order which he has no power to pass (*Anant Krishnji v Secretary of State*, 57 Bom. 16[illegible]).

"Finality."—The reference to 'finality' in this section refers to 'finality' under this Code, for there are no words excluding the jurisdiction of the Civil Courts in the sections of the Act framed to that end (*Dattatraya v. Secretary of State*, 31 Bom. L. R. 1235).

Limitation.—No period of limitation is prescribed for the exercise of revisional powers (*Ibid*).

Revisional jurisdiction of Collector.—Where a lease of certain sheri lands had expired in 1913 and in pursuance of a Government Resolution the Deputy Collector held an enquiry and ordered that the tenants should get an occupancy tenure on paying a certain assessment, but the said order was reversed by the Collector on revision after three years, it was *held*, in a suit questioning the validity of the order, that the Collector had the power to interfere at any time and that his order was valid in law. *Held*, also, that rights held under the tenant were also extinguished by reason of the Collector's order (*Ibid*).

Revision by Commissioner under this section.—The sale of unoccupied lands held by Mamlatdars under s. 62, and permission to occupy such lands gived under s. 60 are within the scope of this section as proceedings which the Commissioner has jurisdiction to call for and revise and to pass such orders thereon as he deems fit, and no suit would lie against Government on account of that officer exercising his legal powers under the section (*Parapa v. The Secretary of State*, P. J. 1891, p. 230).

Rules as to decisions or orders expressly made final.

212. Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

The Governor in Council alone shall be competent to modify, annul, or reverse any such decision or order under the provisions of the last preceding section.

CHAPTER XIV

MISCELLANEOUS.

Maps and land records open to inspection. Extracts and copies shall be given.

213. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and [a] land records [a] shall be open to the inspection of the public at reasonable hours,

[a–a] These words were substituted for the original words "survey records and all village accounts and land registers" by Bom. Act IV of 1913, s. 77.

and certified extracts from [a] the same [a] or certified copies thereof shall be given to all persons applying for the same.

Land records.—The term 'Land records' is defined in s. 3 (26). Ordinary correspondence being an interchange of views between Government Officers, and specially such correspondence and opinions as are referred to in s. 139 (b), and the barnishis or registers of such correspondence are not land records as there defined, and copies thereof are very rarely given under rule 139. Survey records and vaccination records are included but not the Records of the Alienation Office. Petitions of parties would not be documents maintained under the provisions of or for the purposes of the Act (Sec. 3) (26), nor are they records of the proceedings of any public officer, and, therefore, fall entirely into the optional class (*Anderson*).

Survey records.—Survey records are open to inspection and copies are available under this section (*Aludomal v. Ali*, 5 S. L. R. 49).

Rules.

[b] 214. (1) The Governor in Council may, by notification published in the *Bombay Government Gazette*, make rules not inconsistent with the provisions of this Act, to carry out the purposes and objects thereof and for the guidance of all persons in matters connected with the enforcement of this Act or in cases not expressly provided for therein.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made—

(a) regulating the appointment of revenue officers and the exercise by them of their powers and duties;

(b) regulating the assessment of land to the land revenue and the alteration and revision of such assessment and the recovery of land revenue;

(c) prescribing the notice to be given in the case of enquiries and orders under section 37;

(d) prescribing the purposes for which unalienated land liable to the payment of land-revenue may or may not be used, and regulating the grant of permission to use agricultural land for non-agricultural purposes;

(e) regulating the disposal of land and other property vesting in Government;

(f) regulating the disposal of forfeited land;

(g) prescribing the terms and conditions on which, and the periods for which, unoccupied unalienated land may be granted;

(h) fixing the maximum amount of fine leviable under section 61;

[a-a] These words were substituted for the original words "such maps, registers and accounts" by Bom. Act IV of 1913, s. 77.

[b] This section was substituted for the original section by Bom. Act IV of 1913, s. 78.

(*i*) regulating the conduct of surveys and settlements of land-revenue, and prescribing the notice to be given under section 103 before the introduction of a settlement;

(*j*) regulating the division of survey numbers into sub-divisions and the fixing of the assessment of sub-divisions under section 117A;

(*k*) regulating the construction, laying out, maintenance and repair of boundary-marks;

(*l*) regulating the compilation, maintenance and revision of the record of rights and the registers of mutations, disputed cases and tenancies and prescribing the forms in which they are to be compiled and the officers by whom the said records and registers are to be tested and revised;

(*m*) regulating the exercise by village accountants and revenue officers of the powers of a survey officer and the assessment of costs and expenses under section 135G;

(*n*) prescribing the mode, form and manner in which appeals under Chapter XIII shall be drawn up and presented;

(*o*) prescribing the records, registers, accounts, maps and plans to be maintained for the purposes of this Act and the manner and forms in which they shall be prepared and maintained.

(3) The power to make rules under this section shall be subject to the condition of previous publication.

Penalty for breach of rules.

[*a*] 215. It shall be lawful for the Governor in Council, in making any rule under section 214, to prescribe that any person committing a breach of the same shall on conviction by a Magistrate be punished with imprisonment for a term not exceeding one month or with fine not exceeding five hundred rupees, or with both, in addition to any other consequences that would ensue from such breach.

Chapters VIII to X how far applicable to alienated villages.

[*b*] 216 (1) The provisions of Chapters VIII to X shall be applicable to

(*a*) all unlienated lands situated within the limits of an alienated village;

(*b*) unalienated shares of villages of which a definite share defined by metes and bounds is alienated;

[*a*] This section was substituted for the original section by Bom. Act IV of 1913, s. 78.

[*b*] This section was substituted for the original section by Bom. Act XV of 1929, s. 2.

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess above such amount belongs to Government.

(2) Save as is otherwise provided in section 111 and in this section, no provision of the said Chapters shall be applied to any other alienated village except for the purposes of fixing its boundaries and of determining any disputes relating thereto, unless the extension of the provision is authorised by the Commissioner acting on the writtten application of the sole holder, or, if there be more than one holder, of the holder or holders representing in the aggregate not less than one-half of the total interests in the village in respect of its alienated revenue. If any share of the village is unalienated the prescribed proportion of one-half shall be reckoned as if the village were wholly alienated, Government being considered as the holder in respect of the unalienated share.

(3) In any case in which action under sub-section (2) is taken lawfully by the Commissioner on the application of some only of the holders of the village, any covenant or agreement relative to the extension of the said Chapters or incidental thereto, entered into by such holders shall also be binding on the remaining holders of the village in respect of their shares in the revenue of the village as if such covenant or agreement had been entered into by them.

(4) All survey settlements heretofore introduced in alienated villages shall be valid as if they had been introduced in accordance with the provisions of this section.

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

Prior suit to recover the mamool rates.—Where the plaintiff inamdar got a decree for the mamool rates for the years 1888-1890 in the year 1892 against the defendant's khots and where Survey Settlement was introduced in the village in 1885-1886 and where he filed a suit in 1917 for those dues for the years 1915 and 1916, it was *held*, that though the proper construction to be placed on this section was not strictly speaking *res judicata*, still on the principle of *stare decisis* the previous construction should be adhered to (*Sitaram v. Laxman*, 45 Bom. 1260).

Nature of unalienated village lands.—Lands in an unalienated village, granted by Government for rent wholly or partially free, do not fall within this section (*Sitaram v. Tukaram*, 45 Bom. 984).

Revenue settlement, extension of—An application under this section for the extension of revenue settlement to an alienated village can be made by a holder who is entrusted with the full powers of the managmement of the same, even though he does not *possess* the whole of the lands belonging to the village (*Gopikabai v. Laxman*, 2 Bom. L. R. 235).

Holders of land in alienated villages.

217. When a survey settlement has been introduced under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as [a] holders of land [a] in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to [a] holders of land in unalienated villages [a] [b] shall be applicable, so far as may be, to them.

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

Scope of this section.—This section embraces not only registered occupants of land in unalienated villages but also the holders of lands in alienated villages with the same rights and responsibilities in respect of those lands. The words in this section "so far as may be" do not limit the plain meaning of the first part (*Nanabhai v. Collector of Kaira*, 34 Bom. 686).

Retrospective effect.—As the amendment does not say that it should apply only to villages settled after 1913, it does not save any rights acquired prior to 1913. In other words, the amendment has retrospective effect.

Right of inamdar to enhance rent.—An inamdar, to whom, the Government has granted all its rights in the soil in a village as well as its other pecuniary interests is entitled even after a Survey Settlement had been introduced to raise the rents of the permanent tenants even when such permanent tenancies commenced before the alienation (*Pandu Bala Jagtap v. Ramchandra*, 42 Bom. 112; s. c. 20 Bom. L. R. 16).

An inamdar though he is a grantee of the soil and not merely of the Royal share of the revenue, is not at liberty after the introduction of the Survey Settlement into his village to enhance the rent of his mirasdar tenant beyond the amount of the land-revenue dues. A kadim inamdar who is a grantee by a kadim grant of the soil of a small part of the village, and who has consented to or acquiesced in the introduction of the Survey Settlement into the village is equally precluded by this section, from enhancing the rent of the mirasdar tenant beyond the amount of the land-revenue dues (*Pandu v. Ramchandra*, 22 Bom. L. R. 665).

Contractual rights.—The provisions of this section do not affect contractual rights arising before the introduction of the survey. In alienated villages, it is competent to Government to enter into contractual relationship with tenants or occupants. They might acquire fixity of tenure and fixity of rent. In an ancient village, where the alienee has entered into a contract with his tenants granting not only fixity of tenure but also fixity of rent, the provisions of this section do not enable such alienee to avoid his contractual liability and enforce against his permanent tenants the payment of assessment levied on occupancy land (*Saryajirao Ganpatrao v. Sidhanath*, 27 Bom. L. R 645).

[a-a] These words were substituted for the original word "occupants" by Bom. Act IV of 1913, s. 80 (a).

[b] Words repealed by Bom. Act IV of 1913, s. 80 (b) are omitted.

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

Survey Settlement.—Survey Settlement was extended to an alienated village on the application of the inamdar under Bombay Act (I of 1865). The period of the settlement expired in 1888 and the inamdar recovered from 1895 higher assessment than that allowed under the Survey Settlement. The Commissioner objected in 1910 and the inamdar sued to establish his right to charge higher assessment. *Held*, that the inamdar had no such right since this section applied, when a survey Settlement had been introduced into an alienated village with the consent of the alienee under Bombay Act (I of 1865) and when the period of the Settlement had expired after the Code came into force (*Dhondo Vasudev v. The Secretary of State*, 44 Bom. 110).

Holder.—Before a person can claim the benefit of this section, he must be shown to be a "holder" within the meaning of s. 3 (11) of this Code (*Vasudeo v. Govind*, 14 Bom. L. R. 124).

Kadim Haks.—'Kadim Haks' are grants made prior to the grant of a village in favour of an Inamdar and independently of him (*Secretary of State v. Indoorai*, 28 Bom. L. R. 1308).

Construction of this Act.

218. Nothing in this Act, which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land, or the rights of holders of alienated land or of Government in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

SCHEDULE A

Repealed by Bom. Act IV of 1913, section 81

SCHEDULE B

FORM OF BOND TO BE REQUIRED UNDER SECTION 23

WHEREAS I,
inhabitant of
have been appointed to the office of
and have been called upon to furnish security under the provisions of section 23 of the Land-Revenue Code for the due discharge of the trusts of the said office, or of any other office to which I may be hereafter appointed, and for the due account of all moneys, papers and other property which shall come into my possession or control by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council, the amount of any loss or defalcation in my accounts, and to deliver up any papers or other property within such time, and to such person as shall be demanded by the person at the head of the office to which I belong, such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein I bind myself to forfeit to the Secretary of State for India in Council the sum of
Rupees.

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

Dated

(Signature).

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL

WE
hereby declare ourselves sureties for the abovesaid
that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council [b] the sum of rupees, in which the abovesaid has bound himself, or such smaller [b] sum as shall be deemed sufficient by the to cover any loss or damage which the Government may sustain by reason of such default.

Dated

(Signature).

[a] This proviso was added by Bom. Act IV of 1905, First Schedule.

[b-b] These words were substituted for the original word "such" by Bom. Act IV of 19105, First Schedule.

SCHEDULE C

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 25 OR 157

Seal

To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

WHEREAS A. B. of was on the day of 187 . ordered by to (*here state the substance of the demand made*); and whereas the said A B. has neglected to comply with the said order, and it has, therefore, been directed, under the provisions of section of the Bombay Land Revenue Code, that he be imprisoned in the Civil Jail until he obey the said order or until he obtain his discharge under the provisions of section 25 or 28 (*or section* 157 or 164 *as the case may be*) of the said Code; you are hereby required to receive the said A. B. into the Jail under your charge and to carry the aforesaid order into execution according to law.

Dated this day of 187

(Signature of Collector)).

SCHEDULE D

FORM OF BOND TO BE REQUIRED UNDER SECTION 28 OR 164

WHEREAS I,

have been ordered by

to (*here state the nature of the demand*) and whereas I dispute the right of the said to make the said order, I hereby bind myself to file a suit within fifteen days from the date of this bond in the District Court of to contest the justice of the demand, and do agree that in the event of a decree being passed against me I will fulfil the same and will pay all amounts including costs and interests, that may be due by me, or that if I fail to institute a suit as aforesaid, I will, when required, pay the above-mentioned amount of Rupees (or will deliver up the above-mentioned papers or property, (*as the case may be*), and in the case of my making default therein, I hereby bind myself to forfeit to the Secretery of State for India in Council the sum of Rupees

Dated

(Signature)

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL

WE

hereby declare ourselves securities for the above said that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council the sum of Rupees.

Dated

(Signature)

SCHEDULE E

(See *section* 84)

I—FORM OF NOTICE TO BE GIVEN BY LANDLORD TO TENANT TO QUIT

To

A. B.

I do hereby give you notice that I do intend to enter upon, and take possession of the land (*here give the description*) which you now hold as tenant under me, and

you are, therefore, required to quit and deliver up possession of the same at the end of this current year, terminating on the of 187 .

(Signed) C. D.

Dated this day of 187 .

II.—FORM OF NOTICE TO BE GIVEN BY TENANT TO LANDLORD OF HIS INTENTION TO QUIT.

To

C. D.

I do hereby give you notice that I shall quit and deliver up to you, at the end of this current year terminating on the of 187 , the land (*here give the description*) which I hold from you

(Signed) A. B.

Dated this day of 187 .

SCHEDULE F

FORM OF COMMISSION TO BE ISSUED TO A HOLDER OF ALIENATED LANDS OF VILLAGES OR HIS AGENT, UNDER SECTION 89

Seal

The [a] Commissioner, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you *Jagirdar, &c., or Agent, &c., as the case may be*), power to in (or in respect of) the villages and lands specified in this Commission, in the manner prescribed in (or in section of) the said Code.

The villages and lands over which the power thus conferred upon you extends are as follows :—

(*Here enter the description*)

The within delegated power is vested in you during the pleasure and subject to the recall of the [a] Commissioner.

(Signed).

SCHEDULE H [b]

(See *section 133*)

FORM OF SANAD FOR BUILDING SITES

(*Royal Arms*)

To

THE SECRETARY OF STATE IN COUNCIL.

WHEREAS His Excellency the Governor of Bombay in Council, with a view to the settlement of the land revenue, and the record and preservation of proprietary and other rights connected with the soil has under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the of and ordered the necessary inquiries connected therewith to be made, this sanad is issued under section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the division of the of register No. in

[a-a] This word was substituted for the original words "Governor in Council of Bombay" by Bom. Act IV of 1913, s. 82.

[b] There is no Schedule G.

the map marked sheet No. and facing towards the the road leading from to , containing about square yards, and of the following shape and about the following dimensions :-

You are hereby confirmed in [a] the said occupancy]a] exempt from all land revenue (or subject to the payment of Rupees per annum to the land revenue).

The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by the British Government, without any objection or question as to title, to whatsoever shall from time to time be its lawful holder (subject only to the condition of the payment annually of the above land revenue according to the provisions of the Bombay Land Revenue Code or of any other law for the time being in force, and to the liability to have the said rate of assessment revised at the expiration of a term of years reckoned from the and thereafter at successive periods of years in perpetuity, and to the necessity for compliance with the provisions of the law from time to time in force as to the time and manner of payment of the said assessment, and to the liability of forfeiture of the said occupancy and of all rights and interests connected therewith in case of your failure to pay the said assessment as required by law).

This sanad is executed on behalf of the Secretary of State for India in Council by order of the Governor in Council of Bombay, by and under the hand and seal of this day of one thousand eight hundred and A. D.

(Signed).

SCHEDULE I

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 202

Seal

To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

WHEREAS A. B. of has resisted (or obstructed) C. D. in removing E. F. (or himself, that is, the said A B) from certain land in the village of in the taluka, and whereas it is necessary, in order to prevent the continuance of such obstruction (or resistance), to commit the said A. B. to close custody ; You are hereby required under the provisions of section 202 of the Bombay Land Revenue Code to receive the said A. B. into the Jail under your charge, and there to keep him in safe custody for days.

Dated this day of 187 .

(Signature of Collector).

[a-a] These words were substituted for the original words "the occupancy of the above described ground" by Bom. Act IV of 1913, s. 83.

A SUPPLEMENT

CONTAINING

Amendments to Rules and Case-law upto the end of 1935

Amendments to Rules

In rule 32 of the Bombay Land Revenue Rules, 1921—

(1) in the table in sub-rule (1)—

(*i*) in head (1), *for* the words "local or Municipal Funds" the words "the Local, Municipal or Village Fund or the Fund of a Sanitary Committee or Sanitary Board" shall be *substituted*;

(*ii*) in head (2), *for* the words "other than local or Municipal funds" the words, figure and brackets "a fund other than those specified in head (1)" shall be *substituted*;

(2) In the proviso to sub-rule (1), *for* the words "or Municipality" the words "Municipality, Village Panchayat, Sanitary Committee or Sanitary Board" shall be *substituted.*

To rule 51 of the said rules, the following sub-rule shall be added, namely:—

"(3) Notwithstanding anything contained in sub-rule (1) of this rule, lands occupied and assessed for agriculture may, with the approval of the Commissioner, be permitted under an instrument in Form JJ, to be used for non-agricultural purposes, other than building, for short terms not exceeding seven years at an altered assessment of two pies per square yard per annum, or such higher rate as the Collector may, with the previous approval of the Commissioner, fix for any particular site or portion thereof."

2. After Form J, appended to the said rules, the following new form shall be inserted:—

FORF JJ.

[Rule 51 (3).]

Form of Sanad in cases where assessment on land in certain city-surveyed areas assessed for agriculture and permitted to be temporarily used for non-agricultural purposes other than building is altered under section 48.

Whereas the land hereinafter described by measurement and by the boundaries specified in the schedule (and delineated in the map hereto appended) and bearing (or forming part of) City Survey No. in the $\frac{\text{City}}{\text{Town}}$ of in the taluka of entered in the name of, and at present held by , resident of , has been hitherto assessed for purposes of agriculture at the rate of ; and whereas the said land has been permitted to be used for a non-agaricultural purpose, other than for a permanent building to wit, for ——————— (describe purpose), and such assessment has thereby become liable, under section 48 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code") to be altered and fixed at a different rate:

Now this is to certify that under the provisions of the said Code and the rules in force thereunder the said land is hereby permitted to be used for the purpose stated above for the term of
years from 193 and that the amount to be paid as land revenue on the said land has been fixed for the said term of years
at [Rupees (words)] [Rs. (figures)
] payable in one instalment on . If the permission hereby granted is renewed on the expiry of the said term, the assessment aforesaid shall be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

In case of a breach of any of the conditions of this sanad, the Collector may, without prejudice to any other penalty to which the holder of the said land may be liable under the provisions of the said Code, direct the removal or alteration of any structure erected or used contrary to the provisions of this sanad within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the period so prescribed, may cause the same to be carried out and may recover the cost of carrying out the same from the holder as an arrear of land revenue.

Schedule hereinbefore referred to.

Length and Breadth		Total Superficial area	Bearing (or forming part of) City Survey No. or No.	Boundaries.				Remarks.
North to South	East to West			North.	South.	East	West.	

In witness whereof the Collector of has hereto set his hand and the seal of his office this day of 19 .

Seal.

Collector.

Note.—The Collector has full power to impose any conditions he thinks fit for the erection of temporary structures. Such conditions will be inserted after the schedule.

(*G. R. R. D. No. 564/20045, dated 17th October 1935*).

1. To sub-rule (2) of rule 43 of the Land Revenue Rules, 1921, the following shall be added, namely :—

"In the case of grants in which an agreement in Form H is to be taken, the Collector may, with the approval of the Commissioner, annex such additional conditions to the grant, as the Collector thinks fit."

2. In the agreement in Form H appended to the said rules—

(i) for condition 2, the following shall be substituted, namely :—

"2. Within a period of two years from the date hereof, or within such further period as may be fixed by lawful authority, I will erect on the same land a building (or buildings) of a substantial and permament character, and of the following description, and such building (or buildings) will cover not more than one-fourth of the total area of the said land.

(Here enter description)."

(*ii*) Condition 3 shall be deleted and

(*iii*) Conditions Nos. 4 and 5 shall be renumbered as conditions Nos. 3 and 4, respectively.

In the first proviso to rule 135 of the said rules, after the word "purposes" the following shall be added, namely :—

"or except in Sind, by an officer of a Panchayat established or deemed to have been established under the Bombay Village Panchayats Act, 1933, for the purposes of such panchayat."

(*G. R. R. D. No. 1715/28, dated 20th July 1934*).

CASE-LAW DURING THE YEAR 1935

Sec. 3 (20).

Alienation—Khoti grant.—A khoti grant is an alienation within the meaning of this sub-section (*Secretary of State v. Faredoon*, 36 Bom. L. R. 761).

Sec. 26.

Scope.—This section, while it provides that public monies due to Government from a subordinate revenue officer, such as talati, in default, are to be recoverable in the same manner and subject to the same rules as are laid down in the Act for the recovery of arrears of land revenue, does not make such moneys recoverable in terms as arrears of land revenue, nor creates, in respect of such moneys, any charge upon any property of the officer in default (*Balmukund Jagjivan v. Collector, Ahmednagar*, 36 Bom. L. R. 1103).

Sec. 68.

Talukdari estate.—Government resumed possession of a talukdari village in 1856 and managed it for about seven years. During this period a survey settlement was introduced and in 1863, the village was restored to the talukdars on condition that they should not recover more than twice the *vi-ghoti* fixed at the settlement. The

tenants in the village claimed that they had become occupants with permanent rights. *Held*, that under the Regulation XVII of 1827, which was the land law in 1863, the survey settlement and assessment did not make the tenants occupants, and that as they were tenants-at-will at the commencement of the period of Government management, they were still tenants-at-will when the village was restored to the talukdars (*Devji Arjan Dalvadi v. Bhoga Vaija Kachar*, 37 Bom. L. R. 220).

Proviso—Inamdar's right to possession as against Government.—Plaintiff was the inamdar of a village entitled to both the land revenue and the soil. Survey settlement was introduced in the village in 1904. Three plots in the village were let to tenants-at will in 1903 and four other plots were let to other tenants-at will after 1904. In 1917, the tenants, who were concerned in a criminal offence, having absconded, their tenancy rights were attached and forfeited to Government under section 88 of the Criminal Procedure Code in virtue of a proclamation issued by the Government. Plaintiff thereupon applied for restoration of the lands comprised in the tenancies, claiming that on forfeiture of the interests of the tenants who were tenants-at-will, they reverted to him as the inamdar. Government on the other hand claimed the lands as belonging to them contending that on the introduction of survey settlement the tenants became permanent tenants with rights of occupancy and that Government were entitled to step into the shoes of the tenants and to hold the lands. *Held*, (1) that under the combined effect of the proviso to this section, added by the section in 1901, and section 217 as amended in 1913, the tenants-at-will of the three plots, holding under the lease of 1903, did not get any permanent rights at all and that he continued to hold as tenant-at-will even after the survey settlement was introduced; the introduction of survey settlement into an inam village did not confer on persons holding as tenants under the inamdar the status of occupants; (2) that the tenants of the four plots under the lease created after 1904 remained only what they were, *i.e.*, their rights were governed by the agreement between them and the inamdar; and that consequently, the inamdar was entitled, on forfeiture of the interests of the tenants, to possession of all the seven plots, the tenants having no interests which could be forfeited to the Crown (*Krishnarao Anandrao v. Secretary of State for India*, 37 Bom. L. R. 349).

Sec. 65.

This section does not apply to alienated land.—This section which gives the Government the right to levy building fines and altered assessment does not apply to alienated land. A khoti grant is an alienation within the meaning of s. 3 (20), and the grantee (khoti) is not therefore liable to pay extra non-agricultural assessment on buildings erected by him (*Secretary of State v. Faredoon*, 36 Bom. L. R. 761).

Sec. 83.

Presumption of permanent tenancy.—In the absence of miraspatras or other documents creating a permanent tenancy a tenant relying on this section has the burden on him to first lay the foundation for the application of this section by showing that his

tenancy is ancient. But no definite rule can be laid down as to the duration required to raise a presumption of permanency. A period of 40 years or even less has in some cases been held sufficient. Mere long duration is, however, not enough. It must appear that by reason of antiquity the origin of the tenancy is obscure. If the landlord shows that the tenancy commenced in a particular year or within reasonably definite limits of time, this section will not apply. But if antiquity is proved and no satisfactory evidence of the commencement of tenancy is forthcoming, the landlord must then produce evidence of agreement or usage to limit duration. Even leases for a year or for a fixed time will usually, though not always, suffice for this purpose. The fact that the lands are watan lands will not constitute a legal bar to the operation of this section. Nor will a short interruption of the tenancy be necessarily inconsistent with permanent tenancy (*Dhondu Ekoba v. Damodar Shridhar*, 37 Bom. L.R. 209).

This section in referring to the absence of satisfactory evidence of the commencement of a tenancy, does not mean that there must be satisfactory evidence as to the exact date of commencement, *i.e.*, the day on which the tenancy commenced; it is sufficient if the evidence shows that the tenancy must have commenced in a particular period. When there is no satisfactory evidence as to the commencement of the tenant's title or as to the duration of his tenancy, the presumption under this section arises. The presumption will not, however, arise when the date of the commencement of the title is known (*Vaman Vithal v Khanderao*, 37 Bom. L. R. 376).

Sec. 121.

Question as to ownership of land barred by decision in previous suit.—*M* and *S* were neighbours. There was a wall separating their properties. *S* pulled down a portion of the wall and built a new one. In 1913 *M* sued *S* alleging that he was the owner of the old wall and that *S* in rebuilding it had lessened its thickness and appropriated a strip of land belonging to him. He prayed for mandatory injunction directing *S* to pull down the wall and rebuild another wall of the original thickness and at the original place and also for the possession of the strip of land. In a previous suit between *S* and *M* it was decided in 1913 that the wall belonged to the latter. In 1917 there was a revision survey and the boundary line was then drawn so as to include the wall within *S's* plot. *M's* claim was allowed by both the lower courts on the ground that the ownership of the wall had already been decided in the previous suit and the matter was *res judicata*. On second appeal the decree was reversed on the ground that the question that was decided in previous suit was that of boundary with which the court had no jurisdiction to deal and which should have been referred to the Collector and that decision did not bar the present suit by *res judicata* and that the decision of the Survey Officer was conclusive evidence that the wall fell within *S's* plot and the plaintiff, therefore, could not succeed. On appeal under the Letters Patent, it was *held* that the suit of 1913 did not proceed on the question of any boundary dispute but was based on title to the wall. The subsequent decision of the Survey Officer in 1917 with regard to boundary was not determinative within the meaning of s. 121 of the Code and could not have the effect of setting aside a judgment in which the ownership of the wall was decided in *M's*

favour. The question as to the ownership of the wall was therefore barred by *res judicata* (*Mota Raghunath v. Sidhram Annaji*, 36 Bom. L. R. 502).

Sec. 135J.

Rebuttal of presumption under this section.—Under this section, an entry in the record of rights must be presumed to be true until the contrary is proved. Where the landlord has shown that the rent note, on which the revenue officials relied in making an entry conferring occupancy rights on the tenant, was unregistered and inadmissible in evidence, the presumption of truth in favour of the entry is rebutted (*Datto Shivram Gosavi v. Babasaheb Malhar*, 58 Bom. 419, s. c. 36 Bom. L. R. 359).

Sec. 137.

Applicability.—This section, which confers priority upon the Crown for land revenue or other debts of a person liable for land revenue, cannot be said to provide a method or be rule for arrears of land revenue within s. 26; but if it is to constitute such a rule, then this section must be read with s. 151, and when so read the priority enures only for the demands of the current year and not for arrears of past years (*Balmukund Jagjivan v. Collector, Ahmednagar*, 36 Bom. L. R. 1103).

Preferences.—The preference given by ss. 137 and 138 apply only to demands for the current year and not to arrears (*Ibid*).

Sec. 154.

Attachment of property by Talati under orders of Mamlatdar.—Under this section it is only the Collector who can cause the defaulter's provable property to be distrained and sold. A mamlatdar has no authority or power to authorize a talati to attach such property for arrears of irrigation cess. The mamlatdar can only act by showing that the Collector has delegated to him the particular power in question. In the absence of proof of such delegation the Talati has no power to attach, though authorized by the Mamlatdar, and his attachment is illegal (*Emperor v. Sakharam Rawaji Pawar*, 37 Bom. L R. 362).

Attachment of property not belonging to defaulter-Legality.—What can be attached under this section is only the moveable of the defaulter and not of any one else. Property which has already been sold by the defaulter to another cannot be seized unde this section (*Ibid*).

Sec. 204.

Omission to file copy of order appealed against.—Where an appeal is filed without a copy of an order appealed against it is no presentation at all (*Abdul Karim v. Secretary of State*, 58 Bom. 573, s. c. 36 Bom. L. R. 1066).

Sec 211.

Power to Commissioner to modify terms of grant.—The Collector had given A the lands in suit on certain conditions. The Commissioner decreed that A should continue to occupy the lands, but he varied the terms of occupation. *Held*, that this amounted to a modification of the Collector's order and the Commissioner's order fell

within the powers conferred upon him by this section (*Secretary of State v. Anant Krishnaji*, 58 Bom. 111, s. c. 36 Bom. L. R. 242).

Sec. 217.

Applicability.—This section applies only as between an occupant and the grantee and not as between the grantee and the Government. The latter would be governed by the terms of s. 218 rather than by s. 217 of the Code (*Secretary of State v. Faredoon*, 36 Bom. L. R. 761).

Rule 39.

Assessment over rupees 100.—This rule requires as a condition of the lawfulness of a grant by the Collector, that the previous sanction of the Commissioner should be obtained, provided the assessment on the land in the grant exceeds one hundred rupees (*Secretary of State v. Anant Krishnaji*, 58 Bom. 111, s. c. 36 Bom. L. R. 242).

The Land Revenue Rules, 1921

(As corrected upto 1st July 1933)

Secretariat, Fort, Bombay, 26th January 1921

No. B.-205.—In exercise of the powers conferred by sections 213 and 214 of the Bombay Land Revenue Code, 1879 (Bombay V of 1879), and of all other powers enabling him in this behalf, and in supersession of Government Notifications in the Revenue Department No. 7368 dated the 6th December 1881, No. 8356 dated the 27th November 1903, No. 5223 dated the 28th June 1905, and No. 5641 dated the 5th June 1907, and all notifications [1] amending the same, the Governor in Council is pleased to make the following rules :—

CHAPTER I.

INTRODUCTORY.

1. *Short title and extent of application.*—These rules may be called the Land Revenue Rules(1921). Rules 7 to 10 inclusive, 21 clause (2), 23, 25 to 27 inclusive, 38 and 70 shall not apply to Sind.

A.—Khoti

(*i*) To the khoti lands in *Ratnagiri,* to which Act I of 1880 (the Khoti Settlement Act) applies, "no Rule hereafter made shall be applicable, unless it is expressly directed in such Rule, or in some subsequent Rule, that it shall be applicable" [see 40 (*d*)]. Of the present Rules those which are not applicable are 15-16; 20-23; 30-38; 41-53; 73-74; 84; 92-98; 103-117; 119-127; 134-145. All the rest of the Rules are applied. Rules 72 (*b*) and 133 apply with the modifications. But rules 31-57 must be applied to Government lands, which do not include gaothan in which pardi lands are to be assessed (R 983-96, 7968-13), within the Khoti village limits.

(*ii*) In Ratnagiri, the Khot is not the owner of any waste land. But he has a right of cultivating—

(*a*) all assessed waste lands,

(*b*) unassessed unoccupied lands (I. L. R. 31 Bom. 456).

which are *in his village.*

B—Talukdari.

(*i*) Under sections 1 and 33 of the Gujarat Talukdars Act VI of 1888 certain sections of the Code do not apply to Talukdari villages. Consequently the Rules arising from those sections can have no application. These Chapters of the Rules are:—

Those relating to City Survey (in Chap. III—19); alluvion (X); the disposal of land (VII) and assignments for public purposes (XI); grazing (IX); fines for unauthorized uses and occupations (XIV); rights to trees (VIII); the Record of Rights (XV); permissions and altered assessments for N. A uses (XIII and XIV); and all the special leases, agreements, and sanads, which are in use where land is disposed of by Government; the new inalienable tenure and the law as to collections through village officers are also inapplicable.

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1 These Rules do not all apply in Khoti and Talukdari villages.

But Talukdari Wantas (chiefly in Broach and Kaira) summarily settled as Personal Inams under Act VII of 1863 are no longer treated as Talukdari estates at all.

(*ii*) The Code has been applied in certain Native States, presumably in virtue of a decree of the Ruler, *e. g.*, in Akalkot (P. 5728-79), Jath (P. 5730-79). When a new set of rules is finally confirmed, it is desirable that any State adopting them should notify the fact and republish the rules with the modifications approved by the State administration.

2. *Interpretation.*—In these rules, unless there is anything repugnant in the subject or context,

(*a*) "Chapter" and "Section" mean a chapter and a section of that Code.

(*b*) "Mamlatdar" includes Mahalkari and (in Sind) "Mukhtyarkar."

(*c*) "Public Document" has the same meaning as in section 74 of the Indian Evidence Act I of 1872.

(*d*) "Chavdi" in Sind includes a Tapedar's Dera.

CHAPTER II.

(Administrative Orders only.)

CHAPTER III.

REVENUE SURVEYS

Survey and assessment of agricultural land.

3. *Survey numbers and sub-divisions.*—(1) Every holding not less in area than the minimum fixed under section 98 shall be separately measured, classified, assessed and defined by boundary marks, and entered in the land records as a survey number.

(2) Every holding of which the area is less than such minimum shall be separately measured, classified, and assessed and entered in the land records as a sub-division of that survey number in which it is directed to be comprised; it may also be separately demarcated if the Commissioner of Survey so directs, provided that the said Commissioner may require the persons interested in such holding to prepay the costs, or such portion of the costs as he thinks fit, of so defining the holding.

4. *Record of measurements.*—All measurements shall be recorded in a book or embodied in a plane table map kept in such form as shall be prescribed by the Commissioner of Survey for each survey. The said books or maps shall be preserved as a record of the survey.

5. *Test of measurements.*—The original measurements made by the subordinate survey officers employed for the purpose shall be tested by the officers in charge of measuring establishments in such manner and to such extent as the Commissioner of Survey shall deem sufficient.

6. *Village maps.*—Village maps shall be prepared under the orders of the Commissioner of Survey showing each survey number and its boundary marks.

7. *Classification of Land.*—For the purposes of assessment all land shall be classed with respect to its productive qualities. The number of classes and their relative value reckoned in annas shall be fixed under the orders of the Commissioner of Survey with reference to the circumstances of the different tracts of country to which the survey extends and to the nature of the cultivation.

8. *Field-books.*—Every classer shall keep a field-book and record therein the particulars of his classification of each survey number and sub-division and the reasons which led him to place it in the particular class to which in his estimation it should be deemed to belong. Such field-books shall be preserved as permanent records of the survey.

9. *Test of classification.*—A test of the original classification made by the subordinate officers employed for this purpose shall be taken by the officers in charge of classing establishments, in such manner and to such extent as may be directed by the Commissioner of Survey.

10. *Assessment.*—When rates of assessment have been sanctioned by Government, the assessment to be imposed on each survey number or sub-division shall be determined according to the relative classification value of the land comprised therein.

10-A. All agricultural assessments (or judi) shall be calculated out to the nearest pie at the rate (per acre or otherwise) sanctioned upon the area chargeable and rounded off in the following manner:—

When the assessment (or Judi)

(*a*) does not *exceed one rupee* the nearest half anna shall be taken neglecting 3 pies and under and counting 4 pies and 5 pies as 6 pies, in case of all districts, except the Konkan and below-ghat talukas of Kanara, where the nearest 3 pies shall be charged. For example, in the Thana, Kolaba, Ratnagiri districts and the below-ghat talukas of Kanara—

an assessment of Re. 0-10-4 shall be taken as Re. 0-10-3;

an assessment of Re. 0-10-5 shall be taken as Re. 0-10-6;

an assessment of Re. 0-0-2 shall be taken as Re. 0-0-3.

Elsewhere

an assessment of Re. 0-8-3 shall be taken as Re. 0-8-0;

an assessment of Re. 0-9-4 shall be taken as Re. 0-9-6.

(*b*) *exceeds one rupee*—

the nearest anna shall be taken in all cases, neglecting 6 pies and under and counting 7 to 11 pies as one anna, for example—an assessment of Rs. 1-3-6 shall be taken as Rs. 1-3-0;

an assessment of Rs. 1-3-7 shall be taken as Rs. 1-4-0:

Provided that—

(1) when the calculation results in the sum total of the new assessments (or Judi) of all sub-divisions of a survey number being greater or less than the whole assessment (or Judi) of that number, the difference shall be equitably distributed over the sub-divisions by deduction or addition in the largest shares, so as to make the total equal to the assessment (or Judi) on the survey number;

(2) Subject to proviso (1), the assessment of a sub-division shall in no case be less than a pie and every fraction of a pie shall be considered as one pie, the addition being counterbalanced by deduction in the assessment of any of the other sub-divisions of the same survey number in an equitable manner.

(3) No new assessment (or Judi) on a survey number or sub-division of a survey number shall be less than 3 pies in the Thana, Kolaba and Ratnagiri Districts and in the below-ghat talukas of the Kanara District, or less than 6 pies elsewhere, but this provision shall be subject to the condition that the total of the assessments of all the sub-divisions of a survey number shall not exceed the assessment (or Judi) of that survey number. Where this condition cannot be fulfilled, any assessment of less than 3 pies or 6 pies, as the case may be, may be retained subject to proviso (2).

Note.—**This rule does not apply to Sind which has another but equivalent method.**

11. *Amalgamation*.—(1) Any survey number or sub-division of a survey number may be amalgamated with any other coterminous survey number with the sanction of the Collector and upon the application of the holder, whenever all the parcels of land proposed for amalgamation are held by the same holder upon the same tenure.

(2) Any sub-division may be amalgamated without prior sanction with any coterminous sub-division of the same survey number held by the same holder upon the same tenure.

(3) When such amalgamation is effected, the two or more portions of land shall become one entry in the land records, bearing the same distinguishing number as the first in series of the amalgamated numbers. Any boundary marks placed between the amalgamated holdings shall be removed : and the village map corrected accordingly.

12. *Application of rules 3 to 11.*—(1) Rules 3 to 11, unless otherwise directed by Government, shall be observed in the conduct of revenue surveys of lands used, or which may be used, for the purposes of agriculture.

(2) *Form and details.*—Matters of detail not provided for in the foregoing rules shall be determined in each survey in accordance with such general or special orders as the Commissioner of Survey, acting under the general control of Government, may, from time to time, issue.

Survey and assessment of non-agricultural land.

13. *Non-agricultural land not to be classified in accordance with foregoing rules.*—(1) Land of any of the kinds specified in sub-rule (2) shall be measured and mapped in accordance with rules 3 to 6 inclusive, but shall not be classified or assessed in accordance with rules 7 to 10.

(2) The lands referred to in sub-rule (1) are the following :—

(*a*) occupied unalienated lands, which are situated within an area in which a survey under rules 3 to 11 is in progress and which are used for any non-agricultural purposes ;

(*b*) unoccupied unalienated lands, situated within any such area, which are deemed to be likely to be more in demand for building or industrial purposes than for agriculture ; and

(*c*) all lands to which a survey is extended under section 131.

14. *Assessment of non-agricultural land.*—The Collector on receipt of a schedule of the lands referred to in rule 13 (2) shall assess them at the same rates and for the same period as if he were altering an agricultural assessment under whichever of Rules 81 to 85 has been applied to the locality.

Provided that land wholly or partially exempt from assessment under the proviso to section 52 or under section 128 or otherwise shall not, so far as it is so exempt, be assessed.

And also provided that land held under unexpired leases shall become liable to the rate of assessment in force for the locality only upon the expiry of those leases.

14-A (1) All non-agricultural assessments, rents and fines leviable under rules 43, 47, 49, 51, 80—83, 92, 93, and 99—103 shall be calculated out to the nearest pie at the rate (per acre or otherwise) sanctioned upon the area chargeable : but any sum so calculated that–

(*i*) is less than two annas, shall be raised to 2 annas ;

(*ii*) exceeds two annas, and is not an exact multiple of two annas, shall be rounded off, upwards or downwards, and when equidistant upwards, to the nearest multiple of two annas—*e. g.*,

an assessment (fine or rent) of one anna and 3 pies will be charged as two annas ;

an assessment (fine or rent) of 2 annas and 11 pies will be charged as two annas ;

an assessment (fine or rent) of 3 annas will be charged as four annas ;

an assessment (fine or rent) of Rs. 8-9-5 will be charged as Rs. 8-10-0 ;

an assessment (fine or rent) of Rs. 8-10-7 will be charged as Rs. 8-10-0 ;

an assessment (fine or rent) of Rs. 8-11-0 will be charged as Rs. 8-12-0.

15. *Maintenance of records.*—For all lands which have in the past been surveyed or assessed, or which shall be hereafter surveyed or settled under the provisions of the Code and these rules, it shall be the duty of the Director of Land Records—

(1) to cause to be corrected any arithmetical or clerical error whenever discovered ;

(2) to cause to be incorporated punctually in the land records all changes in boundaries, areas, tenures and assessments either of survey numbers or of their sub-divisions which are made under orders of competent authority as defined in the Code and these rules or any other Act :

Provided that where the assessmeut of any survey number has been fixed by a declaration under section 102, such assessment shall not be raised upon the discovery of any mistake in classification until the term of such declaration expires.

Note.—Rule 15 which embodies existing practice also partly replaces old secs. 109, 110, which are in part also superseded by the Record of Rights.

16. Detailed instructions and forms shall be drawn up and maintained by the Director of Land Records, subject to the orders and

approval of Government from time to time for the proper carrying out of Rule 15.

Introduction of settlements of land revenue.

17. *Notifications of Settlements and of period of guarantee.*—(1) Where the assessments have received the sanction of Government under section 102, a notification shall be published in the district or portion of the district to which the Settlement extends in form A, if such district or portion of the district is situate in the Bombay Presidency excluding Sind or in form A A, if it is situate in Sind, as the case may be, and when the Governor in Council has, under section 102, declared such assessments, with any modifications which he may deem necessary, fixed for a term of years, such declaration shall be notified in the official *Gazette*.

(2) Where a Settlement is introduced into a part of a taluka of which part has been already settled the guarantee will be restricted to the unexpired portion of the period for which the assessments in the already settled part of the taluka were fixed.

Note.—When the term of a settlement expires, but no action is taken, that settlement continues integrally, and cannot be applied to some lands and not to others (R. 784 92, 1397-12); and this holds good for Inam villages also (I. L. R. 44 Bom. 110).

18. *Notice of sanction and announcement of assessments.*—(1) The notice required by section 103 shall be given by beat of drum in the village for which the assessments have been sanctioned and a written notice shall be posted in the chavdi or some other public place in the village.

(2) Such notice shall be given by or under the orders of the officer in charge of the survey, referred to in section 100, or the Collector.

(3) Persons affected by the assessments who do not attend at the time and place specified in the notice shall be subject to the same liabilities as if they had attended.

Survey Fees in Towns and Cities.

19. *Survey fees in towns and cities.*—(1) Where a survey is extended to the site of a town or city, the survey fees payable under section 132 shall ordinarily be so fixed that the total sum payable in respect of such site shall cover the cost of the survey and preparation of the Record of Rights thereof.

(2) In fixing the fees for each building site or any portion thereof held separately the Collector shall have regard to the provision of sub-rule (1) and to the position, value (or rental), and area of such building site or portion thereof, but such fee shall not exceed ten rupees.

CHAPTFR IV.

SUB-DIVISION OF SURVEY NUMBERS.

20. *Notices to be issued.*—Before field operations a notice shall be issued by the Mamlatdar and posted in the village chavdi and proclaimed by beat of drum, stating that the sub-divisions of survey numbers in the village are about to be measured according as they have been divided by the holders, and daily notices shall be given as far as possible specifying the numbers or parts of numbers which are to be measured next day and warning landholders to be present.

Notes.—This is a process carred out by the Land Records Department.

Partitions made by the Collector under Civil Court decree cannot be revised by that Court (11 Bom. 662; 15 Bom. 527).

21. *Boundaries to be laid down.*—(1) When there is no dispute the boundary of each sub-division shall be laid down according to the statements of the holders.

(2) Where there is any dispute, the boundary to which the dispute relates shall be measured and mapped in accordance with the claims of both disputants, and the dispute entered in the register of disputed cases. After the dispute has been settled under sections 37 and 119-120, or Rule 108 as the case may be, the map shall be corrected accordingly and the areas finally entered into the land records.

22. *Fees.*—The fees to be recovered for making subdivisions in cases to which section 135G (*b*) applies shall, unless Government in any case otherwise direct, be such as will cover the entire cost of measuring, assessing and mapping the subdivision; they shall be assessed by the Collector.

23. *Assessment.*—The proportionate assessment of subdivisions to the land revenue settled upon the survey number shall be calculated subject to the proviso to section 117A (2) according to the relative classification value of the several parts of the survey number as directed in rule 10. Detailed instructions shall be prescribed by the Commissioner of Survey subject to the approval of Government, and may provide for the rounding off of fractions of annas.

CHAPTER V.

BOUNDARY MARKS.

24. *Details of boundary marks to be furnished by the Survey Department to the Collector.*—On the introduction of a Survey settlement, the Superintendent of Survey shall furnish the Collector with a map and statements showing the position and description of the boundary marks erected or prescribed by or under the orders of the Commissioner of Survey. It shall be the duty of the Director of Land Records to amend these maps in accordance with any subsequent alteration of boundaries, in a revision survey or in the subdivision of a survey number or on any other authorised occasion.

Notes.—But when an Inam village is surveyed otherwise than under the L. R. C. and no survey settlement is introduced L. R. C. 123-24 cannot be applied, R. 3613-88. But in Talukdari villages (including Udhad Jamabandi) when surveyed under section 4 of the Gujarat Talukdars Act, B. M. can be maintained by appointing the Collector a Superintendent of Survey for the purposes of Sec. 122. (R. 7642-20—24-4-23).

These rules apply to surveyed alienated villages where the landholders have the same responsibility as occupants and the Collector has the full obligations imposed by sec. 124 (R. 7169-09) (Anderson).

25. The following boundary marks are authorized :—

Continuous marks—

(1) A boundary strip.

(2) Sarbandhs or hedges and other permanent continuous structures, such as walls.

Discontinuous marks—

(3) Conical earthen mounds or cairns (*buruz*) of loose stones.

(4) Pillars of cut stone, or brick or rubble-stone masonry.

(5) Prismatic or rectangular earthen mounds.

(6) Roughly dressed long stones.

(7) Any other marks found suitable for special localities and sanctioned by the Collector or Survey Officer, such as teak posts in the marine marshes on the Gujarat coasts.

26. *Maintenance of boundary strips.*—(1) Boundary strips or ridges shall not be ploughed up or otherwise injured by cultivation.

(2) The minimum width of boundary strips shall be as follows:—

(*a*) in dry crop lands ... ... 1½ feet.

(*b*) in rice and garden lands ... ... 9 inches.

(*c*) On the frontier lines between British India and Baroda State:—3 ft. (on the British side of the exact pillar-to-pillar demarcation line).

This strip shall also be kept free from tree-growth, any young plant being destroyed at inspection time.

Provided that—

(*i*) where the boundaries of such lands are well defined by banks, hedges, or the like, the actual width of the strip covered by such bank, hedge, or the like, shall be sufficient for the purpose of this rule;

(*ii*) where the boundary of a survey number also forms the boundary of a native or Foreign State, the minimum width prescribed above shall be maintained for the portion of the boundary strip on the British side; and

(*iii*) where village boundaries have been defined at the time of survey by double lines of boundary marks, the whole of the intermediate strip shall be maintained as a boundary strip.

27. *What boundary marks to be considered out of repair and how to be repaired.*—The following boundary marks shall be considered out of repair and shall be repaired in the manner prescribed for each kind as follows:—

(*a*) A continuous mark (strip, sarbandh, hedge, etc.), if it deviates more than three feet from the true straight line of the boundary. *Mode of repair*—either the deviation shall be rectified or the continuous mark not being a boundary strip must be replaced or supplemented by discontinuous marks.

(*b*) Any conical mound or cairn less than 2½ feet in height and 6 feet in diameter at the base. *Mode of repair*—raise it to 3 feet in height and 6 feet in width at the base.

(*c*) Any rectangular mound less than 2 feet high, or less than 5 feet long and 4 feet wide at the base. *Mode of repair*—the mound shall be raised to full dimensions, that is, 2½ feet high, 6 feet long and 5 feet wide at the base.

(*d*) Any mound, conical or rectangular, within 4 feet of which earth has been dug for repairs, when such excavation has affected the stability of the mark or allows water to lodge. *Mode of repair*—the excavation shall be filled up.

(*e*) Any pillar (i) less than 1 foot square or 2½ feet in depth, (ii) broken down, or (iii) rising less than 4 or more than 9 inches clear above the adjacent ground level. *Mode of repair*—(i) replace by one of proper dimensions, (ii) rebuild, (iii) raise the pillar or clear away or make up the ground.

(*f*) Any stone less than 2 feet long and 6 inches thick. *Mode of repair*—a stone of proper size shall be substituted.

(*g*) Any stone out of the ground, or buried less than two-thirds of its length and loose. *Mode of repair*—the stone shall be replaced or fixed firmly.

(*h*) Any mark considerably out of proper position or so repaired or erected as to indicate a materially incorrect line of boundary. *Mode of repair*—the mark shall be correctly placed.

(*i*) Any mark overgrown or surrounded by vegetation of any kind so as not to be easily visible. *Mode of repair*—the vegetation shall be cleared away until the mark is easily visible.

(*j*) Any sarbandh, or continuous embankment less than 2 feet high and 4 feet wide at the bottom. *Mode of repair*—the sarbandh shall be made full 2 feet high and 4 feet wide at the bottom throughout, unless the occupant prefers the substitution of authorized discontinuous marks.

(*k*) Any hedge or other continuous mark which by reason of want of continuity or disrepair fails to define the boundary. *Mode of repair*—the necessary renewals shall be made or other authorised marks substituted.

(*l*) Any boundary strip or ridge which has been ploughed up or otherwise obliterated or the dimensions of which are less than those prescribed by Rule 26. *Mode of repair*—the landholder shall be ordered to restore the strip or ridge within a prescribed period by leaving it unploughed and undisturbed; on his failure to comply he may be prosecuted under section 125.

(*m*) Missing marks. *Mode of repair*—new marks shall be erected.

Proviso as to marks liable to injury from flooding.—Provided that in any case where a boundary mark cannot, owing to flooding of a nala, or river, the breaking away of the bank, or other causes, be kept in repair, another kind of authorised mark may be substituted. Where even that is impracticable the direction of the boundary must be fixed by a pair of discontinuous marks erected at an adequate distance back from the abandoned position; either both on the same side, or one on each opposite side thereof.

28. *Determination of responsibility for maintenance.*—(1) The responsibility of the several landholders for boundary marks on a common boundary lies on the holder of the survey number which is numerically lowest.

(2) Sub-rule (1) is subject to the proviso that when any survey number is unoccupied or assigned for public or Government purposes the responsibility for repair of the marks on its periphery will pass to the landholder on the other side of the boundary. Repairs will be made at Government expenses only when the marks in disrepair lie between survey numbers each of which has no holder except Government.

(3) Within each survey number the holder or holders of each sub-division are responsible for the marks if any have been prescribed on the periphery of that sub-division to the same extent as they would be responsible if 'sub-division' were read instead of 'survey number' in sub-rules (1) and (2).

(4) A mark which is on the common boundary of two or more villages must be repaired by the holder of the land in the village which is under restoration when the marks are found out of repair.

CHAPTER VI.

ENQUIRIES UNDER SECTION 37.

29. *Notice of enquiry.*—(1) (*a*) Before an enquiry under section 37 a written notice in form B of the proposed enquiry and of the time and place and subject-matter thereof shall be affixed not less than ten days before the enquiry at the chavdi or some other public place in the village in which the property is situate; and in a conspicuous position upon the property with respect to which the inquiry will be held.

(*b*) A copy of the notice shall also be served not less than ten days before the enquiry on all persons who are known or believed to have made any claim to the subject-matter of the enquiry, and every such notice shall be served in the manner provided in section 190 for the service of a summons.

Notice of decision (2) (*a*):—Written notice in form C of any order passed under section 37, specifying briefly the subject-matter, contents and date of the order passed, shall be served in the manner specified in clause (*b*) of sub-rule (1) upon the persons referred to in that clause.

(*b*) Such written notice shall also be affixed in the places specified in clause (*a*) of sub-rule (1).

Notes.—(*i*) The minimum legal notice is 10 days: this still leaves upon the officer holding the enquiry an obligation to give longer notice, and to allow adjournments, when the case is complicated and cannot be adequately presented in so short a time

(*ii*) The notice must also take the form of a summons since the Enquiry officer cannot hold an enquiry without also desiring the attendance of parties and witnesses. So he has intrinsically power to summon these (sec. 189).

CHAPTER VII.

THE DISPOSAL OF LAND VESTING IN GOVERNMENT, AND EXEMPTION FORM LAND REVENUE.

30. (*a*) The right of Government to mines and mineral products which is reserved by section 69 shall not be disposed of without the sanction of Government, and in all grants of land the right to mines and mineral products and full liberty of access for the purpose of working and searching for the same shall be deemed to be reserved unless Government direct to the contrary and unless such right and liberty are expressly granted.

(*b*) No land situate within port limits shall be disposed of without the written concurrence of the Collector of Salt Revenue and without the reservation as to the tree-growth provided for in Rule 58 (*d*).

(*c*) In all grants and disposals of land the right of occupation and use only subject to the provisions of the Code shall be granted: and not the proprietary right of Government in the soil itself.

31. Land may not be granted free of land revenue without the sanction of Government except as hereinafter provided.

Gifts of the possession and the revenue.

32. *Limits of revenue-free grants for different purposes.*—(1) Land may be given free of price and free of revenue, whether in perpetuity or for a term, for any purpose hereinbelow mentioned by the authorities and to the extent specified in this table :—

Purpose	Estsmated revenue-free value.		
	By the Governor in Council	By the Commissioner.	By the Collector
(1) For sites for the constuction at the cost of Local or Municipal Funds, of— (*a*) Schools, or Colleges (*b*) Hospitals, (*c*) Dispensaries and (*d*) other public works from which no profit is expected to be derived.	10,000.	5,0000	250
(2) For sites for the construction at the cost of other than Local or Municipal funds, of any of the works referred to in item (1) above and for religious use.	1,000	500	50
(3) To any private individual for Services—			
to be performed or already renderel to the State	1,000	...	...
to be performed to the community ...	500	...	...

Proviso as to land near railway stations.—Provided that the land in the neighbourhood of railway stations shall not be granted for dharmashalas under head (2) in the table unless when erected they are to be in the charge of the Local Board or Municipality concerned.

(2) Such gifts shall ordinarily be made in form D.

33. (1) When it is clear that such [illegible] sale is preferable to any other course on grounds of obvious convenience to Government no less than to the parties concerned :—

(*a*) any land wherever situate, of which the estimated revenue-free value does not exceed one hundred rupees, and

(*b*) with the previous sanction of Government, any land included in a village site of which the estimated revenue-free value does not exceed five hundred rupees

may be sold revenue-free by the Collector to a private person for a private purpose,

(2) The previous sanction of the Government of India is required to the sale of land revenue-free to a private person for a private purpose in any case not provided for by this rule or by rule 49.

Gifts of the possession only.

34. *Grants in the Dharwar District to shetsanadis for remuneration.*—(1) In the district of Dharwar whenever unoccupied land is available for the purpose, the Collector may give such land to any shetsanadi who is willing to accept remission at the rate of one rupee of the assessment in exchange for two rupees of the usual annual cash remuneration :

Provided that no such land shall be given if the estimated occupancy value thereof exceeds five hundred rupees.

(2) Where a grant is made under this rule no sanad need be issued to the grantee, but it is to be a condition of his tenure the the land is granted revenue-free to the agreed extent only in consideration of the shetsanadi's service, and that it is resumable at the pleasure of Government.

Note.——Government sanction is necessary to the transfer of inam or Gavthan rights to other lands in Town Planning Schemes).

Gift of the revenue only.

35. (1) The Collector may exempt from payment of land revenue without any limit lands used for sites of hospitals, dispensaries, schools and for other public purposes, so long as such lands are used for such purposes and yield no return to private individuals or local bodies.

(2) Lands used for sites of buildings solely devoted to religious or charitable purposes may be exempted from payment of land revenue by the authorities and to the extent specified below, so long as such lands are used for such purposes and yield no return to private individuals or local bodies :—

By the Collector—upto an amount of Rs. 10.

By the Commissioner—upto an amount of Rs. 50.

By the Governor-in-Council—upto any amount.

(3) Such exemptions shall ordinarily be made in form E.

Notes:—Presumably the greater includes the less, and the Collector could grant, in cases where it was appropriate, *part* of the revenue.

Alienations sanctioned in Bombay are :—

(1) all proceeds of quarries, lime stone, sand, etc., to the Local Board (R. A. M, p. 214).

(2) Mahableshwar Station Fund gets all receipts (except Income Tax) from houses and lands in its limits including grass and timber (R. 687, 688-62), and the sale price of occupancy rights (R. 1319-63) and fees for renewal of leases (R. 1194-65, 2265-65 and 3269-65).

(3) Matheran Municipality gets revenue fines, proceeds of sales of maps, notice fees, and half the forest revenue (R. 2166-05, 5389-05) and all ground rents of Bazar plots, and sale-proceeds of plots less the cost of administration (F. 112-10).

(4) Panchgani Municipality gets the rents and assessmnnt of all Government lands (G. 392-10)

(5) It follows that no Municipality is exempt for sites vesting in them under Section 53 (2), Ml. Act, as markets, etc., and used for profit—(R. 9202-24-5-9-27 overruling R. 2579—15-3-18).

Religious or charitable purposes.—This is further extension (beyond Hospitals, Schools, Dispensaries and other public purposes) to religious and charitable purposes which are not public but yield no revenue.

There remains a class of Institutions which yield some revenue but not profit (*i, e.*, small fees are charged which do not cover the cost of maintenance). In a Kolaba case the cocoanuts growing on the ground of a free dispensary yielded Rs. 40 a year.

Pinjrapols are often put forward as eligible : but they usually receive some revenue and (all income considered) some are even run at profit. They are discussed in R. 2997-24—22-6-25 (Anderson's L. R. Rules, p. 46).

Conditions attached to grants under foregoing rules.

36. *Conditions attached to grants under rules 32, 34 or 35.*—(1) Every grant under rule 32 or 34 shall be made expressly on the following conditions in addition to any others that may be prescribed in particular cases, namely :—

(*a*) that the land with all fixtures and structures thereon shall be liable to be resumed by Government if used for any purpose other than the specific purpose or purposes for which it is granted, or if required by Government for any public purpose, and that a declaration under the signature of the Commissioner that the land is so required shall, as between the grantee and Government, be conclusive ;

(*b*) that, if the land is at any time resumed by Government under condition (*a*), the compensation payable therefor shall not exceed the amount (if any) paid to Government for the grant, together with the cost or value at the time of resumption, whichever is less, of any building or other works authorizedly erected or executed on the land by the grantee.

(2) Where exemption from revenue is granted under rule 35 on land already occupied by the grantee, the following condition shall be imposed, in addition to any others that may be settled in particular cases, namely, that if the land is used for any purpose other than the specific purpose or purposes for which exemption is granted, it shall, in addition to the assessment to which it becomes liable under section 48, become liable to such fine as may be fixed in this behalf by the Collector under the provisions of section 66, as if the land having been assessed or held for the purpose of agriculture only had been unauthorizedly used for any purpose unconnected with agriculture.

Note.—In all cases a sanad in such form as may from time to time be prescribed by Government shall be issued to the grantee by the Collector.

Where any land is granted revenue-free with the sanction of Government for any purpose not mentioned in Rules 32, 34 and 35, the form of sanad to be issued by the Collector will be specially prescribed by Government.

Every sanad issued under this rule shall be registered in the register prescribed by section 53.

The Collector and all Revenue Officers subordinate to him shall exercise due vigilance to prevent the terms of any such sanad being either exceeded or evaded.

Grant of land for agricultural purposes.

37. *Survey numbers how to be disposed of.*—(1) Any unoccupied survey number not assigned for any special purpose may, at the Collector's discretion, be granted for agricultural purposes to such person as the Collector deems fit, either upon payment of a price fixed by the Collector, or without charge, or may be put up to public auction and sold subject to his confirmation to the highest bidder.

(2) In the case of such grants an agreement in form F shall ordinarily be taken from the person intending to become the occupant.

(3) When the land is granted on inalienable tenure the clause specified in form I shall be added to the agreement.

*(4) When the land is granted on impartible tenure an agreement in Form F (1), and, when it is also granted on inalienable tenure, an agreement in Form I (1), shall ordinarily be taken from the person intending to become the occupant.

* (Cl. (4) was added by R. 4702/24 III of 12-3-1931.)

(5) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

Note.—The meaning of the rule (which is literally capable of the above interpretation, but must be interpreted consistently with the Code) is that—

(*a*) ordinarily the occupancy of land will be offered at public auction ;

(*b*) some plots, such as strips between fields and roads, abandoned roads, alluvion, etc., can only be usefully taken up by one person who might refuse to bid at all (if there were persons who wished to obstruct him) or might get it for practically nothing (for want of competition) if an auction were held. In such cases the Collector fixes a fair price such as might be got at auction if circumstances permitted open competition.

38. *Survey number not already assessed to be assessed before it is disposed of.*—Where any survey number disposed of under rule 37 has not already been assessed, it shall be assessed by the Collector (after reference to the Superintendent of Land Records) at the rates placed on similar soils in the same or neighbouring villages; and the asessment so fixed shall hold good for the period for which the current Settlement for the village in which the land is situated has been guaranteed, and shall be liable thereafter to revision at every general settlement of the said village.

39. *Where survey numbers may be given at reduced assessment.*—Where it appears that the bringing of any survey number under cultivation or its reclamation for other purposes will be attended with large expense, or where for other special reasons it seems desirable, it shall be lawful for the Collector (with the previous sanction of the Commissioner, in cases where *the assessment* on the land included in the total grant exceeds one hundred rupees) to grant the survey number revenue free or at a reduced assessment for a certain term, or revenue-free for a certain term and at a reduced assessment for a further term, and to annex such special conditions as the outlay or other reasons aforesaid may seem to him to warrant, and to cancel the grant or levy full assessment on breach of these conditions.

Explanation.—Assessment on the land means the assessment fixed at the settlement or, where no such assessment has been fixed, the assessment determined in accordance with the procedure prescribed in Rule 38 (G. R. No. 745-28 of 7-2-29).

Provided that, on the expiry of the said term or terms, the survey number shall be liable to full assessment under the rules then in force for lands to which a settlement for agricultural use has been extended or which are assessed for other uses.

(2) Form G1 may generally be used in cases under this rule.

40. *Grants of salt-marsh lands for reclamations.*—Salt land or land occasionally overflowed by salt-water, which is not required or likely to be required for salt manufacture, may, after consultation with the Commissioner of Salt, be leased for purposes of reclamation by the Collector, subject to the confirmation of the Commissioner, on the following maximum terms, and with such modifications in particular cases as may be deemed fit :—

(*a*) no rent shall be charged for the first ten years ;

(*b*) rent at the rate of four annas per acre shall be levied for the next twenty years on the whole area leased, whether reclaimed or not;

(*c*) after the expiry of 30 years the lease shall be continued in the case of re-claimed lands at the rate at which they would be assessed to land revenue from time to time if they were subjected to survey settlement; and in the case of unreclaimed lands, if any, at the average rate of the reclaimed lands (Notification No. 372-B. of 17th April 1923);

(*d*) any portion of the land used for public roads shall be exempt from the payment of rent ;

(*e*) if the reclamation is not carried on with due diligence within two years, or if half the area is not reclaimed so as to be in a state fit for use for agricultural purposes at the end of ten years, and the whole at the end of twenty years, or if any land once reclaimed as aforesaid is not maintained in a state fit for use for agricultural purposes, the lease shall be liable to cancellation at the discretion of the Collector ;

Provided that the lessee shall be at liberty during the first ten years to relinquish any area which he cannot reclaim.

(*f*) if the land reclaimed is used for any non-agricultural purpose, its rent shall be liable to be revised according to the rates under whichever of rules 81 to 85 has been applied to the locality notwithstanding that any of periods specified above may not have expired ;

(*g*) Form G2 may generally be used in cases under this rule.

41. *Land in beds of river.*—Land situated in the bed of a river and not included in a survey number shall, save as otherwise provided in sections 46 and 64, ordinarily be leased annually by auction to the highest bidder for the term of one year or such further period as the Collector thinks fit. The accepted bid shall be deemed to be the land revenue chargeable on such land. But in Sind the Collector may grant it for cultivation to those holders who have lost land by erosion.

Note.—Bed does not include shore or bank. (G. R. No. 4551 of 1885).

Grant of land for non-agricultural purposes.

42. *Disposal of land for building and other purposes.*—Unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots

by auction to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose; but the Collector may, in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him, or without charge, as he deems fit.

Note.—No waste land near Railway stations should be disposed of for building sites and no permission should be given under sec. 65 for such use without concurrence of the Railway. If there is any difference of opinion, the Commissioner will decide it (G. R. No. 4606 of 1899).

43. *Conditions of grants or building.*—(1) Save in special cases in which the Collector with the sanction of Government otherwise directs, or in localities falling under rule 44, land for building sites shall be granted in accordance with the following provisions:—

(*a*) The land shall be granted in perpetuity subject to the provisions of the first paragraph of section 68, and shall be transferable.

(*b*) Where the land has already been assessed for agriculture, the assessment shall be altered under whichever of rules 81 to 85 has been applied to the locality.

(c) Where the land has not been assessed the Collector shall fix the assessment in accordance with the principles laid down for alteration of assessment in rules 81 to 86 and the provisions of the said rules shall, as far as may be, apply.

(*d*) All such assessments shall be fixed for the period specified in Rule 87 (*a*) and may be commuted when they do not exceed one rupee in accordance with the provisions of rule 88.

(2) In the case of such grants an agreement in form **F** or form **H**, as the Collector may deem fit, shall ordinarily be taken from the person intending lo become the occupant, and in the case of land in development schemes undertaken by Government in the Bombay Suburban District an agreement shall be taken in form HH.

(3) When the land is granted on inalienable tenure, the clause specified in form I shall be added to the agreement.

(4) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

Note.—This provision relates only to the terms of the tenure, and does not in any way authorize free grants or charitably reduced assessments which fall under rules 32–35.

43-A. *Terms on which land intended for future building sites may be temporarily disposed of.*—Unoccupied lands which are eventually intended for building sites within the Bombay Suburban District or any other area, to which Government may by notification in the *Bombay Government Gazette*, extend this rule but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let under written leases in a form approved by Government for short terms not exceeding in any case seven years at a ground rent equal to double the standard rate of non-agricultural assessment in force in the locality, or at a ground rent which may in special cases or localities be fixed with the sanction of the Commissioner.

44. *In hill stations.*—In hill stations and such other localities as Government may direct land shall not be granted for building except on such conditions as are considered desirable regarding the style of building, the period for construction and the observance of municipal or sanitary regulations. Such conditions should be embodied in the instrument (Form H).

45. *Establishment of entirely new village site.*—Where an entirely new village site is established, or an addition is made to an existing site, the disposal of the lots therein shall be made under such of the rules 42, 43 or 44 as may be applicable.

46. *Substitution of a new village site for an old one.*—Where a new village site is established, in lieu of a former one which it is determined for any reason to abandon, an agreement shall be taken in form J, from each occupant before he is permitted under section 60 to enter into the occupation of any lot.

47. *Conditions of grant of land for non-agricultural purposes other than building sites and alteration of assessment.*—Where unoccupied land is granted for non-agricultural purposes other than building sites, the Collector shall annex such conditions to the grant as may be directed by Government or, in the absence of any order of Government, may annex such conditions thereto as he thinks fit, subject to the control of the Commissioner; and where the land has already been assessed for the purpose of agriculture, the assessment of such land shall, in the absence of any order of Government to the contrary, be altered in accordance with the provisions of rules 81 to 85. Where it has not been assessed, its assessment shall be fixed by the Collector, as far as may be in accordance with the principles laid down for alteration of assessment in the said rules.

Special rules for certain city surveyed areas.

48. *Special rules for the sites of Ahmedabad, Broach, Surat, Rander, Bulsar and Godhra, and certain other places.*—Except as may be otherwise specially directed by Government, nothing in rules 37 to 47, both inclusive, shall be applicable to the grant of any lands to which a City Survey has been extended under Bombay Act IV of 1868 or under section 131 and which do not vest in the municipality, within the sites of the towns and cites of Ahmedabad (inclusive of its suburbs of Saraspur, Dariapur Cajipor, Rajpur Hirpur, Asarwa, Kochrab, Chhadavad, Changispur and Paldi), Broach, Surat, Rander, Bulsar, Godhra, Igatpuri, Bandra-Danda and Ahmednagar, Tando Adam (Nawabshah) (R. 7080—B/24-27th November 1926.) or of any other town or city to which Government may by notification in the official *Gazette* extend this rule: and nothing in rules 81 to 85 shall apply to any agricultural land lying within the same sites, but to which a City Survey cannot by law extend.

The granting of such lands for building sites, and the granting of permission to use such lands (when assessed for agricultural use) for non-agricultural purposes, shall be regulated by the following rules 49 to 52.

Encroachment on a public road.—The accused encroached on a part of a public road and enclosed it in his own field with an embankment and cultivated it; he was thereupon convicted of an offence under this rule and sentenced

to pay a fine under rule 111 cl. (2) (*a*). *Held*, that as the land encroached upon by the accused did not fall under the prohibition contained in this rule, the conviction was illegal (*Queen-Empress v. Yadu*, 1 Bom. L. R. 161).

49. *Disposal of strips of land adjacent to existing building sites.*—Whenever the holder of a building site desires to acquire any small strip of ground belonging to Government which is adjacent to his site and which could not reasonably be disposed of by the Collector as a separate site, the Collector may, if he thinks fit and notwithstanding anything to the contrary contained in rule 33, sell such strip to the said holder on the same tenure on which he holds the said site, and on payment of ground rent or assessment at the same rate, if any.

50. *Mode in which other lands may be disposed of.*—(1) Any unoccupied land to which rule 49 does not apply and which is not assigned for special purposes may be granted to such person as the Collector deems fit either for purposes of agriculture only or for other purposes.

(2) *Lands to be ordinarily sold by auction.*—Any such land shall ordinarily be sold by auction to the highest bidder; but the Collector may in his discretion sell the same by private agreement.

51. *Terms on which building sites may be disposed of.*—(1) Unoccupied land shall be granted for building sites and permission under section 65 to use for non-agricultural purposes lands occupied and assessed for agriculture shall be given by an instrument in a form approved by Government, for terms expiring on the date fixed in this behalf by Government for each city or town, at a rent or altered assessment, as the case may be, of two pies per square yard per annum, or such other rate as Government may prescribe for any particular site or portion thereof.

(2) (*a*) *Terms on which land intended for future building sites may be temporarily disposed of.*—Unoccupied lands which are eventually intended for building sites, but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let under written leases in a form approved by Government for short terms not exceeding in any case seven years at a ground rent of not less than one anna per square yard per annum.

(*b*) Unoccupied lands under clause (*a*) shall ordinarily, subject to the provisions of the said clause, be let by auction to the highest bidder; but the Collector may in his discretion let any such land by private agreement (G. R. R. D., No. 5189/28 dated 13-1-33).

52. *Terms on which lands may be disposed of for agricultural purposes only.*—Unoccupied lands may be leased for purposes of agriculture for terms of one year. An agreement in form F, with such modification as may be necessary, shall be taken from every person who is to become an occupant of land under this rule, and the provisions of sub-rules (2) to (4), inclusive, of rule 37 shall be applicable to every agreement so taken.

53. *Unoccupied building sites, etc., within municipal limits to be distinguished from lands forming part of public streets.*—(1) In municipal districts, building sites and plots of open ground, which have not been dedicated to public use or already transferred to the municipality,

are hereby declared to be specially reserved by Government within the meaning of sub-section (2) of section 50 of the Bombay District Municipal Act, 1901.

This reservation does not apply to small pieces of ground lying between the houses and the road-way in an irregular street or road of varying width, which should be recognized as forming part of the street and vesting in the municipality unless private individuals have rights thereto. But separate vacant sites between houses do not vest in the municipality even though they are unenclosed unless they have been transferred to the municipality by Government.

BOTH FOR AGRICULTURAL AND NON-AGRICULTURAL GRANTS.

54. *Form of written permission to occupy under section 60.*—The permission in writing to be given by a Mamlatdar under section 60 to enable an intending occupant to enter upon occupation shall be in form K, or Form KK.

Exceptional cases.

55. *Disposal of land to which foregoing rules are inapplicable.*—Unalienated land to which none of the foregoing rules is applicable and concerning which no other rules have been framed by Government, shall be disposed of in such manner for such period and subject to such special conditions, if any, as the Collector, subject to the control of the Commissioner, deems fit.

56. *Special forms.*—The forms appended to these rules shall be used where applicable, but where a grant is made on special terms and none of such forms is suitable and a special form has not been sanctioned, the orders of Government shall be obtained regarding the form to be used.

57. *Records.*—The document evidencing a grant shall be drawn in duplicate and one copy, which shall be retained by the Government officer concerned or by Government, shall be signed by the grantee.

CHAPTER VIII.

TREES AND FOREST RIGHTS.

58. *General reservations.*—The extent to which the right of Government to trees is generally conceded to occupants under the third paragraph of section 40 shall be specified in the notification issued under rule 17. The said general concession will ordinarily extend to all trees, except the following :—

(*a*) all road-side trees planted by or under the orders of Government ;

(*b*) teak, blackwood, and sandalwood ;

(*c*) trees, the produce of which has hitherto been disposed of by Government:

Provided that whenever any land is disposed of after the first introduction of a settlement of land revenue, such trees shall also be disposed of under section 62 ;

(*d*) any trees specially reserved in the terms of the grant of the land.

59. *Special reservations.*—Trees in groves, trees round temples or places of encampment declared to be such by the Collector, and trees

other than teak, blackwood or sandalwood, which for any reason are of special value or utitity shall be specially reserved at the settlement and entries to that effect made in the settlement records.

60. *Disposal of trees on occupied lands.*—(1) Subject to the provisions of rule 63 the disposal of trees on land occupied or being given out for occupation shall be regulated by the following sub-rules :—

(2) Of the trees to which the rights of Government are reserved, such number or kinds as Government may from time to time direct will be at the disposal of the Forest Department. Lists shall be kept of all occupied numbers, over the trees in which the Forest Department has any control or lien ; the clearing of these numbers by the Forest Department shall be arranged in concert with the Collector, and every number when cleared shall be recorded as exempt from all interference in the future on the part of the Forest Department. In districts, where there is no Forest Officer, these functions will be discharged by the Collector alone.

(3) All other reserved trees shall be in charge of the Collector who may dispose of the same or of their produce as he may deem fit, subject to the general rules for the disposal of Government property.

(4) In talukas in which the demarcation of forests has been completed, when any unoccupied land containing jungle or valuable trees which have not been included in any forest reserve is granted to any person for cultivation, the Collector may offer the trees, or such of the trees as he may see fit, to the occupant. If such person agrees to purchase the same, the value shall be recovered from him by the Collector and credited as land revenue. If the occupant refuses to buy under this sub-rule or sub-rule (3) then the Forest Department should clear the land of trees.

(5) In talukas in which the demarcation of forest reserves has not been completed, the Collector may, if he thinks fit, consult the Conservator of Forests before any land containing jungle or valuable trees is granted ; and if any such land is granted to any person the provisions of sub-rule (4) shall apply ; in no case shall land be granted which is likely to be required for forests.

(6) In Sind the clearance of reserved trees under sub-rule (1), and of trees not accepted by the new occupant under sub-rule (4) shall be effected by the Collector.

Note.—In 22 Bom. L. R. 884, it is *held* that 'trees reseved' means trees existing at the time of the settlement ; not trees which may afterwards grow. See too Rule 62. This is almost certainly the contrary of the intention of the law.

When such trees are sold by Forest Department, it takes the credit.

61. Whenever the right to unreserved trees in any land is at the disposal of Government simultaneously with such land all such trees shall invariably be disposed of to the same person who acquires the holding and not to any other person.

62. When the right of Government to the trees in a holding has been once disposed of to the occupant, or when all the reserved trees have been once cut and removed either—

(*a*) at the grant of the land, or

(*b*) after such grant, or

(*c*) in Sind, at any time before such grant, or

(*d*) elsewhere than in Sind, within five years before such grant, Government will have no further claim to trees which may afterwards grow in the holding, or which may spring up from the old roots or stumps, so long as the land continues in occupation.

63. *Exception of reserved trees in varkas and beta lands in certain districts from rules 60-62.*—(1) Nothing in rules 60 to 62 inclusive shall be deemed to apply to varkas lands in the districts of Thana, Kolaba and Ratnagiri, and beta lands in the district of Kanara, or to any land in the Dindori Taluka or the Peth Taluka of the Nasik District or to any land on the banks of streams and nalas in the Godhra Taluka of the Panch Mahals District, or to any riverside jambul trees growing in occupied lands on the banks of the rivers Mula, Pravara, Mhais and Mhalungi in the Parner, Rahuri, Sangamner and Akola Talukas of the Ahmednagar District; or (pending the completion of the acquisition of all occupied lands within the sanctioned demarcation limits of the forest in the Haveli, Purandhar and Junnar Talukas and the Ambegaon Petha of Poona District) to any teak trees in such unalienated land.

(2) In the said lands the trees on which the rights of Government are reserved shall be available for cuttings to be made from time to time by or under the orders of the Forest Department, in consultation with the Collector.

(3) The sale of any such tree or of the timber thereof will confer no right to the after-growth from the root or stump of the tree so cut. The reservation of the rights of Government over the trees will extend to all such after-growth also.

CHAPTER IX.

DISPOSAL OF GRAZING AND MINOR PRODUCTS OF LAND.

64. *Sale of produce of Government trees.*—(1) The produce of trees belonging to Government may be sold by auction annually or for a period of years.

(2) Where any such trees are sold under section 41, the sale shall be by auction or otherwise as the Collector may direct.

65. *Grazing and other similar produce to be ordinarily disposed of by sale for periods not exceeding five years.*—(1) The grazing or other produce of all unoccupied land vesting in Government whether a survey settlement extends to such land or not, and whether the same is assessed or not and of all land specially reserved for grass or for grazing (except land assigned to villages for free pasturage), may be sold by public auction or otherwise, as the Collector deems fit, year by year, or for any term not exceeding five years, either field by field or in tracts, and at such time as the Collector shall determine.

Provided that the purchasers' rights over such land shall entirely cease on the dates respectively fixed in the following table, unless, under special circumstances, the Collector deems it necessary to alter the time so fixed:—

Collectorates	Waste assessed Dry-crop Land.	Waste assessed Rice Land.	Reserved Kurans and unassessed Waste.
All in Sind ...	31st July ...	31st July ..	31st July.
Thana ..	31st March ...	31st March ...	31st December.
Dharwar ...	31st March ..	31st December ..	1st May.
All others ...	31st March ...	31st March ...	1st May.

66. *Disposal of earth, stone, etc., by the Collector.*—(1) The Collector may, at his discretion, sell by public auction or otherwise dispose of the right to remove earth, stone, kankar, sand, muram, or any other material which is the property of Government for such period and in such quantities and on such terms as he thinks fit:

Provided that such sale or other disposal shall be made subject to the privileges conceded by rules 67 to 70 inclusive.

(2) The rate charged by the Collector under this rule, when the right in question is not put up for sale by public auction, may be either a lump sum, or so much per cubic foot of excavation, or in the case of a Railway Company requiring land for excavating ballast, so much per mile of the railway line for which ballast is obtained, or otherwise as the Collector thinks fit.

Note.—It is important to note that in *occupied* lands charges for quarrying, etc, are levied not as 'Stone and Mineral and Sand fees from *Government* land" but are altered assessments under L. R. C. sections 48 and 65. Such altered assessment is not assigned to or to be paid to the Local Boards (R. 10424/17; R. 5428/-22). See rule 82 IV.

67. *Removal of earth, stone, etc., by villagers for their own use without fee with permission of the revenue patel.*—(1) With the previous permission in writing of the revenue patel, or where there is no such patel of the Mamlatdar or (in Sind) of the Tapedar, but without payment of fees (*a*) any potter or maker of bricks or tiles may, for the purposes of his trade, (*b*) any person may, for his domestic or agricultural purposes, remove earth, stone, kankar, sand, muram or other material from the bed of the sea or from the beds of creeks, rivers and nalas or from any unassessed waste land not assigned for special purposes within the limits of the village in which he resides or in which the land for the benefit of which the materials are required is situated.

(2) Nothing in this rule applies to any case falling under rule 69, and where it appears to the revenue patel or Tapedar that any case in which application is made to him under this rule falls under rule 69 he shall refer the application to the Mamlatdar for orders.

68. With the previous permission in writing of the Mamlatdar but without payment of fee, any person may, for the purpose of building a well, remove stone from any of the sources specified in sub-rule (1) of rule 67 if those sources are within the limits of the taluka in which he resides.

69. *Excavation.*—(1) In any case where excavation of the soil is likely to damage or destroy any valuable building or any land

required for any special or public purpose or any boundary mark, the previous sanction of the Mamlatdar to any such removal shall be required and he shall refuse permission to the extent necessary to prevent such damage or destruction.

(2) *Ports.*—No patel or Mamlatdar may permit any removal under rule 67 or 68 from land within port limits, or on the banks or shore of any port, without the written concurrence of the Collector of Salt Revenue, and under such conditions, if any, as he may impose.

(3) *Bricks, etc.*—In any case where it appears to the Mamlatdar that the trade carried on by any potter or maker of bricks or tiles is sufficiently extensive and lucrative to render such a charge fair and equitable, he may grant permission only on payment of fees at such rates as may be prescribed by the Collector in this behalf under rule 66.

(4) In such cases or localities as he thinks fit, the Collector may prohibit the Mamlatdar, the Tapedar or the revenue patel from giving permission without obtaining his previous sanction; and in any such case all applications for permission shall be referred to the Mamlatdar for the Collector's order.

(5) Where the revenue patel or Tapedar refuses permission when the same is applied for under rule 67 or does not refer the application to the Mamlatdar under sub-rule (4) an appeal shall lie to the Mamlatdar.

70. *Removal of earth, etc., from village tanks.*—Any person may, with the sanction of the revenue patel, take free of all charge from village tanks as much earth, stone, kankar, sand, muram or other material as he requires: provided that no stones shall be removed that may have fallen from the banks of built tanks, and that no excavation shall be made within 10 cubits of the foot of the embankment of any such tank.

CHAPTER IX-A.

DISPOSAL OF WATER VESTING IN GOVERNMENT.

70-A. No person shall without the previous permission of the Collector in writing make use of any water of a river, stream or nala which is the property of Government, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad.

70-B. The Collector may grant permission for the use of the water of a river, stream or nala which is the property of Government and for which no water-rate is levied under the Bombay Irrigation Act, 1879, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad, on payment of such water-rate as he may deem fit, but not exceeding the rate per annum per acre which may have been fixed for the locality by Government for occasional irrigation by *Pats* under section 55 of the Bombay Land Revenue Code, or where no such special rate has been fixed, the maximum *Patasthal* rate sanctioned in the current settlement for the group in which the village in which the land in question is situate may have been included. Provided that in precarious tracts irrigation

by *budkis* or pumping plant shall be exempt from the water-rate leviable under this rule.

70-C. Any person who, without the previous written permission of the Collector, makes use of any water of a river, stream or nala which is the property of Government and for which no water-rate is levied under the Bombay Irrigation Act, 1879, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad, shall be liable to pay such water-rate as the Collector may deem fit, but not exceeding Rs. 50 per annum per acre of land so irrigated.

70-D. The water-rates payable under rules 70-B and 70-C shall be recoverable as arrears of land revenue.

Explanation.— For purposes of rules 70-A, 73-B and 70-C *'budki'* includes a *'dhekudi'* or any similar appliance for raising water.

CHAPTER X.

ALLUVION AND DILUVION

71. *Holders of land with shifting boundaries may occupy up to such boundaries.*—When a holding is bounded on any side by the bank or shore of a river, creek or nala or of the sea, the holder will be permitted, subject to the provisions contained in sections 46, 47, 63 and 64, to occupy and use the land up to such bank or shore, notwithstanding that its position may shift from time to time.

Note.—The subject of alluvion is one of the most difficult in the law of land. The references in secs. 37, 46 and 63 to "any law for the time being in force" are vague since so far as is known there is no such law in force behind the L. R. C. except in the case-law or judge-made law bassed upon the common law and natural equity, and some special Municipal and Port Trust enactments outside Bombay Island. Alluvion must, according to these rulings, be interpreted to mean strictly gradual, slow, and imperceptible [imperceptible day by day as it occurs but of course perceptible enough in the long run (Halsbury's Laws of England, Vol.28, p. 362)] accretion by deposit of fresh soil by water upon existing riparian land (Justinan and 3 Bengal L. R, p. 525, 1870.) Sand blown by the wind or a mass of shingle suddenly flung up after a storm, or new land left bare by a receding sea or a diverted river is not alluvion but derelict land. Nor would the deposits in a river bed which raise their surfaces above the hot weather water-level be treated as alluvion in respect of a holding terminating on the upper edge of the steep bank of a river high above the deposit; there is no physical connexion between them, to which the term 'accretion' would be applicable. L. R. 27 All. 655, 28 All. 647.

Kabulayatdar (including Sanadi) Khots have a right only to assessed unoccupied land (and they pay revenue for it). Therefore they can have no rights to alluvion, except that which forms on Khoti Khasgi lands. In such villages therefore secs. 47, 63 and 64 all apply.

It would seem that both classes of Kolaba Khots are entitled to remission on account of diluvion.

72. *The Collector to dispose of claims under section 47.*—(*a*) Claims to decrease of assessment on account of diluvion under section 47 shall be disposed of by the Collector.

(*b*) It shall be the duty of the village officers to ascertain and to record the increases due to diluvion and losses due to diluvion in every holding subject to such changes. They shall also report to the Mamlatdar for orders when the area of any newly formed alluvial land or island, or of any abandoned river bed, or land lost by diluvion exceeds the limits prescribed in sections 46, 47 and 64.

Note.—In Khoti villages, read "Village Accountant or Japtidar, or Circle Inspector if there be none (R. 3451-08) and "Japtidar or Band Karkun" in Talukdari and omit reference to sections 46-47 (R. 2180-F.-29-3-22). For Alluvion increasing forest land, see G. R. 5080-24—17-7-26.)

CHAPTER XI.

ASSIGNMENT OF LAND FOR SPECIAL PURPOSES.

73. *Cattle stands and dhobis' and potters' grounds.*—(1) Gurcharan (gairan) or grazing ground for cattle, burial and burning grounds, spots near villages on which the village cattle stand, and lands for the use of village dhobis and potters, and for other recognised public needs may be assigned by the Collector for these purposes respectively, according to the reasonable requirements of the villagers without charge: and he may for sufficient reasons at any time revoke such assignment.

(2) Orders under this rule shall be passed in writing and recorded.

(*i*) Land so assigned remains public property; there is no disposal of possession or proprietary right under sec. 37 (G.R. 555-01). There is therefore no limit of value (G. R. 3317-99). Grants of sites for idgah, temple, or extensions of village sites are not assignments but disposals (G. R. 9424-06). Instances of public or Municipal purposes are land for rab-cutting, public latrines.

Municipalities may retain half the income derived from the strictly temporary use of such land subject to the approval of the Collector or City Survey Officer; the other half will be credited to Government (G. R. 125-24—7-2-25).

(*ii*) Such assignments do not include transfers to other departments which must be sanctioned by Government.

(*iii*) The annual statement of such assignments was discontinued (G. R. 11506-11).

(*iv*) 'Gairan' may be transferred to 'Burial ground' without Government sanction (G. R 3317-99, 5701-01); and Government can modify any gairan assignment (G. R. 3121-88).

(*v*) When any expenditure on provision of burial grounds is required, then it devolves upon the local bodies (G. R. 4953-00). But after acquisition, the land would be assigned under sec. 38, and not as L. B. property.

Inamdars cannot enclose free pasture or other such assigned land (*Tishcanath v. Madhvji*, 1879).

CHAPTER XII.

RELINQUISHMENTS.

74. *Endorsement as to identify required below rajinamas.*—(1) Every notice given under section 74 shall be in Form L and the declaration below the notice shall be subscribed by two respectable witnesses.

(2) The Mamlatdar who receives any such notice will be held responsible for exercising due care in ascertaining the identity of the person who has signed the same, notwithstanding that such notice has been duly endorsed as hereinbefore required.

Note—All notices received under sec. 74 shall be kept in the records of the village accountant until the expiry of one year after the end of the year in which they were given and afterwards in the records of the Mamlatdar for at least 12 years. Entry will at once be made in the Diary of Mutations and certified in due course : this will ensure resufficient record (*Anderson*).

CHAPTER XIII.

RESTRICTIONS ON USE OF LAND.

75. *Cultivation of unarable land in survey number when prohibited.*—(1) Land included as unarable (*pot kharab*) in a survey number assessed for purposes of agriculture only is of two kinds:—

(*a*) that which is classed as unfit for agriculture at the time of survey including the farm buildings or threshing-floors of the holder;

(*b*) that which is not assessed because it is reserved or assigned for public purposes; or because it is occupied by a road or recognized footpath, or by a tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes, or used for a burial or burning ground by any community, or by the public; or because it is assigned for village potteries.

(2) Class (*a*) may be brought under cultivation at any time by the holder and no additional assessment shall be charged therefor.

The cultivation of class (*b*) is hereby prohibited under section 48, sub-section 4):

Provided that this prohibition shall not apply in the case of a tank or stream when such tank or stream is used for irrigation only and waters only land which is in the sole occupation of the holder, or when the privilege of cultivating the dry bed of the tank or stream has been specially conceded to the holder.

76 *Use of land for the manufacture of salt prohibited except on certain conditions.*—(1) No occupant of unalienated land shall use the same or any part thereof for the manufacture of salt without the previous permission in writing, first of the Collector of salt Revenue and then of the Collector of the district.

(2) The Collector of the district may, in any case where such permission is granted, either

(*a*) require the occupant to relinquish his rights of occupation, and to enter into an agreement that such land shall be placed at the disposal of the Salt Department, subject to a lease in fovour of the applicant on such terms as the Deputy Commissioner of Salt Revenue under the general orders of Government may require; or

(*b*) permit the use applied for without requiring the occupant to relinquish his rights of occupation on the following conditions:—

(*i*) that the occupant shall pay such fine as the Collector may deem proper, not exceeding one-tenth of the amount which would be leviable under section 66 in a case of unauthorized use, and

(*ii*) that the occupant shall execute an agreement that he will pay in lieu of the existing assessment and Local Fund cess, such amount or rate as may be imposed by the license to be granted by the Deputy Commissioner of Salt Revenue in accordance with the general and special orders of Government, and shall also in respect of the land used conform to all the conditions of such license; and

(*iii*) that whenever the Deputy Commissioner of Salt Revenue declares that the land, or any part thereof, is not used or has ceased to be used for the manufacture of salt, such land shall forthwith become liable to the survey assessment which was chargeable upon it immediately before it was permitted to be used for the manufacture of salt.

77. *Removal of earth, stone, etc., prohibited, if injurious to cultivation and for purposes of trade, etc.*—Save as provided in section 65 and rule 76, no occupant of land assessed or held for purposes of agriculture only, and no person claiming under or acting by authority of any such occupant, shall excavate or remove earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, or make any other use of the land so as, in the opinion of the Collector, thereby to destroy or materially injure the land for cultivation or for purposes of trade or profit, or any other purpose except his own domestic or agricultural purposes

78. *Removal of earth, stone, etc, from building site prohibited except on certain conditions.*—No holder of land assessed or held as a building site, or lease-holder of a building site in a hill station, and no person claiming under any such holder or lease-holder, shall, subject to any special provision in the conditions annexed to his holding under section 62, section 67 or otherwise, or prescribed by his lease, excavate or remove for any purpose whatever earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, except with the previous permission in writing of the Collector, and in accordance with such terms (including the payment of fees for any such excavation or removal) as the Collector in each case thinks fit to prescribe.

79. *Excavation of unalienated land within site of village, town or city prohibited except for certain purposes.*—(1) No unalienated land within the site of any city, town or village shall be excavated without the previous written permission of the Collector, for any purpose except the laying of foundations for buildings, the sinking of wells and the making of grain-pits.

(2) When permission is granted by the Collector to excavate any such land as aforesaid for any purpose other than those above mentioned, such excavation shall not be made otherwise than in accordance with such terms (including the payment of fees for any such excavation) as the Collector in each case thinks fit to prescribe.

CHAPTER XIV.

THE USE OF LAND FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT HAS BEEN ASSESSED.

Alteration of assessment in the case of unalienated lands.

80. *Alteration of assessment when land assessed or held for agricultural purposes is used for non-agricultural purposes.*—When unalienated

land assessed or held for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall (except in the cases provided for in rule 59 or 76 and except as otherwise directed by Goverhment) be altered under sub-section (2) of section 48 and such alteration shall be made by the Collector in accordance with the following rules.

81. *Ordinary rates of altered assessment.—Ordinary rates of altered assessment.*—(1) For the purpose of determining generally the rate of altered assessment leviable, each Commissioner shall, from time to time, by notification published in the official *Gazette*, divide the villages, towns and cities in each district in his division (to which a standard rate under Rule 82 has not been extended) into two classes.

(2) The assessment shall then be fixed by the Collector at his discretion, subject to the general or special orders of Government at a sum per square yard within the following limits :—

Maximum—For Class I land 2 pies.

For Class II land 1 pie.

Minimum.—The agricnltural assessment.

In fixing the rate within the above limits due regard shall be had to the general level of the value of lands in the locality used for non-agricultural purposes.

"Provided that the altered assessment of plots of land not built upon in Development Department Schemes shall be limited to a maximum rate of Re. 1 per 250 square yards or part thereof.":

(3) "The Collector with the previous sanction of the Commissioner which shall only be given for special reasons to be recorded in writing, may levy on any land altered assessment at a rate higher than the maximum fixed under Sub-rule (2) in respect of any village, town or city in which such land is situated, in cases where the land is either situated in an exceptionally favourable position, or where it is used temporarily for a non-agricultural purpose, or where the purpose for which it is used is of a special kind. Such higher rate shall not however exceed 50 per cent. of the estimated annual rental value of the land when put to non-agricultmal use in question."

(G R. R D., No. 1390-23 of 29th March 1932.)

82. *Special rates of altered assessment in certain areas.*—In any area in which, on account of there being a keen demand for building sites or for any other special purpose, Government may, by notification in the official *Gazette*, direct that this rule shall be applied, the rate of altered assessment shall be determined in accordance with the following provisions and not under rule 81 :—

I.—The altered assessment shall ordinarily be a percentage on the full market value of the land as a building site.

II.—In cases where this rule is applied on account of there being a demand for building sites, the market value of the land shall be estimated as far as possible on the basis of actual sales of unoccupied land for building purposes in the locality. In cases where this rule is applied on account of the demand being for other special purposes, the market value shall be estimated as far as possible, on the basis of actual sales of unoccupied land of which the value is enhanced by the existence of the special demand.

III.—Government shall determine what percentage shall be charged in any locality to which this rule is applied, and the standard rates of altered assessment shall be calculated thereupon and shall be levied in place of the current rate of assessment. At intervals of ten years or, in particular localities, at such shorter intervals as Government may direct, the rates shall be revised with the sanction of Government. Until the rates are so revised, the old rates shall remain in force. The rates sanctioned from time to time shall be published in the official gazette. A public notice shall be given one year before any revised rate comes into force.

IV.—A rate differing from the standard rate of altered assessment in any locality shall not be levied without special reasons which shall be recorded: provided that the Collector, with the previous sanction of the Commissioner, may levy a higher rate in the case of land situated in an exceptionally favourable position.

V.—*Deleted* (G. R. 1890-28 of 1-2-29).

VI.—The rates of altered assessment leviable on lands in the Bombay Suburban Division, to which this rule applies, shall however be reduced to such extent as Government may specify by a notification in the official *Gazette*.

82-A. Notwithstanding anything in rules 81 and 82 in any area to which Government may by notification in the official Gazette direct that this rule shall be applied an additional rate of Rs. 2½ for every lakh of bricks manufactured in any one year shall be levied in addition to the annual assessment of Rs. 40 per acre on land used for the manufacture of brick: Provided that where exact accounts of manufacture are not available, the Collector shall be at liberty to fix the number according to the known capacity of the kiln, and his decision shall be final.

Note.—This new rule 82-A finally sanctioned in R. 5812 of 9-11-25 assesses land not according to its value or area or profits or other consideration recognised in the Code but at an arbitrary "Royalty" no doubt roughly proportionate to profit. It is framed under section 214 (*d*) (Regulating permission to use) and is considered by R. L A. to be covered by the law.

83. (*Cancelled* by G. R 1890-28 of 20th Aug. 1929.)

84. *Grant of permission in hill stations, etc.*—In hill stations and such other localities as Government my direct, permission shall not be granted under section 65 except on such conditions as are considered desirable regarding the style of building, the period for construction and the observance of municipal or sanitary regulations. Such conditions shall be embodied in the Sanad.

85. *Assessment leviable on compounds; reduced in certain cases.*—Altered assessment shall ordinarily be levied upon the whole of the land within the compound of a building and not merely upon the land covered with building.

86. *Levy of altered assessment when to begin.*—(*a*) The altered assessment shall ordinarily be levied from the first day of the revenue year next succeeding the revenue year in which permission to use the land for non-agricultural purposes was given, provided that (1) where the use is temporary the Collector may in his discretion levy it from the first day on which or the commencement of the year in which the non-agricultural use begins.

(2) In the case of building sites held by Co-operative Housing Societies which are not built upon, no altered assessment shall be levied for the three years subsequent to the date on which possession of the land was taken or the building permission granted, whichever was later; And on the expiry of that period, altered assessment shall be levied with effect from the first day of the next revenue year at half the rate current in the locality, unless for special reasons which shall be specified in writing the Collector considers it desirable that the full exemption from altered assessment should be continued for a further period or periods. In all cases, the full altered assessment payable in the locality shall be levied as soon as a plot is built upon."

(G. R., R. D., No. 620 28, dated 14-10-32.)

(*b*) Where no permission was given the altered assessment levied for non-agricultural use shall always be levied from the first day of the revenue year in which the use commenced. (Notification G. R. 9113-24 3rd January 1928).

87. *Revision of altered assessment.*—(*a*) *Revision of altered assessment.*—The peroid for which the altered assessment is to be fixed shall ordinarily be 30 years from the date prescribed in the sanad except in the Bombay Suburban District where, on account of its special conditions the period shall ordinarily be fifty years. On the expiry of this or any other period mentioned in the sanad, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment fixed shall be liable to revision in accordance with the Code and the rules and orders for the time being in force thereunder.

(*b*) When land used for non-agricultural purposes is assessed under the provisions of rules 81 to 85, a sanad shall be granted in the Form M if the land is used for building purposes, in form NI if the land is used temporarily for a non-agricultural purpose other than building and in Form N in all other cases.

88. *Commuting altered assessment.*—In cases where the altered assessment is fixed under rule 87 the assessment, if not exceeding one rupee, instead of being rendered annually, may, with the consent of the Collector, be commuted by the occupant for a lump payment of its present value, for the residual term for which that assessment is fixed, at a rate of interest not more than half per cent. above the market rate at the time of commutation upon public securities the interest on which is liable to income-tax; and a note of such payment or commutation shall be made in or at the foot of the sanad granted in respect of the land under Rule 87 (*b*) on the expiry of the period for which it has been commuted the assessment, whether revised or not, shall again be leviable unless it is again commuted under this rule.

Note.—The commutation is permissive and is to be restricted to cases where the annual revenue is so small as not to be worth annual collection(G. R. 4578-18) Such cases must be so rare that commutations will practically not be allowed.

89. *Maps showing altered assessment.*—(1) Each Collector shall permanently maintain in his office and from time to time as required renew a map of his district upon which it shall be clearly shown by distinct colours, or otherwise as may be convenient, under which of the foregoing rules and classes all the land of the district falls.

(2) When an area is very small, or when its limits intersect a village in an intricate way, insects on a larger scale or a supplementary file of village maps shall be provided.

(3) Whenever any area is brought under a different class or rate by a fresh order, the map shall be corrected and the authority for the change noted over the Collector's signature on the map.

(4) Each Mamlatdar shall similarly maintain a map of his taluka with similar supplements which shall be similarly corrected and endorsed by the Collector at each change.

(5) These maps shall be open to public inspection free of charge during all office hours.

"90. *Levy of rate when land assessed for a purpose other than building is used for building.*—(1) When any holding which has been assessed or is held for non-agricultural purposes other than building, is with the Collector's permission, used for residential building, the Collector shall levy the rate of assessment imposed on land used for such purpose in the locality."

(2) In such cases the holder shall be given a new sanad in the form prescribed from time to time under rule 87 (*b*).

91. *Re-imposition of agricultural assessment.*—(1) When any holding, which has been assessed or of which the assessment has been altered for any non-agricultural use, is used for agriculture only, the Collector may on the application of the holder, remove the non-agricultural assessment and impose either the old agricultural assessment, if any, and if the settlement period has not expired ; or may impose in other cases a new agricultural assessment equivalent to that imposed on other similar agricultural lands in the vicinity.

(2) Such agricultural assessments shall be subject to the same conditions as to periodical revision and the same rules and provisions of law as if they had been imposed at the ordinary revenue settlement of the village in which land is situated.

Provided that if the holder has paid any lump sum as commuted assessment for any period, he shall not be entitled to any refund or to any change in the conditions of his lease or agreement until the period for which the commutation has been paid expires.

ALTERATION OF ASSESSMEMT IN SURVEYED AND SETTLED ALIENATED VILLAGES.

92. *Application of rules ; certain powers of Collector to be exercised by holder with commission.*—When land assessed for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall, unless otherwise directed by Government, be altered under sub-section (2) of section 48 by the Collector in accordance with rules 81 to 87 inclusive :

Provided that the powers of the Collector under those rules, other than the power of estimating the full market value and fixing standard rates of assessment, shall be exercised by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under section 65 or 66 upon such holder or holders under section 88 (*d*).

93. *Fines.*—For the purposes of determining the amounts of the fines leviable under section 66, rules 99 to 102 shall be applied :

Provided that the powers of the Collector under section 65 or 66 respectively shall be exercised in accordance with the provisions of

rules 99 to 102 by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under section 65 or 66 respectively upon such holder or holders under section 88 (*d*).

94. *Applications how to be dealt with.*—(1) When the Collector receives an application under section 65 for permission to use for any other purpose land assessed for purposes of agriculture only, he shall forthwith forward to the holder or holders of the alienated village in which the land is situated a copy of the application and shall as soon as possible thereafter also forward to such holder or holders a letter showing the altered assessment leviable upon use of the land for such other purpose and requesting such holder or holders to intimate within one month of the date of the letter whether the application should be granted or refused.

(2) If such holder or holders intimate that the application should be granted it shall be granted accordingly; but if such holder or any of such holders intimate that the appliation should be refused or do not make any intimation within the time specified, the application shall be refused.

95. *Procedure when information of use for non-agricultural purposes is received.*—(1) When the Collector receives information that any inferior holder of land assessed for purposes of agriculture only has rendered himself liable to any of the penalties specified in section 66 the Collector shall address to the holder or holders of the alienated village a letter communicating the information and the liabilities of the holder of the said land and showing the altered assessment or fine or both leviable and requesting the holder or holders of the alienated village to intimate within such time as the Collector considers reasonable whether the liabilities should or should not be enforced.

(2) If such holder or holders intimate that the liabilities should be enforced, they shall be enforced accordingly; but if such holder or any of such holders intimate that the liabilities should not be enforced or do not make any intimation within the time specified or within such further time as may specially be granted, they shall not be enforced.

"(3) Provided that the Collector shall not pass any such orders in respect of land specified in a commission conferring the powers of a Collector under section 66 upon the holder or holders of the alienated village under section 88 (*d*) but shall forthwith communicate the information for the orders of such holder or holders of the alienated village; and also provide that any such information may be received and acted upon by such holder or holders of the alienated village direct."

(G. R., R. D., 1890-28 of 15th May 1931)

96. *Communication of orders and levy of assessment.*—(1) The Collector, or the holder or holders of the alienated village, as the case may be, shall communicate any orders passed by him or them under these rules to the Mamlatdar, who shall communicate such orders to the applicant or holder of the land concerned and shall direct the village officers to levy any altered assessment or fine so ordered.

(2) Such altered assessment or fine shall be levied in the same manner as other land revenue and shall be paid wholly to the holder

or holders of the alienated village when such holder or holders are entitled to the whole land revenue of the village or proportionately to their shares when such holder or holders are entitled to a proportion only of the land revenue in accordance with the conditions under which they hold the alienated village.

97. *Kadim and sheri land exempted.*—Nothing in rules 92 to 95 shall be deemed to apply to lands which are alienated lands apart from the alienation of the village in which they are situated, nor alienated land in the possession of and occupied in person by the holder or holders of the alienated village.

Note—Tenants-at-will do not deprive the Inamdar of his possession ; but "permanent" or occupancy tenants do. The distinction between permanent tenants and tenants-at-will is often hard to draw, when not defined by written leases (I. L. R. 17 Bom. 475, 29 Bom. 415), but the "sutidars" of Kurla are admitted to be permanent.

98. *Meaning of "holder" of alienated village.*—For the purposes of rules 92 to 97 the holder or holders of any alienated village shall be taken to mean the actual holder or holders or in cases of doubt the person or persons whose name or names is or are registered as such in the register kept under section 53.

PERMISSION FOR NON-AGRICULTURAL USE AND FINES IN CASES OF UNAUTHORIZED USE.

99. *No fine ordinarily to be imposed under section 65*—No fine shall ordinarily be imposed under section 65, that is to say, where land assessed or held for purposes of agriculture is used for any purpose unconnected with agriculture with the permission of the Collector.

100. *Maximum fine leviable under section 66.*—Any fine imposed by the Collector under section 66 shall be fixed by him at his discretion subject to rule 101 and shall not exceed ten times the altered assessment imposed under this Chapter."

(G. R., R. D., 1890-28 of 15th May 1931).

"101. *Maximum fine leviable for unauthorised use for building, brick making etc.*—When the material of the soil of any occupied land is employed for bricks or tiles or pottery or for any other non-agricultural purposes, without the permission of the Collector being first obtained and the value of the land is thereby adversely affected, a fine may be levied at a rate not exceeding double the rate prescribed in rule 100."

(G. R., R. D., 1890-28 of 15th May 1931).

102. *Saving of special cases dealt with by Government.*—Notwithstanding anything contained in rules 99 to 101, the Collector may, in such cases as Government deem exceptional or unusual, impose a fine, whether under section 65 or under section 66, at such rate as may be fixed by Government in that behalf.

Note.—No extra high maximum may be generally prescribed for certain areas ; but an individual order in each case is necessary (G. R. 1881-97).

103. *Limit of fine under section 61.*—The limit of fine to be levied under section 61, when land is unauthorizedly occupied and used for

any non-agricultural purpose, shall be double the amount of the fine that would be leviable under section 65 and rule 100 if the same land being in lawful occupation had been used by the holder for the same purpose without the permission of the Collector :

"Provided that a fine up to Rs. 100 may be levied in any such case irrespective of the area of the land involved."

(G. R., R. D., 1890-28 of 15th May 1931).

CHAPTER XV.

RECORD OF RIGHTS.

104. The record of rights and mutations, the Index of lands and the register of disputed cases shall be kept in forms O, P, and Q respectively ; provided that in sites surveyed under section 131, these forms may be modified by the Director of Land Records to suit the requirements of cities, the record of rights being termed the "Property Register." After the original preparation of the Record, all later entries altering or transferring those rights are termed "mutations."

Notes.—The method of writing the record has been changed. The rules have therefore been modified as per G. R. 352-28 of 10-4-29.

The subject of the Record of Rights was first mooted by the Government of India in their letter 2770-369 dated 1-12-97 and it was intended purely for Settlement purposes In April 1898 orders to make experiments were received. The first draft was prepared by Sir J. W. P. Muir Mackenzie, and the experiments were carried out in 1899 by Messrs. A. B. Fforde, F. B. Young, H. B. Sathe. The first Act was passed in 1903 (IV of 1903) but this was repealed and incorporoated in the L. R. C. of 1913. The Record has now also become the basis of the accounts of liability to pay land revenue : and also of the audit of alienations of land revenue.

105. (1) When the record of rights is first introduced in any village, as soon as the preparation has begun, the vilage accountant shall cause notice thereof to be given by beat of drum and shall post up a written notice in the chavdi. He shall also write at the head of the record a certificate that such notice was duly given.

(2) Prior to the preparation of the fair copy of the record of rights, the villag e accountant shall prepare a rough copy of the record in the form of an Index of Lands with all rights noted against each parcel. Until the fair copy is prepared, such rough copy shall be used as and be deemed to be the register of mutations, and the provisions of the Code and of these rules which apply to the said register shall apply so far as may be to such rough copy, and the provisions of rule 111 respecting the introduction of the re-written copy of the index shall apply so far as may be to the introduction of this first fair copy of the record.

Note—The assistance of all village servants is of course required (G. R. 4950-1902).

106. (1) Every mutation shall be posted in the Diary by the village accountant and examined by the Circle Inspector and shall be read out and explained by the latter to all persons present.

(2) The Circle Inspector shall initial all entries so examined.

(3) If any person adversely affected admits an entry to be correct the Circle Inspector shall note the admission.

(4) If any interested person disputes the correctness of an entry, the Circle Inspector shall not erase but shall correct any errors admitted by all parties either by bracketing the errors and inserting the correct entries by interlineation or side note or by an entirely fresh entry in either case authenticated by his signature: if the error is not admitted, he shall enter the dispute in the Register of Disputed Cases (form Q), and it shall be disposed of under rule 108.

Dispute.—The dispute must be between holders; a claim against Government must be decided under sec. 37 and the result recorded: it cannot be dealt. with under this Chapter.

107. (1) The entries in the Diary of mutations shall be further tested and revised, by a revenue officer not lower in rank than a Mamlatdar's First Karkun.

(2) Any entry found by such officer to be correct shall be certified by him.

(3) Any entry found to be incorrect shall, if no dispute is brought to his notice, be corrected as in rule 106 (4) and certified by him: such correction shall be a new mutation for the purpose of section 135 D (2).

(4) Where such officer finds that there is a dispute regarding any entry examined by him, he shall enter the dispute in the register of disputed cases and the dispute shall be disposed of under rule 108. Such officer shall, wherever possible, himself dispose of the dispute under the said rule forthwith.

(5) One appeal only shall lie against any entry certified under sub-rule (3) or corrected under sub-rule (3) otherwise than by the Collector himself, to the same authority to which an appeal lies in a case decided under rule 108.

Correction.—The correction may possibly be made without the knowledge of the opponent or some interested third party. This provision secures notice to them also.

Appeal.—There is *no appeal* against Collector's order. Chap. XIII, of the L. R. C., as to appeals and revision does not apply to the Records of Rights. Therefore papers cannot be called for or proceedings revised otherwise than as provided in this chapter, that is to say, otherwise than during inspection and test in the village. If a party presents an appeal this can be decided by taking evidence, etcl or on local enquiry by the Appellate Officer. When a party makes a formal appea no entry in the Dispute Register is needed, if not already made; as the appellate decision can be posted direct to the Mutation Register (V. F. VII) and will operate as a decision of the dispute. (*Andersan*).

108. (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar, but may be disposed of by the District Inspector of Land

Records or by any revenue officer of superior rank to that of First Karkun.

(2) The enquiry shall ordinarily be made in the village in which the land is situate or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register, and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been passed by the Mamlatdar's first karkun, the Mamlatdar, the District Idspector or a revenue officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer or an officer appointed by Government in this behalf, and if the order has been passed by the Sub-Divisional Officer, the Superintendent of Land Records or by a Revenue Officer of not lower rank than that of a Deputy Collector, to the Coll ctor; and must be presented within 60 days from the day the appellant first knew it had been made The decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector and no second appeal in any case.

(6) If the appellate order confirms the previous decision, it should be noted in the remarks column, against the confirmed entry. If it alters it, the change shall be entered as a fresh, but not disputable, mutation.

109. Entries in the Diary of mutations shall ordinarily be transferred to the Index of lands as soon as certified.

110. The index of lands shall be re-written incorporating all mutations recorded up to the date prescribed by the sub divisional officer whenever that officer, in view of the number of entries in the Diary of mutations, shall so direct.

111. (1) When the re-written Index of land is reported to be complete, the Collector or sub-divisional officer shall fix a date for its inspection and shall cause notice thereof to be given calling upon all persons interested to appear on such date at a specified place in or in the immediate vicinity of the village concerned, and notifying that any such person may before such date inspect the Index on application.

(2) On the date at the place appointed, the Collector or subdivisional officer shall compare the new copy with the old Index and the diary of mutations, cause such portions thereof to be read out as any of the persons present may desire to hear, read and make any correction that may be necessary.

(3) Such officer shall then sign the new Index and subscribe below it a certificate that the entries therein have been duly tested and found correct.

112. Where a revenue officer or a village accountant issues any summons or notice under section 135E (1) or G, he shall follow the provisions of section 190 or 191 as the case may be.

113. Record of such tenancies as are not perpetual or notified under section 135B (2) shall be kept in form R. The enties therein shall be tested by the Circle Inspector when he examines the crops, and by other officers of higher rank. When any error is discovered by any of these inspecting officers, they may correct it and initial the

corrected entry. The register will be compiled every ten years, but there will be no notification. When any dispute as to such tenancies is found to exist, a note of the fact may be made in the register, but no entry will be made in the register of disputed cases, nor will any revenue officer decide the dispute.

CHAPTER XVI.

RECOVERY OF LAND REVENUE.

114. *Land revenue where and to whom to be paid.*—All payments of land revenue shall be made to the officers of the village in which such revenue is due: provided that, with the sanction of the Collector, such payment may in special cases be made into a Government Treasury within the district to which the payment appertains.

Notes.—For collection of inamdars' rents directly as Government dues, see sec. 94A. When there is no watandar kulkarni, or when the watandar has commuted (G. R. 8733-16), this power cannot be used. Inamdars must stamp the receipts they give to occupants or to the kulkarni for sums exceeding Rs. 20. (G. R, 2641-84); but not receipts given to their tenants on "sheri" lands.

Payment is ordinarily to be made to the patel in the presence of the accountant.

115 Except in Sind, Ratnagiri, Kolaba, Kanara and Thana, Collectors shall, with the sanction of the Commissioner, classify the villages in their districts into the following three classes :—

Class I : kharif villages in ghat districts and elsewhere where it is necessary that the revenue be secured specially early ;

Class II : kharif villages in Gujarat and elsewhere where no such special provision is necessary ;

Class III : rabi villages generally.

116. *Dates on which agricultural revenue to be paid.*—(1) The land revenue payable in respect of lands assessed for purposes of agriculture only shall be paid in equal or nearly equal instalments on the following dates :—

(*a*) in Sind—for kharif cultivation the 15th February and the 15th April, and for rabi cultivation the 15th May and the 15th June, (Notification 6961-24 July 1927).

(*b*) in Thana district—the 1st January and the 16th February ;

(*c*) and in villages classed under rule 115 in—

Class I, on the 5th December and the 5th January ;

Class II, on the 5th January and the 5th March ;

Class III, and the whole of the District of Ratnagiri, Kanara and Kolaba the 5th February and the 5th April :

(2) Provided that—

(*i*) in any district or in any part of a district where the dates above specified are found unsuitable, the Collector may, with the sanction of the Commissioner, fix such other dates as he may deem expedient according to the circumstances of the season and of the villages concerned and the character of the crops generlly sown therein;

(*ii*) Where the annual amount of the revenue is five rupees or under, it shall be payable in a lump sum at the date of the first instalment;

(*iii*) if the person from whom the year's revenue is due so wishes, he may in any case pay the whole amount at once instead of by instalments.

117. *Other land revenue.*—Land revenue, other than that due upon agricultural land, shall ordinarily be paid in one instalment, at the time of the first instalment of agricultural land revenue or on such other date as the Collector thinks fit in any case to prescribe; but in special cases the Collector may in his discretion allow the payment to be made in two or more instalments on dates which shall be fixed by him.

118. *Form of notice of demand.*—The notice of demand to be issued under section 152 shall be in form S.

119. *Dulies of village officers.*—(*a*) It shall be the duty of the village officers to warn landholders verbally from time to time of the dates on which their instalments are due, and to use their influence in securing prompt payment without resort to notices of demand or other compulsory processes.

(*b*) Village officers shall report to the Mamlatdar the names of landholders who, they have reason to believe, will not punctually pay their instalments, in order that precautionary measures under sections 140-145 may be, when necessary, adopted in time: and shall immediately report any case where the produce of any land on which the assessment has not been paid is attached by a Civil Court.

Restriction upon distraint.—For restrsctions upon distraints, see sec. 60 (1), Civil Procedure Code, V of 1908. There is no *form* of distraint order (G. R. 9401-83 and 1302-89). Dwelling houses may not be broken open (G. R. No. 9982 of 1884). It is under consideration whether Civil Courts should be required to notify the Collector when they attach crops (G. R. No. 9188 Of 1916).

Notes.—Whenever the consolidated demand is ordered to be half suspended or half remitted, the division shall be so made that no fraction less than a whole anna shall be taken in the portion to be suspended or remitted.

Whenever an amount is suspended, the suspension shall always be conditional upon the payment of the amount which is not suspended. When, for instance, half the revenue is suspended, but any revenue-payer defaults in respect of any remaining unsuspended revenue the suspension shall be cancelled so that the suspended amount also becomes due for the current year.

CHAPTER XVII.

DISPOSAL OF FORFEITED LAND.

120. *Restoration or grant on inalienable tenure.*—Where the Collector thinks it advisable that the holding of a defaulter should, after forfeiture, be either restored to the defaulter or given out with or without any occupancy price to any other person, subject to the condition that he shall not transfer it in any way to another person without the previous sanction in writing of the Collector, the Collector, after having declared such holding to be forfeited to Government, may, without

having resort to any of the other means provided in the Code for the recovery of an arrear of land revenue, restore, or give it out (as the case may be) accordingly, and shall take an agreement in form T.

Notes.—Land cannot be forfeited for arrears of Local Fund Cess (G. R. No. 5673-28 of 28th August 1930).

Sale expenses are levied even if arrears are paid on the day of sale (G. R. 9482-92, 5304-94). A certificate of sale must always be given (G. R. 3009-80) and sent to the Sub-Registrar (sec. 89 (4), Act XVI of 1908). The form is discussed in G. R. 6023-83; and it must be stamped (Art. 16, Sch. I, Stamp Act), and the purchaser must execute a kabulayat (G. R. 2600-83).

Where Rule 120 is not applied, resort should not be had to forfeiture of land unless it appears to the Collector that the arrear cannot be readily recovered by any of the other means provided in Chapter XI of the Code.

121. *Partial forfeiture.*—Where the land in respect of which an arrear is due consists of two or more survey numbers or of two or more sub-divisions of survey numbers or of two or more estates separately assessed, and the Collector is of opinion that the whole amount of such arrear could be realized by the sale of less than all of such survey numbers, portion or estates, he shall restrict forfeiture to such one or more survey numbers or the sub-divisions as prove sufficient to realise the arrears.

122. *Deleted, as it merely repeated sec. 117 B (i).*

123. *Disposal of forfeited land otherwise than by sale in certain cases.*—Forfeited land shall not be put up for sale in the follwing cases, but shall be disposed of in the manner hereinafter prescribed for the particular case under which it falls, namely:—

(*a*) Where the Collector thinks that, owing to general agricultural depression or to the want of demand for such land, or to a combination of the neighbouring land-holders, or for any other special cause, there will be no bidders at the sale, or that the highest amount bid will be considerably below the reasonable value, he shall cause the land to be entered in the land records as unoccupied.

(*b*) Where the Collector finds that the land is likely to be required either immediately or within a reasonable time, for any of the purposes described in section 38, he shall take steps at once to assign it for such purpose.

(*c*) In the case of a forfeited alienated holding, where the Collector considers it expedient to allow the land to continue in the possession of its actual holder or tenant, as an occupant of unalienated land, annulling the alienation, he shall pass orders accordingly for its continuance.

(*d*) In the case of an inferior holding forfeited on account of an arrear of rent or land revenue due to a superior holder, for the recovery oi which assistance is being rendered under sections 86 and 87, the Collector may in his discretion transfer the holding to the superior holder thereof, subject to such tenures, rights, incumbrances or equities (if any) as he may direct under section 56.

(*e*) In any other case, where the Collector considers it is expedient that the disposal of a forfeited holding should be otherwise than by sale, and obtains the sanction of Government thereto, he shall dispose of it in accordance with the particular orders for its disposal passed or sanctioned by Government.

Note.—It may be inexpedient to lose the tenant, even if the superior holder be bankrupt.

124. *Forfeited land to be sold for recovery of arrears in other cases.*—In cases not falling under rule 120, 121, 122 or 123, forfeited land shall, subject to the provisions of rule 126, be put up for sale for recovery of the arrears due.

125. *Rules and orders applicable to sales of forfeited land.*—(1) Every sale of forfeited land shall be made subject to the same rules as are applicable to the sale of unoccupied unalienated land so far as the same are consistent with the provisions of Chapter XI.

(2) The Collector should ordinarily set aside the sale under section 179, if in his opinion—

(*a*) the bidding at such sale has not been *bona fide*; or

(*b*) there has been collusion to recover the holding without payment in full of the arrears and charges due to Government or the superior holder; or

(*c*) there has been some material irregularity or mistake or fraud, in publishing or conducting such sale, which is likely to have affected the amount of the highest bid or otherwise to have caused substantial injury to any person.

Notes.—The purchaser of forfeited land, like purchasers of unoccupied land, passes an agreement in Form F or H (with or without Form I) or if in Hill Stations, or certain Municipal areas, or for certain kinds of *leasehold* land then O. E, O-F, O-G, O-H or O-I as may be applicable.

No permission to occupy (Form K) is needed since sec. 181 requires the Collector to put him in possession; but a sale-certificate should be issued on impressed stamp paper : so printed form is provided (*Anderson*).

126. *Restoration of forfeited land.*—(1) It shall be the discretion of the Collector to restore any forfeited land at any time previous to any sale or other disposal under these rules on payment of the arrear in respect of which the forfeiture was incurred together with all costs and charges lawfully due by the defaulter, or on security being given to his satisfaction for the payment of the said arrear, costs and charge within a reasonable period:

Provided that no forfeited alienated holding, which is not held for service, shall be restored as alienated land without the previous sanction of -

(*a*) The Commissioner if it is assessed at more than Rs. 20;

(*b*) Government if it is assessed at more than Rs. 50.

(2) Where in the case of a forfeited alienated land held for service by a watandar the Collector is satisfied that the failure to pay the land revenue due thereupon arose solely from the inability of the defaulter to meet the demand, he may deduct from the forfeited land a portion of which the price would be likely to equal the amount of the arrear recoverable, and deal with such portion in accordance with such of rules 122 to 125 as are applicable, and restore the remainder of the forfeited land to the defaulter, or may restore the entire forfeited land to the defaulter, and either remit the arrear of land revenue due, or make such arrangements for its being paid in the future as he thinks fit.

CHAPTER XVIII.

SALES.

127. *Auction sales under rule 42 where to be held.*—Auctions held under rules 37 (1), 41, 42 and 50 (2) shall ordinarily be conducted in the town or village in which the land is situated.

Note.—It is of course desirable that most other auctions should similarly be conducted near the property to be sold. Sometimes, however, for some contracts and farms there is better bidding at the taluka head-quarters than at a distant village.

128. *Upset price may be fixed.*—Where any land or other property is sold by public auction, an upset price shall, if the Collector thinks fit, be placed thereon.

129. *Sales how to be conducted.*—(1) Every sale by auction, under these rules, or in pursuance of any of the provisions of the Code, shall be conducted, so far as may be, in accordance with sections 165, 166, 170 to 177 both inclusive and 180. The proclamation and written notice of sale required to be issued under sections 165 and 166 shall be in one of the forms U or W, with such modifications, if any, as may be necessary :

(2) Provided that, in conducting the follwing sales, namely :—

(*a*) sales of the right of grazing and of the right to take or cut grass in waste lands,

(*b*) sales of the right to take the fruit of specified Government trees for a specified period, and

(*c*) sales of dead-wood,

the procedure shall be in accordance with such orders as may from time to time be made by the Collector either generally or in a particular case instead of the procedure prescribed in sections 165 and 166.

Notes.—When a bidder at an auction defaults in fulfilling his contract, he can be sued for damages, if any are provable (G. R. 373-12), in addition to any other forfeitures provided by the Code.

After forfeiture there could be no other claim to which the footnotes in Form U could apply.

CHAPTER XIX.

APPEALS.

130. *Form and contents.*—(1) Every appeal shall be made in the form of a petition addressed to the authority to whom an appeal lies, and shall be drawn up in concise, intelligible and respectful language; and shall bear the signature or mark of the appellant or of his duly authorized agent.

(2) The petition should give the following particulars :—

the name, father's name, occupation and place of residence or address of the appellant ;

the name and address of the writer of the petition.

(3) The petition should also contain a brief and unexaggerated statement of the facts on which the appellant relies in support of his

appeal and the grounds of the appellant's objection to the order or decision appealed against.

Notes—This chapter does not apply to appeals under the Record of Rights (See rule 108, etc).

Applications for compassionate allowances from discharged Revenue officers are treated as "appeals" (G. R. No. 4997-08).

131. *Presentation.*—(1) Appeals may either be presented to the authority to whom an appeal lies in person or be forwarded to him by post.

(2) Where an appeal is sent by post, the postage on the cover containing it must invariably be fully prepaid.

Note.—In dealing with Civil Court darkhasts, the Collector is not subject to appeals to or revision by the Commissioner, but only by the Court. The Collector cannot set aside a darkhast sale, but can only confirm or refuse to confirm it.

132. *Rejection of appeals without enquiry into their merits.*—Inattention in any material respect to the requirements of rule 130 or 131 will render an appeal liable to be rejected without enquiry into its merits.

CHAPTER XX.

PENALTIES.

133. *Breaches of the rules how punishable.*—Breaches of rules hereunder mentioned shall be punishable on conviction before a Magistrate as follows :—

(1) Whoever commits a breach of rules 67, 68, 69, 70 or 78, by excavating or removing earth, stone, kankar, sand, muram or any other material of the soil without due authority :

with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees.

(2) Whoever commits a breach of rules 75, 76, 77 or 79, by using or excavating land in a prohibited manner, or for a prohibited purpose, without the due authority :

with fine which may extend to five hundred rupees.

(3) Breach of any of rules 67, 70, 72 (*b*), 119 (*a*), 119 (*b*), 134 or 135 committed by a village officer or city surveyor—

(*a*) by taking or levying any fees for preparing any document or copy or extract of any document which he is bound by any such rule to prepare without charge, or

(*b*) by charging any fee (*i*) for granting any permission or inspection which he is authorized by any such rule to grant, or (*ii*) for making any search for records, for which no fee can lawfully be charged,

(*c*) by refusing without reasonable cause an inspection of land records which he is required by any such rule to permit :

with imprisonment which may extend to one month, or

with fine which may extend to five hundered rupees,

(*d*) by refusing or neglecting to prepare any document or copy or extract of any document, or to sign or to certify the same, in the manner prescribed by any such rule, or

(*e*) by neglecting to make any report or to perform any duty which he is required by any such rule to make or to perform :
with fine which may extend to five hundred rupees.

Notes.—'Magistrate' means *any* Magistrate (G. R. 3103-83; H. C. Ruling 46-16, 11, 93).

Fines are recovered as arrears of land revenue under sec. 187 (not by the ordinary police procedure) (*G.* R. 4697-85).

CHAPTER XXI.

CERTAIN DOCUMENTS TO BE PREPARED FREE OF CHARGE.

134. *Village accountants to prepare certain documents without charge when so desired.*—(1) It shall be the duty of every village accountant, if so requested by any occupant, or by any person about to become an occupant, of land in his village, to prepare any agreement that may be necessary under either rules 37, 43, 46 or 120 without fee or charge of any kind, and any notice of relinquishment under section 74.

(2) A village accountant who prepares any such agreement or notice shall affix his signature beneath the words "written by" on the lower left-hand corner of such agreement or notice.

CHAPTER XXII.

COPIES, INSPECTION AND SEARCHES.

I.—Inspection.

135. *Certain documents to be open to inspection.*—Documents, maps, registers, accounts and records, the right of inspection of which is provided for in section 91 of the Indian Registration Act (XVI of 1908) and in section 213 and all *public documents* which any person has, under the provisions of any law for the time being in force, a right to inspect, shall be open to inspection in the office of the officer in charge of the same during the usual office hours every day, except Sundays and public holidays, on payment of the fee hereinafter prescribed in this behalf : and not otherwise.

Provided that no fee shall be charged for inspection (with the permission of the Officer in charge) of the Enquiry Proceedings or register or Property Register of a City Survey by a Municipal Official for municipal purposes (Notification R. 5228/24—13-12-27).

Provided further that no fee shall be charged for the inspection of village records by an officer or a member of any Co-operative Society for the business of the Society (Notification 248/28-3-10-28.)

Notes.—These rules do not apply to Bombay City (see rules in R. 2374-14 under sec. 40, Bombay City Land Revenue Act of 1876) or to Civil or Criminal Courts (see High Court Circulars). For copies from the records of the Registrar of Co-operative Societies, see R. 3047-14. For Registration Department Records, see Notification R. 7368-81.

The documents referred to in sec. 213 are " all maps and land records".

These are defined in sec. 3 (*26*).

Persons suing *in forma pauperis* cannot have free copies (G. R. No. 3098 of 78).

II.—Extracts and copies.

136. *Uncertified copies.*-(1) No uncertified copy or extract shall be obtainable of or from any documents other than those prescribed in rule 135, nor otherwise than under this rule.

(2) Any person may himself or by an agent make a copy of any public document or of any portion of any public document of which he has duly obtained inspection, but no copy so made shall be certified by any public officer.

Notes.—Local Boards should be supplied free of charge with copies of, or information from, public documents provided that copies from preliminary survey records shall only be given with the sanction of the Collector.

The form of this certificate is prescribed by sec. 76 of the Evidence Act.

137. *Village accountants to grant certified copies of certain records.*-

(1) So long as the originals are in their charge, all village accountants, and in the cities surveyed under section 131 all City Surveyors, shall themselves receive and grant applications for certified copies of any serial number (entry) in the record of rights, register of mutations (Property Register) or of tenancies, or of a map of a survey number or sub-division thereof.

(2) The Collector may, in his discretion in respect of his whole district or any part thereof, also empower village accountants to receive and grant applications for certified copies of village forms Nos. (old) 1, 3, 5, 6, 9, 11, 13, 14 and 18; (new) Nos. I, III, VII—XII combined, VIII-A and B, IX, XI, XII, XIV and XV, and of orders for levying miscellaneous land revenue.

(3) Such copies shall after comparison with the original be certified by the accountant as true, and given to the applicants direct within ten days from their application.

Note.—The period is determined by the orders in the A. B. C. D. lists of Records.

138. *Mamlatdars generally to grant certfiied copies of village papers.*-Except as provided in rule 137 every application for a certified copy of any public document in the charge of a village accountant shall be made to the Mamlatdar to whom he is subordinate, who shall cause the copy to be prepared, compared with the original, and signed in token of correctness by the village accountant. The copy shall then be certified and made over to the applicant by the Mamlatdar.

139. *Officer in charge of document generally to grant cetified copy.*—In all other cases the officer in charge of any public document described in rule 135 shall, and in the case of any public document or portion thereof other than those described in rule 135 may, cause to be prepared and give certified copies of the same or of any portion thereof under his own signature to any person applying for such copy on payment of the fees hereinafter prescribed :

Provided that (*a*) no copy shall be granted of any record, map or plan which has been printed or lithographed and published under the authority of Government and is on sale; but small extracts of not more than five fields or plots may be granted under rule 142 (6);

(*b*) that no copy of any document is to be given in any case in which the grant would be prejudicial to the public interest.

Notes.—(*i*) Petitions of parties would not be documents maintained under the provisions of or for the purposes of the Act (sec 3 (*26*)), nor are they records of the proceedings of any public officer, and therefore fall entirely into the optional class.

(*ii*) When an original document is filed in a case under the Code, including cash allowance cases and general revenue matters (R. 2071-8) concerning private parties only, and the parties then apply for its return, a certified copy should be retained on the record, unless (G. R. 4492-98) the period of appeal or revision has already expired. This rule was extended to Mamlatdars' Courts (J. 3394-81) and to Watan Proceedings (G. R. 148-86). No court-fee is leviable on such applications (*B. G. G.*, Part I, P. 368 of 1887). The originals of Government Records should therefore always be brought back (*Anderson*).

140. *Receipt to be endorsed on copy.*—On every certified copy or extract granted under these rules and delivered otherwise than through the agency of the value payable post there shall be endorsed by the officer who receives the fee for the same a receipt in the following form:-

Received Rs. a. , as fee for this certified copy.

Dated of 19 .

(Signed) A. B.

III.—Searches.

141. *Search fees when to be charged.*—When an application is made for an inspection or copy of any public document or of any portion of a public document and such application does not distinctly describe the number, date and nature of the document required ; or if the description given in such application is incorrect, and it shall in consequence be necessary for the officer in charge of the document to search his records in order to find it, a fee, at the rate hereinafter prescribed, shall be payable by the applicant for such search whether the inspection or copy for which he applies, on examination of the said document by the said officer, be granted or not.

IV.—Fees.

142. *Fees.*—The following fees shall be levied in cash under these rules :—

(1) For an inspection granted under Rule 135 for each day on which inspection is made.	Twelve annas an hour for each applicant subject to a minimum of Rs. 1-8-0, to be paid in advance.
(2) For every certified copy of a public document not falling under Articles 3, 4 and 5 of this table—	
(*a*) if the original be in English, for every 25 words or fraction of 25 words :	Nine pies.
(*b*) if the original be in the vernacular, for every 33 words or fraction of 33 words :	Nine pies.

(*c*) (*i*) for examining or comparing 100 words or fraction of 100 words, whether the original be in English or the vernacular :	Nine pies.
(*ii*) for comparing copies of maps etc., under Articles (5), (6) and (7) out of the copy fee there will be credited as comparing fee :	One-fourth.
(*d*) if the original be in a tabular form, whether in English or the vernacular :	Twice the rates, respectively, named in clauses (*a*) and (*b*).
(*e*) if the copy be given on a printed form, for every sheet or page of forms used :	Three pies *plus* the fees at the rates herein prescribed for the manuscript additions made on the form.
(*f*) For each form of extract of a City Property Register :	Two annas.
(*g*) When no printed form is supplied or available, for each sheet of foolscap paper used in preparing the copy other than that of a map or plan under Articles (5), (6) and (7) :	Six pies.
(3) For every certified extract from a register of alienations granted under section 53 :	One anna for every rupee of the amount of alienated revenue, or if the sanad lost or destroyed had been granted under Bombay Act IV of 1868 or under section 133, a sum equal to one-half of the survey fee which the holder of the building site included in the sanad would be liable to pay under section 132 if not exempted by the second paragraph of that section. Povided that the fee shall in no case exceed Rs. 10 or be less than 8 annas.
(4) For every certified copy of a serial number (or entry) in the record of rights, register of mutations, or register of tenancies, and for every Holding Sheet in V. F. VIII-A (including the printed form), and in villages to which rule 137 (2) applies for every certified copy of each entry in the forms named, or for each khata in V. F. VIII-B : provided that there shall be no charge for correcting the Holding Sheet at any time during the 5 years for which it is current.	One anna.

(4-A) (*i*) For every certified copy of the tabular annewari statement of a village with the annewari decision worked out therein ...	Five annas.
(*ii*) For every certified copy of the decision of the Collector or Mamlatdar not embodying such a form, or of the opinion of the village committee as to the anna valuation	Two annas.
(5) For every certified copy of a map of a survey number or subdivision of a survey number or of any (uncoloured) map of any immovable property prepared under clause (*a*) of section 135 G, or of an entry in a City Property Register;	Two annas.
(6) Subject to proviso (*a*) to rule 139 for every other certified copy of a map of a survey number or of a subdivision or of a field or of any ordinary, (uncoloured) map or plan of any immovable property, or extract of City Survey map, for each field or plot:	Eight annas.
(7) For every certified copy of a map or plan or of any portion of a map or plan not falling under Article (5) or (6) of this table:	Such fee not exceeding fifteen rupees, and not less than one rupee, as the officer who certifies the copy shall determine: provided that no fee exceeding Rs. 5 shall be charged by any officer subordinate to a Collector except with the permission of the Collector, or by an Officer of the Land Records Department except with the permission of the Superintendent of Land Records, to whom he is subordinate.
(8) For every search	One rupee for each year of which the records are searched.
(9) For every authenticated translation of orders, and the reasons therefor, and of exhibits in formal or summary inquiries under the Code:—	
(*a*) for the first 100 or fraction of 100 words:	Eight annas.
(*b*) for every subsequent 100 or fraction of 100 words	Four annas.

Provided that—

(*a*) when any fee is required to be recovered through the agency of the value payable post, postage and postal commission shall be levied

in addition, and when the total amount of fee together with postage and commission includes a fraction of an anna a whole anna shall be levied in place of the fraction :

(*b*) any revenue officer shall be entitled to receive free of any charge a certified copy of the final order recorded in his own case under section 33.

Notes.—The copies or certified extracts from the Record of Rights required to be produced in Civil Courts [sec. 135 H (4)] are free of court-fee stamps (G. of I. Notfn. F. & C. 4353 S. R. 20-7-03). But this exemption does not extend to copies produced in Assistance Suits under sec. 86, which are not Civil Suits (R. 6507-18).

Translators may keep three-fourths of the fee, if the work is done out of office hours (G. R. 3101-83).

The V. P. commission and postage may be paid by affixing service stamps if they are recovered, but it is more convenient to use ordinary stamps.

142. (*b*). While recovering copying and comparing fees, any amount less than six pies shall be remitted, and six pies or more shall be rounded to the extent of whole anna.

143. *Fees how to be paid.*—Every fee payable in accordance with the foregoing table shall either be paid in advance or recovered in pursuance of a specific request through the agency of the value payable post.

Note.—Fees held in deposit must be kept in a separate box under seal of the Record Karkun in the Treasury if there is one : or in the Presidency Town, in a secure place provided with a Police Guard: or, in Sind, in charge of a Munshi who has given security (G. R 4305-08).

V.—Miscellaneous.

144. *Applications how to be made.*—Every application under rules 135 to 143 must be made in writing, and except in the case of an application for inspection made to a village accountant, must be duly stamped. The application may contain a request that the copy, extract, or translation be forwarded by value payable post (unregistered book packet) to any post Office which is also a Money Order Office.

145. *Stamp duty or court-fee payable in addition.*—Nothing in these rules affects the provisions of the Stamp Act (II of 1899) or Court Fees Act (VII of 1870). The stamp duty or court-fee with which an application, copy or extract made or furnished under these rules may be chargeable is in addition to the fees prescribed herein and care is to be taken that the requirements of the Stamp Act and Court Fees Act are properly fulfilled in respect of every such application, copy or extract.

Note.—Applications for the return of documents (or of certified copies) are free of C. F. stamps (*B. G. G.* 1-368-1887). But if the period of appeal is not expired, copies may be retained at applicant's expense (G. R. 4492-98).

FORM A (Rule 17).

NOTIFICATION OF SETTLEMENT
FOR THE BOMBAY PRESIDENCY EXCLUDING SIND.

(Notice under sections 102 and 103, Land Revenue Code, 1879).

For Revised Settlements.

(For original settlements and revised settlements when the basis of classification is changed see notes below.)

Whereas the Governor of Bombay in Council has been pleased to sanction, under section 102 of the Bombay Land Revenue Code, 1879, the levy of assessments for the revised Settlement, which have been fixed under the provisions of sections 100 and 101 of the said Code in the case of such lands as are now actually used for the purposes of agriculture alone and in the case of unoccupied cultivable lands (but excepting lands classed as *pot kharab*) within the village of of the taluka it is hereby declared under section 102 of the said Code that the said assessments calculated as noted below shall henceforth be leviable *in accordance therewith and shall be fixed for a term of years from to*

Class of land.	Approximate increase or decrease in the rupee of existing assessment.	
	annas	pies
Dry-crop		
Rice, etc.		

2. Notice of the same is hereby given under section 102 of the said Code to all holders of land in respect of which the assessments have been *sanctioned* [approved].

3. By this notice the Revised Settlement shall be deemed to have been introduced in the aforesaid village.

4. But in the case of land which may hereafter be brought under irrigation by the use of water the right to which vests in Government or which is supplied from works constructed and maintained by, or at the instance of, Government, or in the case of land which may be supplied with an increased amount of water from works constructed, repaired or improved at the cost of the State, Government reserve the right of imposing an extra cess or rate, or of increasing any existing rate, for the use of water supplied or increased by such means, whether under the provisions of the Bombay Irrigation Act, 1879, or otherwise.

5. In addition to the fixed assessment, a cess not exceeding such rate as may be allowed by law will be levied under the Bombay Local Fund Act, 1869, or other law for the time being in force, for the purpose of providing funds for expenditure on objects of local public utility and improvement.

6. The reservations respecting the right of Government to trees as made by any general notification at the time of, or after the Survey-Settlement and reproduced in the margin, or as made by any express order at the time of Survey Settlement and recorded in the Settlement Records, are hereby continued. All other rights over trees are conceded to occupants.

Note 1.—In cases of original settlements the following changes should be made in the above form :—

(1) Substitute "original" for "revised" occurring in line 3 of paragraph 1 and in line 1 of paragraph 3.

(2) After the word "assessments" in line 7 of paragraph 1 add "as shown in the accompanying Akarband" and omit "as noted below."

(3) For the words "Approximate increase or decrease in the rupee of existing assessments" in paragraph 1 substitute "Maximum Rates.
Rs. as. "

(4) Substitute the following for paragraph 6:—

"6. The right of Government to trees standing in lands which are now occupied is hereby conceded to the occupants thereof subject to the general excep-

tions entered in the margin and the special exceptions inscribed in the Settlement Records."

Note 2.—In cases of revised settlements in which the classification basis is altered the following changes should be made in the above form :—

(1) *After the word* "assessments" *in line 7 of paragraph 1 add* "as shown in the accompanying Akarband" *and omit* "calculated as noted below."

(2) *For the words* "approximate increase or decrease in the rupee of existing assessment" *in paragraph 1 substitute* "Maximum Rates.

Rs. as. "

Note 3.—This form was finally confirmed in G. R. No. 3012 of 1920.

"FORM AA (Rule 17).

NOTIFICATION OF SETTLEMENT FOR SIND.

(*Notice under sections 102 and 103 of the Bombay Land Revenue Code, 1879*).

For Revised Settlements.

Whereas the Governor in Council has been pleased to sanction, under section 102 of the Bombay Land Revenue Code, 1879, the levy of assessments for the revised settlement in the case of such lands as are now actually used for the purpose of agriculture alone and in the case of unoccupied cultivable lands within the village of in the Taluka of the District. Now, it is hereby declared under section 102 of the said Code that the said assessments as noted below shall hereafter be leviable in accordance therewith and shall be fixed for a term of years commencing with the revenue year and ending with the revenue year.

Class of cultivation.	Sanctioned rates per acre.		
	Flow	Lift.	Combined Flow and Lift
	Rs. a.	Rs. a.	Rs. a.
Rice ...			
Sugarcane ...			
Cotton ...			
Tobacco ...			
Other Kharif ...			
Rabi Wheat ...			
Rabi Oil-seeds ...			
Leguminous crops (Kharif or Rabi) ...			
Huris ...			
Gardens ...			
Watered Dubari ...			
Unwatered Dubari ...			
Adhawa ...			
Barani ...			
Cultivation on river side of band ...			

2. Notice of the same is hereby given under section 102 of the said Code to all holders of land in respect of which the assessments have been sanctioned.

3. By this notice the revised settlement shall be deemed to have been introduced in the aforesaid village."

(G. R., R, D., No. 557-B. dated 5-7-32)

FORM B [Rule 29 (1)].

A FORM OF NOTICE UNDER SECTION 37 (2), AND SUMMONS UNDER SECTIONS 189-190.

To

A. B.

Whereas (*here describe the property or right in or over any property*) is claimed by Government (or by C. D. against Government) notice is hereby given that an enquiry will be held by me in order to decide the said claim.

You are hereby required to attend before me either in person or by a duly authorized agent at o'clock of the noon (at the site in dispute or) at my office (camp at in the taluka) on the day of 19 at which time and place an enquiry into the same claim will be made.

And you are hereby required to produce before me at the above-named time and place any documents or evidence you may wish to be heard.

If you fail to attend in person or by a duly authorized agent in pursuance of this notice the abovementioned claim will be decided in your absence and you will not afterwards be entitled to be heard with respect thereto, except in an appeal filed within 60 days or in a suit civil if filed within one year from the date of my decision.

Dated this day of 19 .

(Signed)

Designation of Officer.

FORM C [Rule 29 (2).

Whereas in accordance with a notice duly issued and served under rule 29 (1) of the Land Revenue Rules an enquiry was held by me on and an order was passed on

Notice is hereby given to all persons concerned and to (*here specify the person to whom this notice is directed*) that my decision and order is that:—(*here summarise the order and define the property or right to which it relates*).

You are not entitled to be heard by me in respect thereof. After my decision has been communicated to you, there remain only two ways by which you can get it altered if you are dissatisfied with it, namely:—

(*i*) You must within 60 days of the date of my decision appeal to (specify the proper appellate authority), and again to the next higher revenue authority, or

(*ii*) within one year from the date of my decision you may (without recourse to the appeals above detailed) and notwithstanding anything contained in section 11 of the Bombay Revenue Jurisdiction Act, 1876, file a suit in the proper Civil Court.

A suit filed more than a year from the date of my decision or from the date of the decision of the last of the appeals if you make them cannot be entertained by any Court.

Dated this day of 19 .

(Signed)

Survey Officer,
or
Collector.

FORM D (Rule 32).

FORMS OF SANAD FOR REVENUE-FREE GRANTS OF LAND FOR RELIGIOUS, CHARITABLE OR EDUCATIONAL EDIFICES OR INSTITUTIONS.

(SANCTIONED BY G. R. 7010 of 1905).

(To be used where the land is granted by Government.)

To

A. B.

Whereas Government have been pleased to grant revenue-free to you, *A. B.*, the possession of the below-mentioned piece of land situated in the village of in the taluka for the purpose of (namely)—

All that piece of land bounded on the North by on the South by , on the East by , and on the West by , and measuring from North to South , and from East to West , comprising square in superficial area, be the same more or less, and bearing No. in the Land Records.

It is hereby declared that the said land shall be continued for ever / for a term of years free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said , [(*a*) on the condition that neither the said land nor any building erected thereupon shall at any time, without the express consent of Government, be diverted either temporarily or permanently to any other than the aforesaid purpose, and that no change or modification shall be made of such purpose, and that in the event of any such unauthorized diversion, change or modification being made, the said land shall thereupon, in addition to the assessment to which it becomes liable under section 48 of the Bombay Land Revenue Code, 1879, become liable to such fine as may be fixed in this behalf by the Collector under the provisions of section 66 of the said Code, or other corresponding law for the time being in force relating to the recovery of land revenue, as if the land, having been assessed for purposes of agriculture only, had been unauthorizedly used for any purpose unconnected with agriculture (*a*)] and in any such event as aforesaid, or in the event of the land being notified by Govern-

ment for acquisition under Act I of 1894, it shall be lawful for Government, on causing six months' previous notice in writing to be given to the said holder or manager, to take one of the two following courses (namely), either—

(1) to require that the said land be vacated and delivered up to Government free of all claims or incumbrances of any person whatsoever,

or (2) to resume and take possession of the said land and any buildings erected or works executed thereon, free of all claims and incumbrances of any person whatsoever, on payment of compensation not exceeding the following amount, namely:—

(*a*) the amount (if any) paid to Government for this grant, and

(*b*) the cost or value at the time of resumption, whichever is the less, of any buildings or other works authorizedly erected or executed on the said land by the said grantee.

This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products and of full liberty of access for the purpose of working and searching for the same, with all reasonable conveniences.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor of Bombay in Council, by the Collector of , this day of 19 .

Seal of the Collector	(Signed) Collector.

**If there be any further conditions, add here the words "and subject to the following further special conditions, namely:—"

The Commissioners suggest a further condition:—

"that an open space shall be kept free from any building whatever, as marked on the plan hereto appended as land not to be built upon."

FORM E (Rule 35).

(To be used where the land is not granted by Government.)

To

A. B.

Whereas, in consideration of your having built (or undertaken to build, *as the case may be*)* on the piece of land hereinafter described, which is your property, Government have been pleased, at your request, to exempt the said piece of land from liability to rent or land revenue.

It is hereby declared that the said land shall be continued $\frac{\text{for ever}}{\text{for a term}}$ of years free of all claim on the part of Government for rent or land

The nature of the building and the extent of the public interest in it should be clearly set forth, as for instance "a temple with a Dharmashala attached, for the use of the Digambar Jain community."

revenue to whoever shall from time to time be the lawful holder or manager of the said , [Insert "(a) . . . (a)" as in Form D.] [If there be any further special conditions, here add: "and subject to the following further special conditions, namely":—].

The piece of land herein referred to is situated in the village of in the taluka, and is bounded on the North by , on the South by , on the East by and on the West by , and comprises about square in superficial area, be the same more or less, and bears No. in the Land Records.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor of Bombay in Council, by the Collector of , this day of 19 .

Seal of the Collector	(Signed) Collector.

FORM F (Rules 37, 43 and 52).

FORM OF AGREEMENT* TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS.

To the Mamlatdar of

I, *A. B.*, inhabitant of in the taluka, hereby accept the right of the occupation of the land comprised in Survey No. (or of the building site hereinbelow described, or otherwise as the case may be), in the village of in the taluka, and I pray that my name be entered in the Government records as the occupant of the said land.

The said land has been granted to me subject to the provisions of the Bombay Land Revenue Code, 1879, and of rules in force thereunder, in perpetuity†, from the day of 19 ; ‡ and I undertake to pay the land revenue from time to time lawfully due in respect of the said land (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue as may be lawfully imposed

* This agreement is (so far as it is application) exempt from Court fee; item C-24 of Notification of the Govt. of India, 4650, 10.9.89. It is also exempt from stampduty; item A-9 of Notification of the Govt. of India 3616-Exc., 16.7.09 R. 8022, 17.8.

†When not granted in perpetuity delete the words and insert "until the day of 19 ".

‡When land is sold for a fixed period free of land revenue the agreement should end here, and the second endorsement may be omitted.

thereupon under the orders of Government or otherwise as the case may be).

Dated the day of 19 at

Written by (Signed) *A. B.*

We declare that *A. B.*, who has signed this agreement, is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *C. D.*

E. F.

We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) G. H. Patel.

I. J., Village Accountant.

"FORM F-1 Rule 37 (4)

FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS OF LAND ON IMPARTIBLE TENURE.

To the Mamlatdar of

I, A. B., inhabitant of in the taluka, hereby accept the right of occupation of the land comprised in survey No. in the village of in the taluka and I pray that my name be entered in the Government records as the occupant of the said land.

The said land has been granted to me in perpetuity from the day of 19 , subject to (1) the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder and to (2) the further condition that I, my heirs, assigns and legal representatives shall not at any time by partition, inheritance, lease, mortgage or otherwise howsoever transfer the said land except as a whole or allow any portion of it to be cultivated, used, or occupied by any other person so as to divide it.

If I fail to perform any of the aforesaid conditions I shall be liable without prejudice to any other penalties that I may incur under the said Code, and the rules made thereunder, to have the said land summarily forfeited by the Collector, and I shall not be entitled to claim compensation for anything done or executed by me in respect of the said land.

*And I undertake to pay the land revenue from time to time lawfully due in respect of the said land (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from

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* When land is sold for a fixed period free of land revenue the agreement should end here, and the second endorsement may be omitted.

(G. R. 4702-24-III of 12-3-1931).

In Sind the Collector is empowered to allow division of survey number if in view of any special circumstances, he considers it necessary to do so.

(G. R. 4702-24 III of 8-3-1932).

payment of land revenue to pay such revenue as may be lawfully imposed thereon under the orders of Government or otherwise, as the case may be).

Dated the day of 19 .

Written by

(Signed) A. B.

We declare that A. B. who has signed this agreement is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) C. D.
(,,) E. F.

We declare that, to the best of our knowledge and from the best information which we have been able after careful enquiry to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time on the above land.

(Signed) G. H.
Patel.
I. J.,
Village Accountant."

FORM G-1 (Rule 39) (as amended by G. 11514—11)

RECLAMATION LEASE.

Form of lease to be granted to an occupant who takes up land on special terms.

This is to certify that, with the previous sanction of the Commissioner (in Sind, *or as the case may be*), of has been granted the right of occupation of survey No. in the village of in the taluka for a term of years from the day of 19 , subject to the payment of land revenue as follows (*viz.*):—

(*a*) for the first years, A. D. 19 to 19 , nil;

(*b*) for the next years, A. D. 19 to 19 , a reduced assessment of Ra.

The reason for the grant of the said land on the favourable terms aforesaid is that the lessee has undertaken, at his own expense, within a period of from the day of 19 , to carry out to the satisfaction of the following work, whereby the cultivation of the said survey No. will be improved (or rendered feasible *or otherwise as the case may be*), *viz.*:—

(*Here describe as accuratelg as possible the work to be executed*)

The conditions on which this lease is granted are:—

(1) That the lessee shall completely execute the work aforesaid to the satisfaction of the said within the period above mentioned;

(2) that he shall keep the said work when executed in good order and repairs to the satisfaction of the said until the expiry of this lease;

(3) It shall not be lawful to the lessee to partition, bequeath, alienate, asign, mortgage or otherwise charge or encumber any portion of the said land less than the area—hereby fixed by the Collector as the economic holding, nor shall any such portion of the said land be liable to seizure, requestration, attachment, sale or partition by process of a Court:—

(4) that if the lessee shall fail th perform any of the aforesaid conditions he shall be liable, notwithstanding anything hereinbefore written, to pay the full assessment of the land comprised in this lease amounting to Rs. , for the year or years during which such failure shall take place and it shall be open to the Collector either to cancel the remaining portion of the lease and re-enter upon the land, or to levy full assessment from the lessee for every subsequent year of the term of this lease;

(5) that provided the lease shall not have previously determined under the last preceding condition, the lessee shall be entitled, on the expiry of this lease, to retain th occupation of the land herein comprised, subject to the payment of the full assessment from time to time fixed thereupon under the law and rules in force in this behalf, on his executing an agreement in the form prescribed for persons who intend to become occupants.

This lease is executed on behalf of the Secretary of State for India in Council, by order of Government of Bombay in Council, by the Collector of and under his seal of office, this day of 19 .

Seal

(Signed)

Collector.

I the aforesaid lessee do hereby accept this lease in the terms and conditions therein mentioned.

Signed by

lessee.

in the presence of—

Note.—Form G-I is prineed as amended by Draft Notification No. 4702-24, dated 1st June 1933.

FORM G-2 (Rule 40).

RECLAMATION LEASE.

THIS INDENTURE made the day of 19 BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Lessor) of the one part and inhabitant of hereinafter called the lessee of the other part WITNESSETH that the Lessor doth hereby lease unto the Lessee all the Salt Marsh Lands situated in the village of in the Registration Sub-district of and in the taluka the Survey Numbers, Area and Boundaries of which are set forth in Schedule A hereunder written which said Lands were late in the occupation of and are now in the occupation of

and are delineated in the Plan attached hereto and signed by the Collector of (hereinafter referred to as the Collector) TO HOLD the said Lands unto the Lessee for the term of 999 years from the day of 19 , paying during the said term unto the Lessor for the said lands save such portion as may be appropriated for Public Roads which portion shall be exempt from payment the yearly Rents following that is to say for the first ten years of the said term the rent of One Pie if demanded and for the next 20 years, *viz.*, from the day of 19 , till the day of 19 a yearly sum equal to Four annas *per* Acre in such Instalments on such Dates and to such Person as may be from time to time prescribed and designated by the Collector and for such Period if any as shall intervene beeween the day of 19 , and the date of the first settlement of Assessment hereinafter provided for the yearly sum hereinbefore lastly reserved payable in the manner hereinbefore mentioned AND from and after the first settlement of assessment hereinafter provided for such sum of Land Revenue as under the Laws or Rules having the force of Law for the time being in force in respect of Lands held under Government by ordinary Occupants shall from time to time be found to be payable AND the Lessee hereby covenants and agrees with the Lessor in manner following that is to say FIRST that the Lessee shall at his own expense and with due diligence completely reclaim the lands hereby leased so as to be in a state fit for use for agricultural purposes AND shall so reclaim at least one-half of the said lands within ten years and the whole thereof within twenty years from the day of 19 , respectively and shall maintain such Reclamation during the residue of the term hereby granted AND shall not until the whole of the said Lands shall have been completely reclaimed and rendered cultivable assignd or underlet the said Lands or any portion thereof or charge or receive any Tax or Fee for Cattle-grazing npon any portion thereof and that the lessee shall not at any time partion, bequeath, alienate, assign, mortgage or otherwise charge or encumber or allow to be cultivated, used or occupied by any other person, any portion of the said Land less than the Area—hereby fixed by the Collector as an economic holding in respect of the said lands, nor shall any such portion of the said land be liable to seizure, requestration, attachment, sale or partition by process of a Court. PROVIDED that if any Officer of Government duly empowered in this behalf by the Government of Bombay shall certify in writing that any portion of the said Lands is unreclaimable such portion shall be excluded from the operations of the covenants hereinbefore contained. Provided further that the lessees shall be at liberty during the first ten years to relinquish any portion of the said lands which he cannot reclaim : and such portion shall thereupon be excluded from the operation of the covenants herein contained (R. 372-B-17th April 1923) SECOND that the Lessee shall at his own expense (*a*) keep open the several Roads mentioned and described in Schedule B hereunder written and delineated in the Plan hereunto annexed (*b*) provide and keep in good order to the satisfac-

* The portion in brackets was inserted as per Draft Notification No. 4702-24, dated 1st June 1933 which would be taken into consideration on or after 1st August 1933.

tion of the Collector such water-ways in and along the Lands hereby leased as may from time to time be required by the Collector (*c*) erect such new Boundary-marks upon the said Lands as may from time to time be required by the Collector and maintain and keep in good repair to the satisfaction of the Collector all such new Boundary-marks as well as all those at present existing thereon, THIRD that the said Lessee shall pay the rents hereinbefore respectively reserved at the times and in manner hereinbefore provided for payment of the same respectively and that whenever any Instalment of the said Rents respectively shall be in arrear, it shall be recoverable from the Lessee as an arrear of Land Revenue under the provisions of the Law for the time being in force in that behalf AND the Lessee shall also pay all Rates, Taxes and other Outgoings (if any) which shall at any time during the continuance of this Lease be payable in respect of the said Premises or any part thereof FOURTH that from and after the day of 19 the Lands hereby leased shall be liable to be from time to time surveyed and assessed to the Land Revenue under the Laws or Rules having the force of Law for the time being in force in respect of Lands held under Government by ordinary occupants and thenceforward during the residue of the term hereby granted the Lessee shall hold the said Lands subject to all the provisions of such Laws and Rules and subject also to such of the Covenants and Provisions of this Lease as shall then be capable of continuing effect PROVIDED ALWAYS AND IT IS HEREBY AGREED that if and whenever there shall be a breach by the Lessee of any Covenant, Condition or provision herein contained the Lessor may re-enter upon the said Lands or upon part thereof in the name of the whole and thereupon this Lease shall determine AND that in case default shall be made in reclaiming the half or the whole of the Lands within the periods respectively hereinbefore prescribed in that behalf the Lessor may re-enter upon the said Lands and determine this Lease under the power in that behalf hereinbefore contained AND that if in the opinion of the Collector (whoe decision shall be final) the reclamation is not carried on with due diligence during the two years ending on the day of 19 the Lessor may on or after the said day re-enter upon the said Lands and determine this Lease under the power in that behalf hereinbefore contained AND that notwithstanding anything hereinbefore contained if at any time any portion of the said Lands (other than such portion as may be appropriated for Public Roads) is after being reclaimed used for any purpose unconnected with agriculture, such portiou shall be liable to such assessment or altered assessment as may be leviable under the Law or Rules having the force of Law for the time being in force in respect of land which is held for agricultural purposes and subsequently used for purposes unconnected with agriculture and such assessmont or altered assessment shall be leviable notwithstanding that any of the periods hereinbefore specified shall not have elapsed AND that the right of the said Lessor to all Mines and Mineral Products and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences shall be reserved.

AND IT IS LASTLY AGREED that the word "Lessor" in this Lease shall mean the Lessor and his Successors and Assigns and the word "Lessee" shall mean the Lessee and his Legal Representatves.

IN WITNESS WHEREOF
Esq., Collector of , has, by order of the Governor of Bombay in Council, hereunto set his hand and affixed his official seal on behalf of the said Secretary of State in Council, and the Lessee has hereunto set his hand the day and year first above written.

Schedule A above referred to :

Schedule B above referred to :

Signed by the above name

in the presence of

Seal of the Collector.

Signed by the above named

in the presence of

FORM H (Rule 43).

ALTERNATIVE FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS, IF THE COLLECTOR SO REQUIRES.

Agreement.

To

The Mamlatdar of

I, A, B., of in the said taluka, agree on behalf of myself and my assigns to occupy the land specified in the Schedule

appended hereto on the conditions stated below, and I pray that my name may be entered in the land records as occupant of the said land.

Conditions.

1. I will pay the land revenue from time to time lawfully due in respect of the said land, to wit: as assessment the sum of Rs. (being at the rate of per) for the period of years commencing on , and thereafter I will pay such assessment for such further periods as may from time to time be fixed by lawful authority.

2. Within the period of two years from the date hereof or within such further period as may be fixed by lawful authority, I will erect on the said land one or more buildings of a permanent character.

3. I will keep as an open space, free from any buildings whatever, the piece of land marked on the plan appended hereto as the land not to be built upon.

4. The provisions of the Bombay Land Revenue Code, 1879, and all rules and orders for the time being in force thereunder, shall apply to my occupation of the said land, so far as the same may be applicable and not inconsistent with these conditions.

5. Subject to the foregoing conditions I shall be entitled to occupy the said land in perpetuity, but if I contravene any of foregoing conditions the Collector may declare the said land forfeited to Government and may dispose of the same in any way he may deem fit, free from any claim by me or by any person holding through or under me.

The Schedule.

Dated the day of 19 .

Written by Signed.

[Declaration, if necessary.]

Then follows the Plan.

Note.—This agreement is exempt from Court-fee under item O (24) of the Notification of the Government of India, 4650—10-9-89.

It is also exempt from the payment of stamp duly, under item A-9 of Notification of Government of India, No. 3616-Exc., 16-7-09.

FORM HH.

Form of agreement to be passed by persons intending to become occupants of land included in a development scheme or in other special cases (*vide* Rule 43)

AGREEMENT.

The Special Mamalatdar,
The Mamalatdar, taluka Bombay Suburban District,

I, AB, of agree on behalf of myself and my heirs, executors, administrators and assigns to occupy the land specified in the schedule appended hereto (hereinafter referred to as the said land) on the conditions stated below, and I pray that my name may be entered in the land records as occupant of the said land :—

Conditions.

(1) I will pay the land revenue from time to time lawfully due in respect of the said land to wit: as assessment the sum of Rs. (being

at the rate of per or at such lower rate as is leviable under the rules for the time being in force and applicable to such land) for the period of years commencing on and thereafter, I will pay such assessment for such further periods as may from time to time be fixed by lawful authority.

(2) *Use.*—I will use the said land only for building purposes of the nature specified in condition (3) of this agreement.

(3) *Building.*—I will erect and complete on the said land* of a substantial and permanent description; I will in regard thereto duly comply in every respect with the building regulations contained in clauses , etc., of the second schedule hereto ;† (and I will not use, or permit the use of, any of the buildings erected or to be erected on the said land as a shop, or carry on in any of the said buildings any trade or business, other than).

‡(4) *Reservation of margin.*—If at any future date the Collector shall give me notice in writing that a strip from the margin of the said land not more than feet in depth is required by Government for the purposes of a road, I will, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such strip to the Collector in consideration of receving from Government in exchange and as full compensation therefor a sum equivalent to ( ) times the assessment proportionately payable upon the strip so surrendered.

Provided that, where the materials of any gate, wall, pavement or other such authorised erection or construction on such strip cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to me as the Collector may deem fit.

(5) *Liability of rates.*—I will pay all taxes, rates and cesses leviable in respect of the said land.

(6) *Penalty clause.*—The Collector may, without prejudice to any other penalty to which I may be liable under the provisions of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code"), direct the removal or alteration of any building or structure erected or used contrary to the provisions of this agreement within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from me as an arrear of land revenue.

(7) *Code provisions applicable.*—The provisions of the said Code and all rules and orders for the sime being in force thereunder shall apply, to my occupation of the said land, so far as the same may be applicable and not inconsistent with the conditions of this agreement.

(8) Subject to the foregoing conditions I shall be entitled to occupy the said land in perpetuity, but if I contravene any of the foregoing conditions, the Collector may declare the said land forfeited to Government and may dispose of the same in any way he may deem fit, free from any claim by me or by any person holding through or under me.

* Here insert description of the buildings such as a "residential bungalow and outhouses."

† To be scored out in areas where business premises are permitted.

‡ To be omitted where not required.

MAP.

Schedule.

Length and Breadth		Total Superficial area	Boundaries				Remarks
North to South	East to West		North	South	East	West	

Schedule II.

(The number of the conditions which are applicable should be entered in condition 3 of the grant; and special conditions should be inserted in continuation.)

1. Buildings may be erected only within the area marked on the map annexed and the remaining area of the said land shall be left as an open space.

2. Three-quarters of the said land shall be left open to the sky.

3. No latrine, cesspool or stables shall be constructed on the said land in any place which shall not have been approved for such purpose by the Collector or an officer authorised by him.

4. No building shall be erected in the said land with more than a ground floor and one upper storey.

5. The building erected on the said land shall be used for residential purposes only.

6. No building erected on the said land shall be used as a factory or as a place for carrying on an offensive trade.

7. The grant shall be subject to the following special conditions:-

(*a*)

(*b*) etc., etc.

Dated the day of at

(Signed) A. B.

We declare that AB, who has signed this agreement, is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto, in our presence.

(Signed) E. F.

G. H.

N. B.—1. This document need not be registered.

2. This document is exempt from stamp duty.

FORM I [Rules 37 (3) and 43 (3)].

CLAUSE FOR INALIENABLE TENURE ADDITIONAL TO FORMS F AND H OR OTHER AGREEMENTS.

In cases where the land is granted subject to the condition that the occupant shall not transfer it in any way to another person without the sanction of the Collector, the following clause should be added in the agreement to be taken from him:—

"The said land has been granted to me subject to the condition to which I hereby assent, namely, that I, my heirs, executors, administrators and approved assigns may not at any time lease, mortgage, sell, or otherwise howsoever encumber the said land or any portion thereof without the previous sanction in writing of the Collector."

"FORM II [Rule 37 (4)]

FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS OF LAND ON THE INALIENABLE TENURE.

To the Mamlatdar of

I, A. B., inhabitant of in the taluka, hereby accept the right of occupation of the land comprised in survey No. or of the building site hereinafter described or otherwise, as the case may be), in the village of in the taluka, and I pray that my name be entered in the Government records as the occupant of the said land.

The said land has been granted to me in perpetuity from the day of 19 subject to the conditions hereinbelow mentioned and to the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder;

* And I undertake to pay the land revenue from time to time lawfully due in respect of the said land (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue, as may be lawfully imposed thereon under the orders of Government or otherwise, as the case may be).

The said land has been granted to me subject also to the further condition to which I hereby assent, namely, I, my heirs, assigns and legal representatives shall not at any time—

(1) partition the said land;

or

(2) lease, mortgage or otherwise howsoever encumber the said land or any portion thereof without the previous sanction of the Collector, which shall not be given except in respect of the whole land.

If I fail to perform any of ths aforesaid conditions I shall be liable without prejudice to any other penalties that I may incur under the said Code, and the rules made thereunder, to have the said land summarily forfeited by the Collector, and I shall not be entitled to claim compensation for anything done or executed by me in respect of the said land.

Dated the day of 19 at

Written by

(Signed) A. B.

* When land is sold for a fixed period free of land revenue this paragraph should end here, and the second endorsement may be omitted.

In Sind the Collector is empowered to allow division of a survey No. if in view of any special circumstances, he considers it necessary to do so.

We declare that A. B. who has signed this agreement is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) C. D.
(") E. F.

We declare that, to the best of our knowledge and from the best information which we have been able after careful enquiry to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) G. H.,
Patel.
I. J.,
Village Accountant."

(*G. R. No. 4702/24. III of* 12-3-1931).

FORM J (Rule 46).

FORM OF AGREEMENT* FOR EXCHANGE TO BE EXECUTED BY VILLAGERS REMOVING TO A NEW VILLAGE-SITE.

Agreement executed the day of 19 by *A. B.* resident of in the taluka :

Whereas Government have been pleased to sanction a change being made in the position of the site of the village of in the registration sub-district of , and in pursuance of such sanction the following plot of ground has been allotted to me in the new site in exchange for the ground held by me in the old site, namely, the piece of land bounded as follows, that is to say on the North by , on the South by , on the East by , on the West by , measuring in length from North to South, and in length from East to West, and comprising about square in superficial area and bearing No. in the Land Records.

I do hereby agree, in consideration of the allotment to me of the new piece of land aforesaid, as follows, namely :—

(1) That all my right, title and interest in any land whatsoever, situate within the old site of the said village, shall be deemed to be, and is hereby, surrendered to Government, together with the trees standing thereon and all rights over or other benefits arising out of or enjoyed by me in respect of the said land :

(2) That I shall hold the piece of land aforesaid in the new site from the date of this agreement on the same terms and with the same rights and subject to the same liabilities as would apply to my tenure

*The stamp duty for this agreement is reduced to four annas ; item 10 of Notification of the Government of India, 3616-Exc., 16-7-09, G. R 7317-09.

of the ground held by me in the old site, if I continued to be the holder thereof,†

In witness whereof I have hereto set my hand the day and year aforesaid.

Written by (Signed) *A. B.*

Signed and delivered by in our presence.

FORM K (Rule 54).

FORM OF WRITTEN PERMISSION TO OCCUPY LAND TO BE GIVEN BY A MAMLATDAR UNDER SECTION 60.

Permission is hereby given to *A. B.*, inhabitant of in the taluka, to occupy Survey No. (*or* the building-site hereinbelow described *or otherwise as the case may be*) in the village of in the taluka, in accordance with the Sanad granted (*or*, upon the conditions sanctioned by the Collector in his order No. dated).

Dated the day of 19 at

Seal

(Signed)

Mamlatdar.

Form KK (Rule 54 Bombay Suburban).

Permission is hereby given to you AB, inhabitant of , to occupy the building site hereinbelow described in the village of in the taluka in accordance with the conditions sanctioned by the Collector and accepted by you in the agreement dated the day of 19 subject to which this permission is given.

Description of Land.

Plot No. in the Suburban Scheme No.

Dated the day of 19 , at

Seal

(Signed)

Mamlatdar.

FORM L (Rule 74).

FORM OF* NOTICE OF RELINQUISHMENT.

To the Mamlatdar of

I, A. B., inhabitant of in the taluka, (the occupant/holder) of Survey No. (or sub-division

† In omitting a clause reserving the right to impose land revenue if hereafter thought fit, Government nevertheless do actually reserve that right. (G. Rs. Nos. 9021 and 10096-85—see Note 27 to Rule 14).

*No Court-fee is chargeable, *vide* Court-fees Act, VII of 1870, section 19 (XI)

No.) or the building-site hereinbelow described (*or otherwise as the case may be*), in the village of in the taluka, hereby give notice under section 74 of the Bombay Land Revenue Code, 1879, that it is my intention to relinquish and I hereby do relinquish the said Survey No. (or building-site, etc.) at the end of the current year,† subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any person (other than Government or the $\frac{\text{occupant}}{\text{holder}}$)

Dated this day of 19 at

Written by

(Signed) *A. B.*

FORM M.

Form of sanad in cases where the assessment on land appropriated to building purposes is altered under section 48.

WHEREAS appplication has been made to the Collector of (hereinafter referred to as the Collector which expression shall include any officer whom the Collector shall appoint to exercise and perform his powers and duties under this grant) under section 65 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as " the said Code " which expression shall where the context so admits include the rules and orders thereunder) by inhabitant of being the registered occupant of Survey No. in the village of in the taluka hereinafter referred to as " the applicant " which expression shall where the context so admits include his heirs, executors, administrators and assigns) for permission to use for building purposes the plot of land (hereinafter referred to as the " said plot ") described in the first schedule hereto and indicated by the letters on the site plan annexed hereto, forming part of Survey No. and measuring be the same a little more or lsss.

When used under rule 51 for land already occupied for agricultural purposes within certain surveyed cities the period for which the assessment is leviable will be ordered to coincide with the expiry of 99 years' period running in that city. (G. R. No. 9508-24—23-8-27.)

Now this is to certify that permission to use for building purposes the said plot is hereby granted subject to the provisions of the said Code, and on the following conditions, namely:—

(1) *Assessment.*—The applicant in lieu of the assessment heretofore leviable in respect of the said plot shall pay to Government on the day of in each year an annual assessment of Rupees (Rs.) during the thirty (30) years commencing on the day of 19 , or in composition therefor a lump sum of Rupees (Rs.) being twenty times the said annual assessment; and on the expiry of the said period of thirty years, such revised assessment as may from time to time be fixed by the Collector under the said Code.

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†These notices must be given before the 31st March, or such other date as Govt. prescribe under sec. 74 for each district.

"Provided that where the applicant is a Co-operative Housing Society, it shall be entitled to such exemption from the payment of altered assessment in whole or in part as is permissible under proviso (2) to clause (*a*) of rule 86."

(This Proviso was added by G.R., R. D., NO. 620-28, dated 14-10-32).

(2) *Use.*—The applicant shall use the said plot only for building purposes of the nature specified in condition (3) of this sanad.

(3) *Building Time Limit.*—The applicant shall within three (3) years from the date hereof, erect and complete on the said plot* of a substantial and permanent description, and shall in regard thereto duly comply in every respect with the building regulations contained in clauses etc., of the second schedule hereto.

"From the date of permission" has been suggested by one Commissioner: but there *ought* not to be any material difference and the "permission" can only date from its formal expression in the Sanad. Government did not accept the suggestion. (R. 1432-24-3-1-25).

(4)‡ *Reservation of Margin.*—If the Collector shall give the applicant notice in writing that a strip of land from the margin of the said plot not more than feet in depth, is required by Government for the purposes of a road, the applicant shall, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such strip of land to the Collector in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to ( ) times the assessment proportionately payable upon the strip so surrendered.

An agreement *executed* before 1913 was by compromise modified and recast in G. R. No. 9955—9-2-24.

Provided that, where the materials of any gate, wall, pavement or other such anthorized erection or construction on such portion cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to the applicant as the Collector may deem fit.

(5) *Liability for Rates.*—The applicant shall pay all taxes, rates and cesses leviable on the said land.

(6) *Penalty clause.*—The Collector may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, direct the removal or alteration of any building or structure erected or used contrary to the provisions of this grant within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from the applicant as an arrear of land revenue.

(7) *Code provisions applicable.*—Save as herein provided, the grant shall be subject to the provisions of the said Code.

(8) *Execution.*—The applicant shall bear all costs incurred in the preparation, execution, stamping and registration of these presents.

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*Here insert description of the buildings such as "a residential bungalow and out-houses."

‡ Omit this condition if not required. And see Note 1.

MAP.

Schedule I.

Length and Breadth		Total Superficial area	Forming (part of) Survey No or Hissa No.	Boundaries				Remarks
North to South	East to West			North	South	East	West	

Schedule II.

(The numbers of the conditions which are applicable should be entered in condition 3 of the grant: and special conditions should be inserted in continuation).

1. The applicant may build on the area marked on the map annexed and shall leave the remaining area of the said plot as an open space.

2. of the said plot shall be let open to the sky.

3. Any latrine, cesspool or stables constructed on the said plot shall, if any place shall have been set apart in the map annexed for such purpose be constructed in such place and not elsewhere.

4. No building shall be erected in the said plot more than feet in height.

5. The building erected on the said plot shall be used for residential purposes only.

6. No building erected on the said plot shall be used as a shop or a factory or as a place for carrying on an offensive trade.

7. The grant shall be subject to the following special conditions:—

(*a*)

(*b*) etc., etc.

IN WITNESS WHEREOF the Collector of has hereunto set his hand and the seal of his office on behalf of the Secretary of State for India in Council; and the applicant has also hereunto set his hand this day the of 19 .

(Signature of applicant).

(Signatures and designations of witnessses).

Signature of Collector).

(Signatures and designations of witnesses).

(Seal of Collector).

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*

G. H.

N. B.—1. This document need not be registered [sec. 90 (1) (*d*), Act XVI of 1908] unless condition 4 is retained [sec. 17 (1) (*b*) *ibid*].

2. This document is exempt from stamp duty (Rule 7, G. of I. Notfn. 3616-Exc.-16-7-09) unless condition 4 is retained when it should be stamped under Article 55 of Schedule 1 to Act II of 1899. See also R. 7431-23. Form was sanctioned in G. R. 1291-20

FORM N [Rule 87 (*b*)].

Form of Sanad in cases where the assessment on land appropriated to non-agricultural purposes other than building is altered under section 48.

WHEREAS the land hereinafter described by measurement and by the boundaries specified in the schedule (and delineated in the map hereto appended) and forming (part of) Survey No. in the village of in the taluka of , entered in the name of and at present held by , resident of , has been hitherto assessed for purposes of agriculture at the rate of ; AND WHEREAS the said land has been used for a non-agricultural purpose, to wit for (*describe purpose*) (but not for building) and such assessment has thereby become liable under section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate :

Now this is to certify that under the provisions of the said Code, and rules in force thereunder the assessment of the amount to be paid annually as land-revenue on the said land has been fixed: for a term of years from the day of 19 , at the sum of Rs. (*figures*) [Rupees (*words*)] payable in each year of the said term in one instalment due on* in each year.

On the expiry of the said term, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment aforesaid will be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

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* Here insert the usual date of the Land Revenue first instalment or such other date as the Collector may fix (Rule 116).

Schedule hereinbefore referred to.

Length and Breadtth		Total super-ficial area	Forming (part of) Survey No. or Hissa No.	Boundaries				Remarks
North to South	East to West			North	South	East	West	

In witness whereof the Collector has hereto set his hand and the seal of his office this day of 19 .

Seal

Collector.

Note.—In such Sanads also the Collector has full power to impose conditions, which will be inserted after the schedule.

" FORM NI [Rule 87 (*b*)]

Form of Sanad in cases where the assessment on land temporarily appropriated to non-agricultural purposes other than building is altered under section 48.

Whereas the land hereinafter described by measurement and by the boundaries specified in the schedule (and delineated in the map hereto appended) and forming (part of) Survey No. in the village of in the taluka of entered in the name of, and at present held by , resident of , has been hitherto assessed for purposes of agriculture, at the rate of ; and whereas the said land has been used for a non-agricultural purpose, to wit for (describe purpose)(but not for a permanent building) and such assessment has thereby become liable under section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate:

Now this is to certify that under the provisions of the said Code and rules in force thereunder, the assessment of the amount to be paid as land-revenue on the said land, has been fixed for a term of from the day of 19 , at the sum of Rs. (figures) [Rupees (words)] payable in one instalment on

On the expiry of the said term the assessment aforesaid will be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

In case of a breach of any of the conditions of this Sanad the Collector may, without prejudice to any other penalty to which the holder of the said land may be liable under the provisions of the said Code, direct the removal or alteration of any structure erected or used contrary to the provisions of this Sanad within a time precribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from the holder as an arrear of land revenue:—

Schedule hereinbefore referred to.

Length and Breadth		Total superficial area	Forming (part of) Survey No. or hissa No.	Boundaries				Remarks
North to South	East to West			North	South	East	West	

In witness whereof the Collector has hereto, set his hand and the seal of his office this day of 19 .

Seal.

Collector.

Note.—The Collector has full power to impose any conditions he thinks fit. Such conditions will be inserted after the schedule for the erection of tempoary structures."

FORM O (Rule 104 and Rule 113).

RECORD OF RIGHTS.

A double-page form with sufficiently wide columns for (or cards in V. F. VII-XII ruled to contain) the following particulars :—

1. Serial Number.
2. Survey Number (if inam, the kind of inam).
3. Area.
4. Ordinary or Special Assessment and Judi.

5. Sub-division Number.
6. Area.
7. Assessment.
8. Judi or Special or Non-agricultural Assessment payable.
9. Occupant of Khalsa Land or Holder of Alienated Land.
10. Nature and origin of Title.
11. Other rights or encumbrances with names of right-holder or encumbrancer.
12. References to Mutation Diary, Form P.
13. Remarks.

FORM P (Rule 104).

Mutation Register.

A single page form with columns showing the following particulars :—

Serial No. of entry	Nature of right	Survey and anti-division Nos. affected	Initials or ramarks by testing officers
1	2	3	4

FORM Q (Rules 104 and 108).

Register of Disputed Cases.

Serial No.	Number in Form O. or P.	Survey No. and Hissa No. (or part).	Date of receipt of objection	Particulars of dispute with names	Orders of Mamlatdar or Collector
1	2	3	4	5	6

FORM R (Rule 113).

Now Combined with V. F. XII (Form 6) in card form.

FORM S (Rule 118).

NOTICE TO A DEFAULTER.

To *A B* residing at

You are hereby required to take notice that the sum of Rs. a. p. due by you on the as the* instalment of land revenue on the land held by you, of which full details can be obtained from the village Accountant (or otherwise as the case may be), in the village of in the taluka of has not been paid, and that, unless it is paid within ten days from the date of this notice together with the sum of annas, being the fee chargeable for this notice, complusory proceedings will be taken according to law for the recovery of the whole of the revenue still due by you on the said land, together with an additional penalty not exceeding one-fourth of the said arrears under section 148 of the Land Revenue Code.

Dated the day of 19 .

(Signed) Mamlatdar (or Aval Karkun). ‡

FORM T (Rule 120).

FORM OF AGREEMENT TO BE PASSED WHEN FORFEITED LAND IS RESTORED ON NEW TENURE.

Agreement.

To

The Mamlatdar of

I, A. B., inhabitant of in the Taluka hereby accept the right of occupation of the land comprised in Survey Number in the village of in the Taluka and I pray that my name may be entered in the Government records as the occupant of the said land.

The said land which has been forfeited for arrears of land revenue has been regranted to me subject to the provisions of the Bombay Land Revenue Code, 1879, and of the Rules in force thereunder in perpetuity† from the day of 19 ; and I undertake to pay the land revenue from time to time lawfully due in respect of the said land.

The said land has been regranted to me after forfeiture, subject to the condition to which I hereby assent in consideration of the regrant, namely, that I, my heirs, executors, administrators and approved assigns may not at any time lease, mortgage, sell or otherwise howsoever encumber the said land or any portion thereof without the previous sanction in writing of the Collector.

Dated the day of 19 at

Written by

(Signed) *A. B.*

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* "First" or "Second", as the case may be.

‡ Authorised by G. R. No. 2459-83; 9263-11.

† When not granted in perpetuity delete the word and insert "until the day of 19 ."

We declare that *A. B.*, who has signed this agreement, is to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *C. D.*
E. F.

We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) *G. H.* Patel,
I. J., Village-Accountant.

FORM U (Rule 129).

(*Standard form R. M. 20*)

FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF ATTACHED PROPERTY.

(Under Section 165, L. R. C.)

Whereas the property of ' hereinunder specified has been attached on account of the Government assessment Rs. due by the said ; and whereas it is necessary to recover the said amount by sale of the said property, together with all lawful charges and expenses resulting from the said attachment and sale:

Notice is hereby given that on the day of 19 at o'clock A. M. A. B. the Mamlatdar of (or other person appointed) will, at in taluka in this district, sell by auction to the highest bidder and upon such conditions as to upset price and other conditions as are set out in the subjoined Schedule of Conditions of Sale, the right, title and interest of the said in the property hereinunder specified, and every power of disposing of the same or any of them or of the profits arising therefrom which the said may now consistently with the law exercise for his own benefit.

Movable Property.

(This table only should be omitted when the form is to be used under rules for the execution of decrees.)

1	2	3	4	5	6
Lot No.	Number and description of articles	Where attached	Where now placed	When to be viewed	Whether the sale is subject to confirmation or not

Immovable Property.

1	2	3	4	5	6 | 7 | 8	9
Lot No.	Description of Lot including local situation supposed or estimated rent or annual value, and if leased, for how long, on what terms and to whom	Survey number, municipal number and other cadastral designation	Government Revenue including any Local Cess and any other known fiscal charge resting on the Lot.	Present occupant	(Here enter any other particulars the Collector may see fit)	(This column should be used for particulars which the Collector may see fit to enter under the rules for the execution of Civil Court decrees)

N. B.—No guarantee is given of the title of the said or of the valldity of any of the right charges or interests claimed by third parties.

(Signed)

Collector.

A printed *schedule* setting forth the conditions of sale according to the Code and Rules shall be appended.

FORM W (Rule 129).

FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF RIGHT OF OCCUPATION OF UNOCCUPIED LAND.

Notice is hereby given that the right of occupation of the undermentioned unoccupied land, situate in the village of in the taluka will be put up to public auction at on the day of 19 , at or after o'clock A. M. / P. M.

The written (or printed) conditions of sale signed by *[may be seen on application during office hours, on any office day before the day of the auction, to the Mamlatdar of or, at the time of the auction, to the officer who conducts the same] and intending bidders are warned that they should ascertain the said conditions before bidding, *[*or* are subjoined to this Proclamation"].

Description of the Land.

Here give a full description of the land, *viz.*, the Survey Number or Numbers, if it has been surveyed, if not, its boundaries; the class of land, *i. e.*, whether it is dry-crop land, garden land, or a building-site, etc., the area of the land, adding "be the same more or less"; the assessment, if any, at present payable for the land, and the term for which that assessment has been fixed.

(Signed)

Dated the day of 19 } Collector (or other competent officer).

RULES
under sub-section (1) of s. 214 of L. R. Code

Regulating entry into any premises by any officer empowered under s. 154 of this Code for the distraint of moveable property of a defaulter.

(*Vide G. R. R. D. No. 4112, dated 13th November 1930*).

No. 4112.—In exercise of the powers conferred by sub-section (*1*) of section 214 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), the Governor in Council is pleased to make the following rules regulating entry into any premises by any officer empowered under section 154 of the said Code for the distraint of moveable property of a defaulter:—

1. *Service of notice.*—Where an officer in exercise of his power of distraint under section 154 of the Bombay Land Revenue Code, 1879, intends to enter any building used as a human dwelling, the notice required by the proviso to section 200 shall be served by presentation to the defaulter or to any adult male member of his family present in the building, or failing either of the aforesaid methods, by being affixed to any prominent part of the building.

2. *Breaking open doors.*—An officer in exercise of the aforesaid power of distraint may break open, at any time between sunrise and sunset, the gate of any private street or any outer or inner door or window of any permises, if he has reasonable grounds for believing that such street or premises contain any property liable to distraint as aforesaid, and if after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtain admittance;

Provided that such officer shall not enter, or break open a door or window of any apartment in the actual occupation of a woman who according to custom does not appear in public, until he has given notice to such woman that she is at liberty to withdraw and has given her every reasonable facility for withdrawing.

3. *Forcing open of receptacle.*—An officer in exercise of the aforesaid power of distraint may break open any closed receptacle found on any permises entered in exercise of the said power, if he cannot otherwise, after demand duly made from the persons, if any, occupying the said premises to open the receptacle, obtain inspection of the contents of the same.

4. *Value of property distrained.*—The estimated sale-proceeds of the property distrained shall be as nearly as possible equal to the amount in respect of which the defaulter has made default.

5. *Inventory.*—An officer on distraining any property from any permises shall make an inventory thereof; and shall supply a copy of the inventory to the defaulter, or to any adult male member of his family present; if neither the defaulter nor any such member is present, the officer shall affix a copy of the inventory to a prominent part of the premises from which distraint has been made.

THE LAND SUITS
Bom. Regulation I of 1831

[*5th January, 1831.*

A Regulation for extending the jurisdiction of the Agent of Government, acting under the provisions of s. 4, Regulation XXIX of 1827, over suits in which persons of rank of the privileged classes are concerned, and which are now cognizable by the Collectors of land-revenue.

Preamble.

WHEREAS it has been deemed expedient to extend the jurisdiction of the Agent of Government acting under the provisions of section 4, Regulation XXIX of 1827, to suits connected with land, its rent and produce, wherein persons of rank of the privileged classes established by that Regulation are concerned; the following rules have accordingly been enacted:

Suits connected with land, rent and produce, which are cognizable by Agent.

1. *First.*—Suits connected with land, its rent and produce, wherein persons of rank of the privileged classes established by regulation XXIX of 1827 are concerned, shall hereafter be cognizable only by the Agent of Government acting under the powers vested in him by section 4, Regulation XXIX of 1827, and under the same rules as are prescribed for his guidance in other cases.

Second. [*Pending suits.*] *Repealed by Act XII of 1873.*

THE LAND SUITS
Bom. Regulation XVI of 1831

[*14th September 1831.*

A Regulation for extending the jurisdiction vested in the Political Agent in the Southern Maratha Country, under the provisions of section 5, Regulation VII. A. D. 1830, to the cognizance of civil suits of the nature specified in Regulation I. A.D. 1831, and also for the better defining the extent of jurisdiction therein conferred with respect to persons of the privileged classes.

Preamble.

WHEREAS it has been deemed expedient to extend to the Political Agent in the Southern Maratha Country, as Agent of Government, the cognizance of suits of the nature specified in Regulation I, A. D. 1831, and to define more expressly the extent to which such suits shall be cognizable before the Agent of Government; the following rules have therefore been enacted:

Suits cognizable before Political Agent of Southern Maratha Country.

1. Suits of the nature specified in clause first, section 1, Regulation I, A. D. 1831, shall also be cognizable before the Political Agent in the Southern Maratha Country, as Agent of Government, and shall be tried by him in the same manner, and under the same rules, as are prescribed for his guidance in section 5, Regulation VII, A. D- 1330.

Bom. Reg. I. 1831, section 1, clause 1, explained.

2. And it is further explained, with reference to clause first, section 1, Regulation I, A. D. 1831, that such suits shall be cognizable before the Agents of Government only when the persons of the rank of the privileged classes shall in the original suit stand in the relation of defendants.

LANDING AND WHARFAGE FEES ACT

Bom. Act No. VII of 1882.

[*18th November, 1882.*

An Act to provide for the levy of fees for the use of Public Landing-places.

Preamble.

WHEREAS it is expedient to provide for the levy of fees for the use of public landing-places in certain ports in the Bombay Presidency;

It is hereby enacted as follows:—

Short title.

1. This Act shall be called "the Bombay Landing and Wharfage Fees Act, 1882."

Local extent.

2. [1] [It shall extend to any ports] in the Presidency of Bombay to which the Governor in Council may from time to time, by notification in the *Bombay Government Gazette* and other local official Gazette, extend the Act.

Repeal of Bombay Act III of 1879.

3. Bombay Act III of 1879 is hereby repealed, and all fees levied and every declaration, appointment, or rule made under that Act shall be deemed to have been levied and made under this Act.

"Landing-place" and "Passengers" defined.

4. [2] [In this Act the term "landing-place" includes a bandar, wharf, pier, jetty, hard and any place used for the landing, shipping, or storage of goods, or for the embarking or disembarking of passengers:]

[3]* * * * * *

[4] [and the term "passengers" means any person of three years of age or upwards, carried in a vessel, other than the master and crew and the owner, his family and servants.]

The Governor in Council to fix limits of bandars, etc., and the fees to be levied.

5. It shall be lawful for the Governor in Council from time to time by notification in the Bombay Government Gazette and other local official Gazette—

(*a*) to define the limits of any port to which this Act is made applicable when such limits have not been defined under the [5]Indian Ports Act, 1875;

(*b*) to determine what are public landing-places to which the provisions of this Act shall apply;

(*c*) to determine the limits of any such landing-place;

(*d*) to withdraw this Act from any port in which it is for the time being in force.

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[1] These words were substituted for the words "It shall extend—(*a*) to the Ports of Karachi and Aden; (*b*) to any other ports" by Schedule II of the Amending Act, 1895 (16 of 1895).

2. This definition was substituted by s. 2 (*a*) of the Bombay Landing and Wharfage Fees (Amendment) Act, 1916 (Bom. Act 5 of 1916).

3. This definition of the term "Commissioner" was repealed by s 2 (*b*), *ibid.*

4. This definition was added by s. 2 (*c*), *ibid.*

5. *See* now the India Ports Act, 1908 (15 of 1908).

[5] (*e*) to fix the fees to be levied—

(1) on goods landed, shipped or stored at, and

(2) on passengers embarking or disembarking at, and

(3) on animals or vehicles bringing or removing goods to or from, or plying for hire at, and

(4) on vessels or boats approaching or lying alongside,

any such landing-place:

[6] Provided that it shall be lawful for the Governor in Council at any time to exempt any goods, passengers, vessel, boat, animal or vehicle wholly or partially from any fee to which the same may be liable under this section;]

provided further that the fee to be levied on any passenger on each occasion of embarking or disembarking at a landing-place shall not exceed one anna.

Powers and duties under this Act by whom to be exercised and performed

6. The levy of fees under this Act shall be made and all other powers and duties conferred and imposed by this Act or by any bye-laws made hereunder, shall be exercised and performed by such officers as the Governor in Council from time to time directs, or by such persons as he shall from time to time direct in this behalf.

Powers, privileges and liabilities of officers who collect fees.

7. The officers and persons whose duty it may be to levy fees under this Act shall have the same powers for collecting and enforcing payment of the same as are exercisable under the provisions of any law, for the time being in force, in respect of duties of sea-customs by the Collector of Customs and his subordinates, and shall have the same privileges and be subject to the same liabilities in respect of anything done by them in collecting and enforcing payment of the said fees as the said Collector of Customs and his subordinates have, or are liable to, under the provisions of any such law.

Punishment of offenders.

The law for the time being in force for the punishment of offences relating to the levy or payment of duties of sea-customs, and for the reward of informers, shall, as far as may be, apply to similar offences committed in respect of the said fees.

[1] [In particular and without prejudice to the generality of the provisions of the foregoing paragraph, the penalty prescribed in the third column of article I of section 167 of the Sea Customs Act, 1878, shall be leviable in respect of the contravention of any bye-law made under this Act.]

Tables of fees to be posted up.

8. Tables of the fees leviable under this Act shall be posted up in some conspicuous position at every landing-place at which such fees are leviable, in English and the Vernacular language of the district, province, or territory in which the port is situate.

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5. Clause (*e*) was substituted by s. 3 (1) of the Bombay Landing and Wharfage Fees (Amendment) Act, 1916 (Bom. Act 5 of 1916).

6. This and the succeeding proviso were substituted for the original proviso by s. 3 (2), *ibid.*

1 This paragraph was inserted by s. 4 of the Bombay Landing and Wharfage Fees (Amendment) Act, 1916 (Bom. Act 5 of 1916).

9. [2][The] [3][Chief Customs-authority] may, with the previous sanction of Government, from time to time make, and from time to time alter or repeal, bye.laws not inconsistent with the provisions of this Act :

Power to make Byelaws.

(*a*) regulating the use of every landing-place to which this Act applies ;

(*b*) providing for the management of the traffic over, on or about and to and from every such landing-place ;

[[1](*c*) regulating the collection and remittance of the fees leviable under all or any of the provisions of this Act ; and]

[2][(*d*)] generally for the guidance of all persons in matters connected with the enforcement of this Act.

The bye-laws so made, and every alteration of the same and every order repealing the same or any portion thereof, shall be published in the Bombay Government Gazette and other local official Gazette.

Fees realized under this Act how to be expended.

[3][10. The proceeds of all fees realized under this Act shall be expended in any port to which this Act applies—

(*a*) in payment of the expenses of the administration of this Act;

(*b*) in defraying the cost of acquiring or constructing new landing-places required for the convenience of the traffic or trade of such port ;

(*c*) in maintaining and improving any existing landing-place and in constructing, maintaining or providing waiting rooms and other conveniences or facilities for passengers, and generally in the improvement of such port ; and

(*d*) in payment of the charges connected with the establishing, maintaining and working of telegraphs and telephones between any such ports.]

Receipt, expenditure and account of landing and wharfage fees.

[4][11. (1) For each port to which this Act applies a distinct account, to be called the landing and wharfage fees fund account, shall be kept showing, in such detail as the Chief Customs-authority prescribes, the receipts and expenditure under this Act for the port. An abstract of the account for the past financial year, in such form as the Chief Customs autority prescribes, shall be published annually as soon after the first day of April as may be practicable.

(2) If an advance of money shall be made by the Government for any of the purposes of this Act, on account of any port to which this Act applies, simple interest on that advance or upon so much of it as

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2 This word war inserted by s. 2 of 1st Sch of the Bombay Repealing and Amending Act, 1919 (Bom. Act 2 of 1919).

3 These words were substituted for the original words by s. 5 (*a*) of the Bombay Landing and Wharfage Fees (Amendment) Act, 1916 (Bom. Act 5 of 1916).

1 Clause (*c*) was inserted by s. 5 (*b*) of the Bombay Landing and Wharfage Fees (Amendment) Act, 1916 (Bom. Act 5 of 1916).

2 Clause (*d*) was re numbered by s. 5 (*c*), *ibid.*

3 Section 10 was substituted by s. 6, *ibid.*

4 Section 11 was added by s. 7, *ibid.*

shall remain unrepaid, at such rate as the Governor in Council may determine, shall be chargeable in the landing and wharfage fees fund account of such port.

(3) All monies received under this Act at or on account of any port to which this Act applies shall be credited in the landing and wharfage fees fund account of the port.

(4) Any balance from time to time standing to the credit of a landing and wharfage fees fund account may be temporarily invested in such manner as the Governor in Council may direct.

[1]12. The Governor in Council may direct that for the purposes of sections 10 and 11 any number of ports to which this Act applies shall be regarded as constituting a single port, and thereupon all monies to be credited to the landing and wharfage fees fund account under section 11 shall form a common fund account which shall be available for expenditure for the sake of the several ports of the group on the objects authorized by this Act.

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[1] Section 12 was added by Bom. Act V of 1916.

THE BOMBAY
Live-Stock Improvement Act, 1933
Bombay Act No. XXII of 1933.

[*1st December 1933*

An Act to provide for the improvement of live-stock.

WHEREAS it is expedient to provide for the improvement of live-stock in the manner herein provided; And whereas the previous sanction of the Governor-General required under sub-section (3) of section 80A and the previous sanction of the Governor required under section 80C of the Government of India Act, have been obtained for the passing of this Act; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bombay Livestock improvement Act, 1933.

Extent.

2. (*a*) Section 1 and this section extend to the whole of the Presidency of Bombay.

(*b*) On a written application made—

(*i*) by the district local board with the previous concurrence of the Director of Agriculture, or

(*ii*) by the Director of Agriculture with the previous concurrence of the district local board, Government may, by notification in the *Bombay Government Gazette*, direct that the remaining provisions of this Act shall extend to any village in respect of which the application has been made.

(*c*) Section 1 and this section shall come into force at once and the remaining provisions of this Act shall come into force in any village to which the said provisions shall have been extended under sub-section (*b*) on such date as Government may by notification in the *Bombay Government Gazette* appoint.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Cow" includes a heifer;

(2) "Director of Agriculture" means the officer appointed for the time being to be the Director of Agriculture;

(3) "Licence" means a licence granted under section 6;

(4) "Live-stock officer" means an officer or person appointed or invested with powers under section 4;

(5) "Prescribed", with its grammatical variations, means prescribed by rules;

(6) "Rules" means rules made under section 23;

(7) "Village" means a village as defined in the Bombay Land Revenue Code, 1879; and

Village, definition of—Village includes a town or city and all the land belonging to a village, town or city (*Bom. L. R. Code, s.* 3 (21)).

(8) "A person is said to keep a bull", if such person owns the bull or has the bull in his possession or custody.

Appointment of live-stock officer.

4. Government may, by notification in the *Bombay Government Gazette*, appoint the Director of Agriculture or any other officer of the Department of Agriculture to be a live-stock officer and assign to such officer such powers and duties under this Act, as they may deem fit.

Prohibition for keeping a bull.

5. No person shall keep a bull which has attained the prescribed age except under and in accordance with the terms, conditions and restrictions of a licence granted under section 6.

Grant of licences.

6. Every licence for the keeping of a bull shall be granted by a live-stock officer authorised by Government by general or special order in this behalf in such form, for such period, and subject to such terms, conditions and restrictions as may be prescribed :

Provided that no fee shall be charged for the grant of a licence.

Refusal to grant or revocation of licence.

7. (1) Subject to rules, the live-stock officer authorised to grant the licence may refuse to grant or may revoke a licence, if in the opinion of such authority, the bull appears to be—

(*a*) of defective or inferior conformation and likely to beget defective or inferior progeny ; or

(*b*) permanently affected with any contagious or infectious disease ; or

(*c*) permanently affected with any other disease rendering the bull unsuitable for breeding purposes.

(2) The live-stock officer granting a licence may also revoke a licence, if in the opinion of such officer there be any breach of any of the terms or conditions of the licence.

(3) No person shall be entitled to any compensation for the revocation of a licence under sub-section (1) or (2).

(4) If a licence is revoked under sub-section (1) or (2), the live-stock officer revoking the licence shall give notice to that effect to the owner or the person stated therein to be the owner of the bull and any such notice given in respect of a licence shall state the grounds for the revocation.

(5) If the notice is duly given in accordance with the last foregoing sub-section to a person who is not the owner of the bull, it shall be the duty of that person forthwith to take all reasonable steps to inform the owner accordingly, and if he fails to do so, he shall indemnify the owner against any loss the owner may suffer by reason of the failure.

Grant of duplicate of licence.

8. When the live stock-officer granting the licence is satisfied that a licence granted under section 6 has been lost or destroyed, such officer may, subject to such conditions as may be prescribed, issue to the holder of the licence a duplicate

thereof, and thereupon all the provisions of this Act with respect to the licence shall apply to the duplicate as if it were the original licence.

Duration of licence.

9. A licence granted in respect of a bull shall remain in force until—

(a) the period specified therein expires, or

(b) it is revoked under this Act, or

(c) the bull dies or is castrated in the prescribed manner.

Inspection of bulls.

10. Any person who keeps a bull shall at any reasonable time either at the place where the bull is for the time being or at any other reasonable place, submit the bull for inspection by any live-stock officer when required by such officer to do so and render all reasonable assistance to that officer for the purpose of inspection.

Power to order castration of bulls.

11. (1) A live-stock officer may, by notice served in the prescribed manner, require that any bull which has attained the prescribed age at the date when the notice is served and in respect of which no licence is for the time being in force under this Act, shall be castrated in a prescribed manner within one month after the notice takes effect. Such castration shall, if the owner or other person who keeps the bull requires, be performed or caused to be performed by the live-stock officer free of charge.

(2) For the purpose of this section, a notice shall be served on the owner of the bull or on any other person who keeps the bull.

(3) If a notice under this section is duly served on a person who is not the owner of the bull, it shall be the duty of the person forthwith to take all reasonable steps to inform the owner accordingly, and, if he fails to do so, he shall be liable to idemnify the owner against any loss the owner may suffer by reason of the failure.

Duty to produce licence

12. It shall be the duty of any person who for the time being keeps a bull, if a licence is in force in respect of the bull, to produce the licence—

(a) within a reasonable time on demand made by a live-stock officer or an officer of the Agricultural or Veterinary Department authorized by general or special order by Government in this behalf in any place where the bull is for the time being.

(b) before a cow is served by a bull on demand made by the person in charge of the cow.

Penalty for keeping a bull in contravention of this Act or rules or without or in contravention of licence.

13. Whoever in contravention of this Act or any rule or order made under this Act or of any terms, conditions or restrictions of licence keeps a bull shall, on conviction, be punishable with fine which may extend to Rs. 25.

Penalty for neglect or failure to comply with notice under section 7 or 11.

14. Whoever neglects or fails to comply with a notice served in accordance with section 7 or 11 shall, on conviction, be punishable with fine which may extend to Rs. 25.

Penalty for neglect or failure to comply with requisition under section 10 or 12.

15. Whoever neglects or fails to submit a bull for inspection when required by a live-stock officer for inspection under section 10 or whoever fails to produce a licence when required to do so in accordance with the provisions of section 12 shall, on conviction, be punishable with fine which may extend to Rs. 25.

Power of live-stock officer to castrate.

16. (1) Whenever an offence under section 15 has been committed, or whenever any bull has not been castrated in compliance with the notice served under section 11, it shall be competent to a live-stock officer to castrate or cause to be castrated in the prescribed manner, the bull in respect of which such offence was committed or such notice was served, as the case may be. Such castration shall be performed or caused to be performed by a live-stock officer free of charge.

(2) It shall also be competent to a live-stock officer to seize any bull, if the person in whose ownership, possession or custody it is, for the time being, is not known or cannot be ascertained after an inquiry in the prescribed manner. On such seizure the live-stock officer may, if he is of opinion that such bull has attained the prescribed age or is suffering from any of the defects or disease specified in section 7, direct that the said bull shall be—

(*a*) castrated in the prescribed manner, and

(*b*) sold by public auction or sent to a pinjrapol : provided that if the owner of the said bull appears within fifteen days of such seizure and proves to the satisfaction of the live-stock officer that the said bull is of his ownership,—

the said bull—

(*i*) if not sold by public auction, or

(*ii*) if sent to a pinjrapol,

shall be delivered to such owner on payment of the costs, charges and expenses incurred for the maintenance of the said bull and determined in the prescribed manner, or

(*iii*) if sold by public auction, the proceeds of such sale shall be paid to such owner after deducting therefrom the costs, charges and expenses incurred for the maintenance and sale of the said bull and determined in the prescribed manner.

Power of live-stock officer to inspect or mark a bull or to enter premises.

17. For the purposes of this Act, a live-stock officer shall have power at all reasonable times—

(*a*) to inspect any bull,

(*b*) to mark any bull with any prescribed mark in the prescribed manner,

(*c*) to enter any premises or other place in the prescribed manner where he has reason to believe that a bull is kept.

Officers bound to assist live-stock officers.

18. All village officers, all village servants useful to Government and all officers of the departments of revenue, agriculture and veterinary shall be bound—

(*a*) to give immediate information to a live-stock officer of the commission of any offence, or the intention or preparation to commit any offence punishable under this Act which may come to their knowledge ;

(*b*) to take all reasonable measures in their power to prevent the commission of any such offence which they know or have reason to believe is about to be committed ; and

(*c*) to assist any live-stock officer in carrying out the provisions of this Act.

Cognizance of offences under the Act.

19. No Court shall take cognizance of any offence under this Act, except on a complaint made by a live-stock officer or any person authorised by such officer in that behalf.

Live-stock officer to be public servant.

20. Every live-stock officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Protection of persons acting in good faith and limitation of suits and prosecutions.

21. (1) No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or the rules.

(2) No suit shall be instituted against Government and no prosecution or suit shall lie against any live-stock officer in respect of anything done or alleged to have been done, in pursuance of this Act, unless the suit or prosecution has been instituted within four months from the date of the act complained of.

Revision.

22. Government may call for and examine the record of any order or the proceedings of any live-stock officer for the purpose of satisfying themselves as to the legality and propriety of any order passed and as to the regularity of the proceedings of such officer. If in any case it shall appear to Government that any order or proceedings so called for should be modified, annulled or reversed, they may pass such order as they may deem fit.

Power of Government to make rules.

23. (1) Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(*a*) under section 4, prescribing the powers and duties to be exercised and performed by a live-stock officer and the assignment of such powers or duties,

(*b*) under section 5, prescribing the age of a bull after which it shall not be kept without a licence,

(*c*) under section 6, prescribing the form of, the manner in which, the terms, conditions and restrictions on which, a licence shall be granted, transferred or renewed,

(*d*) under section 7, prescribing the conditions subject to which a licence may be revoked,

(*e*) under sections 7 and 11, prescribing the manner in which notice shall be served,

(*f*) under section 8, prescribing the conditions subject to which a duplicate of a licence may be granted,

(*g*) under sections 11 and 16, prescribing the manner in which a bull shall be castrated, and the manner in which inquiry regarding the ownership of a bull shall be made, and the costs, charges and expenses for the maintenance and sale of a bull shall be determined,

(*h*) under section 17, prescribing the manner and form in which a bull shall be marked and the manner in which a live-stock officer shall enter any premises or other place.

(3) Rules made under this section shall be subject to the condition of previous publication in the *Bombay Government Gazette*.

(4) Rules made under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by a resolution of the said Council and such rule shall after notification in the *Bombay Government Gazette* be deemed to have been modified or rescinded accordingly:

Provided that when, in the opinion of Government such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, Government may, by notification in the *Bombay Government Gazette*, declare that the modification or rescission shall have no effect and thereupon the rule shall remain in force as if it had not been modified or rescinded.

Power of Government to apply the provisions of this Act to buffalo-bulls.

24. Government may, by notification in the *Bombay Government Gazette*, direct that all or any of the provisions of this Act which shall have been extended to any village under section 2 shall apply to buffalo-bulls in such village from the date specified in such notification and thereupon the references to bulls and cows in the provisions of this Act so applied shall be construed as references to buffalo-bulls and buffalo-cows respectively and this Act shall apply accordingly.

Saving.

25. Nothing in this Act shall apply to a bull dedicated in good faith to a religious purpose according to religious custom and usage.

The Bombay Life-stock Improvement Rules, 1935

No. 818/33.—In exercise of the powers conferred by section 23 of the Bombay Live-stock Improvement Act, 1933 (Bom. XXII of 1933) the Government of Bombay is pleased to make the following rules, namely :—

1. *Short title.*—These rules may be called the Bombay Live-stock Improvement Rules, 1935.

2. *Definitions.*—In these rules, unless there is anything repugnant in the subject or context—

(i) "the Act" means the Bombay Live-stock Improvement Act, 1933 ;

(ii) "castrate" means to perform an operation in accordance with these rules for the purpose of removing the reproductive power of a bull and the words "castrated" and "castration" shall be construed accordingly ;

(iii) "entire" means a male bull possessing full reproductive power ;

(iv) "schedule" means a schedule appended to these rules ;

(v) "section" means a section of the Act ;

(vi) "village" means a village to which the Act is extended and in which the Act has been brought into force under section 2 ;

(vii) "panchayat" means a panchayat established under the Bombay Village Panchayats Act, 1933 ;

(viii) words and expressions not defined in these rules but defined in the Act shall have the meaning assigned to them in the Act.

3. *Limit of age beyond which unlicensed or uncastrated bull not to be kept.*—No person shall keep a bull which has attained the age of two years unless a licence has been granted in respect of such bull, or such bull has been castrated in accordance with the provisions of these rules, as the case may be.

4. *Application for licence.*—Where a person keeping a bull desires to retain such bull entire after it has attained the age of two years, such person shall, three months before the bull attains the age of two years, make an application for a licence in respect of such bull to the Live-stock Officer. The application shall state the name and address of the person who keeps such bull, the place where such bull is kept, and the marks, colour, height and other particulars of identification of such bull.

5. *Inspection of bull before grant of licence*—On the receipt of such application, the Live-stock Officer shall inspect the bull and if the Live-stock Officer is not a qualified veterinary officer, may cause the bull to be inspected by a qualified veterinary officer as to its age and whether it is suffering from any defect or is affected with any disease mentioned in section 7 (1) (*b*) and (*c*).

6. *Grant of licence.*—If on inspection under rule 5, the Live-stock Officer is satisfied that the bull is not suffering from any defect or is not affected with any decease mentioned in section 7, the Live stock Officer may grant a licence in respect of such bull in the form prescribed in Schedule II; and the Live-stock Officer shall ordinarily grant a

licence for any such bull so as to provide that there shall be one such bull for every 60 cows in a village in the Presidency of Bombay excluding Sind and for every 40 cows in a village in Sind.

7. *Period of licence.*—The period for which a licence may be granted shall not exceed three years.

8. *Marking of licensed bulls.*—A bull in respect of which a licence has been granted shall be marked by means of tattooing in such manner as the Director of Agriculture may from time to time direct.

9. *Inspection by veterinary officer when compulsory.*—Before refusing to grant or revoking in a licence in respect of a bull on any of the grounds specified in sub-section (1) of section 7, the Live-stock Officer, if he is not a qualified veterinary officer, shall, if so required by the person who keeps the bull, cause the bull to be inspected by a qualified veterinary officer free of charge, and the opinion of such veterinary officer shall be conclusive whether the bull is suffering from any defect or affected with any disease mentioned in section 7 (1) (*b*) and (*c*).

10. *Renewal of licence.*—Before the period of a licence in respect of a bull expires, the holder of such licence shall apply to the Live-stock Officer for the renewal thereof. On such application the Live-stock Officer may renew the licence for a period not exceeding three years, provided that he is satisfied that the bull in respect of which the licence has been granted is not suffering from any defect or is not affected with disease mentioned in section 7.

11. *Transfer of licence.*—The holder of a licence may, with the previous consent in writing of the Live-stock Officer, transfer the licence to any person who shall have become the keeper of the bull. On such transfer, the Live-stock Officer shall make an endorsement on the licence stating the name of the person to whom the licence is transferred and the date up to which the said licence shall be in force.

12. *Notice of revocation of licence.*—When a Live-stock Officer revokes a licence in respect of any bull, he shall give the keeper of the bull notice in the form perscribed in Schedule III.

13. *Form of notice of castration.*—The notice of castration under section 7 shall be given in the form prescribed in Schedule IV.

14. *Castration.*—(1) Every bull directed to be castrated under section 11 or section 16 shall be effectively desexed.

(2) If a Live-stock Officer, not being a qualified veterinary officer, is not satisfied with the castration of any bull, he may cause the castration to be performed again by a qualified veterinary officer free of charge.

15. *Manner of inquiry under section 16.*—Before seizing a bull under sub-section (2) of section 16, the Live-stock Officer shall cause an inquiry to be made as to the ownership of the bull by the panchayat of the village in which the bull is kept and, where no panchayat has been established for the village, by a committee consisting of the village officers and such other residents of the village, not exceeding three in number, as may be appointed by the Live-stock officer in this behalf.

16. *Determination of costs of maintenance and sale of a bull.*—The amount of costs, charges or expenses specified in sub-section (2) of section 16 shall be fixed by the Live-stock Officer :

Provided that if the owner or other person who keeps the bull disputes the amount so fixed, such amount shall be determined by the panchayat of the village and, where no panchayat has been established, by a committee constituted in the manner prescribed in the preceding rule. The decision of the panchayat or the committee, as the case may be, shall be final.

17. *Duties of the Live-stock Officer.*—It shall be the duty of the Live-stock Officer to exercise all or any of the powers conferred on him under the Act or the rules for purpose of carrying into effect the purposes of the Act ; and, in particular, to provide that no bull which has attained the age of two years shall remain in any village unless a licence has been obtained in respect of such bull, or unless such bull has been castrated in the manner prescribed by these rules.

18. *Power of Live-stock Officer to enter premises.*—The Live-stock Officer shall have power to enter any premises or place where he has reason to belive that bulls are kept, between sunrise and sunset, for the purpose of performing any of the duties imposed on him by the Act or the rules ;

Provided that the Live-stock Officer may before entering such premises or place give notice in writing to the owner or occupier of such premises or place in the form prescribed in Schedule I.

SCHEDULE I.

(*See* rule 18)

To

A. B. , residing at

Whereas I have reason to believe that you have kept $\frac{\text{on your premises}}{\text{in your place}}$ an entire $\frac{\text{bull}}{\text{bulls}}$ I hereby give you notice that I shall enter your $\frac{\text{premises}}{\text{place}}$ on * between † for the purpose of inspecting the said $\frac{\text{bull}}{\text{bulls}}$; you are hereby warned to keep the $\frac{\text{bull}}{\text{bulls}}$ ready for inspection and not to remove the $\frac{\text{bull}}{\text{bulls}}$ on the aforesaid date from the $\frac{\text{premises}}{\text{place}}$ until $\frac{\text{it is}}{\text{they are}}$ inspected by me.

Dated this the day of 19 .

*(Here state date). †(Here state hours.)

SCHEDULE II.

(*See* rule 6)

LICENCE TO KEEP A BULL.

Mr. / Mrs. / Miss. of is hereby granted a licence, subject to the provisions of the Bombay Live-stock Improvement Act, 1933 (Bom. XXII of 1933), and the Bombay Live-stock Improvement Rules, 1935, conferring upon him/her the privilege of keeping the bull described in the margin, for breeding purposes, in the village of , taluka , district , for the period from 19 to 19 both days inclusive subject always to the terms, conditions and restrictions hereinafter mentioned, namely :—

S. No. Tattoo No.

Name, if any, of bull—

Age

Colour—

Height—

Marks—

Other particulars—

(1) The licence-holder shall inform the Live stock Officer of any illness, defect or deformity which is likely to render the bull unsuitable for breeding purposes.

(2) The licence-holder shall not be entitled to any compensation for revocation of the licence.

(3) The licence-holder shall submit the bull for inspection whenever required by any live-stock Officer to do so.

(4) The licence-holder shall maintain the bull in good breeding condition to the satisfaction of the Live-stock Officer.

(5) The licence-holder shall give benefit of the service of the bull to the cows of the village in which the bull is kept in preference to the cows of other villages.

(6) The licence-holder shall give to the Live-stock Officer all information regarding the service rendered by the bull during the period of the licence.

(7) The licence-holder shall give intimation to the Live-stock Officer when the licensed bull is sold or otherwise transferred.

Dated the day of 19

(Signed).

Live-stock Officer.

N. B.—(*a*) This licence may be renewed on the keeper satisfying the Live-stock Officer that the bull continues to be a good breeder and has been maintained in good breeding condition.

(*b*) This licence will be revoked for breach of any of the terms or conditions thereof.

SCHEDULE III

(*See* rule 12)

To

A. B. , residing at

Whereas it has come to my notice that you keep a bull described

S. No. Tattoo No. in the margin in respect

Name, if any, of bull—
Age—
Colour—
Height—
Marks—
Other particulars—

of which a licence was granted to you on

And Whereas I am of the opinion that

A the bull appears to be *

B there has been a breach of the terms or conditions of the licence inasmuch as ‡

I have under section 7 of the Bombay Live-stock Improvement Act, 1933, revoked the licence and I give you notice of the said revocation as required by sub-section (4) of the said section 7.

Dated this the day of 19.

(Signed)

Live-stock Officer.

N. B.—A or B should be scored out where necessary.

SCHEDULE IV.

(*See* rule 13)

To

A. B. , residing at

Whereas it has come to my notice that you $\frac{\text{own}}{\text{keep}}$ a bull described in the margin in respect of which

Name, if any, of bull :

Description :

a licence is $\frac{\text{not taken}}{\text{refused}}$ / $\frac{\text{revoked}}{\text{not renewed}}$;

Now therefore in exercise of the powers conferred upon me by section 11 of the Bombay Live-stock Improvement Act, 1933, I give you notice that the said bull shall be castrated within one month from the date of the receipt of this notice and that on your failure to do so you shall be liable to be punished under section 14 of the said Act.

Dated this the day of 19 .

(Signed)

Live-stock Officer.

Note.—Castration shall be performed by officers of the Agricultural or Veterinary Departments free of charge.

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* [Here state the condition according to clause (*a*), (*b*), or (*c*), as the case may be, of sub-section (1) of section 7.]

‡ (Here describe the breach).

THE

Bombay Local Boards Act, 1923

BEING

Bombay Act No. VI of 1923.

[*17th March 1923.*

(As amended by Bom. Acts II and XIII of 1925, VI of 1926, X of 1927, V of 1928, IV and XXV of 1930, X, XXII and XXIII of 1931, V and XV of 1932, XVI of 1933, VIII and XIV of 1934 and VI, XIII and XVI of 1935).

An Act to consolidate and amend the law relating to local boards.

WHEREAS it is expedient to consolidate and amend the law relating to local boards and local funds and whereas the previous sanction of the Governor-General required by clauses *(a)*, *(e)* and *(h)* of sub-section (3) of section 80A of the Government of India Act, has been obtained for the passing of this Act; It is hereby enacted as follows :—

CHAPTER I—PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Bombay Local Boards Act, 1923.

(2) It extends to the whole of the Presidency of Bombay, except the City of Bombay and Aden.

Operation of the Act.—Where any Bombay Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it is first published in the *Bombay Government Gazette* after having received the assent of the Governor General (*Bombay General Clauses Act, 1904, s 5*). Accordingly it came into operation on the 17th March 1923.

"Presidency of Bombay."—"Presidency of Bombay" shall mean the territories within British India for the time being under the administration of the Governor of Bombay in Council (*Bombay General Clauses Act* (I of 1904), s. 3 (7)).

"Whereas it is expedient, &c".—Preamble—The preamble of an Act is a key to its understanding and it generally fixes its scope or limit (*Edwards*, 1 Bom. 333).

Construction.—Where in an Act of the Legislature the context discloses a manifest inaccuracy the sound rule of construction is to eliminate the inaccuracy and to execute the true intention of the Legislature (*Jennings v. President, Municipal Committee, Madars*, 11 Mad. 753).

The powers of a statutory corporation as a municipal or Local Board must be strictly construed and what is not permitted to such body in express terms or by necessary implication must be taken as forbidden (*Municipal Council, Kumbhahonam v. Abbahsaheb*, 36 Mad. 115). But a construction which would facilitate the carrying out of the object of the Act ought rather to be adopted than a construction which would retard the fulfilment of the object (*Municipal Corporation v. Gharandas*, 20 Bom. L. R. 1422).

The powers of a local authority are strictly confined to the territorial limits prescribed by the Act. It cannot acquire any property, exercise any of its rights and privileges or expend money on any object outside the statutory limits of its jurisdiction unless specifically authorized in that behalf by the Legislature (*Sundaram Aiyar v. Municipal Council, Madura*, 25 Mad. 635).

In construing a Statute the Court cannot refer to the Statement of Objects and Reasons attached to the Bill, or to the Report of the Select Committee, or to the debates of the Legislature but can only look to the Statute itself (*Kadir Baksh v. Bhawani Prasad*, 14 All. 145), nor to the Proceedings of the Legislature as legitimate aids to the construction of an Act (*Shri Churn Chungo*, 22 Cal. 1047). See also *Bal Gangadhar Tilak*, 22 Bom. 112.

Interpretation of the Act and Rules.—There is a clear distinction between the provisions of the Act and the Rules framed by the Government under the Act. The Local Boards are only creations of the statute; they take the privileges with all the limitations and conditions that may be imposed by the Act; one of such limitations is the power conferred on the Government to make rules for the purpose of working the Act. The Government has only the power to impose restriction by virtue of its rule-making power, so long such rules are not repugnant to the provisions of the Act and do not curtail any right previously vested in the public. If the Government has power to make rules, the fact that they purported to make them under one section rather than another is no ground for holding that the rules are *ultra vires*. Misquotation of authority is not fatal to its authority (30 Mad. 113).

Repeal of certain Acts.

2. The Sind Local Funds Act, 1865, the Bombay Local Funds Act, 1869, and the Bombay Local Boards Act, 1884, are hereby repealed : Provided that such repeal shall not affect the liability of any person to pay any sum due from him under any of the said enactments.

Interpretation section.

3. In this Act, unless there is anything repugnant in the subject or context,

(*a*) the words "salaried servant of the Government" do not include a retired servant of the Government in receipt of a pension or a person in receipt of a salary of fees from the Government who is not a full time servant of the Government ;

(*b*) the word "taluka" means any local area for which a taluka board is established, [1] "or a taluka committee is appointed under section 38A" [1] inclusive of the portion of such area, if any, for the time being within a municipal district or a Military cantonment ;

(*c*) the word "Mamlatdar" means in Sind a Mukhtyarkar, and

(*d*) any word or expression which is defined in the Bombay Land Revenue Code, 1879, and is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code.

[1—1] These words were inserted by the Bom. Amending Act VI of 1935.

"Salaried Servant of the Government."—Ugratdar appointed under the Gujarat Talukdars Act not being a full time servant of Government, is not a salaried servant of the Government (O. No. 5509 of 7th August 1917).

CHAPTER II.

CONSTITUTION OF LOCAL BOARDS.

Establishment of district and taluka local boards.

4. (1) The Government shall establish one district local board for each district as constituted from time to time under the Bombay Land Revenue Code, 1879, and may establish such number of taluka local boards for such areas within the district as it shall deem fit.

(2) Local funds shall be administered by local boards established under the provisions of this Act.

(3) A district local board and subject to the authority of the district local board, a taluka local board shall have authority for the purposes of this Act over the area for which it has been established, except such portion thereof as is for the time being within the limits of a municipal district or cantonment.

(4) Any local board established under the Bombay Local Boards Act, 1884, and existing immediately prior to the coming into force of this Act, shall be deemed to have been established under this Act;

and in respect of all property, debts, obligations, contracts, agreements, civil and criminal proceedings and any other matter or thing the rights and liabilities of any such local board shall be deemed to vest in the local board so deemed to have been estalished;

and any appointment, notification, notice, tax, order, scheme, license, permission, rule, by-law or form made, issued or imposed in respect of any such local board under any law other than the Acts repealed by section 2, or so far as consistent with the provisions of this Act, under any Act so repealed shall be deemed to have been made, issued or imposed under the provisions of such law or this Act respectively in respect of the local board so deemed to have been established under this Act, unless and until superseded by any appointment, notification, notice, tax, order, scheme, license, permission, rule, by-law or form made, issued or imposed under such law or this Act.

*"(5) Notwithstanding anything contained in sub-section (1), when two districts constituted under the Bombay Land Revenue Code, 1879, are constituted into one district under the said Code, it shall be competent to Government by notification in the *Bombay Government Gazette*, to order the one district so constituted to be divided into two districts for the purposes of this Act, and there-

* Sub-section (5) was added by Bom. Act XVI of 1933, s. 2.

upon the provisions of this Act and any other enactment relating to or having reference to a district local board shall, unless there is anything repugnant in the subject or context, apply to each of such two districts as if each such district were a district within the meaning of the said sub-section."

Constitution of local boards.

5. (1) Every district and taluka local board shall consist of—

(*a*) elective members, and

(*b*) such persons, if any, as the Government or any officer whom it authorizes in this behalf from time to time appoints, who shall be called "nominated members."

(2) Any officer of the Government may be appointed by the said authority by his official designation only to be *ex-officio* a member of the board. The holder of the office for the time being and all persons succeeding thereto shall then be members of the board in succession, provided that the combined term of office of such persons as members of the board shall be limited in the manner provided in this Act for the term of office of a person appointed to be a member otherwise than *ex-officio*.

(3) The number of elective members shall be not less than three-fourths of the whole board, and not more than one-half of the nominated members shall be salaried servants of the Government.

(4) Where in the opinion of the Government in the area subject to a local board the number of any class which in the opinion of the Government is a depressed class is sufficient to require representation on the local board and no member of such class has been elected and a member of such class is qualified and willing to be nominated a member of the board, the Government shall nominate one such member to be a member of the local board.

(5) Any vacancy due to failure to elect at any election or by-election the full number of elected members may be filled by appointment by the Government.

Elective members of local boards by whom to be elected.

6. The elective members of local boards shall be elected by general and Mahomedan constituencies and the number and the extent of such constituencies and the number of members to be elected by each constituency shall be as prescribed by orders made by the Government under clause (*a*) of section 133.

Constitution of local boards in exceptional cases.

7. (1) The Government may at any time by notification in the *Bombay Government Gazette* direct that the provisions of sections 5 and 6, and the subsequent provisions of this Act which refer to those sections, or any one or more of the said

provisions, shall not apply to any local board to which for exceptional reasons, which shall be set forth in the said notification, the Government shall deem such provisions to be unsuitable.

(2) In the said notification or any subsequent notification published as aforesaid the Government may substitute such provision or provisions as it deems fit for the provision or provisions declared inapplicable to any local board and the provision or provisions so substituted shall have effect, so far as concerns such board, as if they were inserted in this Act.

(3) In the event of any notification under sub-section (1) being rescinded the local board affected thereby shall, from a date to be fixed in this behalf by the Government, be constituted in accordance with sections 5 and 6 and the subsequent provisions of this Act having reference thereto.

Qualifications necessary for election to local boards.

[a] 8. Subject to the provisions of this Act and of any other law for the time being in force,—

(a) every person whose name is entered in the list prepared under section 11 for a constituency of a taluka local board may be a candidate at any election for such taluka local board ; and

(b) every person whose name is entered in any such list for a constituency of the district local board may be a candidate at any election for the district local board.

General disqualifications of members.

9. (1) No person may be a member of a local board who—

(a) is less than 21 years of age, or

(b) is a Judge of a civil court, or

[b] (c) (i) has been sentenced by a criminal court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months or to transportation, such sentence not having been subsequently reversed or quashed, if and so long as such sentence has not expired, or

(ii) is a person against whom an order has been passed under section 118 of the Code of Criminal Procedure, 1898, in proceedings instituted under section 110 of that Code, such order not having been subsequently reversed or quashed if and so long as such order is in force, or

(iii) has been removed from office under section 31 and five years have not elapsed from the date of the expiry of such removal, unless he has, by an order of the Government notified in the *Bombay Government Gazette*, been relieved from the disqualification arising on account of such sentence, order or removal from office, or

[a] This section was substituted for the original section by Bom. Act II of 1925, s. 2.

[b] This clause was substituted for the original clauses (c) and (d) and the explanation to clause (d) by Bom. Act XIII of 1925, s. 2 (1) (a).

[a] (d) is a stipendiary officer or servant of a local board, or

[a] (e) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of a local board, or in any contract or employment with, or under, or by, or on behalf of, a local board.

(2) No person shall be disqualified under clause [b] (e) of sub-section (1) for membership of a local board by reason only of such person—

(a) having a share in any joint stock company or a share or interest in any society registered or deemed to be registered under the Co-operative Societies Act, 1912 [c] which shall contract with or be employed by or on behalf of the local board; or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the local board may be inserted; or

(c) holding a debenture or being otherwise concerned in any loan raised by or on behalf of the local board; or

(d) being professionally engaged on behalf of the local board as a legal practitioner; or

[d] '(e) being a police patil, who is an *ex-officio* keeper of village cattle pounds under the control of the local board."

(2) If any person is elected or appointed to a local board and is subject to any of the disqualifications specified in this section, his seat shall be deemed to be vacant and the vacancy shall be filled up, as soon as conveniently may be, by the election or appointment, as the case may be, of a person thereto, who shall hold office so long only as the person in whose place he is elected or appointed would have held it if he had been eligible to be a member of the board.

(4) If any question, dispute or doubt arises whether a vacancy has occurred under this section, the orders of the Commissioner shall be final for the purpose of deciding such question, dispute or doubt.

Disqualification.—The sex disqualification having been removed, women may become members of local boards under this Act.

Sub-Assistant Surgeons and school-masters are eligible for election.

A contract with a corporation though not under a seal will disqualify (*R. v. Francis*, 18 Q. B. 526). A person is interested in a contract if he takes an assignment of it by way of security even before its election (*Hunnings v. Williamson*, 11 Q. B. D. 537).

An interest in a contract must be a pecuniary, or at least, a material interest; but it need not be a pecuniary advantage (*Ibid*).

[a—a] Clauses (e) and (f) were relettered (d) and (e) respectively by Bom. XIII of 1925, s. 2 (1) (b).

[b] The letter and brackets "(e)" were substituted for the original letter and brackets "(f)" by Bom. Act XIII of 1925, s. 2 (2).

[c] See now the Bombay Co-operative Societies Act, 1925.

[d] Cl (e) was inserted by Bom. Act X of 1931, s. 2 (b).

A councillor who purchases from the municipality any article, whether or not it is an article in which he regularly trades subject to certain pecuniary limits, is exempted from disqualification.

Re-eligibility of members.

10. A person who has already been elected or appointed a member of a board on one or more occassions shall, if otherwise duly qualified, be eligible at any time for re-election or re-appointment.

Preparation of list of voters.

11. (1) The Collector shall keep a list for each constituency of each local board within his district of the persons qualified to vote in such constituency at elections of members of the local board.

(2) Such list shall be prepared by the Collector whenever a date has been fixed for any election of persons to fill the places of persons whose term of office has expired or whenever the Commissioner so directs, and shall be based upon such information as shall be available in the records of the Collector and of the officers subordinate to him, and also upon the past decisions of the Collector under section 22 of the Bombay Local Boards Act, 1884, or under section 13.

"Collector"—The term "Collector" may include the Assistant or Deputy Collector in charge of the taluka.

Printing Charges.—The printing charges of voters' lists should be borne by the local boards.

Publication of the lists.

12. (1) A list prepared under section 11 shall be published by affixing, in some conspicuous place in or near the office of the local board and of each Mamlatdar and Mahalkari, and in the chavdi or some other public building of each town or village in the district, a copy of the list or of so much of the list as relates to the taluka, town or village.

(2) The publication aforesaid shall be made in the vernacular language of the district and where a date has been fixed for any election of persons to fill the places of members whose terms of office have expired, at least three months before such date.

Revision of lists.

13. The Collector may, on application being made to him at any time within one month after the publication of the list aforesaid by any person claiming to be qualified to vote at any election of

members of the local board, correct any erroneous entry in the list, or insert therein the name of any person whose right to be entered in the list is proved to the satisfaction of the Collector. The Collector's decision shall be final and conclusive.

Final publication of list.

14. (1) The Collector, after revising the list as provided in section 13, shall republish the same within two months from the date of publication under section 12 in the manner provided in that section.

Lists conclusive evidence of right to be elected or to vote.

(2) No person whose name is not in the revised list last published before the date of any election shall be qualified [*a*] * * to vote at the election of a member for the constituency for which such list has been prepared.

[*b*] (3) No person shall be qualified to be elected for any constituency of a taluka or district local board unless his name is in the revised list last published before the date of any election for a constituency of such taluka or district local board.

"Person."—The term "person" includes a company or association or body of individuals whether incorporated or not (*Bombay General Clauses Act*, 1904, s. 3 (35).

What persons may be voters at elections.

[*c*] "**15.** (1) Unless disqualified under this Act or under any other law for the time being in force, the following persons shall, subject to the provisions of sub-section (2), be entitled to have their names entered in the list for a constituency prescribed under section 6 qualifying them to vote at elections of members of local boards in such constituency, namely :—

Every person who on the first day of January next precedfng the date on which the list is published under section 12 had a place of residence within the constituency, and

(a) whose name is entered in the current electoral roll of a territorial constituency of the Bombay Legislative Assembly for an area constituting or forming part of a constituency prescribed under section 6, or

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[*a*] Words repealed by Bom. Act II of 1925, s. 3 (1), are omitted.

[*b*] This sub-section was inserted by Bom. Act II of 1925, s. 3 (2).

[*c*] This section was substituted for the original section by Bom. Act XVIII of 1936, s. 2.

(b) who was assessed to any tax imposed by a local board (other than toll or octroi) fn the financial year preceding that in which the list is published under section 12.

(2) A person whose name is entered in the current electoral roll of a territorial constituency of the Bombay Legislative Assembly shall not, by reason only of the entry of his name in such electoral roll, be entitled to have his name entered in the list for a constituency prescribed under section 6, if the place of residence of such person on the date referred to in sub-section (1) is within the limits of a municipal district or a cantonment comprised in such constituency, unless such person possesses, on the aforesaid date, a property qualification entitling his name to be included in the electoral roll for the area referred to in clause (*a*) of sub-section (1).

(3) Provided that—

(*a*) no person who is not a Mahomedan shall be entered in a list for a Mahomedan constituency ; and

(*b*) no person who is a Mahomehan shall be entered in a list for a general constituency.

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one constituency of the same taluka local board or of more than one constituency of the same district local board.

Explanation.—For the purposes of this section—

(1) the current electoral roll of a territorial constituency of the Bombay Legislative Assembly shall mean the electoral roll for the time being in force of a territorial constituency of the Bombay Legislative Assembly prepared and published under the Bombay Legislative Assembly Electoral (Preparation, Revision and Publication of Electoral Rolls) Rules, 1936.

(2) 'property qualification' means any of the qualifications dependent on property as prescribed in clauses *(a)*, *(b)* and *(c)* of paragraph 3 of Part III of the Sixth Schedule to the Government of India Act, 1935, or clauses *(a)* and *(b)* of paragraph 5 of Part III of the Government of India (Provincial Legislative Assemblies) Order, 1936."

Landholder.—The term "landholder" signifies the person in whom a right to hold land is vested, whether solely or on his own account or wholly or partially

in trust for another person, or for a class of persons or for the public. It includes a mortgagee vested with a right to possession (*Bombay Land Revenue Code*, s. 3 (11). It includes (1) Registered occupants, (2) Holders of alienated land and (3) Tenants.

General disqualification of voters.

16. No person who is less than twenty-one years of age shall be entitled to have his name entered in a list prepared under section 11.

Elections when to be held.

17. Every election requisite for the purposes of this Act shall be held on such date as the Collector shall fix in this behalf :

Provided that, when the elections are for the purpose of filling the places of members whose terms of office have expired, such date shall be not sooner than two months and not later than one month before the commencement of the term of office of members of the board to which such elections are to be made.

Election.—An election of councillors must be free ; and subject to this and to certain well defined restrictions, every candidate at an election has the same right, upto and including the day of the poll, to take all proper legitimate measures to canvass the electorate and persuade them to vote for him. And all persons may legally use their legitimate influence to persuade the electors to vote for such persons as they think fit; and the ordinary methods which prevail at election times, upto and including the day of poll, of persuading the elector's holding meetings, posting placards, distributing handbills and so on, are perfectly lawful subject to certain well defined restrictions. So likewise and upon the same conditions the canvassing of voters which has for its chief end the bringing of every supporter to the poll, or the asking them to record their votes in favour of any particular candidate, is perfectly lawful in itself. Compulsory levies to obtain representation of municipal bodies is illegal (*E. v. White*, L. R. 2 Q. B. 557). The election of any candidate as councillor may be avoided if that candidate by himself or his agents has been guilty of corrupt or an illegal practice (*Aiyangar's Municipal Corporations in British India*, p. 93).

Provisions for election or nomination in particular cases.

18. (1) If at any election of a member of a local board under this Act there is an equal number of votes in favour of each of two or more persons who are willing to take office, and the addition of one vote will entitle any of the persons to be elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by the Collector, or by such officer as he may empower in this behalf, by lot in such manner as he shall deem fit.

(2) If any person duly elected at any such election declines to take office, the person, if any, amongst the unsuccessful candidates in whose favour the highest number of votes has been recorded and who is willing to take office shall be deemed to be the member elected.

(3) If at any contested election no votes are recorded, or if for any reason an election does not result in the return of the required number of qualified persons willing to take office, the Collector, in the case of a taluka local board, and the Commissioner, in the case of a district local board, shall appoint the required number of persons, being persons who would have been qualified to be elected, and the persons so appointed shall be deemed to be members of the local board as if they had been duly elected.

Note.—This section dispenses with the necessity under the old Act of 1884 of the approval of Government to the appointment of a member of a local board by the Collector or the Commissioner in the case of an election not resulting in the return of any qualified person willing to take office (*Statment of Objects and Reasons*).

Determination of validity of elections : enquiry by Judge : procedure.

19. (1) If the validity of any election of a member of a local board, or the legality of any order or proceeding made or held under section 18 is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time within fifteen days after the date of the declaration of the result of the election or the date of the order or proceeding, apply to the District Judge of the district within which the election has been or should have been held for the determination of such question.

(2) An enquiry shall thereupon be held by a judge, not below the grade of an Assistant Judge, appointed by the Government either specially for the case or for such cases generally; and such Judge may, after such enquiry as he deems necessary, pass an order confirming or amending the declared result of the election or the order of the Collector under section 18, or setting the election aside. For the purposes of the said enquiry the said Judge may exercise any of the powers of a civil court, and his decision shall be conclusive. If he sets aside an election, a date shall forthwith be fixed and the necessary steps taken, for holding a fresh one.

[1] (2A) All applications received under sub-section (1)—

(a) in which the validity of the election of members to represent the same constituency is in question shall be heard by the same Judge ; and

(b) in which the validlity of the election of the same member elected to represent the same constituency is in question shall be heard together.

(2B) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not permit *(a)* any applicaion to be compromised or withdrawn or *(b)* any person to alter or amend any pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is *bona fide* and not collusive."[1]

(3) *(a)* If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of sub-section (4), he shall deelare the candidate disqualified both for the purpose of that election and of such fresh election as may be held under sub-section (2), and shall set aside the election of such candidate if he has been elected.

(b) If, in any case to which clause *(a)* does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall, after a scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected :

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

(4) A person shall be deemed to have committed a corrupt practice—

(a) who with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury, to any person, or

[1—1] Sub-sections (2A) and (2B) were inserted by the Bombay District Municipal, Local Boards and Municipal Boroughs (Amendment) Act, 1936 (Bom. Act XIV of 1936), s. 2.

(*b*) who gives, procures, or abets the giving of a vote in the name of a voter who is not the person giving such vote ;

And a corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation.—The expression "a promise of individual profit"

(i) does not include a promise to vote for or against any particular measure which may come before a local board for consideration, but

(ii) subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested.

(5) If the validity of the election is brought in question only on the ground of an error made by the officer charged with carrying out the rules made in this behalf under clause (*b*) of section 133, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.

(6) If the Judge sets aside an election under clause (*a*) of sub-section (3), he may, if he thinks fit, declare any person by whom any corrupt practice has been committed within the meaning of this section to be disqualified from being a member of any local board for a term of years not exceeding five and the decision of the Judge shall be conclusive :

Provided that such person may, by an order of the Government in that behalf, be at any time relieved from such disqualification :

Provided further that no such declaration shall be made in respect of any person without such person being given an opportunity to show cause why such declaration shall not be made.

"**At any time within fifteen days.**"—A petitioner questioning the validity of an election is entitled to give evidence of additional cases of misconduct in the course of the election which are mentioned for the first time after the expiration of fifteen days prescribed by the rules for filing the application, and the fact that the additional instances are given by means of amendment of plaint makes no difference. There is nothing in the rule which requires a petition, to specify all the particulars in the petition, and it is enough if the ground mentioned is that the respondent was guilty of personation. The practice in England is to allow particulars of the charges to be furnished after the petition is presented, and there is no reason why the same practice should not prevail in India (*Nawab Khan v. Mahammad Zamin*, 34 All. 649).

Voter disqualified for corrupt practice.

20. Any person who has been convicted under section 171E or 171F of the Indian Penal Code, or has been disqualified from exercising any electoral right for a period of not less than five years on account of malpractices in connec-

tion with an election, shall, for five years from the date of such conviction or disqualification, be disqualified from voting at any election to a local board or at any municipal election.

Notes—Section 171E of the Indian Penal Code treats for punishment for bribery and section 171F for punishment for undue influence for personation at an election.

Corrupt and illegal practice—A corrupt practice means (1) treating, (2) undue influence, (3) bribery, (4) personation and (5) aiding, abetting, counselling, and procuring the offence of personation (*Halsburys' Laws*, Vol. 12, p. 345). Corrupt practices whenever committed may avoid an election. The gist of the offence in corrupt practices is the corrupt inducement to the voter to vote or refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. There can be no corrupt practice without an intention; but with reference to illegal practices, whatever the intention may be, it could be committed. A corrupt practice is a thing the mind goes along with. An illegal practice is a thing the Legislature is determined to prevent whether it is done honestly or dishonestly (*Parrow in Furness*, 4 O. M. and H. 77). Associations cannot be found guilty of illegal practices. Such offences should be brought home to the committee or to the individuals guilty (*Hexham and Rochester*, Days's El. Cas. 14 and 101 quoted in *Aiyangar's Municipal Corporations in British India*, p. 94.)

Application to the District Court is liable to a stamp duty of eight annas under the Court fees Act, Sch. II, Art. (1) (*b*).

Publication of names of members in the Bombay Government Gazette.

21. The names of all members finally elected to any local board, as well as the names of the nominated members, if any, appointed thereto shall be published, as soon as conveniently may be, in the *Bombay Government Gazette*.

Election of presidents.

22. (1) Every local board shall be presided over by a president, elected by the board from among its own members.

Vice-presidents

(2) The board shall also elect one of its members to be vice-president.

Presidents and vice-presidents not to be salaried servants of the Government.

(3) A salaried servant of the Government shall not be elected president or vice-president of a local board and the election of any such servant as such shall be void.

Note.—A Municipal Committee presided over by a person who is not its president as required by the section is not a validly constituted Committee (*Chandu*, P. R. No. 46 of 1905, Or.)

Functions of presidents.

23. (1) The president of a local board shall—

(*a*) preside at the meetings of the Board;

(*b*) watch over the financial and executive administration of the board and submit to the board all questions connected therewith which shall appear to him to require its orders ;

(*c*) exercise supervision and control over the acts and proceedings of all officers and servants of the board in matters of executive administration, and in matters concerning the accounts and records of the board ; and subject to the regulations at the time being in force framed by the board under section 123, dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances ; and

(*d*) furnish to the Collector or to such other officer as the Collector shall from time to time nominate in this behalf, a copy of every resolution passed at every meeting of the board and any extract from the minutes of the proceedings of the board, or other document or thing which the Commissioner, Collector or other duly authorized officer of the Government may from time to time call for under section 124.

Emergency powers of president.

(2) The president of a local board may in cases of emergency direct the execution or stoppage of any work or the doing of any act which requires the sanction of the local board, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the local fund :

Provided that—

(*a*) he shall not act under this section in contravention of any order of the local board prohibiting the execution of any particular work or the doing of any particular act, and

(*b*) he shall report forthwith the action taken under this section and the reasons therefor to the standing committee at its next meeting.

Function of President.—The president has no power to override a resolution of a Managing Committee which can be overruled only by a resolution passed by the municipality at a quarterly or special general meeting (*G. R. No. 22 of 4th January 1887, G. D., quoted in Cumming's District Municipal Manual,* 5th Ed. of 1930, p. 95).

Duties of Chairman of meeting.—The most important duty of the Chairman of a meeting is to maintain order, or, in other words, to see that the proceedings and discussions are regularly and properly conducted. He must take care that there is a distinct motion before the meetings, and should allow no speeches to be made which are not strictly relevent to that motion. His decision on all points of order is virtually final. The duty of deciding all questions as to the admissibility of motions and amendments under the rules in force as to notice, or in regard to the terms of the notice convening the meeting in question is

specially imposed upon him. He should insist upon the use of decorous and temperate language and call any person to order who indulges in unwarrantable personalities or imputations. Where two members rise at the same time it is for the Chairman to decide who is entitled to speak. When a motion or amendment is made, and the mover resumes his seat, the Chairman should allow no member to speak unless such member declares that he rises to second the motion or amendment. The Chairman is entitled to insist that all speeches should be addressed to him, and that members should not speak on the same motion more often than the rules permit. The general rule is, that, except in the case of a mover summing up by way of reply, no speaker is entitled to speak twice. "Perhaps it will be safe in a general way to allow a man to speak a second time, if he does so in good faith for the purpose of commenting on some new point that has arisen since his first speech, or of making some new suggestion of his own, it being clearly understood both by him and by the meeting that he speaks by favour and not of right." (*Chamber's Hand-book for Public Meetings, p. 25*).

Functions of Vice-presidents.

24. The vice-president of a local board shall

(*a*) in the absence of the president preside at the meetings of the board ;

(*b*) exercise such of the powers and perform such of the duties of the president as the president from time to time deputes to him ; and

(*c*) pending the election of a president, or during the absence of the president on leave, exercise the powers and perform the duties of the president.

Note.—Under this section and sections 82 *post*, the Vice-President can sign cheques only if the President is absent on leave and not otherwise.

Consequence of absence of president or vice-president without leave.

25. (1) Every president of a local board who for a period exceeding three months, and every vice-president who for a period exceeding one month, shall absent himself from the district or taluka for which the local board is established in such manner as to be unable to perform his duties as such president or vice-president, shall cease to be president or vice-president, as the case may be, unless leave so to absent himself has been granted by the board or in the case of a vice-president by the president.

Limit to the grant of leave, and arrangements pending absence of president or vice-president.

(2) Leave under sub-section (1) shall not be granted for a period exceeding six months, and whenever leave is granted to a president or vice-president under that sub-section, the board shall elect one of its members to exercise all the powers and perform all the duties of a vice-president in lieu of the vice-president who is exercising the powers and performing the duties of the president, or who is absent on leave, during the period for which such leave is granted.

Term of office of president and vice-president and their liability to be removed.

26. (1) The term of office of every president or vice-president shall cease on the expiry of his term of office as a member of the local board over which he presides: provided that he shall be removable from office, as such president or vice-president, by the Government for misconduct, or neglect of or incapacity to perform his duty.

Casual vacancies in their office how to be filled up.

(2) In the event of the death, resignation, or removal from office of a president or vice-president, or of his becoming incapable of acting, or ceasing to be a member of the local board, previous to the expiry of his term of office, the vacancy shall be filled up as soon as conveniently may be by the election of some other member of the board thereto.

Inability of president or vice-president to call a meeting.

(3) Where the president and vice-president are unable or for any reason fail to call a meeting for the purpose of an election under sub-section (2), the Collector may exercise the powers of the president for the purpose of calling such meeting.

President and vice-president to continue to carry out certain duties until their successors take over charge.

27. On the expiry of the term of office of a local board the president and vice-president shall continue to carry out the current administrative duties of their offices until such time as a new president and vice-president shall have been elected and shall have taken over charge of their duties: Provided that in the case of the new board constituted under this Act, a meeting for the election of a new president shall be called by the president of the retiring board.

[1] "The president or vice-president of the retiring board and, in their absence, the Chief Officer, if any, shall preside at such meeting, and the new board shall then elect its own chairman for that meeting; provided that (*a*) if the president or vice-president so presiding is a member of the new board, he shall be entitled to vote only as such member, and (*b*) the Chief Officer, when so presiding, shall have no right to vote. In case of an equality of votes the result of the election of the chairman shall be decided by lot to be drawn in the presence of the person presiding in such manner as he may determine. The chairman so elected shall then preside at such meeting, and the meeting shall then proceed to elect the new president." [1]

[1] These words were substituted for the original words "The president of the retiring board shall preside at such meeting and then the new board shall then elect its own chairman for that meeting and the meeting shall proceed to elect the new president" by Bom. Act IV of 1930, s. 3.

[1] Provided further that where no meeting for the purpose of such election has been held within fifteen days from the expiry of the term of office, the Collector may exercise the powers of the president for the purpose of calling such meeting. [1].

Notes.—A provision is now made for Presidents and Vice-Presidents on the expiry of the term of office of the Board to carry on the administrative duties of their offices till new Presidents and Vice-Presidents are appointed (*Statement of Objects and Reasons*).

Illegal Election.—Where it is clear that if the new Board is not legally constituted its acts will be *ultra vires* and that if it be restrained from functioning, the duties of the board cannot be carried on at all, the chairman and vice-chairman of the old Board should continue to perform their routine duties until the new Board beigns to function, and in such a case the balance of convenience is on the side of a person who has brought a suit for a declaration that the election to the Board is illegal and for an injunction to prevent the Board functioning, temporary injunction should, therefore, be granted (*Mohammad Azim v. District Local Board*, A. I. R. 1929 Sind 224).

Term of office.

28. Except as is otherwise provided in this Act or in any other law for the time being in force, members of local boards shall hold office for a term of three years, extensible by order of the Commissioner to a term not exceeding in the aggregate four years if on any occasion the Commissioner shall think fit, for reasons which shall be notified, together with the order, in the *Bombay Goaernment Gazette*, so to extend the same.

Extension of term of office of membsrs of local boards in Sind.

[2] "28A Notwithstanding anything contained in section 28, the term of office of the members of all local boards in Sind is hereby extended up to and inclusive of the 31st day of March, 1933." [2]

Resignation of office as member of board.

[3] 29. (1) The vice-president or any member of a local board other than the president may resign his office as a member of the board by giving notice in writing to the president. The president may resign his office as a member of the board by giving notice in writing to the Commissioner.

Resignation of president and vice-president.

[4] (2) The vice-president may resign his office as vice-president by giving notice in writing to the president. The president may resign his office as president by giving notice in writing to the Commissioner.

Disqualification of member after election.

30. (1) Any member of a local board who, during the term for which he has been elected or appointed—

[1] This proviso was added by Bom. Act X of 1927, s. 2.

[2] This section was inserted by Bom. Act V of 1932.

[3] Section 29 was renumbered section 29 (1) by Bom. Act X of 1927, s. 3.

[4] This sub-section was added by Bom. Act X of 1927, s. 3.

(*a*) becomes disqualified under sub-section (1) of section 9, or

(*b*) having any share or interest such as is described in clause (*a*) or (*b*) of sub-section (2) of section 9, acts as a member of the local board in any matter relating to a contract or agreement between the local board and the company or society or the manager or publisher of the newspaper discribed in the said clauses, or

(*c*) is absent for more than four consecutive months from the district or taluka for which the board is established, unless leave so to absent himself, which shall not exceed six months, has been granted by the board, or in the case of a vice-president by the president, or absents himself for six consecutive months from meetings of the board without the leave of the board,

shall cease to be a member and his office shall become vacant.

(2) If any question, dispute or doubt arises whether a vacancy has occurred under this section, the orders of the Commissioner shall be final for the purpose of deciding such question, dispute or doubt.

Removal of member for misconduct, etc.

31. The Government in the case of a district local board, and the Commissioner in the case of a taluka local board, may, if it or he thinks fit, on the recommendation of the local board, remove any member of such local board, elected or appointed under this Act, after giving him an opportunity of being heard and after such inquiry as the Government or the Commissioner, as the case may be, deems necessary if such member has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or has become incapable of performing his duties as a member of the local board.

Unjustifiable removal.—Under a corresponding provision in the Town Improvements Act (Mad. II of 1871) it was *held* that the Secretary of State for India in Council is liable for damages for illegal or unjustifiable removal of a Municipal Councillor (*Vijaya Raghava v. Secretary of State*, 7 Mad. 463).

"Incapable of performing his duties."—This incapacity refers to some mental or physical or legal disability which incapacitates a person from acting in the office such as insanity, paralysis, deafness (*Cumming's Bom. L. B's Manual*, 3rd ed., p. 51).

Vacancies to whom to be communicated.

32. (1) On the occurrence of any vacancy in a local board the president shall forthwith communicate such occurrence to the Collector.

(2) If the member of such board whose seat has become vacant was a nominated member, and the Collector is not authorized under section 5 to appoint members of such boards, the Collector shall on receipt of such communication forward it to the officer, if any, authorized, as aforesaid, or, if no officer is so authorized, to the Government through the Commissioner.

Note.—On the occurrence of a vacancy among the members of a local board it is necessary for either the Collector, whose duty it is to fix the dates of election, or the nominating authority, to be informed of the vacancy (*Statement of Objects and Reasons*)

Casual vacancies how to be filled up.

33. In the event of a vacancy occurring on account of the death, resignation, disqualification, or removal of a member of a local board or through a member becoming incapable of acting, previous to the expiry of his term of office, the vacancy shall be filled up, as soon as conveniently may be, by the election or appointment, as the case may be, of a person thereto, who shall hold office so long only as the member in whose place he is elected or appointed would have held it if the vacancy had not occurred.

[1] "Provided that notwithstanding anything contained in section 5, if the vacancy be of an elected member and occurs within four months preceding the date on which the term of office of the members of the local board expires under section 28, the vacacy shall not be filled." [1].

Temporary provisions pending election of boards under this Act.

34. Notwithstanding anything contained in this Act, local funds shall be administered, so far as may be under the provisions of this Act, by the local boards deemed to have been established under the provisions of this Act under clause (4) of section 4, as constituted immediately prior to the coming into force of the provisions of this Act, until such date as the Government shall prescribe in this behalf in resptct of each such board. The president, vice-president and members of such boards as constituted immediately prior to the passing of this Act shall be deemed to have been appointed or elected under the provisions of this Act and their term of office shall expire on the aforesaid prescribed date.

Note.—In view of section 4 (4) and this section any vacancy under the old Act of 1884 can be filled under this section, the procedure prescribed under the repealed Act being followed as regards the election (G. R. G. D. No. 5010, dated 20th January 1924).

CHAPTER III.

CONDUCT OF BUSINESS OF LOCAL BOARDS.

Meetings of local boards.

35. (1) A local board shall meet together not less than once in every 3 months and shall from time to time make regulations, consistent with this Act and with any rules or orders made by the Government in this behalf under clause (*c*) of section 133 with respect to the place, day, hour, notice, management, and adjournment of such meetings, and generally with respect to the transaction of business, as it thinks fit, subject to the provisions of the following sub-sections.

(2) (*a*) The president shall fix the dates for the quarterly meetings hereinbefore prescribed and may, whenever he thinks fit, and shall, upon the written request of not less than one-fourth of

[1—1] The proviso to section 33 was added by Bom. XVI of 1935.

the members and for a date within twenty-one days from the receipt of such request, call a special meeting.

(*b*) *Fifteen clear days' notice of a quarterly meeting and *ten clear days' notice of a special meeting, specifying the time and place at which such meeting is to be held and the business to be transacted thereat, shall be circulated to the members and posted up at the local board office. Such notice shall include in the case of a special meeting any motion or proposition mentioned in any written request made for such meeting.

(*c*) If less than one-third of the whole number of members be present at a meeting at any time from the beginning to the end thereof, the presiding authority shall adjourn the meeting to such hour on the following or some other future day as he may reasonably fix; a notice of such adjournment shall be fixed up in the local board office, and the business which would have been brought before the original meeting, had there been a quorum thereat, shall be brought before the adjourned meeting and may be disposed of at such meeting or at any subsequent adjournment thereof, whether there be a quorum present or not.

(*d*) Every meeting shall be open to the public unless the presiding authority deems any inquiry or deliberation pending before the board such as should be held in private, and provided that the said authority may at any time cause any person to be removed who interrupts the proceedings.

(*e*) Every meeting shall be presided over by the president, or if he be absent, by the vice-president, and if both the president and vice-president are absent, by such one of the members present as may be chosen by the meeting to be chairman for the occasion.

(*f*) All questions shall be decided by a majority of votes of the members present, the president, vice-president or chairman, as the case may be, having a second or casting vote in all cases of equality of votes.

(*g*) Except with the permission of the presiding authority, which permssion shall not be given in the case of a motion or proposition to modify or cancel any resolution within three months after the passing thereof, no business shall be transacted and no proposition shall be discussed at any quarterly meeting unless it has been entered in the notice convening such meeting or, in the case of a special meeting, in the written request for such meeting. The order in which any business or proposition shall be brought forward at such meeting shall be determined by the presiding authority, who in case it is proposed by any member to give priority to any particular item of such business or to any particular proposition, shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal.

* The words "fifteen" and "ten" were respectively substituted for the original words "twenty-one" and "fourteen" by Bom. Act VIII of 1934.

(*h*) Any quarterly meeting may, with the consent of a majority of the members present, be adjourned from time to time; but no business shall be transacted at any adjourned meeting other than that left undisposed of at the meeting from which the adjournment took place.

(*i*) No resolution of a local board shall be modified or cancelled within three months after the passing thereof, except by a resolution supported by not less than one-half of the whole number of members and passed at a quarterly meeting, whereof notice shall have been given fulfilling the requirements of clause (*b*) and setting forth fully the resolution which it is proposed to modify or cancel at such meeting and the motion or proposition for the modification or cancellation of such resolution.

(*j*) Except for reasons which the presiding authority deems emergent, no business relating to any work which is being executed, or which under section 45 may only be executed for the board by the Government Executive Engineer of the district, or to any educational matter, shall be transacted, at any meeting of a local board, unless at least fifteen days previous to such meeting a letter has been addressed to an officer of the Government Public Works and Educational Departments, respectively, who is not a member of the board, but is entitled under section 40 to be present at such meeting informing him of the intention to transact such business thereat and of the motions or propositions to be brought forward concerning such business.

(*k*) Minutes shall be kept of the names of the members and of the Government officers, if any, present under the provisions of section 40 and of the proceedings at each meeting of the board, and if any member present at the meeting so desire, of the names of the members voting, respectively, for or against any resolution, in a book to be provided for this purpose, which shall be signed, as soon as practicable, by the president, vice-president or chairman of such meeting and shall at all reasonable times be open to inspection by any member of the board or by any inhabitant of the district.

(*l*) Every regulation made under this section by a taluka local board shall be subject to the approval of the district local board to which such taluka local board is subordinate.

Vacancy not to effect proceedings of board or committee.

(3) During any vacancy in a local board the continuing members may act as if no vacancy had occurred.

Acts of boards, etc. not to be invalidated, by informalities.

(4) No act of a board, or of any person acting as a member or as a president, vice-president or chairman, shall be deemed to be invalid by reason only of some defect in the appointment of such board, president, vice-president, chairman, or

member, or on the ground that they, or any of them, were disqualified for the office of member, or that formal notice of the intention to hold a meeting of the board was not duly given, or for any other such mere informality.

Sub-Section (2) (b)—Service of notice by post is sufficient.—It is sufficient for the Board to circulate notices of a meeting by post, and it is not essential that a notice should be served personally on every member (*Gopal Narayan v. Sanmukhappa Ningappa*, 29 Bom. L. R. 1325).

Sub-section (4)—President—If in fact a meeting is properly convened, the president has no power to dissolve it (*Ibid*).

It is the duty of a chairman to preserve order, conduct proceedings regularly and take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will; and if he purports to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened, and to appoint another chairman for that object (*Ibid*). See also *National Dwellings Society v. Sykes*, 1894, 3 Ch. 159).

There is nothing in the section or any part of the Act about *de facto* or *de jure* members. When the Act speaks of a member, president or vice-president, it refers to persons validly elected or appointed under the Act. The section only provides for the validity of the acts of local boards, committees, presidents or members when the Board is incomplete, *i e*, when the presidentship or membership has fallen vacant. It has nothing to do with the validating of the act of a president when there is no president or the act of a member when he is not a member (*Devasingmony v. Sethuratna Iyar*, 87 I. C. 363).

Notice of meetings.—The meetings of the Municipal Corporation to be legal must have been called by notice pursuant to the statutory authority and under the regulations and provisions of the law with respect to them. The notice must give every member of the corporation an opportunity of attending, otherwise the meeting is not duly convened. The agenda is usually circulated with the notice; and both usually from one document. A corporate meeting may be valid where notice of it has not been given, provided all the members of the corporation are present and consent to the meeting being held (See Halsbury's Laws, Vol. VIII, p. 342). It is not necessary to file proof of service of notice required by law.

Want of notice will affect the validity of a meeting (See *Crew's Meetings*, pp. 8, etc.) Where a certain act is to be done, all the members entitled to attend must be summoned, if they are within a summoning distance, and the omission to summon any one so entitled will invalidate the proceedings (*Smith v. Darley*, 2 H. L. C. 789).

If a member was so ill as to be unable on that ground to appear, no notice need be sent to him (*Young v. Ladies Imperial Club*, 36 T. L. R. 392).

The object of the meeting should be stated in the notice with sufficient particularity. If a statute required that notice of the special purpose for which a meeting is called should be specifically given, it should be complied with. Otherwise, the notice will be insufficient and the resolution invalid (*Smith v. Deighton and Bidington*, 8 Moore P.C. 187). If the notice for the previous meeting is ineffective, and if the same subject is brought up at a subsequent meeting after due notice, the resolution passed at the second meeting may be treated as confirmation of the re-

solution passed at the previous meeting, or as a separate or distinct resolution in itself (*Longfield Parish Council v. Wright*, 88 L. J. Ch. 119). If a notice is sent to the registered address of a councillor, it is sufficient. It is immaterial that the notice has not been received by the addressee owing to change of address which has not been notified (*James v. Chartered Accountants*, 98 L. T. 225). In the absence of special provision, the number of days must be *clear*, *i. e.*, exclusive of the day of service and the day on which the meeting is held (*Lahouchers v. Warncliffe*, 13 Ch. D. 346). See also Aiyangar's Municipal Corporations of British India, 2nd Ed., pp. 134—137.

Minutes of proceedings.—The record of proceedings of municipal committees are "public documents" within the meaning of s. 74 of the Indian Evidence Act, 1872, and under s. 78 of that Act are proved by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of the committee (*Reference under Act I of 1879*, 19 All. 203).

If proceedings are minuted in accordance with this sub-section, they are to be held good and valid until the contrary is proved.

The usual course is for the presiding authority to count the votes for and against each proposition and declare which is the majority or whether there is an equality.

Open to inspection.—Obstruction to inspection is punishable on summary conviction.

Second or casting vote.—When the presiding authority has a vote, he should give that vote before declaring the number of votes for and against a motion, and when the votes are equally divided between the affirmative and negative, he should give his casting vote which will decide question.

Adjournment of meetings.—A chairman has no right to adjourn a meeting against the expressed wish of the members present so as to prevent them from proceeding to the transaction of the business for which they have been called together. A statutory chairman, however, may have the power to adjourn for a subsidiary purpose as for taking a poll or where the meeting is so poorly attended as not to be representative of the general body (R. v. D'D'Oyle, 12 A & E. 139). The question of adjournment should be decided by vote and not by the chairman (Blackwell's Meetings, p. 63).

Where a meeting cannot be held for want of a quorum it is not competent to the members present to adjourn the meeting to another time unless notice of the adjournment be given to all members or unless the rules specifically provide for the event (*Vilkanath v. Marari*, 25 Bom. L. R. 315).

Local Boards to conduct their own affairs.—With regard to the conduct of business, and the general course of procedure to be adopted by local boards the desire of Government is that as much independence should be left to each board as is compatible with good administration, and with the harmonious working together of all the Boards in the district. Subject only, therefore, to the general provisions contained in s. 69, the power reserved to Government by Chapter VII, and to the proviso that regulations for the conduct of their affairs made by taluka local boards shall be subject to the approval of the district local board, each taluka local board is left to arrange for the discharge of its duties in such manner as it thinks fit (*Statement of Objects and Reasons*).

Regulations are to be made by each board and the Rules are to be made by Government.

President to fix dates of quarterly meetings.—Meeting not called by the President is not legal (*Aboji v. The Trimbak Municipality*, 28 Bom. 66).

"Clear days."—Both terminals are to be excluded, and no consent of members will validate a notice which does not allow this interval (G. R. 4925 of 15 Dec. 1899, quoted in Mr. *Cumming's Bom. L. B. Manual*, 3rd Ed., p. 56).

The whole number of members.—I. e., the number fixed under s. 133, and not the number who may be members at the time (*Cumming's B. L. B. Manual*, 3rd Ed., p. 56).

Notice convening meeting of the Board.—A new District Local Board consisting of twenty-four members was elected under this Act, for the Belgaum District, for a period of three years beginning from May 1, 1926. Under s. 27, the President of the retiring board called a meeting of the new board on May 26, for the election of new President. Notice convening the meeting was sent by post to all the members of the Board, it was received by all the members except one. At the meeting convened on May 26 the retiring President presided, but he dissolved the meeting without doing any business on the ground that the notice of the meeting did not reach one of the members. Thereupon seven members left the meeting. The remaining members thereafter elected a Chairman and proceeded to elect their new President. In a suit brought for declaring the election of the President invalid, it was *held*, dismissing the suit, that the notice convening the meeting was in order, for under cl. (*b*) of sub-section (2) of this section it was sufficient for the board to circulate of a meeting by post, and it was not essential that the notice should be served personally on every member; (2) that under the circumstances, the retiring President had wrongly dissolved the meeting; (3) that as the seven members had left the meeting before the Chairman had left the chair and the meeting was broken up, they could not complain in law about the action of the remaining members; (4) that the remaining members had power to continue the meeting notwithstanding the Chairman's erroneous declaration of the dissolution, and that they were entitled to elect their new chairman and thereafter to elect their new President. The decisions of a chairman are not necessarily final, and if on any important question he wrongly rules out a particular amendment, then it is open for the Court to revise his decision (*Gopal Narayan v. Sanmukha Ningappa*, 29 Bom. L. R. 1325).

Sub-Section (2) (*b*)—Absence of notice is mere irregularity.—On the expiry of the term of office of the District Local Board at Satara, on March 31, 1928, its president called a meeting, on April 13, 1928, of the newly constituted board under s. 27 *infra* for the election of a new president. Notices convening the meeting were issued on March 31, 1928, and served on all except two members of the board, but the meeting was attended by all the members. Two of the members (plaintiffs) protested that the meeting was not legally convened; but the business of the meeting was proceeded with and defendant No. 2 was elected as the new president. The plaintiffs gave a notice of suit under s. 136 *infra*, and addressed it to "(1) The President, District Local Board, Satara; (2) President elected in the meeting of the District Local Board, Satara, held on April, 3, 1928, and (3) Chairman of the meeting." Eventually, they filed a suit

and obtained a decree that the meeting of April 13, 1928, was not legally and properly convened, and that the business transacted at the meeting was illegal and invalid; and an injunction was issued restraining defendants Nos. 1 and 2 from functioning on the basis that the proceedings at the meeting were valid, and defendant No. 2 was restrained from functioning as the president of the board. Defendant No. 2 appealed against the decree, but failed to make the District Local Board a party to the appeal. He applied for a stay of the decree, but was unsuccessful. The board called another meeting which defendant No. 2 attended without protest, and offered himself for presidentship, but a new president was elected. The appeal was unsuccessful. In second appeal, the District Local Board was made a respondent along with the plaintiffs. The board having objected that defendant No. 2 should not be allowed to disturb the existing state of things: *Held*, upholding the objection, that the High Court was entitled to take cognizance of events which had happened since the filing of the appeal in the lower court, and that by not making the board a party to that appeal defendant No. 2 had put it out of the power of the High Court to grant him relief which would avail against the board. *Held*, further, (1) that the notice under s. 136 *infra* should have been addressed to the District Local Board *simplicitor* or to the District Local Board by its president though the misdirection was under the circumstances immaterial; (2) that the plaintiffs in the events that had happened could not be taken to have waived their objection to the legality of the meeting, for it was not necessary to raise the objection at a preliminary stage of the meeting; (3) that the want of fourteen clear days' notice required by cl. (2) of sub section (2) of this section was a mere irregularity in a matter of internal management of the board, and the Court would not interfere as no prejudice was shown to have ensued to any party by it; (4) that the provisions of cl. (*b*) of sub-section (2), requiring fourteen clear days' notice for special meetings, applied to meetings summoned under section 27 or 26 of this Act; (5) that the want of 14 clear days' notice was a mere irregularity cured by s. 35 (4) of this Act (*Pundurang v. Ramchandra*, 32 Bom. L. R. 1252; s. c. 54 Bom. 902).

Cognizance of events since appeal.—A court is entitled to take cognizance of events which have happened since the filing of the appeal (*Ahmadjee v. Mahamadji*, 1 Bom. L. R. 218). See also *Rustomji v. Sheth Purshotamdas*, 25 Bom. 606 and *Hanmant v. Secretary of State*, 32 Bom. L. R. 155.

Standing Committee.

36. (1) Every local board shall appoint a standing committee consisting of such number of members not being more than seven and not less than five as the board may determine.

(2) The standing committee shall perform the functions allotted to it under this Act, and subject to any limitations or other provisions contained in rules made under section 133, clause (*c*) or regulations made under section 35, sub-section (1), shall exercise all the powers and perform all the duties of the local board which have not been delegated to any other committee.

(3) The president shall be *ex-officio* a member and chairman of the standing committee in addition to the members appointed under sub-section (1).

37. (1) Every district local board may appoint a public health committee, consisting of such members of the board as the board may elect. The said members may co-opt the Civil Surgeon of the district or any medical or sanitary officer of the Government or a legally qualified medical practitioner to be a member of the committee for a period not exceeding the term of their own office.

Public Health Committee.

(2) Such committee shall, subject to any limitations or other provisions contained in rules made under clause (c) of section 133 or regulations made under sub-section (1) of section 35, perform the duties and exercise the powers of the district local board in regard to matters of public health and sanitation, and shall give effect to the provisions of this Act and to any by-laws framed under this Act regarding such matters and may delegate any of its duties or powers to any member or honorary or stipendiary officer of the board. Such member or officer shall conform to any instructions that may from time to time be given by the board. The Committee may at any time withdraw any of the duties or powers so delegated.

38. (1) A local board may apppoint committees consisting of such members as the local board may decide or any member or honorary or stipendiary officer of the board to exercise the powers and perform the duties of the local board in respect of any purpose subject to any limitations and provisions contained in rules made under section 133 (c) or regulations made under section 35 (1); not being where a public health committee has been appointed, powers or duties referred to in section 37, sub-section (2).

Other executive committees.

Where a Committee is appointed to manage a dispensary, the local board may appoint any local residents to be members of such committee.

(3) Any such committee, member or officer shall comply with any instruction that may from time to time be given by the board.

(4) The board may at any time discontinue or alter the constitution of any such committee or withdraw any of the powers or duties which any such committee, person or officer has been appointed to exercise or perform.

[1] "38A. (1) When, in the opinion of Government, it is in the interest of the inhabitants of a taluka that the taluka local board should be abolished, it shall be competent to Government by notification in the *Bombay Government Gazette* to abolish the said taluka local board, from a date to be specified in the notification.

Abolition of taluka local boards and appointment of taluka committees.

[1—1] Section 38A was added by the Bom. Amending Act VI of 1935.

(2) Where a taluka local board is abolished under sub-section (1) Government may, on an application made by the District Local Board or otherwise, by a notification in the *Bombay Government Gazette* direct that a taluka committee shall be appointed from a date to be specified in the notification for the area which was subject to the authority of such taluka local board.

(3) On the publication of the notification under sub-section (2), the District Local Board shall appoint a taluka committee in accordance with the provisions of sub-section (4).

(4) A taluka committee shall consist of such number of members not being less than seven as shall be prescribed by an order made under clause (*cc*) of section 133. Every member of the district local board resident within the area for which a taluka committee is appointed shall be *ex-officio* a member of the taluka committee and the remaining members of the taluka committee shall be appointed by the district local board from among persons resident in the said area in a manner prescribed by rules made under clause (*cc*) of section 133.

(5) A taluka committee shall, subject to any limitations or other provisions contained in rules made under clause (*cc*) of section 133 or regulations made under sub-section (1) of section 35, exercise such powers and perform such duties of supervision and advice as may be assigned to it by the district loosl board.

(6) The provisions of sections 39 to 41 shall, so far as may be, apply to a taluka committee."

Committees. Term of Office. Vacancies. Chairman. Procedure. Meetings. Adjournments. Quorum.

39. (1) The term of office of the members of a committee shall expire on the termination of one year from the date of appointment of the members or on such earlier date as the local board may direct.

(2) A vacancy occurring in any committee shall as soon as possible be filled up by the appointment or co-option as the case may be of a member thereto. A member appointed under this sub-section shall hold office so long only as the person in whose place he is appointed would have held it if the vacancy had not occurred.

(3) (*a*) The president or vice-president, if appointed a member of any committee, shall be *ex-officio* chairman thereof.

(*b*) A local board may appoint a chairman for a committee of which there is no *ex-officio* chairman.

(*c*) A committee, of which there is an *ex-officio* chairman or a chairman appointed by the local board, shall, at each meeting which such chairman does not attend, appoint from its members a chairman for such meeting.

(*d*) A committee, of which there is no *ex-officio* chairman or chairman appointed by the local board, shall appoint from time to time a chairman from the members of such committee.

(4) The provisions of section 35, sub-section (2), clauses (*f*), (*j*) and (*k*) and sub-sections (3) and (4), shall apply to committees as if the word "committee" had been substituted for the words "board" or "local board."

(5) A committee may meet and adjourn as it thinks proper; but the chairman of a committee may, whenever he thinks fit, and shall upon the written request of the president of the local board or of not less than two members of the committee and for a date not more than two days after the presentation of such request, call a special meeting of such committee.

(6) No business shall be transacted at any meeting of a committee unless more than one-half of the members of the committee be present thereat.

Quorum.—The first thing is to see whether a quorum is present. Without a *quorum*, there cannot be a valid meeting (*Smith's Corporations*, Vol. 1, p. 289). The entire membership of the body need not be present to validate the transactions (though every member of the body must be summoned by notice to attend (*Smyth v. Darley*), 2 H.L.C. 789), but only a quorum thereof which, under this Act, is more than one-third of the members of the committee. This quorum of the Council, when duly assembled in a corporate meeting, is clothed with the powers of the municipality and may perform all municipal functions, not expressly conferred on some other officer or agency. The chairman or president is to be included in the count when the statute makes him a constituent member of the body. The actual presence of the *quorum* in the meeting is sufficient, although some members refuse to vote, or even though they be present under compulsion or arrest (*Amer. Encyclo.* Vol. 28, pp. 330, etc,).

When a meeting cannot be held for want of a *quorum*, it is not competent to the members present to adjourn the meeting to another time, unless notice of the adjournment be given to all the members or unless the Rules specifically provide for the event (*Nilkantha v. Murari*, 24 Bom. L. R. 315).

Certain Government officers may attend meetings of district local boards.

40. (1) The Executive Engineer, the Educational Inspector and the Deputy Director of Public Health, and the Civil Surgeon of a district, when charged with any of the duties of a health officer therein, [*a*] a Deputy Director of Agriculture or an Assistant Registrar of Co-operative Societies charged with any duties of his office in the district if not members of the district local board, [*b*] and, in the case of educational matters, when the chairman of the school board is not a member of the district local board, such chairman or the

[*a*] The word "and" repealed by Bom. Act X of 1927, s. 4 (1), is omitted.

[*b*—*b*] These words were inserted by Bom. Act X of 1927, s. 4 (*ii*).

vice-chairman or the administrative officer of the school board or, when the chairman is a member of the district local board but is for any reason unable to be present, the vice-chairman or the administrative officer of the school board, [a] shall have the right of being present at any meeting of the said board, or of any committee thereof, and with the consent of the board or committee, each of them may take part at such meetings in the discussion or consideration of any question on which in virtue of the duties of his office he considers his opinion or the information which he can supply will be useful to such board or committee: provided that the said [b] persons shall not, unless they are members of the board, be entitled to vote upon any such question.

Certain Government officers may attend meetings of taluka local boards.

(2) Any officer of the Government Public Works Department not lower in rank than an overseer employed in a taluka, and any officer of the Government Educational Department not lower in rank than the Assistant Deputy Educational Inspector of a taluka may, in the like circumstances and subject to the same proviso, take part in the discussion or consideration of any such question as aforesaid at any meeting of the taluka local board of such taluka or of any committee of the said board.

Local boards may require the presence of the said officers at their meetings.

(3) If it shall appear to a district local board or to a taluka local board that the presence of any of the above officers respectively is desirable in the circumstances aforesaid at any future meeting of such board, or of any committee thereof, it shall be competent to such board by letter addressed to such officer not less than fifteen days previous to the intended meeting to require his presence thereat; and the said officer, unless prevented by sickness or other reasonable cause, shall be bound to attend such meeting.

Notice to Government officers—*Executive Engineer.*—The Executive Engineer should assist municipalities in the execution of smaller works whenever he can do so without prejudice to his other duties. But Government officers cannot be allowed to receive remuneration other than their authorized pay and allowances (G. R. 630-1399. July 11, 1866—*Cumming's Bom. Dist. Municipal Manual*, 1926, p. 92). Nor are they allowed travelling allowances for attending the meetings of municipal boards. They can draw the travelling allowances admissible to them under the Rules (*Ibid*), p. 93).

President may circulate written propositions.

41. (1) Whenever it appears to the president of a local board, or to the chairman of a committee unnecessary to convene a meeting, he may instead of so doing circulate a written proposition of his own, or of any other member of

[a—a] These words were inserted by Bom. Act X of 1927, s. 4 (ii).

[b] The word "persons" was substituted for the word "officers" by Bom. Act X of 1927, s. 4 (3).

such board or committee, or of any executive officer of the board for the observations and votes of the members.

(2) Previous to circulating any such proposition for the votes of members the president or chairman may, if he thinks fit, and if the business to which it relates is of the nature described in clause (*j*) of sub-section (2) of section 35 shall obtain thereupon the remarks, if any, which any Government officer, not a member of the board, who is entitled under the provisions of section 40 to be present at any meeting at which such proposition might be considered, desires to record.

(3) The decision on any proposition so circulated shall be in accordance with the majority of votes of the members who vote upon it, unless a special meeting is convened to consider the proposition under clause (*a*) of sub-section (2) of section 35 or sub-section (5) of section 39.

(4) Every decision arrived at by the board under this section shall be recorded in the minute-book kept under clause (*k*) of sub-section (2) of section 35 or sub-section (4) of section 39.

Note.—Resolutions passed by a circular should be recorded in the minute book and confirmed at the next meeting, as required by sub-section (4) of this section, and should not be filed with the correspondence relating to the subject concerned.

Mode of executing contracts.

42. (1) The president of a local board may, on behalf of the board, enter into any contract or agreement in such manner and form as, according to the law for the time being in force, would bind him if such contract or agreement were on his own behalf : provided that the amount or value of such contract or agreement shall not exceed five hundred rupees in the case of a district local board, or two hundred rupees in the case of a taluka local board.

(2) Every other contract or agreement on behalf of a local board shall be in writing, and shall be signed by the president and by two other members of the board, and sealed with the common seal of the board.

(3) No contract or agreement not executed as in this section provided shall be binding on a local board.

Sub-section (1)—In the case of a taluka local board contracts for the supply of materials or for the execution of work, the cost of which exceeds Rs. 300, should be entered into by the President after obtaining prior sanction of the Board, as required by sub-section (1) of this section.

The sanction of the Board to contracts for sums in excess Rs. 200 in the case of a taluka local board, and Rs. 500 in the case of a district local board, must be obtained as required by sub-section (1) of this section.

Sub-section (2).—If the amount of a piece-work which is a contract for rates only exceeds Rs. 500, an agreement bond has to be executed under sub-section (2) of this section.

All contracts and agreement bonds obtained from contractors should be in writing on stamped paper and signed by the President and two other members of the Board and sealed with the common seal of the Board as required by sub-section (2) of this section.

Local funds ordinarily liable for all costs and expenses incurred by boards.

43. (*a*) Except as is hereinafter otherwise provided, no member of a local board shall be personally liable in respect of any contract or agreement made, or for any expense incurred by, or on behalf on such board; the local fund at the disposal of each local board shall be liable for and be charged with all costs in respect of any such contract or agreement and all such expenses :

But members to be held responsible for misapplied or wasted funds and property

(*b*) Provided that every member of a local board shall be personally liable for the misapplication of any money or other property of the local board, to which he has been a party or which has been caused or facilitated by his misconduct or gross neglect of his duty as a member and may be sued by the local board concerned, with the sanction of the Government or by the Government for recovery of or compensation for the misapplication of such money or property ; and any money or property so recovered by the Government shall after satisfaction therefrom of the necessary expenses of such recovery, be delivered to the local board.

Power to compromise.

44. (1) A local board may compromise in respect of any suit instituted by or against it, or, in respect of any claim or demand arising out of any contract entered into by it under this Act, for such sum of money or other compensation as it shall deem sufficient :

Provided that, if any sanction in the making of any contract is required by this Act, the like previous sanction shall be obtained for compromising any claim or demand arising out of such contract.

(2) A local board may make compensation out of the local fund to any person sustaining any damage by reason of the exercise of any of the powers vested in it and its officers and servants under this Act.

Works to be executed by the Government Executive Engineer.

45. (1) Such of the works for which plans and estimates prepared or approved by the Government Executive Engineer of the district are required by clause (*b*) of sub section (1) of section 89 as the Government shall from time to time by a general or special order direct, shall be executed by the said Executive Engineer, who for this purpose shall exercise the same powers as if he were executing a work for the Govern-

ment, and shall have control over all officers and servants of the local board, if any, assisting in the execution of any of the said works.

Works which may be executed by other agency.

(2) All other works shall be executed by such agency and subject to such supervision as the local board at whose cost any such work is to be executed thinks fit : provided that any such work shall be executed by the Governmnet Executive Engineer of the district in the manner described in sub-section (1) if the said board communicates a desire to that effect.

Payment of Government establishment employed by Government Executive Engineer.

(3) When any work is executed under this section by a Government Executive Engineer either wholly or partly with the aid of his own Government establishment, such charge shall be payable on account of such establishment by the local board at whose cost the work is being executed as shall be agreed upon between such board and the said Executive Engineer : provided that no charge shall in any case be made on account of the services of the Executive Engineer.

Works to be executed by the Government Executive Engineer.—The following works shall be executed by the Government Executive Engineer, viz:

(i) Every work for which a plan and estimate prepared or approved by the Government Executive Engineer of the district are required by clause (*b*) of sub-section (1) of section 89 of the Act, and of which the estimated cost is to exceed Rs 30,000, and

(ii) Every such work as aforesaid of which the total estimated cost does not exceed Rs. 30 000, but which the Government Executive Engineer of the district for reasons, stated in writing, considers it desirable should be executed by himself if such recommendation is approved by the Commissioner of the division in which the district local board is situate, provided that nothing in this paragraph applies to the District Local Board employing an Engineer approved by Government under sub-section (2) of section 119 of the Act (G. R. G. D. No. 4453, dated 19th March 1924).

Repairs not to be commenced without plans and estimates.

[*a*] 45-A. No work of repairs shall be commenced unless a detailed estimate of the cost of such work has been approved by the local board and in the case of a work of which the total cost is to exceed three thousand rupees, plans and estimates have either been prepared or approved by the Government Executive Engineer of the district, or by an engineer employed by the board and approved by the Government.

Joint committees of two or more local bodies.

46. (1) A district local board may, from time to time, concur with any other district local board or with any municipality or cantonment [*b*] "authority," or with more than one such local board, municipality or [*b*] "authority"—

[*a*] Section 45-A was inserted by Bom. Act X of 1927, s. 5.

[*b*] The word "authority" was substituted for the original word "committee" by Bom. Act XIV of 1934, s. 3 (1) (*i*).

(*a*) in appointing out of their respective bodies a joint committee for any purpose in which they are jointly interested and in appointing a chairman of such committee; and

(*b*) in delegating to any such commitee power to frame terms binding on each such body as to the construction and future maintenance of any joint work and any power which might be exercised by either or any of such bodies; and

(*c*) in framing and modifying rules for regulating the proceedings of any such committee and the conduct of correspondence relating to the purpose for which the committee is appointed.

[*a*] "(1A) A district local board may from time to time enter, subject to the sanction of the Government, into an agreement with a district local board, municipality, cantonment authority or committee appointed for a notified area or with a combination of any such bodies, for the levy of octroi duty whereby the octroi duties respectively leviable by the bodies so contracting may be levied together instead of separately within the limits of the area subject to the control of the said bodies.

Explanation.—For the purpose of this sub-section, octroi duty includes a terminal tax."

[*b*] (2) Where a district local board has requested the concurrence of any other local authority under the provisions of sub-section (1) or (1A) in respect of any matter and such other local authority has refused to concur, the Commissioner may pass such orders as he may deem fit, requiring the concurrence of such other local authority, not being a cantonment authority, in the matter aforesaid and such other local authority shall comply with such orders.

[*b*] (3) If any difference of opinion arises between local bodies, acting under this section, the decision thereupon of the Government, or of such officer as it appoints in this behalf shall be final.

CHAPTER IV

INCORPORATION OF LOCAL BOARDS, PROPERTY, POWERS AND DUTIES

Incorporation of local bords.

47. Every local board shall be a body corporate by the name of "The District Local Board of" or "The Taluka Local Board of," as the case may be, and shall have perpetual succession and a common seal and may sue and be sued in its corporate name, and shall be competent to acquire and hold pro-

[*a*] Sub-clause (1A) was inserted by Bom. Act XIV of 1934, s. 3 (*1*) (*ii*).

[*b*—*b*] Sub-sections (2) and (3) are printed as amended by Bom. Act XIV of 1934, s. 3 (*i*), (*iii*) (*a*), (*b*), (*c*), (*iv*) (*a*), (*b*) and (*c*).

perty, both moveable and immoveable, whether within or without the limits of the area over which it has authority, to lease, sell or otherwise transfer any moveable or immoveable property which may have become vested in or been acquired by it, and to contract and to do all other things necessary for the purposes of this Act :

Provided that no lease of immoveable property for a term exceeding seven years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer shall have been made with the previous sanction of the Commissioner.

Vesting of future local works.

48. Every road, building or other work constructed by a local board shall vest in such local board.

Power to decide whether property vests in taluka or district board.

49. When any doubt arises whether any property vests in the local board established for any taluka or in the district local board having authority over such taluka, the Government may decide in which of the two boards it vests, and any such decision shall be final.

Obligatory duties.

50. It shall be the duty of local boards, so far as the local fund at their disposal will allow, to make adequate provision for the areas respectively subject to their authority in regard to the following matters, namely :—

(*a*) the construction of roads and other means of communication and the maintenance and repair of all roads and other means of communication vesting in them ;

(*b*) the construction and repair of hospitals, dispensaries, markets, dharmashalas and other public buildings, and the visiting, management and maintenance of these institutions ;

(*c*) the construction and repair of public tanks, wells and water-works, the supply of water from them and from other sources, and the construction and maintenance of works for the preservation of water for drinking and cooking purposes from pollution ;

(*d*) the provision of suitable accommodation for, and the visiting and maintenance of primary schools, and the payment, if necessary, of stipends to persons qulifying as teachers for primary schools during the period of their training for such qualification, and the general development and extension of primary education ;

(*e*) public vaccination, and sanitary works and measures necessary for the public health ;

(*f*) the planting and preservation of trees by the side or in the vicinity of roads vesting in such boards ;

(*g*) the maintenance of any property vesting in them ; and

Discretionary powers of expenditure.

(*h*) the payment at such rates and subject to such conditions as the Government from time to time by general or special order may direct of the expense of maintenance and treatment in any institution which the Government declares by notification to be suitable for such purpose, either within or without the district, and other necessary expenses, of persons undergoing anti-rabic treatment as indigent persons according to the rules applicable to such institutions, and proceeding to and returning from such institutions; and local boards may at their discretion, provide out of the said fund for the following matters, namely,

(*i*) the payment to members of the board of expenses incurred in travelling for the purpose of the business of the board, in accordance with rules made in this behalf under clause (*d*) of section 133, provided that no such payment shall be made to a salaried servant of the Government [*a*] who is in receipt of travelling allowance as such Covernment servant [*a*];

(*j*) the establishment and maintenance of model farms, the acclimatization of exotics, the importation and distribution of superior kinds of seed, the improvement of the breed of cattle and horses, the introduction and preservation of fish and the advancement and improvement of agriculture and local industries ;

(*k*) the establishment and maintenance of relief and local relief works in time of famine or scarcity ;

(*l*) educational objects other than those set forth in clause (*d*) of this section ;

(*m*) the construction, management and maintenance of light-railways and tramways ;

[*b*] (*mm*) the construction, maintenance, management, organisation or purchase of telephone lines, or the guaranteeing of payment of interest on money expended for the construction of a telephone line, provided however that, when the line extends beyond the limits of the area subject to the authority of the local board, the previous sanction of the Commissioner is necessary ;

(*n*) any other local works or measures likely to promote the health, safety, comfort or convenience of the public ; and

(*o*) with the previous concurrence of the Collector, any public reception, ceremony, entertainment or exhibition.

Notes.—The Board cannot spend any amount for a *Pansupari* Party in honour of some one without obtaining the previous approval of the Collector required under s. 50 (*o*).

The grant to a Central Co-operative Institute does not fall within any of the matters specified in this section (G. R. G. D. No. 5571, dated 8th August 1924).

[*a*—*a*] These words were added by Bom. Act V of 1928, s. 2.

[*b*] This clause was inserted by Bom. Act X of 1927, s. 6.

Anti-rabic treatment.—The actual travelling expenses of indigent persons coming from local board areas for anti-rabic treatment to the nearest institutions opened by Government and notified to be suitable for such purpose and their maintenance and treatment charges shall be paid by the local board at the rates and on the conditions prescribed by Government in rule 12 of the rules sanctioned in G.R. G. D. No. 552 of 12th September 1922, or such other rates as may be prescribed from time to time (G. R. G. D. No. 4353, dated 19th August 1924).

Power of district local board to conduct other works and manage other institutions.

[a] 50A. It shall be lawful for a district local board to undertake upon such terms and conditions as may be agreed upon, the construction, maintenance or repair of any work or the management of any institution on behalf of Government or any other local authority or the Court of Wards.

Relative duties of taluka and district local boards.

51. (1) Subject to the control of the district local board and, as regards educational matters, to the provisions of proviso (b) to section 80, each taluka local board shall, within the area subject to its authority, have the control and administration of all purely local roads, works and buildings maintained at its cost and also of all local services and institutions except such as the district local board thinks fit to take under its own direct control and administration.

(2) In respect of roads, works, buildings, services and institutions in the control and administration of the district local board, each taluka local board shall, if the district local board so desires, be the agent of the district local board and, as such agent, shall exercise such authority and perform such duties as the district local board may from time to time in writing delegate to it.

CHAPTER V.

SANITARY AND OTHER POWERS.

Power to enter and inspect, etc., buildings.

52. The president of the district local board, or any person authorized by the said board in this behalf, may at any time between sunrise and sunset, on giving notice in the manner hereinafter provided, enter into and inspect all buildings and lands, and by written notice direct that all or any part thereof shall be cleansed, cleared or otherwise put in a proper state for sanitary reasons.

Filthy buildings, etc.

53. Whoever, being the owner or occupier of any building or land, whether tenantable or otherwise, suffers the same to be in a filthy or unwholesome state, or, in the opinion of the district local board, a nuisance to persons residing in the neighbourhood,

[a—a] This section was added by Bom. XVI of 1935, s. 3.

or overgrown with prickly pear or rank and noisome vegetation, and who shall not, within a reasonable time after notice in writing from any person authorised by the district local board in this behalf to cleanse, clear or otherwise put the same in a proper state, have complied with the requisition contained in such notice, shall on conviction before a Magistrate be liable to a fine not exceeding rupees twenty-five and if the offence be a continuing one to a further fine not exceeding rupees five for every day during which the said offence is continued after conviction.

Powers and duties with regard to sources of water-supply.

54. The president of the district local board or any person authorised by the said board in this behalf may at any time by written notice require that the owner of, or any person who has control over, any well, stream, channel, tank, or other source of water-supply, shall, whether it is private property or not,

(*a*) if the water is used for drinking;

(*i*) keep and maintain any such source of water-supply, other than a stream, in good repair, or

(*ii*) within a reasonable time to be specified in the notice, cleanse any such source of water-supply from silt, refuse and decaying vegetation, or

(*iii*) in such manner as the board directs, protect any such source of water supply from pollution by surface drainage, or

(*iv*) desist from using and from permitting others to use for drinking purposes any such source of water-supply, which not being a stream in its natural flow, is in the opinion of the board unfit for drinking, or

(*v*) if notwithstanding any such notice under sub-clause (*iv*) such use continues and cannot in the opinion of the board be otherwise prevented, close, either temporarily or permanently, or fill up or enclose or fence in such manner as the board considers sufficient to prevent such use, such source of water supply, or

(*vi*) drain off or otherwise remove from any such source of water-supply, or from any land or premises or receptacle or reservoir attached or adjacent thereto, any stagnant water which the board considers is injurious to health or offensive to the neighbourhood;

(*b*) within twenty-four hours of such notice, repair, protect or enclose in such manner as the board may direct or approve, any such source of water-supply, whether used for drinking purposes or not, other than a stream in its natural flow, if for want of sufficient repair, protection or enclosure, such source of water-supply

is in the opinion of the board dangerous to the health or safety of the public or of any persons having occasion to use or to pass or approach the same.

Remedy on non-compliance with directions issued.

55. If the owner or the person having control as aforesaid fails or neglects to comply with any such requisition within the time required by or under the provisions of section 54 the district local board may, and, if in the opinion of the president immediate action is necessary to protect the health or safety of any person, shall at once proceed to execute the work required by such notice, and all the expenses incurred thereon shall be paid by the owner of, or person having control over, such water-supply, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII:

Provided that in the case of any well or private stream or any private channel, tank or other source of water-supply, the water of which is used by the public or by any section of the public as of right, the expenses incurred by such owner or person having control may, if the district local board so directs, be paid from the portion of the local fund at the disposal of such board.

Power to set apart public springs, etc., for certain purposes.

56. (1) The district local board may by public notice, which shall be put up at the spring, tank, well or other place concerned and otherwise as required by this Act, set apart public springs, tanks, wells and other places and parts of public water courses for drinking purposes or for bathing or for washing clothes or animals or for any other purpose calculated to promote the health, cleanliness, comfort or convenience of the inhabitants; and with the consent of the owners may also set aside any private springs, tanks, wells or other places for any of the aforesaid purposes.

Power to prohibit use of water from certain sources.

(2) The district local board may, during epidemics, on receipt of a certificate from any medical officer in the employ of the board or of the Government stating that such action is desirable, summarily by notice prohibit the use of water from any source to which the public have access. Such notice shall be served by putting up a copy thereof near the source of water-supply or by beat of drum, stating the number of days during which such prohibition shall last. The district local board may extend or modify the notice from time to time without the production of a further certificate.

Penalty for using places set apart for other purposes.

57. Whoever—

(*a*) bathes in or defiles the water in any place set apart for drinking purposes by the board, or in the case of private property by the owner thereof, or

(*b*) deposits any offensive or deleterious matter in the dry bed of any place set apart as aforesaid for drinking purposes, or

(*c*) washes clothing in any place set apart as aforesaid for drinking or bathing, or

(*d*) washes any animal or any cooking utensils or wool, skins or other foul or offensive substance, or deposits any offensive or deleterious matter in any place set apart as aforesaid for drinking purposes or bathing, or washing clothes, or

(*e*) allows the water from a sink, sewer, drain, engine or boiler, or any other offensive matter belonging to him or flowing from any building or land belonging to or occupied by him, to pass into any place set apart as aforesaid for drinking purposes or for bathing or for washing clothes shall, on conviction before a Magistrate, be liable to a fine not exceeding rupees fifty, and if the offence be a continuing one, to a further fine not exceeding rupees ten for every day during which the said offence is continued after conviction.

Abatement of nuisance from foul water.

58. When any pool, ditch, tank, pond, well, hole or any waste or stagnant water, or any channel or receptacle of foul water or other offensive or injurious matter, whether the same be within any private enclosure or otherwise, shall appear to the district local board to be likely to prove injurious to the health of the inhabitants or offensive to the neighbourhood, the district local board may by written notice require the owner of the same to cleanse, fill up, drain off or remove the same, or to take such measures as shall, in its opinion, be necessary to abate or remove the nuisance.

Closing of places for the disposal of the dead.

59. (1) If the district local board is of opinion that any place in the district which is used for the disposal of the dead is in such a state as to be, or to be likely to become injurious to health, it may submit its opinion, with the reasons therefor, to the Commissioner. The Commissioner may thereupon, after such further inquiry, if any, as he shall deem fit to cause to be made, by notification direct that such place shall cease to be so used from such date as may be specified in that behalf in the notification.

(2) A copy of the said notification with a translation thereof in the vernacular of the district, shall be published in the local newspapers, if any, and shall be posted up at the district local board office and in one or more conspicuous spots on or near the place to which it relates.

(3) Any person who buries or otherwise disposes of any corpse in any such place after the date specified in the said notification for closure thereof or buries any corpse in any unoccupied Government land not set aside for the burial of the dead under the provisions of any law for the time being in force or by established usage, shall on conviction before a Magistrate be liable to a fine not exceeding rupees one hundred.

President, etc., to have power of entry for inspection into buildings, etc., where infectious disease exists.

60. (1) The president of any district local board or any person authorised by the board in this behalf, may enter at any time, after reasonable notice, into any building or premises in which any dangerous infectious disease is reputed or suspected to exist, for the purpose of inspecting such building or premises.

Inspection to be made between sunrise and sunset.

(2) No such inspection shall be made except between sunrise and sunset.

Disinfection of buildings, etc.

(3) If the district local board is of opinion that the cleansing or disinfecting of a building or premises or of a part thereof, or of any articles therein likely to retain infection, would tend to prevent or check the spread of any dangerous infectious disease, it may by notice require the owner or occupier to cleanse or disinfect the same within a time to be specified in such notice: provided that if the board considers that immediate action is necessary or that the owner or occupier is, by reason of poverty or otherwise, unable effectually to comply with its requisition, the board may itself cause such building or premises or articles to be cleansed or disinfected, and for this purpose may cause such articles to be removed from such building or premises; and the expenses incurred by the board under this sub-section shall be recoverable from the said owner or occupier unless he was, by reason of poverty, unable effectually to comply with its requisition.

District local board to notify places for washing and disinfecting articles exposed to infection.

61. (1) The district local board shall, from time to time, notify places at which articles of clothing or bedding or other articles which have been exposed to infection from any dangerous infectious disease may be washed or disinfected.

Infected articles may be destroyed.

(2) The district local board may direct the destruction of clothing, bedding or other articles likely to retain such infection, and shall on demand give compensation for the articles destroyed.

(3) Whoever washes such clothing or bedding or other articles at any place other than those set apart for such purposes under sub-section (1), shall on conviction before a magistrate be liable to a fine not exceeding rupees fifty.

Penalty.

[a] 61A. (1) Whoever on any part of a public road, land or building, after it has vested in, or has become the property of, a local board, shall build, or set up, any wall or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing, or other encroachment or obstruction, or shall deposit, or cause to be placed or deposited, any box, bale, package or merchandise or any other thing on any part of any such road, land or building, or in, or over, or upon, any open drain, gutter, sewer or aqueduct in such road, land or building, shall be punished with fine which may extend to twenty-five rupees.

Obstructions and encroachments upon public roads, land or building.

(2) The local board shall have power to remove any such obstruction or encroachment, and the expense of such removal shall be paid by the person who has casused the said obstruction or encroachment, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII;

Provided that, before proceeding to remove any such obstruction or encroachment, the local board shall by written notice call upon the person who his caused such obstruction or encroachment to remove it within a reasonable time to be specified in the notice, or to show cause why the same should not be removed.

(3) Nothing contained in this section shall prevent a local board from allowing any temporary occupation of or erections on any public road, which vests in it or is its property, on occasions of festivals and ceremonies, or for the piling of fuel on any part of such road for not more than fifteen days and in such manner as not to inconvenience the public or any individual.

(4) Notwithstanding anything contained in section 47, it shall be competent to a local board to lease or to permit the temporary use of land forming part of a public road when such land is not, in the opinion of the local board, required for a public road or for any other of the purposes of this Act, for a period not exceeding seven years:

Provided that if the lease or permit does not exceed one year, the previous sanction of the Collector, and if the lease or permit exceeds one year but does not exceed seven years, the previous sanction of the Commissioner, shall have been obtained to such lease or permit.

Note—Section 61A is printed as amended by Bom. Act XVI of 1933.

[a] This section was inserted by Bom. X of 1927, s. 7.

*61B. The president, vice-president, or any councillor or officer authorised by the local board in this behalf may at all reasonable times enter into any place where weights or measures or weighing or measuring instruments are used or kept for the purpose of trade and inspect such weights or measures or weighing or measuring instruments.

Powers of inspection of weights and measures, etc.

District local board empowered to make by-laws.

62. (1) The district local board may, from time to time, with the sanction of the Commissioner, make by-laws and cancel or alter the same :—

(a) for the general or special regulation, control or prohibition of the use of markets, dairies, creameries, granaries, grain-shops, slaughter-houses, cart-stands, burial and burning grounds, offensive trades, and all matters, connected with conservancy ;

(b) for regulating the use of public roads and the traffic thereon ; and for securing cleanliness, safety and order in respect of the same ; and

(c) for carrying out all the purposes of this Act,

and may impose fines and penalties for the infringement of such by-laws.

Infringement of by-laws.

(2) No by-law shall be repugnant to any law in force, and no fine for any one infringement shall exceed rupees fifty : provided that in the case of a continuing infringement the offender may by any by-law be made liable to further fine not exceeding rupees ten for every day during which such infringement is continued after conviction.

Confirmation of by-laws.

(3) No by-law or cancellation or alteration of a by-law shall have effect until the same has been approved and confirmed by the Government.

By-laws to have the force of law.

(4) All by-laws when they have been duly confirmed shall have the force of law.

Service of notices, etc addressed to individuals.

63. The service of every notice, and the presentation of every bill under this Act, on any person or to any person to whom it is by name addressed shall, in all cases not otherwise specially provided for in this Act, be effected by a district local board officer or servant or other person authorized by the district local board in this behalf, or on such terms as may be agreed upon, by any officer or servant of the Government—

* Section 61B was instered by the Bombay Weights and Measures Act (XV of 1932), Schedule II, Part I.

(*a*) by giving or tendering the notice or bill to the person to whom it is addressed ; or

(*b*) if such person is not found by leaving the notice or bill at his last known place of abode, if within the district, or by giving or tendering the notice or bill to some adult male member or servant of his family ; or

(*c*) if such person does not reside within the district, and his address elsewhere is known to the president or other person directing the issue of the notice or bill, then by forwarding the notice or bill to such person by registered post under cover bearing the said address ; or

(*d*) if none of the means aforesaid be available then by causing the bill or notice to be affixed on some conspicuous part of the building or land, if any, to which the bill or notice relates.

Service of notices on owners or occupiers of buildings and lands.

64. When any notice under this Act is required or permitted by or under this Act to be served upon an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either,—

(*a*) by giving or tendering the notice to the owner or occupier, or if there be more owners or occupiers than one, to any one of them ; or

(*b*) if no such owner or occupier be found, then by giving or tendering the notice to some adult male member or servant of the family of any such owner or occupier as aforesaid ; or

(*c*) if none of the means aforesaid be available, then by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

Public and general notices how to be published.

65. Every notice which this Act requires or empowers a district local board to give or to serve either as a public notice, or generally, or by provisions which do not expressly require notice to be given to individuals therein specified, shall be deemed to have been sufficiently given or served if a copy thereof is put up in such conspicuous part of the district local board office during such period and in such other public buildings and places, or is published in such local papers or in such other manner as the district local board in by-laws in this behalf directs.

Defective form not to invalidate notice.

66. (1) No notice or bill shall be invalid for defect of form.

Execution of acts required to be done by any notice.

(2) When any notice under this chapter requires any act to be done for which no time is fixed by this Act, the notice shall fix a reasonable time for doing the same.

(3) In the event of non-compliance with the terms of the notice the district local board may take such action or such steps as may be necessary for the doing of the act thereby required to be done, and all the expenses thereby incurred by the district local board shall be paid by the person or persons upon whom the notice was served, and shall be recoverable in the manner provided in section 69.

Punishment for disobedience of orders and notices not punishable under any other section.

67. Whoever disobeys or fails to comply with any lawful direction given by any written notice issued by or on behalf of a district local board under any power conferred by this chapter, or fails to comply with the conditions subject to which any permission was given to him by the district local board under any power so conferred, shall, on conviction before a Magistrate if the disobedience or failure is not an offence punishable under any other section, be liable to a fine not exceeding rupees fifty and to a further fine not exceeding rupees five for every day during which the said disobedience or failure continues after conviction :

Provided that when the notice fixes a time within which a certain act is to be done, and no time is specified in this Act, it shall rest with the Magistrate to determine whether the time so fixed was a reasonable time within the meaning of this Act.

District local board in default of owner or occupier may execute works and recover expenses.

68. (1) Whenever, under the provisions of this Act, any work is required to be executed by the owner or occupier of any building or land, and default is made in the execution of such work, the district local board, whether any penalty is or is not provided for such default, may cause such work to be executed ; and the expenses thereby incurred shall, unless otherwise expressly provided in this Act, be paid to it by the person by whom such work ought to have been executed, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII either in one sum or by instalment as to the district local board may seem fit.

Power to levy charges on occupier, who may deduct the sum from his rent.

(2) If the defaulter be the owner of the building or land, the district local board may, by way of additional remedy, whether a suit or proceeding has been brought or taken against such owner or not, require, subject to the provisions of sub-section (3), the payment of all or any part of the expenses payable by the owner for the time being, from the person who then, or any time thereafter, occupies the building or land under such owner ; and in default of payment thereof by such

occupier on demand, the same may be levied from such occupier: and every amount so leviable shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII; every such occupier shall be entitled to deduct from the rent payable by him to his landlord so much as has been so paid by or recovered from such occupier in respect of any such expenses.

Occupiers not to be liable for more than the amount of rent due.

(3) No occupier of any building or land shall be liable to pay more money in respect of any expenses charged by this Act on the owner thereof, than the amount of rent which is due from such occupier for the building or land in respect of which such expenses are payable at the time of the demand made upon him, or which at any time after such demand and notice not to pay the same to his landlord, has accrued and become payable by such occupier, unless he neglect or refuse, upon application made to him for that purpose by the district local board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded of any such occupier is greater than the rent which was due by him at the time of such demand, or which has since accrued, shall be upon such occupier:

Provided that nothing herein contained shall be taken to affect any special contract made between any such occupier and the owner respecting the payment of the expense of any such works as aforesaid.

Expenses or costs how determined and recovered.

69. If a dispute arises with respect to any expenses or costs which are by this Act directed to be paid, the amount, and if necessary the apportionment of the same, shall, save where it is otherwise expressly provided in this Act, be ascertained and determined by the district local board, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

District local board may prosecute.

70. (1) The district local board may direct any prosecution for any public nuisance whatever, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or of any by-law thereunder, and may order the expenses of such prosecutions or other proceedings to be paid out of the local fund:

Provided that no prosecution for an offence under this Act or of any by-law thereunder shall be instituted except within six months next after the commission of such offence.

(2) Any prosecution under this Act or under any by-law thereunder may, save as therein otherwise provided, be instituted before any Magistrate, and every fine or penalty imposed under or by virtue of this Act or any by-law thereunder, and also all claims to compensation or other expenses for the recovery of which no special provision is otherwise made in this Act, may be recovered on application to such Magistrate, by the distress and sale of any moveable property within the limits of his jurisdiction belonging to the person from whom the money is claimed.

Jurisdiction of Magistrate.

71. If through any act, neglect or default, on account whereof any person shall have incurred any penalty imposed by or under this Act, any damage to the property of any local board shall have been caused by such person, he shall be liable to make good such damage as well as to pay such penalty, and the value of the damage shall, in case of dispute, be determined by the Magistate by whom the person incurring such penalty is convicted, and on non-payment of such value on demand the same shall be levied by distress, and such Magistrate shall issue his warrant accordingly.

Damage to any local board property how made good.

72. In lieu of proceeding by distress and sale, or in case of failure to realise by so proceeding the whole or any part of any amount recoverable under the provisions of Chapter VIII or of any compensation, expenses, charges or damages awarded under this Act, the district local board may sue in any Court of competent jurisdiction the person liable to pay the same, as also any other person who may have in any way caused any injury to any property, rights or privileges of the district local board.

Alternative procedure by suit.

73. (1) Any police officer may arrest any person committing in his presence any offence against any of the provisions of this Act or of any by-law thereunder, if the name and address of such person be unknown to him, and if he decline to give his name and address, or if the police officer have reason to doubt the accuracy of such name and address if given, and such person may be detained at the station-house until his name and address shall be correctly ascertained :

Powers of Police officers.

Provided that no person arrested shall be detained without the order of a Magistrate longer than shall be necessary for bringing him before a Magistrate, or than twenty-four hours at the utmost.

(2) It shall also be the duty of all police officers to give immediate information to the president or an officer of the local board

of the commission of any offence against the provisions of this Act or of any by-law thereunder, and to assist all local board officers and servants in the exercise of their lawful authority.

CHAPTER VI

REVENUE AND EXPENDITURE

Local fund, its custody and investment.

74. (1) There shall be in each district a fund which shall be called the local fund.

(2) The local fund shall be kept in the Government treasury or in the bank to which the Government treasury business has been made over or in such other bank or co-operative society registered or deemed to be registered under the Co-operative Societies Act, 1912,* as may be approved by the Government:

Provided that the district local board may from time to time, with the previous sanction of the Government, and subject to any general or special orders of the Governor-General in Council invest any portion of the fund in securities of the Government of India or such other securities as the Governor-General in Countil may approve in this behalf, and vary such investments for others of the like nature; and the income resulting from the securities and proceeds of the sale of the same shall be credited to the local fund.

Notes—In addition to the Imperial Bank of India the District Local Boards have been authorized to deposit at interest their surplus funds in the following banks :—

1. The National Bank of India.
2. The Chartered Bank of India, Australia and China.
3. The Hongkong and Shanghai Banking Corporation.
4. The Central Bank of India.
5. The Mercantile Bank of India.
6. The Bank of India.
7. The Bank of Baroda (Ltd.).

G. R. G. D. No. 4453 of 19th Aug. 1924).

Also Bombay Central Co-operative Bank and other Co-operative Banks for District Local Board, Ahmedabad (G. R. R. D. No. 140A of 19th June 1923, of 2nd February 1924 and of 11th February 1924);

District Local Board, Poona, was refused permission to invest the minimum balance in Post office Cash Certificates (G. R. G. D. No. 4362 of 16th October 1923).

Income of local fund.

75. The following shall form part of, or be paid into, the local fund :—

(*a*) the balance of the local fund of the district at the commencement of this Act;

(*b*) the net proceeds (after deducting the expenses of assessment and collection) of any residue of the cesses payable in

*See now the Bombay Co-opertive Societies Act (VII of 1925.)

the district under the Sind Local Funds Act, 1865, and the Bombay Local Funds Act, 1869;

(c) the net proceeds (after deducting the expenses of assessment and collection) of the cesses in the district authorized by sections 93 and 95;

(d) the net proceeds (after deducting the expenses of collection and of the maintenance of the ferries) of all public ferries established in the district under the Bombay Ferries Act, 1868, not being ferries vested under the Act in * "a municipality" and all penalties inflicted and levied under the said Act in the district;

(e) all rents and profits accruing from property (including ferries) placed by the Government under the management of a local board or vested in a local board;

(f) the net proceeds (after deducting the expenses of collection) of all tolls and leases of tolls on roads and bridges vested in the local board which are levied in the district under the Tolls on Roads and Bridges Act, 1875;

(g) such portion of the net proceeds of fees, fines and penalties levied in the district under the Poisons Act, 1919, as the Government from time to time directs;

(h) all sums ordered by the Government under section 31 of the Cattle-trespass Act, 1871, or otherwise, to be credited to the fund;

(i) all fees levied in the district under the Bombay Land Revenue Code, 1879, for permission to remove sand or to quarry;

(j) all sums received by a local board in the execution of, or from taxation under, this Act and the interest on and the sale-proceeds of any securities held by such board;

(k) all sums contributed by private persons;

(l) the proceeds of any fisheries vesting in a local board;

(m) the receipts on account of charities and trusts placed under the management of a local board; and

(n) all grants and assignments of revenue made by the Government:

Provided that when a public ferry, road or bridge is partly in one district and partly in another, the Commissioner, if the districts are in one division, and the Government if they are in different divisions, may assign to the local fund of each district such proportion of the net proceeds of such ferry, or of the toll, or or the lease of the tolls levied on such road or bridge, as he or it shall think fit:

Provided further that if any road in a district is vested partly in a local board and partly in the Government, the Collector may

* The words "a municipality" were substituted for the original words "the district local board" by Bom. Act X of 1931, s. 3.

assign to the local fund of the district such proportion of the net proceeds of the toll or of the lease of the toll levied on such road as he shall think fit.

* Provided also that a local board may, subject to the condition that reasonable provision shall be made for the performance of all obligations imposed or that may be imposed on it by or under this Act or any other law for the time being in force, credit to a separate heading in the local board accounts any portion of the local fund set apart by it for any special purpose and shall credit to a separate heading any grant or donation received by it for any special purpose. Any grant or donation so credited by it shall be applied exclusively to the special purpose for which the same was received.

Funds of Extinct Village Sanitary Committees.—The assets of sanitary Committees which have ceased to exist should in those cases in which a Panchayat is not or cannot be established be credited to the District Local Board (G. R. G. D. No. 2550, dated 19th August 1924).

Cattle Trespass Act receipts.—The net proceeds under the Cattle Trepass Act, 1871, accruing in areas outside municipal or Cantonment limits after deducting expenses shall be credited to local boards (G. R. G. D. No. 4453, dated 19th August 1924).

Local fund by what boards to be expended.

76. (1) The local fund of a district shall be available for expenditure by or under the direction of each taluka local board for the purposes of this Act as follows:—

(*a*) the balance available for expenditure by or under the direction of such board at the commencement of this Act; and

(*b*) the balance of the revenue described in clauses (*b*), (*c*), (*e*), (*g*), (*h*), (*i*), (*j*) and (*k*) of section 75 accruing in the areas subject to the authority of such taluka local board, after the district local board shall have made provision therefrom for the portion to be devoted to educational purposes under section 80 and for such share of the charges payable by the district local board under sections 78 and 81 as the said board shall deem equitable.

(2) The remaining portion of the fund shall be available for expenditure by or under the direction of the district local board for the purposes of this Act.

Local fund where to be expended.

77. Expenditure by the local boards out of the local fund shall, save as otherwise provided by this Act, be made within the areas respectively subject to their authority only, but may, [1] "where it does not exceed rupees two hundred with the sanction of the Collector and where it exceeds rupees two hundred [1] with the sanction of the Commissioner, be made outside that area for any of the purposes of this Act.

*This proviso was added by Bom. Act IV of 1930, s. 3. (2).

[1—1] These words were inserted by Bom. XVI of 1935, s. 4.

Notes.—Under this section the sanction of the Commissioner, and not o the Board, is necessary to an expenditure incurred outside the Board's jurisdiction.

The payment of a certain sum to a Red Cross Committee being an expenditure outside the local board area, should be made with the sanction of the Commissioner under this section.

General charges to be defrayed by district local boards.

78. Every district local board shall, from the portion of the local fund at its disposal, defray—

(*a*) the salaries and other emoluments of all officers and servants maintained under section 119, and the pensions or other retiring allowances, if any, of such officers and servants, and the gratuities or compassionate allowances payable to the surviving relatives of such officers and servants; and such charges as may be agreed upon for the performance of any services for the board by any officer or servant of the Government;

(*b*) such sum as shall from time to time be fixed by the Government for the payment of the salaries, allowances and contributions for pension, according to the rules from time to time made by the Government, of any officers or servants of the Government employed by the board.

Notes.—Provision has been made permitting the grant of gratuities or compassionate allowances to the surviving relatives of local board employees, to obviate the necessity of obtaining the sanction of Government in every case (*Statement of Objects and Reasons*).

The payment of salaries, allowances and contributions for pension of Government servants lent to local boards shall be made by them as advised by the Accountant General, Bombay, in conformity with the Fundamental Rules (G.R.G.D. No. 3453, dated 19th August 1924).

The District Local Boards can defray the establishment charges only of the Taluka Local Boards. The Taluka Local Boards should provide for rent of Taluka Local Board office building and travelling allowance of their members in their respective budgets.

The entire cost on account of the peons sanctioned for the Taluka Local Board must be met by the District Local Board under cl. (*a*) of this section and not by Taluka Local Board.

Assignment of certain portions of revenue to municipalities or cantonment committees.

79. (1) Every district local board shall assign and cause to be paid out of the district local fund to every municipality and cantonment committee within the district for which such board has been established a sum equal to two-thirds of the amount of the revenue described in clauses (*b*) and (*c*) of section 75 levied from lands within the municipal district or cantonment subject to such municipality or committee, and may, in its discretion, assign and pay to every such municipality or committee, the whole of the said amount and such amount shall, at the request of the district local board, be ascertained and certified by the Collector.

(2) The sum assigned and paid shall be expended by the municipality or cantonment committee only for such purposes as are described in section 50, or for the remuneration of officers and servants whom it entertains for any of the said purposes; and a portion thereof equal to not less than one-third of the revenue described in sub-section (1) shall be expended by it for educational purposes only, as defined in clause (*d*) of section 50.

Expenditure for educational purposes to be made by district local boards only.

80. In every district the expenditure from the local fund for educational purposes as defined in clauses (*d*) and (*l*) of section 50 shall be made by the district local board only or by such authority as may be prescribed in any enactment for the time being in force, and for this purpose a sum equal to not less than one-third of the revenue described in clauses (*b*) and (*c*) of section 75 shall be set apart by the said board for expenditure by it on the said purposes (after deducting the sum or sums described in sub-section (1) of section 79):

Provided that

(*a*) *Repealed by Bom. XVI of 1935, s. 5.*

(*b*) the charges to be necessarily defrayed by each district local board or by such authority as aforesaid on account of primary education, the extent of the independent authority of district and taluka local boards in education and their relations generally with the Government Educational Department and with each other in educational matters shall be from time to time prescribed by rules made by the Government in this behalf under clause (*e*) of section 133.

The provisions of proviso (*b*) of this section shall apply also to municipalities and cantonment committees in respect of the sums to be expended by them under section 79 for educational purposes.

Notes.—Under this section an expenditure for the payment of travelling allowance to members for purposes of primary education or inspection of repairs can be incurred only by the district local board and the taluka Local Board funds cannot be utilized for such purposes (*vide* ss. 76 and 81).

As expenditure under s. 50 (*d*) and (*e*) of the Act can be incurred only by the District Local Board under this section, any contribution to a library cannot be paid from the Taluka Local Board Funds.

Cess on water rate to be utilized towards improvement of communications in irrigated tracts.

*80A. In any district notified by Government in this behalf, such specified portion of the net proceeds of the cess levied therein under section 95, as may be determined by Government, after consultation with the District Local Board concerned, shall be utilized towards the improvement of communications in irrigated tracts in that district.

* Section 80A was inserted by Bom. Act XXII of 1931, s. 2.

Provisions for determining by which boards expenditure should be incurred for other purposes.

81. (1) The responsibility of district and taluka local boards, respectively, for expenditure in respect of matters other than education, shall be determined in accordance with the following provisions, namely:—

(*a*) each local board shall be responsible for the maintenance of any building or other property which vests in it, and of any work which has been executed at its cost;

(*b*) district local boards shall be responsible for the construction, maintenance and repair of the main roads and other means of through communication in the district vesting in them, for the maintenance of public vaccination and dispensaries and other similar local services and institutions of general benefit to the district, and for all matters in which two or more talukas are, or may be, interested ;

(*c*) taluka local boards shall be responsible for the construction and maintenance of all other roads and works which are purely local, and for all local services and institutions not maintained by the district local board ; and

(*d*) large works of the nature described in clause (*c*) of this section which are beyond the means at the disposal of a taluka local board may be undertaken by the district local board at its own cost, or the district local board may assist the taluka local board in undertaking the same by a grant-in-aid conditional upon a certain portion of the cost being contributed by the taluka local board or by private persons, or by both.

(2) If a difference of opinion arises between a district and a taluka local board as to which board is responsible for any charge, work, institution or service, the question shall be referred for the decision of the Commissioner, which shall be final.

Note.—Charges aggregating to Rs. 40 on account of anti-rabic treatment are payable out of District Local Board funds under s. 81 (2) of this Act (*Vide* Commissioner, N. D's No. L. F. 1519, dated 26th February 1929 in Kaira District Local Board case).

How the local fund shall be drawn against.

82. (1) Subject to the provisions of sections 126 to 131 inclusive no payment shall be made from the Government treasury or by a bank or a co-operative society out of a local fund except upon a cheque or letter of credit signed by the president of the local board which requires such payment.

(2) Payment of any sum in excess of one hundred rupees shall be made by a local board by means of a cheque or letter of credit signed as aforesaid and not in any other way.

[a] Provided that in the case of expenditure from the local fund for educational purposes such payments shall be made in accordance with the provisions of the Bombay Primary Education Act, 1923, and of the rules made thereunder.

Notes.—Uner this section and section 24 *ante* the Vice-President can sign cheques only if the President is absent on leave and not otherwise.

The payments of any sum in excess of Rs. 100 should not be made in cash to contractors, but by cheques drawn in their favour, as required by sub-section (2) of this section.

Cheques issued for amounts drawn from the treasury are not required to be stamped as per amended Stamp Act.

Accounts to be kept in form prescribed by the Government.

83. Accounts of the receipts and expenditure of every local board shall be kept in such form as the Government may from time to time by rule made in this behalf under clause (*f*) of section 133 prescribe, and shall be balanced annually on the last day of every financial or revenue year, as Government may prescribe.

Publication of abstract of accounts annually.

84. An abstract of the accounts of every local board showing the amounts drawn from the local fund, the charges for establishment, and for all other expenses, the works undertaken, and the sums expended on each work, and the balance, if any, in hand, shall be forwarded by the president of the board every year, as soon as may be after the end of the year, in such form as the Government may from time to time by rule made in this behalf under clause (*f*) of section 133 prescribe, to the Collector or such other officer as the Collector nominates in this behalf and shall be published in the *Bombay Government Gazette.*

Return to be rendered to local boards of actual and estimated income of local funds.

85. (1) To enable local boards to prepare annual budget estimates, as hereinafter provided, the Collector shall annually render to each taluka local board in his district, on or before such date and in such form as the Government from time to time directs, a return setting forth, for the taluka for which such board is established,—

(*a*) the actual receipts in the last complete official year,
(*b*) a revised estimate of the receipt in the current official year, and
(*c*) a first estimate of the probable receipts in the next following official year

} From each of the sources from which the local fund is derived.

and to the district local board a similar return for the whole district.

[a] This proviso was added by Bom. Act X of 1927, s. 8.

(2) The district local board shall, on or before such date as the Government from time to time may direct, communicate to each taluka local board in the district the probable amount of the revenue described in clauses (*b*) and (*c*) of section 75, which will be at the disposal of such taluka local board in the next following official year, explaining the manner in which, with reference to clause (*b*) of sub-section (1) of section 76, the said amount has been fixed.

Preparation of annual budget estimates of income and expenditure.

86. (1) Every local board shall have prepared annually, on or before such date and in such form as the Government from time to time by rule made in this behalf under clause (*f*) of section 133 prescribes, a budget estimate of the income and expenditure of the board for the next official year.

Consideration and approval of budget estimates by the board.

(2) The board shall, on or as soon as may be after the said date, consider the budget estimate so prepared and approve the same with or without modification as it shall think fit.

Taluka local boards' budget estimates to be submitted for sanction to the district local board.

87. Every budget estimate, as approved by a taluka local board, shall be forthwith submitted to the district local board to which such taluka board is subordinate, which may—

(*a*) as often as it thinks fit, send back such estimate to the taluka local board for revision, or

(*b*) sanction any budget estimate, or revised budget estimate submitted to it, either as it stands, or subject to such modification as it deems expedient.

Revised or supplementary budget estimates may be made when necessary.

88. (1) Every local board may, at any time during the year for which any such budget estimate has been approved or sanctioned, cause a revised or supplementary budget estimate to be prepared. Every such revised or supplementary estimate shall be considered and approved by the local board and in the case of a taluka local board submitted to the district local board for sanction, in the same manner as if it were an original annual budget estimate.

Re-appropriation to be subject to approval or sanction like budget estimate.

(2) Re-appropriation of funds in a budget estimate may be made from time to time subject to the same approval or sanction as is required for the budget estimate.

Budget estimates and re-appropriations when to be approved or sanctioned.

89. (1) No budget estimate of a local board and non reappropriation of a budget item shall be approved or sanctioned as aforesaid, unless—

(*a*) provision is therein made for such board having at its credit at the end of the official year a balance of not less than five thousand rupees in the case of a district local board, and two hundred rupees in the case of a taluka local board;

(*b*) for every work, [*a*] of first construction [*a*], there is attached to the budget estimate in which provision is made therefor a detailed estimate of the cost of such work, which has been approved by the board, and in the case of a road of which the cost is to exceed on an average three hundred rupees per mile or of any other work of which the total cost is to exceed three thousand rupees, plans and estimates have [*b*] either been prepared or approved by the Government Executive Engineer of the district or by an engineer employed by the board and approved by the Government:

[*c*] Provided that the Government may, in any case, for special reasons direct that the provisions of this clause shall not apply.

Copies of budget estimates and re-appropriation statements to be sent to the Collector.

(2) A copy of every budget estimate and a statement of every re-appropriation as finally approved or sanctioned under the foregoing provisions shall be forwarded by the president of each local board without delay to the Collector, or such officer as he nominates in this behalf. Annual budget estimates shall be so forwarded not later than the 18th February.

Notes.—Under this section detailed estimates approved by the Board are required to be attached to the Budget estimate.

Estimates should be approved by the Engineer and sanctioned by the Board before making provision for the works in the Budget as required by sub-section (1) of this section.

Detailed estimates on account of certain minor works can be prepared before works are taken up for execution and attached to the budget as required by cl. (*b*).

Under cl. (*b*) of sub-section (1) of this section no sum should be provided in the budget for any work unless there is an estimate approved by competent authority.

The approval of the Government Executive Engineer is necessary for an estimate for repairs exceeding Rs. 300 as required by s. 89 (1) (*b*).

Sub-section (2) of this section requires that all estimates for works whether of first construction or repairs should be approved by the Board before provision is made therefor in the Budget.

[*a*—*a*] Words repealed by Bom. Act X of 1927, s. 9 (*a*), are omitted.

[*b*] The word "either" was inserted by Bom. Act X of 1927, s. 9 (*b*).

[*c*] This proviso was added by Bom. Act X of 1927, s. 9 (*c*).

Except on a pressing emergency no sum not provided for in a budget estimate to be expended.

90. (1) Save in a case of pressing emergency, no sum shall be expended by, or on behalf of, any local board, unless such sum is included in some budget estimate at the time in force which has been approved or sanctioned as aforesaid.

(2) If any sum is so expended on a pressing emergency, the circumstances shall be forthwith communicated in writing by the president to the Collector (through the district local board, if the sum has been expended by a taluka local board) with an explanation of the way in which it is proposed by the local board to cover such extra expenditure.

Note.—Section 90 (1) requires that no sum should be expended unless such sum is included in the sanctioned budget estimate.

Provision as to budget estimates in force when this Act comes into operation.

91. Every budget estimate prepared, approved or sanctioned by any local board, under the Bombay Local Boards Act, 1884, before the commencement of this Act shall be deemed to have been duly prepared, approved or sanctioned under this Act.

Audit to be made periodically under the orders of the Government.

[a] 92. (1) Independently of the audit provided for under the provisions of the Bombay Local Fund Audit Act, 1930, the accounts of local boards may be examined and audited at such intervals, in such manner, and by such agency as Government, on the application of the local board or local boards concerned, directs.

Auditor to have power to see all accounts, etc.

(2) Every auditor appointed under this section shall have access to the accounts and to all books, deeds, contracts, vouchers and all other documents and records in the possession, or under the control, of the local board.

[b] (3) [c] * * * Every local board shall publish the report and audit notes with the replies thereto in its administrative report and in a local newspaper selected by the board. A copy of the report on every taluka local board shall also be sent to the district local board of the district.

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[a] Sub-section (1) was substituted for the original sub-section by Bom. Act XXV of 1930, s. 16 (2).

[b] This sub-section was substituted for the original by Bom. Act X of 1927 s. 10.

[c] Certain words repealed by Bom. Act X of 1931, are omitted.

CHAPTER VII—TAXATION.

Levy of one anna cess on every rupee of land-revenue.

93. (1) The Government shall levy, on the conditions and in the manner hereinafter described, a cess [a] at the rate [a] of one anna or, on an application of the district local board to which the cess is payable made in pursuance of a resolution of the board passed at a special meeting called for the purpose, an increased cess [a] at the rate [a] not exceeding two annas, on every rupee of

(a) every sum payable to the Government as ordinary land-revenue except sums payable on account of any of the charges mentioned in Schedule A, and except sums payable on account of any charge which may be notified by the Government in this behalf, [b]

(b) every sum which would have been assessable on any land as land-revenue had there been no alienation of land-revenue [c], and

[d] (c) every sum which would have been assessable on any land as land revenue had the land not been talukdari land :

Provided that [e] the rate of [e] any increased cess leviable as aforesaid shall be a multiple of 3 pies.

[f] Provided further that no cess shall be levied on sums below four annas, and that the amount of the cess shall, if not a multiple of three pies, be increased to the next highest multiple of three pies.

(2) The Government may, on the application of the local board to which the cess is payable, suspend the collection of the cess or any portion thereof in any year in any area [g] subject to the authority of such local board [g].

Note.—"These clauses (secs. 93 and 94) contain the provisions of ss. 6 and 7 of the Bombay Local Funds Act, 1869 without material alteration, except that the levy of the cess is no longer optional. The special provision, contained in section 2 of the Sind Local Funds Act, 1865, that Jagirs and other alienated land should pay five per cent, on their assessable value, has been omitted, and such land

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[a—a] These words were inserted by Bom. Act X of 1927, s. 11 (i) (1).

[b] This comma was substituted for the word "and" by Bom. X of 1927, s. 11 (i) (2) (a).

(c) This mark and word were substituted for the mark ";" by Bom. X of 1927, s. 11 (i) (2) (b).

(d] This clause was inserted by Bom. X of 1927, s. 11 (i) (2) (c).

[e—e] These words were inserted by Bom. X of 1927, s. 11 (i) (3).

[f] This proviso was inserted by Bom. X of 1927, s. 11 (i) (4).

[g—g] These words were substituted for the words "in which the Government has declared that famine exists" by Bom. X of 1927, s. 11 (ii).

in Sind will, under these clauses, be required to pay one anna in the rupee on the assessable value like lands held on the same tenure in the presidency proper. The term "sair revenue" used in the two existing Acts is dropped, and certain items of what is termed "Miscellaneous Land Revenue" are excluded from the incidence of local cess, which has in fact never been taxed upon them. The result will be to preserve the *Status quo*. The Sind shop-tax, for the levy of which power was given by section 4 of the Sind Local Fund Act, has never been levied, and the references to it are omitted in this Bill. Provision has also been made for raising the cess to two annas or any less amounts on the application of the local board, and for allowing suspension of the levy in famine years. The sources of rural taxation other than the land cess are very limited, and without increased funds progress is impossible. Remissions and suspensions of the local fund cess are allowed at present but, it is considered that the cess should no longer be remitted as the cess is a slight imposition in itself and the local fund revenue is already insufficient for local needs *(Statement of Objects and Reasons)*.

Rules of assessment.

94. [*a*] (1) In the assessment of the said cess on villages alienated as defined in the Bombay Land Revenue Code, 1879,

(*a*) if the village has been surveyed and assessed in the manner laid down in the said Code and the rules made thereunder, the cess shall be fixed on the total amount of assessment of the village as fixed under the said Code or the rules made thereunder;

(*b*) if the village has come under summary settlement under the Exemptions from Land Revenue (No. 1) Act, 1863, or the Exemptions from Land Revenue (No. 2) Act, 1863, and clause (*a*) of this section does not apply, the cess shall be fixed on the total annual assessment as settled for the purpose of summary settlement; and

(*c*) in villages to which neither of clauses (*a*) or (*b*) of this section applies, the cess shall be fixed on the old or kammal rate recorded in the books of the Collector; and if no such rate is recorded, or if the rate so recorded is objected to by the holder or proprietor of the alienated village, the cess may be fixed as agreed upon by the Collector [*b*] in agreement with the district local board who shall pass a special resolution to that effect [*b*] and such holder or proprietor or, failing agreement, by a rough survey and assessment to be made by the Government, the expense of such rough survey being borne half by the local board and half by the holder or proprietor of such village.

[*c*] (2) The provisions of sub-section (1) shall apply, so far as may be, to talukdari land.

[*a*] Original section 94 was renumbered sec. 94 (1) by Bom. V of 1928, s. 3 (*a*).

[*b-b*] These words were inserted by Bom. V of 1928, s. 3 (*b*).

[*c*] New sub-section (2) was added to the original section 94 by Bom. V of 1928, s. 3 (*c*).

Levy of cess on water-rate.

95. The Government may levy a cess not exceeding two annas on every rupee of water-rate leviable under the provisions of the Bombay Irrigation Act, 1879.

Notes.—*Local fund cess.*—In the case of the Presidency proper a local fund cess under this section should be levied on both the water and occassional rates. In the case of Sind, the local fund cess should be levied in accordance with the orders in G. N. No. 4453, dated the 16th December 1925.

Government of Bombay are pleased to direct that one anna on every rupee of water rate leviable under the provisions of the Bombay Irrigation Act, 1879, shall be levied for the purpose of the local fund (*G. N. G. D. No.* 4453, dated 19th August 1924, quoted in Mr. Metha's L. B. Code).

Manner of levying cess described in section 93.

96. The cess described in section 93 shall be levied, so far as may be, in the same manner, and under the same provisions of law, as the land revenue.

Manner of levying cess described in section 95.

97. The cess described in section 95 shall be levied, so far as may be, in the same manner, and under the same provisions of law, as water-rates payable to the Government under the Bombay Irrigation Act, 1879.

Assistance to superior holders.

98. The provisions of law relative to the assistance to be given to superior holders and owners of water-courses for the recovery of their dues from their tenants and occupants under them or from persons authorized to use their water-courses, shall be applicable to all superior holders, whether of alienated or unlienated land, and to all owners of water-courses in respect of the recovery of the said cesses from their tenants, occupants or persons authorized to use their water-courses, and shall be applicable also to occupants of land under the Bombay Land Revenue Code, 1879, for the recovery of the said cesses from their tenants or joint occupants.

Taxes which may be imposed by district local board,

99. Subject to any general or special orders which may be made by the Government in this behalf, every district local board may—

(*a*) after observing the preliminary procedure required by section 100, and

(*b*) with the sanction of the Commissioner, and subject to such modifications or conditions as under section 101 the Commissioner, in according such sanction, deems fit,

impose, for the purposes of this Act, any tax [1] "other than a toll on [2] "vehicles or animals[2] save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935 [1] which, under rules

[1-1] These words were inserted by the Bombay Motor Vehicles Tax Act (XXXIV of 1935), 2nd Schedule.

[2-2] The words "vehicles or animals" were substituted for the original words "motor vehicles or trailers" by Bom, Act XXIV of 1936.

made under clause (*a*) of sub-section (3) of section 80A of the Government of India Act, a local authority may be authorized to impose by any law made by the local legislature without the previous sanction of the Governor-General:

Provided that no tax imposed as aforesaid other than a special sanitary cess or a water-rate shall, without the express consent of the Government be leviable in respect of any building or part of any building, or of any vehicle, animal or other property belonging to the Government and used solely for public purposes, and not used or intended to be used for porposes of profit, and no toll shall be leviable for the passage of troops, the conveyance of Government stores or of any other Government property, the passage of Military or Police officers on duty, or the passage or conveyance of any person or property in the custody of such officers.

Procedure of Board preliminary to imposing tax.

100. (1) Every district local board shall, before imposing a tax, by resolution passed at a meeting of the board—

(*a*) select a tax which may under section 99 be imposed; and

(*b*) approve rules describing the tax selected; and shall in such resolution and in such rules specify

(1) the class or classes of persons or of property, or of both, which the district local board desires to make liable, and any exemptions which it desires to make;

(2) the amount for which, or the rate at which it is desired to make such classes liable; and

(3) all other matters which the Government may require to be so specified.

(2) When such resolution has been passed, the district local board shall publish the rules with a notice in the form of Schedule B prefixed thereto.

(3) Any inhabitant of the district objecting to the imposition of the said tax, or to the amount or rate proposed, or to the class of persons or property to be made liable thereto, or to any exemptions proposed, may within one month from the publication of the said notice send his objection in writing to the district local board, and the board shall take all such objections into consideration, or shall authorize a committee of its members to consider and report on them, and, unless it decides to abandon or modify the proposed tax in accordance with the said objections, shall submit them with its opinion thereon, together with the notice and rules as aforesaid, to the Commissioner.

Note.—Sections 100-103 prescribe the procedure of imposition of new taxes.

Power to sanction, modify and impose conditions.

101. The Commissioner may either refuse to sanction the rules submitted, or may return them to the district local board for further consideration, or, if no objection, or no objection which is in his opinion sufficient, was made to the proposed tax within one month from the publication of the said notice, may sanction the said rules either—

(*a*) without modification, or

(*b*) subject, as he deems fit,

(*i*) to such modifications not involving an increase of the amount to be imposed, or

(*ii*) to such conditions as to the application within the district, to any purpose or purposes of this Act specified in such conditions of the whole or any part of the proceeds of such tax.

Publication of sanctioned rules with notice.

102. All rules sanctioned under section 101 with all modifications subject to which the sanction is given, shall be published by the district local board in the district for which they are made, together with a notice reciting the sanction and the date and serial number thereof; and the tax as described in the rules so published shall, from a date which shall be specified in such notice and shall not be less than one month from the publication of such notice, be imposed accordingly, and the proceeds thereof shall be applied by the district local board in accordance with the conditions, if any, subject to which under section 101 the sanction was given:

Provided that

(*a*) a tax leviable by the year—

(*i*) shall not come into force except on one of the following dates, *viz.*, the first day of April, the first day of July, the first day of October, or the first day of January, in any year, and

(*ii*) if it comes into force on any day other than the first day of April, it shall be leviable by the quarter till the first day of April then next ensuing;

(*b*) on or before the day on which a notice is issued under this section, the district local board shall publish such further detailed rules as may be required, and as may have been approved by the Commissioner, prescribing the mode of levying and recovering the tax therein specified, and the dates on which it or the instalments, if any, thereof shall be payable; and

(*c*) if the levy of a tax, or of a special portion of a tax, has been sanctioned, for a fixed period only, the levy shall cease at the conclusion of that period, except so far as regards any unpaid arrears which have become due during the period.

Collection of octroi by one public body on behalf of others.

[1] 102A. Where any agreement such as is referred to in sub-section (1A) of section 46 has been entered into, such one of the bodies entering into the agreement as by the terms thereof shall be specified in this behalf shall have the same power to establish such octroi limits and stations as that body may deem necessary for the entire area in which the octroi is to be collected, and shall have the same power of collecting octroi on animals or goods or both brought within the limits so established, and the provisions of the Act under which that body is constituted relating to octroi, shall apply in the same way as if the limits so established were wholly comprised within the area subject to the control of that body ; and the collections made and the costs thereby incurred shall, subject to the provisions of section 46, be divided between the bodies entering into the agreement, in such proportions as shall have been determined in the agreement. [1]

Power of Government to suspend levy of objectionable taxes.

103. If it shall at any time appear to the Government, on complaint made or otherwise, that any tax leviable by a district local board is unfair in its incidence, or that the levy thereof, or of any part thereof, is obnoxious to the interest of the general public or violates any promises made or undertakings incurred by Government, the Government may require the said district local board, within such period as it shall fix in this behalf, to take measures for removing any objection which appears to it to exist to the said tax, and if within the period so fixed, such requirement shall not be carried into effect to the satisfaction of the Government, the Government may, by notification in the *Bombay Government Gazette*, suspend the levy of such tax or of such part thereof, until such time as the objection thereto shall be removed.

CHAPTER VIII.

COLLECTION OF TAXES.

Presentation of bill for amount of tax.

104. (1) When any amount which

(*a*) by or under any provision of this Act, is declared to be recoverable in the manner provided by this chapter, or

(*b*) not being payable on demand on account of a toll, is claimable as an amount or instalment on account of any tax which is imposed in the district shall have become due,

the district local board shall, with the least practicable delay, cause to be presented to the person liable for the payment thereof a bill for the sum claimed as due.

Contents of bill.

(2) Every such bill shall specify—

[1] Section 102A was inserted by Bom. Act XIV of 1934, s. 3 (2).

(*a*) the period for which, and

(*b*) the property, occupation or thing in respect of which the sum is claimed, and shall also give notice of—

(*i*) the liability incurred in default of payment, and

(*ii*) the time within which an appeal may be preferred, as hereinafter provided, against such claim.

If bill not paid within fifteen days, notice of demand to issue.

(3) If the sum for which any bill has been presented as aforesaid is not paid into the local board office, or to a person authorized by any rule in that behalf to receive such payments, within fifteen days from the presentation thereof, the district local board may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form of Schedule C, or to the like effect.

Note.—Chapter VIII consisting of ss. 104–118 prescribes the procedure of levying the local fund taxes.

In what cases warrant may issue.

105. If the person liable for the payment of the said sum does not, within fifteen days from the service of such notice of demand, either—

(*a*) pay the sum demanded in the notice, or

(*b*) show cause to the satisfaction of the district local board, or of such officer as the board by rule may appoint in this behalf, why he should not pay the same, or

(*c*) prefer an appeal in accordance with the provisions of section 113 against the demand,

such sum with all costs of the recovery may be levied under a warrant caused to be issued by the district local board in the form of Schedule D or to the like effect by distress and sale of the moveable property of the defaulter.

Warrant by whom to be signed.

106. Every warrant issued under section 105 shall be signed by the president of the district local board causing the same to be issued, or by an officer authorized by the district local board for this purpose or with the sanction of the Government, by an officer of the Government.

To whom warrant should be addressed.

107. When the property is in the district, the warrant shall be addressed to an officer of a local board established in the district or with the sanction of the Government, to an officer of the Government.

When the property is in another district, the warrant shall be addressed to the president of the district local board in such other district: provided that such president may endorse such warrant to a subordinate officer or with the sanction of the Government to

an officer of the Government. When the property is in the City of Bombay, the warrant shall be addressed to the Registrar of the Court of Small Causes of Bombay : provided that the Registrar may endorse such warrant to a subordinate officer.

Power of entry under special order.

108. Any officer to whom a warrant is addressed by endorsement or otherwise may, if the warrant contains a special order authorizing him in this behalf, but not otherwise, break open at any time between sunrise and sunset any outer or inner door or window of a building in order to make the distress directed in the warrant, if he has reasonable grounds for believing that such building contains property which is liable to seizure under the warrant, and if after notifying his authority and purpose and duly demanding admittance he cannot otherwise obtain admittance provided that such officer shall not enter or break open the door of any apartment appropriated for women until he has given three hours' notice of intention and has given such women an opportunity to remove themselves.

Warrant how to be executed.

109. Such officer may distrain, wherever it may be found, any moveable property of the person named in the warrant as defaulter subject to the following conditions, exceptions and exemptions, namely :—

(*a*) the following property shall not be distrained—

(*i*) the necessary wearing apparel and bedding of the defaulter, his wife and children,

(*ii*) the tools of artizans, and

(*iii*) when the defaulter is an agriculturist, his implements of husbandry, seed-grain, and such cattle as may be necessary to enable him to earn his livelihood ;

(*b*) the distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any articles have been distrained which, in the opinion of a person authorized by or under section 106 to sign a warrant, should not have been so distrained they shall forthwith be returned ; and

(*c*) the officer shall on seizing the property forthwith make an inventory thereof, and shall before removing the same give to the person in possession thereof at the time of seizure a written notice in the form of Schedule E that the said property will be sold as shall be specified in such notice :

Provided that if after the property is distrained and before it has been removed, the sum due by the defaulter together with all costs incidental to the notice, warrant and distress of the property is paid, the officer shall remove the distress.

Sale of goods distrained.

110. (1) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody together with the amount to be levied is likely to exceed its value, the president or officer by whom the warrant was signed shall at once give notice to the person in whose possession the property was when seized to the effect that it will be sold at once, and shall sell it accordingly unless the amount named in the warrant be forthwith paid.

Application of proceeds of sale.

(2) If not sold at once under sub-section (1), the property seized or a sufficient portion thereof may, unless the warrant is suspended by the person who signed it, or the sum due by the defaulter together with all costs incidental to the notice, warrant, and distress and detention of the property is paid, be, on the expiry of the time specified in the notice served by the officer executing the warrant, sold by public auction under the orders of the district local board and the proceeds, or such part thereof as shall be requisite, shall be applied in discharge of the sum due and of all such incidental costs as aforesaid.

Surplus, if any, how dealt with.

(3) The surplus, if any, shall be forthwith credited to the local fund, notice of such credit being given at the same time to the person from whose possession the property was taken. But if the same be claimed by written application to the district local board within one year from the date of the notice, a refund thereof shall be made to such person. Any sum not claimed within one year from the date of such notice shall be the property of the district local board.

Distraint and sale outside the district.

111. When the warrant is addressed outside the district, the authority issuing the warrant may by endorsement direct the president or registrar to whom the warrant is addressed to sell the property distrained, and in such case it shall be lawful for such president or registrar to sell the property and do all things incidental to the sale, and the foregoing provisions shall be modified accordingly. Such president or registrar shall, after deducting all costs of recovery incurred by him, remit the amount recovered under the warrant to the authority by whom it was issued.

Fees and costs chargeable.

112. Fees for—

(a) every notice issued under sub-section (3) of section 104

(b) every distress made under section 109, and

(c) the cost of maintaining any live stock seized under the said section,

shall be chargeable at the rates respectively specified in such behalf in the rules of the district local board, and shall be included in the costs of recovery to be levied under section 105.

Appeals to Magistrates.

113. Appeals against any notice of demand issued under sub-section (3) of section 104 may be made to any Magistrate or Bench of Magistrates by whom under the directions of the Government, or of the District Magistrate, such class of cases is to be tried. But no such appeal shall be heard and determined unless—

(*a*) the appeal is brought within fifteen days next after service of the notice of demand complained of ;

(*b*) an application in writing, stating the ground on which the claim of the district local board is disputed, has been made to the district local board as follows : that is to say :

(*i*) in the case of a rate on buildings or lands, within a time to be notified in the notice given of the assessment or alteration thereof, according to which the bill is prepared, and

(*ii*) in the case of any other claim for which a bill has been presented under sub-section (1) of section 104, within fifteen days next after the presentation of such bill ; and

(*c*) the amount claimed from the appellant has been deposited by him in the local board office.

Liability of lands, buildings, etc., for rates.

114. All sums due on account of any tax imposed in the form of a rate on lands or buildings or on both shall, subject to prior payment of land-revenue, if any, due thereupon, be a first charge upon the building or land, in respect of which such tax is leviable, and upon the moveable property, if any, found within or upon such building or land, and belonging to the person liable for such tax :

Provided that no arrears of any such tax shall be recovered from any occupier who is not the owner, if it has been due for more than one year or for a period during which such occupier was not in occupation.

Suspension of power to recover by distress and sale.

115. The Government may at any time by notification suspend the operation of sections 105 to 110 inclusive in any district and from such date as shall be fixed in this behalf in the notification, every amount due on account of any tax theretofore recoverable under the said sections, shall be recoverable on application to a Magistrate, in the manner provided in sub-section (2) of section 70 for the recovery of such fines as are therein referred to and not otherwise.

116. (1) In the case of the non-payment on demand of any toll leviable by district local board the person appointed to collect such toll may seize any vehicle or animal on which the toll is chargeable or any part of its burden, which is of sufficient value to satisfy the demand, and may detain the same. He shall thereupon give the person in possession of the property seized a list of the property together with a written notice in the form of Schedule E that the said property will be sold as shall be specified in such notice.

Power on non-payment of toll.

(2) When any article seized is subject to speedy and natural decay, or when the expense of keeping it together with the amount of the toll chargeable is likely to exceed its value, the person sezing such article may inform the person in whose possession it was that it will be sold at once, and shall sell it or cause it to be sold accordingly unless the amount of toll demanded be forthwith paid.

Power to sell property seized at once.

(3) If at any time before the sale has begun, the person whose property has been so seized tenders at the local board office the amount of all expenses incurred, and of toll payable, the property seized shall forthwith be released.

Release of property on payment.

(4) If no such tender is made, the property may be sold, and the proceeds of such sale shall be applied in payment of such toll and of the expenses incidental to the seizure, detention and sale.

Sale.

(5) The surplus, if any, of the sale-proceeds shall be credited to the local fund and may, on appplication made to the district local board in writing within six months next after the sale, be paid to the person in whose possession the property was when seized, and, if no such application is made, shall be the property of the district local board.

Surplus how dealt with.

117. (1) The district local board may lease the levy of any toll that may be imposed under this Act by public auction or private contract:

Farming of tolls.

Provided that the lessee shall give security for the due fulfilment of the conditions of the lease.

(2) When any toll has been leased under this section, any person employed by the lessee to collect such toll shall, subject to the conditions of the lease, have the powers referred to in sub-sections (1) and (2) of section 116:

Person employed by the lessee of toll to have power of seizure.

Provided that no article seized may be sold except under the orders of the district local board.

(3) Any sum due from a lessee to a local board in respect of any toll leased under this section may be recovered as an arrear of land-revenue.

Any toll includes toll for public ferries also.—The expression "any toll" in sub-section (3) of this section is not restricted merely to the "tolls for roads and bridges" but includes "toll for public ferries" also (*Ghellaram Kevalram v. District Local Board of Karachi*, A. I. R. 1930 Sind 176).

Receipts to be given for all payments.

118. For all sums paid on account of any tax under this Act, a receipt stating the amount and the tax on account of which it has been paid shall be tendered by the person receiving the same.

CHAPTER IX.

OFFICERS AND SERVANTS OF LOCAL BOARDS

Schedule of establishment to be prepared and sanctioned by district local boards: Chief Officer: Health Officer: Engineer.

119. (1) Every district local board may appoint and pay such officers and servants as it shall deem necessary and proper to maintain for the efficient execution of its duties and the duties of the taluka local boards in the district under this Act, and shall from time to time prepare and sanction a schedule of the staff to be so maintained, setting forth the designations and grades of the different officers and servants, the boards under which they are to be respectively employed, their respective duties and the amount and nature of the salaries, fees and allowances to be paid to each, and determining which of the said officers and servants are to be maintained permanently and which temporarily only.

(2) Where any district local board appoints a Chief Officer or an Engineer and such appointment is approved by the Government, the Government shall pay two-thirds of the salary of such Chief Officer or Engineer; and where any district local board appoints a Health Officer and such appointment is approved by the Government, the Government shall pay two-thirds of the salary of such officer.

[a] (3) If at any time after a Chief Officer, Engineer or Health Officer has been appointed by a district local board and such appointment has been approved by the Government under sub-section (2), it shall appear to the Government, after an enquiry held under section 128, that any of such officers is incapable of per-

[a] Sub-section (3) was added by Bom. Amending Act, XXX of 1935, s. 3.

forming the duties of his office or has been guilty of any misconduct or neglect which renders his removal necessary in the puplic interest, the Government may, by a written notice require the district local board to remove such officer from office on or before a date specified in the notice. If the district local board fails to remove such officer from office on or before such date, the liability of the Government to pay any part of the salary of such officer shall, notwithstanding anything contained in sub-section (2), cease from the said date. [a]

Notes.—The appointment of the Chief Executive Officers of the Board should be subject to the approval of the Government ; and it will be difficult for the local board to defray the salaries of officers properly qualified to hold these posts ; two-thirds of the salaries of these officers should be paid by Government (*Report of the Select Committee*).

Government will continue the practice of giving grants on account of leave and pension contributions of Chief Officers who are Government servants (G. R. G. D. No. 1134, dated 8th December 1923).

Delegation of power to engage officers and servants.

120. The District local board may, subject to any rule or order made by the Government in this behalf under clause (*g*) of section 133, delegate to its president [b] "or Chief Officer" or to the president of any taluka local board subordinate to it the power of appointing any officer or servant on a salary not exceeding such limit as may be prescribed by the Government by rule in this behalf.

Power of Commissioner to prevent extravagance in establishments.

121. If in the opinion of the Commissioner the number of persons maintained by a district local board as officers or servants, or whom a district local board proposes to maintain, or the remuneration assigned by the board to those persons or to any particular person, is excessive, the said board shall, on the requirement of the Commissioner, reduce the number or remuneration of the said persons :

Provided that the district local board may appeal against any such requirement to the Government whose decision shall be conclusive.

Punishment and dismissal of officers and servants.

122. The power of punishing or dismissing any officer or servant maintained by a district local board shall, subject to any regulation framed under section 123, and to any rule or order made by the Government in this behalf under clauses (*g*) of section 133, vest in the said board :

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[a] Sub-Section (3) was added by Bom. Amending Act XXX of 1935, s 3.

[b-b] The words " or Chief Officer" were inserted by Bombay Act VIII of 1934, s. 3.

Provided that, subject as aforesaid, the power of punishing or dismissing any such officer or servant not receiving salary beyond such limit as may be prescribed by the Government by rule made in this behalf under clause (*g*) of section 133 may be delegated by a district local board to its president [*a*] or to its Chief officer, [*a*] [*b*] Engineer or Health Officer" [*b*] or to the President of any taluka local board subordinate to it.

District local boards to frame regulations;

123. Every district local board may from time to time frame regulations,

fixing the amount of the security to be furnished;

(*a*) fixing the amount and nature of the security to be furnished by any officer or servant maintained by the board from whom it may be deemed expedient to require security;

regulating leave;

(*b*) regulating the grant of leave to the permanant officers and servants maintained by the board;

settling absentee allowances;

(*c*) authorizing the payment of allowances to the said officers and servants or to certain of them, whilst absent on leave;

fixing acting allowances;

(*d*) determining the remuneration to be paid to the persons appointed to act for any such officers or servants during their absence on leave;

regulating length of service;

(*e*) regulating the period of service of all such officers and servants;

regulating punishment and dismissal.

[*c*] "(*ee*) regulating, subject to any rule or order made by the Government in this behalf under clause (*g*) of section 133, the punishment and dismissal of such officers and servants;" [*c*]

fixing pensions, etc.,

(*f*) determining the conditions under which such officers and servants, or any of them, shall, on retirement, receive pensions, gratuities, or compassionate allowances; the conditions under which gratuities or compassionate allowances may be paid to the surviving relatives of such officers and servants; and the amount of such pensions, gratuities or compassionate allowances; and

fixing contributions to provident funds.

(*g*) authorizing the payment of contributions at certain specified rates and subject to certain specified conditions to any pension or provident fund which may, with the approval of the said board, be established by the said officers and servants: Provided that

[*a–a*] These words were inserted by Bom. Act X of 1927, Sec. 12.
[*b–b*] These words were inserted by Bom. Act VIII of 1934, s. 4.
[*c–c*] Clause (*ee*) was inserted by Bom. Act VIII of 1934, s. 5.

Proviso as to officers lent by Government.

(*i*) if an officer is lent to any local board by the Government or if an officer is employed partly in the service of the Government and partly in the service of a local board, such board shall contribute to his pension and leave allowances to such extent as may be required by rules made by the Government in this behalf under clause (*g*) of section 133 and shall not except with the assent of the Government, dispense with his further services at any time without giving the Government six months' previous notice; and

and as to approval of regulations by the Government.

(*ii*) no regulation made by any district local board under this section shall have effect unless and until it has been approved by the Government.

Note.—Unless regulations have been framed by the Board under section 39 of the Bombay Local Boards Act of 1884 or this section, payments of pensions to local board officers are illegal.

CHAPTER X.

CONTROL.

Powers of inspection and supervision.

124. (1) The Commissioner, Collector or any officer of the Government authorised by general or special order of the Government may—

(*a*) enter on and inspect any immoveable property occupied by any local board or any institution under its control and management, or any work in progress under it or under its direction, or cause such immoveable property, institution or work to be entered upon and inspected by any other person authorised by him in this behalf in writing; and

(*b*) call for any extract from the proceedings of any local board or any committee appointed by such board, and call for or inspect any book or document in the possession of or under the control of a local board.

(2) The Collector may—

(*a*) call for any return, statement, account or report which he may think fit to require a local board to furnish; and

(*b*) require a local board to take into its consideration any objection which appears to him to exist to the doing of anything which is about to be done by such board, or any information furnished by him which appears to him to necessitate the doing of a certain thing by such board and to make a written reply to him within a reasonable time, stating its reasons for not desisting from doing, or for not doing, such thing.

Notes.—This clause gives powers of inspection and inquiry such as are already vested in the Collector, to the Commissioner and to any officer authorized by Government. In England it has been considered necessary to give the Local Government Board wide powers of inspection and inquiry through inspectors (*Vide* Public Health Act, 1875, section 296). In this Presidency a Commissioner has no statutory power at present to inspect local board property or to call for local board papers. Among the other officers whom Government might wish to authorize are experts such as the Sanitary Commissioner or the Sanitary Engineer to Government. A reference to institutions under the board's control is inserted, following the procedure of the Assam Local Self Government Act (*Statement of Objects and Reasons*).

The following officers of Government are authorized for the purpose of sub-section (1) of this section :—

(1) All Superintending Engineers.
(2) The Sanitary Engineer to Government.
(3) The Director of Public Health.
(4) All Educational Inspectors.

G. R. G. D. Notfn. No. 4453, dated 19th August 1924, quoted in Mr. Mehta's L. B. Code.

Collector's power of suspending execution of orders, etc., of local boards.

125. (1) If, in the opinion of the Collector, the execution of any order or resolution of a local board, or the doing of anything which is about to be done, or is being done by or on behalf of a local board, is causing, or is likely to cause, injury or annoyance to the public, or to lead to a breach of the peace or is unlawful, he may, by order in writing, under his signature, suspend the execution or prohibit the doing thereof.

Collector's order to be reported to the Commissioner, who may confirm or modify it.

(2) When a Collector makes any order under sub-section (1), he shall forthwith forward to the Commissioner and to the local board affected thereby a copy of the order, with a statement of the reasons for making it; and it shall be in the discretion of the Commissioner to rescind the order, or to direct that it continue in force with or without modification permanently or for such period as he thinks fit.

Every case under this section to be reported to the Government for its final orders.

(3) The Commissioner shall forthwith submit to the Government a report of every case occurring under this section, and the Government may revise or modify any order made therein, and make in respect thereof any other order which the Commissioner could have made.

Extraordinary powers of Collector in case of emergency.

126. (1) In cases of emergency the Collector may provide for the execution of any work, or the doing of any act, which a local board is empowered to execute or do, and the immediate execution or doing of which is, in his opinion,

necessary for the health or safety of the public, and may direct that the expense of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or do it, shall be forthwith paid by the local board.

(2) If the expense and remuneration are not so paid, the Collector may direct the officer in charge of the treasury or bank or society in which the local fund is kept or the whole or portion thereof is deposited or lent on interest, to pay the expense and remuneration, or as much thereof as is possible, from the balance of such fund in his hand.

(3) The Collector shall forthwith report to the Commissioner every case in which he uses the powers given to him by this section.

Power of the Government to provide for performance of duties in default of local board.

127. (1) When the Government is informed, on complaint made or otherwise that a local board has made default in performing any duty imposed on it by or under this Act, [1] or by or under any enactment for the time being in force [1] the Government, if satisfied after due enquiry that the local board has been guilty of the alleged default, may fix a period for the performance of that duty :

Provided that no such period shall be fixed unless the local board has been given an opportunity to show cause why such order shall not be made.

(2) If that duty is not performed within the period so fixed, the Government may appoint some person to perform it, and may direct that the expense of performing it, with a reasonable remuneration to the person appointed to perform it, shall be forthwith paid by the local board.

[2] (3) If the expense and remuneration are not so paid the Government may make an order directing the officer in charge of the treasury or bank or society in which the local fund is kept or the whole or portion thereof is deposited or lent on interest to pay such expense and remuneration from such moneys as may be standing to the credit of the local board in such treasury or bank or society or as may, from time to time, be received from or on behalf of the local board by way of deposit by such treasury or bank or society ; and such officer or bank or society shall be bound to obey such order. Every payment made pursuant to such order shall be a sufficient discharge to such officer, bank or society from all liability to the local board in respect of any sum or sums so paid by him or it out of the moneys so received or standing to the credit of the local board in such treasury or bank or society.

[1] These words were inserted by Bom. Act V of 1932, s. 3.

[2] Sub-section (3) was substituted for the original sub-section by Bom. Act XXIII of 1931, s. 3.

Inquiry into affairs of local board.

128. (1) The Government may from time to time cause inquiry to be made by any of its officers in regard to any local board, or matters concerning it, or any matters with respect to which the sanction, approval, consent or order of the Government is required by this Act.

(2) The officer holding such inquiry shall have the powers of a court under the Code of Civil Procedure, 1908, to take evidence and to compel the attendance of witnesses and the production of documents for the purposes of the inquiry.

(3) The Government may make orders as to the costs of inquiries made under sub-section (1) and as to the parties by whom and the funds out of which they shall be paid, and such order may, on the application of the Government or of any person named therein, be executed as if it were a decree of a civil court.

Note.—"The Inspectors of the English Local Government Board have power to hold enquiries as the Board see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction or approval or consent is required. In conducting such enquiries their inspectors can summon officers and other persons, call for papers, plans and documents, and enter upon property with the help of a court of summary jurisdiction. This new clause confers somewhat similar powers upon Government and any officer through whom it causes enquiry to be made. Following the English Act, the section also empowers Government to pass orders as to costs of enquiry (*Statement of Objects of Reasons*).

Power of the Government to dissolve or supersede local boards in case of incompetence, default, or abuse of powers.

129. (1) If in the opinion of the Government a local board is not competent to perform, or persistently makes default in the performance of the duties imposed on it by or under this Act, or otherwise by law, or exceeds or abuses its powers, the Government may by an order published, with the reasons for making it, in the *Bombay Government Gazette*, declare the local board to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and either—

(*a*) dissolve the board, or

(*b*) supersede it for a period to be specified in the order.

(2) When a local board is dissolved or superseded, all members of the board shall, as from the date of the order, vacate their offices as such members.

Reconstitution of local board after dissolution.

130. When a local board is dissolved, it shall be reconstituted by such nominations and elections as may be necessary, as if the term of office of its members had expired; and a president and vice-president of the board shall be elected in the manner provided in this Act.

Consequences of supersession of local board.

131. When a local board is susperseded—

(*a*) all powers and duties of the board may, during the period of supersession, be exercised and performed by such person or persons as the Government from time to time appoints in that behalf; such person or persons may appoint a person or a committee or committees and delegate to them all the powers which the local board could have delegated to a person or committee under this Act, and empower such person or committee or committees to perform the duties which a board could have delegated; and

(*b*) all property vested in the board shall, during the period of suspersession, vest in the Government;

(*c*) when more persons than one are appointed to exercise the powers and perform the duties of the board, such persons may authorise one or more of their number to sue or be sued on their behalf.

Power of Government to dissolve and reconstitute local boards on the alteration of limits of districts or talukas.

*131A. (1) When, on account of the constitution of a new district under the Bombay Land Revenue Code, 1879, or for any other reason, the limits of a district or taluka are, during the term of office of the members of the district or taluka local board, altered, the Government may, by order published in the *Bombay Government Gazette*, dissolve such local board from a date specified in the order and direct a local board—

(*i*) to be reconstituted for the district or taluka of which the local board has been dissolved, or

(*ii*) to be established for a new district or taluka which has been constituted.

The members of the local board which has been dissolved shall vacate their offices from the date specified in the order.

(2) The district or taluka local board reconstituted or established under the provisions of sub-section (1) shall consist of members nominated by Government. Such members shall, so far as may be practicable, in the opinion of Government, be persons who were members of the local boards which have been dissolved under sub-section (1).

The president and vice-president of the local board so reconstituted or established shall be elected in the manner provided in this Act.

(3) The members of a local board reconstituted or established under the provisions of sub-section (2) shall hold office for such period, not exceeding one year, as the Government shall, by order in writing, specify.

* Sections 131A and 131B were inserted by Bom. Act V of 1932, s. 4.

(4) On the expiry of the period of office of the members of a local board under the provisions of sub-section (3), the local board of the district or taluka, as the case may be, shall be constituted in the manner provided in sections 5 and 6.

Vesting of property, etc., of local boards which have been dissolved in reconstituted local boards.

[1] 131B. (1) When a local board has been dissolved and reconstituted or established under section 131A, so much of the local fund and other property vesting in the local board which has been dissolved shall vest in, and such portion of the debts and obligations shall be transferred to, a local board reconstituted or established under section 131A as the Commissioner may, by order in writing, direct.

(2) The rights and liabilities of the local board which has been dissolved in respect of civil and criminal proceedings, contracts, agreements, and other matter or thing arising in or relating to any part of the area subject to the authority of the local board reconstituted or established, shall vest in such local board.

(3) Any notification, notice, tax, order, scheme, licence, permission, rule, by-law or form made, issued or imposed by the local board which has been dissolved, in respect to any part of the area subject to the authority of the local board which has been reconstituted or established, shall be deemed to have been made, issued or imposed by such local board, unless and until it is superseded by any notification, notice, tax, order, scheme, licence, permission, rule, by-law or form made, issued or imposed by such local board. [1]

Vesting of property etc. of a taluka local board which has ceased to exist in the district local board.

[2] 131C. (1) When a taluka local board is abolished, all property vesting in the said taluka local board shall vest in the district local board of the district and all rights and liabilities of the said taluka local board in respect of civil and criminal proceedings, contracts, agreements and other matter or thing arising in or relating to any area subject to the authority of the said taluka local board shalll vest in the said district local board.

(2) Any notice, order, scheme, licence, permission or form made or issued by the said taluka local board shall be deemed to have been made or issued by the said district local board, unless and until it is superseded by any notice, order, scheme, licence, permission or form made or issued by the said district local board. [1]

[1—1] Sections 131A and 131B were inserted by Bom. Act V of 1932, s. 4.

[2—2] Section 131C was inserted by the Amending Act VI of 1935, s. 4.

132. In all matters connected with this Act, the Government and the Commissioners and Collectors shall have and exercise the same authority and control over the Commissioners, the Collectors and their subordinates, respectively, as they have and exercise over them in the general and revenue administration.

Powers of the Government and of Commissioners over Collectors, etc.

CHAPTER XI.—RULES.

133. The Government may by notification in the *Bombay Government Gazette*, from time to time make rules or orders, consistant with this Act,

Purposes for which rules and orders may be made.

(*a*) prescribing the number of members of each local board, the proportion of the elective and nominated members for each local board and the number of members to be elected by each constituency :

(*b*) determining the mode in which and the places at which, and the authorities, if any, under whose supervision elections of members of local boards shall be held, and the manner in which votes thereat shall be recorded, and how and by whom the results of such elections shall be declared ;

(*c*) prescribing such general conditions as shall seem fit as to the manner in which the business of local boards shall be conducted ;

[1] (cc) prescribing the number of members of a taluka committee, the manner of appointment of such members and regulating the exercise of powers and performance of duties by taluka Committees;" [1]

(*d*) prescribing, for the purposes of clause (*i*) of section 50, the conditions under which, and the rates at which, payment of travelling expenses shall be made ;

(*e*) prescribing, for the purposes of proviso (*b*) to section 80, the charges to be defrayed by each district local board on account of primary education, the extent of the independent authority of district and taluka local boards in respect of education and their relations generally with the Government, Educational Department, and with each other in educational matters ;

(*f*) prescribing, for the purposes of sections 83, 84 and sub-section (1) of section 86 the form in which the accounts of local boards shall be kept and the forms in which their abstracts of accounts and budget estimates shall be prepared and regulating the audit of the local board accounts ;

[1—1, Clause [*cc*] was inserted by the Bombay Amending Act VI of 1935, s. 5.

(*g*) regulating, for the purposes of sections [1] "120 and 122 and clause (*ee*) of," [1] and proviso (*i*) to section 123 the appointment, control, punishment and dismissal of the officers and servants of local boards and the extent of contributions to the pensions and leave allowances of Government officers employed by local boards ; and

(*h*) generally, for the guidance of local boards and Government officers in all matters connected with the administration of this Act and not therein specially provided for :

Provided that rules made under this section shall be made after previous publication.

CHAPTER XII.

MISCELLANEOUS.

Penalty for member, officer or servant of a local board having an interest in any contract, etc., with that board.

134. If any member of a local board or any officer or servant maintained by or employed under a local board, has directly or indirectly any share or interest in any work done by order of the board of which he is a member or by which he is maintained or under which he is employed or in any contract with or under such board, he shall be liable on conviction before a Magistrate to a fine not exceeding rupees five hundred :

Provided that no person shall be convicted under this section by reason only of such person—

(*a*) having a share in any joint stock company or a share or interest in any society registered or deemed to be registered under the Co-operative Societies Act, 1912, [2] which shall contract with or be employed by or on behalf of the local board, or

(*b*) having a share or interest in any newspaper in which any advertisement relating to the affairs of the local board may be inserted, or

(*c*) holding a debenture or being otherwise concerned in any loan raised by or on behalf of the local board, or

(*d*) being professionally engaged on behalf of the local board as a legal practitioner.

Members, etc., of boards to be public servants.

135. Every member of a local board and every officer and servant maintained by or employed under a district local board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

[1—1] These figures, words, letters, and brackets were substituted for the original figures "120, 122" by Bom. Act VIII of 1934, s. 6.

[2] See now the Bombay Co-operative Societies Act, 1925.

Limitation of suits.

[1] 136. (1) No suit, prosecution or other legal proceeding shall lie against any member, officer or servant of a local board or any person acting under the order of a local board in respect of anything which is, in good faith, done or intended to be done under this Act or under any other law for the time being in force which entitles or requires a member, officer, servant as such, or other person so acting to exercise any powers or perform any duties.

[2] (2) No suit, prosecution or other legal proceeding shall be commenced against any local board, or against any member, officer or servant of a local board, or any person acting under the orders of a local board, for anything done, or purporting to have been done, in pursuance of this Act, or any other law for the time being in force which entitles or requires a local board, member, officer, servant as such, or other person so acting to exercise any powers or perform any duties without giving to such local board, member, officer, servant, or person one month's previous notice in writing of the intended action and of the cause thereof, nor after three months from the date of the act complained of.

[2] (3) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.

Applicability.—Where the suit was to recover damages for breach of a contract entered into by a Local Board, it was *held* that the suit was not governed by the time limit prescribed by this section (*District Local Board of Poona v. Vishnu Raghoba*, 57 Bom. 67, s. c. 35 Bom. L. R. 55).

Ferry toll.—The Legislative Council can authorize a local authority to impose a ferry toll under s. 117 *ante*; and when such toll is imposed, any sum due to the Local Board from a lessee can be recovered as an arrear of land revenue. Hence any act purporting to recover such sum would be an act purporting to have been done in pursuance of this Act, and so a month's notice would be necessary before filing a suit (*Chellaram Kewalram v. District Local Board, Karachi*, A. I. R. 1930 Sind 176).

Notice.—Where the relief sought is that the particular person should become a member of the School Board and he should perform the functions of that Board and deal with money allotted to that Board, the case falls under this section and notice is necessary (*Mohamed Asam v. District Local Board, Karachi*, A. I. R. 1930 Sind 246).

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[1] Sub-section (1) was newly inserted by Bom. Act XIII of 1935, s. 2 (1).

[2] Original Sub-sections (1) and (2) were renumbered as sub-sections (2) and (3) by *ibid.*

Sub-section (2) as so renumbered is printed as amended by *ibid.*

137. [a] When any land is required for the purposes of this Act, the Government may, on the request of the local board requiring it, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, or other law for the time being in force, and, on payment by the local board of the compensation awarded under that Act and of all other charges incurred by the Government on account of the acquisition, the land shall vest in the local board.

Acquisition of land.

SCHEDULE A.

[*See clause (a) of section 93*]

1 Penalties and fines, including any charge imposed under section 148 of the Bombay Land Revenue Code, 1879, as penalty or interest in case of default, but not including any fine levied under section 65 of the same on grant of permission to use land for a purpose unconnected with agriculture.

2. Occasional fixed payments, in commutation of all claims of the Government, in respect of succession to or transfer of inams, payable on each succession or transfer.

3. Land Revenue on service inam land, recovered from inferior village servants for periods of unauthorised absence from service; and all other such charges of assessment on inams and watans for broken periods and past years.

4. Fees for grazing, when charged per head of cattle.

SCHEDULE B.

[*See sub-section (2) of section 100.*]

FORM OF NOTICE OF PROPOSED TAX.

Notice is hereby given to the inhabitants of the district of that the district local board desires to impose the tax, rate, toll, octroi, or ces (as the case may be) defined in the rules appended [in lieu of the tax known as the]

*To be inserted if the tax is to be substituted for any existing tax.

, which is published at page of the sanctioned rules *].

Any inhabitant of the district objecting to the proposed tax may, within one month from the date of this notice, send his objection in writing to the district local boards.

RULES.

(*The rules prepared by the district local board under sub-section (1) of section 100 are to be appended here.*)

SCHEDULE C.

[*See sub-section (3) of section 104.*]

FORM OF NOTICE OF DEMAND.

To

A. B., residing at

Take notice that the district local board of demands from the sum of due from on account of

(*Here describe the property or other subject in respect of which the tax is leviable.*)

leviable under rule No. for the period of commencing on the day of 19 , and ending

[a] This section was substituted for the original by Bom. X of 1921, s. 13.

on the day of 19 , and that if, within fifteen days from the service of this notice, the said sum is not paid into the local board office at , and sufficient cause for non-payment is not shown to the satisfaction of the district local board, a warrant of distress will be issued for the recovery of the same with cost.

Dated this day of 19 .

(Signed)

By order of the district local board of

SCHEDULE D.

(*See section 105*)

FORM OF WARRANT.

(*Here insert the name of the officer charged with the execution of the warrant.*)

Whereas A. B. of has not paid, and has not shown satisfactory cause for the non-payment of, the sum of due for the tax § mentioned in the margin for the period commencing on the day of 19 , and ending with the day of 19 , and leviable under rule No.

§ Here describe the tax.

And whereas fifteen days have elapsed since the service on him of notice of demand for the same ;

This is to command you to destrain, subject to the provisions of sections 108 and 109 of the Bombay Local Boards Act, 1923, the goods and chattels of the said A. B to the amount of , being the amount due from him, as follows :—

	Rs.	a.	p.
On account of the said tax			
For service of notice			

and forthwith to certify to me together with this warrant all particulars of the goods seized by you thereunder.

Dated this , day of 19 .

(Signed)

President

(or as the case may be, *see* section 106.)

SCHEDULE E.

[*See clause (c) of section 109 and sub-section (1) of section 116.*]

FORM OF INVENTORY AND NOTICE.

To

A B.

residing at

Take notice that I have this day seized the goods and chattels specified in the inventory beneath this, for the value of due for the tax* mentioned in the margin for the period commencing with the day of 19 and ending with the day of 19 together with Rs. due as for service of notice of demand and that unless within five days from the day of the date of this notice you pay into the local board office at the said amount together with the cost of recovery, the said goods and chattels will be sold.

*Here describe the tax.

Dated this day of 19 .

(Signature of officer executing the warrant)

INVENTORY

(*Here state particulars of goods and chattels seized*)

BOMBAY LOCAL BOARDS ACT 1923

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THE

Bombay Local Fund Audit Act, 1930

BOMBAY ACT No. XXV OF 1930.

[*17th September, 1930.*

An Act to provide for and regulate the audit of the local funds under the management or control of certain local authorities in the Bombay Presidency except the City of Bombay.

WHEREAS it is expedient to provide for and regulate the audit of the local funds under the management or control of certain local authorities in the Bombay Presidency except the City of Bombay in manner hereinafter appearing; And whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Bombay Local Fund Audit Act, 1930.

Operation of Act.—Where any Bombay Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it is first published in the *Bombay Government Gazette* after having received the assent of the Governor General (*Bombay General Clauses Act*) (Bom. Act I of 1904, s. 5). Accordingly it came into force on the 17th September 1930, on which date it was first published in the *Bombay Government Gazette.*

Construction.—In construing a Statute, it is not competent to refer to the Proceedings of the Legislative Council as legitimate aids to the construction of the law (*Queen-Empress v. Tilak*, 22 Bom. 112). The only way to construe the Act is to read it fairly, taking the words in their common and ordinary signification and the Court ought not to strain the language in order to bring in or to include any particular case, however arbitrary or unscientific the line of demarcation drawn by the Act may seem to be (*Naddinot v. Hewton Chamber Co.*, 1901 A. C. 57).

The language of the Statute must be interpreted in its ordinary and popular meaning. The use of language preceded scientific investigation (*Brinton Ltd., v. Furvey*, 1905 A. C. 233).

2. *Extent.*—This Act extends to the whole of the Bombay Presidency except the City of Bombay.

Bombay Presidency.—"Bombay Presidency" or "Presidency of Bombay" shall mean the territories within British India for the time being under the administration of the Government of Bombay in Council (*Bombay General Clauses Act*, 1904, s. 3 (7)).

3. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Auditor" means the Examiner or any other person empowered by Government to perform the function of an auditor under this Act.

(*b*) "Examiner" means the Examiner of Local Fund Accounts and includes the Assistant Examiner of Local Fund Accounts.

(*c*) "Local authority" means a local authority as defined in clause (26) of section 3 of the Bombay General Clauses Act, 1904, and includes a school board constituted under the Bombay Primary Education Act, 1923.

"Local Authority".—"Local authority" shall mean a municipal corporation, municipality, local board, body of port trustees or commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund (*Bombay General Clauses Act*, 1904, s. 3 (26)).

(*d*) "Local Fund" means any fund to the control or management of which a local authority is legally entitled and includes the proceeds of any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

4. *Liability of local authorities to submit their accounts for audit.*—The accounts of any local authority whose accounts are declared by the Government, by a notification in the *Bombay Government Gazette*, to be subject to audit under this Act shall, notwithstanding anything contained in any enactment by which such local authority is constituted or in any rules made thereunder, be subject to audit in all respects in the manner provided by or under this Act.

Note.—In exercise of the powers conferred by section 4 of the Bombay Local Fund Audit Act, 1930 (Bom. XXV of 1930), the Government of Bombay is pleased to declare that the accounts of the following local authorities shall be subject to audit under the said Act, *viz* :—

(1) Taluka Local Boards,

(2) District Local Boards,

(3) Municipalities, and

(4) School Boards constituted under the Bombay Primary Education Act, 1923.

5. *Accounts to be submitted for audit at such period or periods as may be required.*—The president or chairman, as the case may be, of every local authority, whose accounts are declared under section 4 to be subject to audit under this Act, shall present or cause to be presented for audit all accounts of its local fund in the manner and form prescribed by rules under section 15 to the auditor yearly or at such period or periods as may be required by the Commissioner.

6. *Power of auditor to require production of documents and attendance of persons concerned, etc.*—(1) For the purpose of any audit under this Act, an auditor may—

(*a*) require in writing the production, at the head office of the local authority, of any document, the perusal or examination of which he believes to be necessary for the elucidation of the accounts;

(*b*) require in writing any salaried servant of the local authority accountable for, or having the custody or control of such document, or any person having directly or indirectly, by himself or his partner, any share or interest in any contract with or under the

local auuthority, to appear in person before him at the head office of the local authority and answer any question;

(c) in the event of an explanation being required from the president, chairman or other honorary officer or member of a local authority, in writing invite such person to meet him at the head office of the local authority and shall in writing specify the point on which his explanation is required.

(2) The auditor may, in any requisition or invitation made under sub-section (1), fix a reasonable period, not being less than three days, within which the said requisition or invitation shall be complied with.

(3) The auditor shall give to the local authority not less than two weeks' notice in writing of the date on which he proposes to commence the audit.

7. *Penalty for disobeying requisition under section 6.*—(1) Any person who wilfully neglects or refuses to comply with any requisition lawfully made upon him under clause (a) or clause (b) of sub-section (1) of section 6 shall be liable, on conviction before a Magistrate, to a fine which may extend to one hundred rupees:

Provided that no proceeding under this section shall be instituted except on the written sanction of the Commissioner:

Provided further that before giving such sanction the Commissioner shall call upon the person against whom the proceedings are to be instituted to show cause why the sanction should not be given.

(2) No court inferior to that of a Magistrate of the first class shall try any offence against this Act.

8. *Audit report to be sent to certain officers and bodies as Government may direct.*—Within two months after the completion of the audit, the Examiner shall prepare a report on the accounts audited and examined and shall send such repart to the local authority concerned and copies thereof to such officers and bodies as the Government may direct.

9. *Audit Report what to contain.*—The Examiner shall include in his report a statement of—

(a) every payment which appears to him to be contrary to law,

(b) the amount of any deficiency or loss which appears to have been caused by the gross negligence or misconduct of any person,

(c) the amount of any sum received which ought to have been but is not brought into account by any person, and

(d) any material impropriety or irregularity which he may observe in the accounts other than those mentioned in clauses (a), (b) and (c) above.

10. *Local authority to remedy defects; Procedure to be followed after report of the Examiner under section 8.*—(1) On receipt of a report under section 8 the president or chairman, as the case may be, shall either remedy any defects or irregularities which may have been pointed out in the report and send to the Examiner, within three months of the receipt of the report, intimation of his having done so, or, shall, within the said period, supply to the Examiner any further explanation in regard to such defects or irregularities as the president or chairman may wish to give.

(2) On receipt of such intimation or explanation the Examiner may, in respect of all or any of the matters discussed in his report,

(*a*) accept the intimation or explanation given by the president or chairman and withdraw the objection, or

(*b*) direct that the matter be reinvestigated at the next audit or at any earlier date, or

(*c*) hold that the defects or irregularities pointed out in the report or any of them have not been removed or remedied.

(3) The Examiner shall send a report of his decision to the Commissioner within one month of the date of the receipt by him of the intimation or explanation of the president or chairman referred to in sub-section (1) or in the event of the president or chairman failing to give such intimation or explanation, on the expiry of the period of three months mentioned in the said sub-section and shall forward a copy of such report to the president or chairman, as the case may be, of the local authority. If the Examiner holds that any defects or irregularities have not been removed or remedied, he shall state in the report whether, in his opinion, the defects or irregularities can be regularised and if so, by what method; and if they do not admit of being regularised, whether they can be condoned and if so, by what authority. He shall also state whether the amounts to which the defects or irregularities relate should, in his opinion, be surcharged or charged:

Provided that in the case of reports on the accounts of school boards and of such loal authorities as are specially notified by Government in this behalf the report referred to in this sub-section shall be submitted by the Examiner to such officer, being the head of a department, as Government may direct. Such officer shall take such action as may be necessary regarding any defects or irregularities falling under clause (*c*) of sub-section (2) which may have been brought to notice in the report. If he is of the opinion that the amounts to which any such defects or irregularities relate should be surcharged or charged, he shall forward the report to the Commissioner together with his recommendation in that bealf.

(4) The local authority concerned shall publish in its next administration report, such portions of the report under section 8

as deal with defects and irregularities falling under clause (c) of sub-section (2), together with the explanation thereof, if any, given under sub-section (1) and the final report of the Examiner thereon under sub-section (3). Such report of defects and irregularities, explanation and final report shall be open to the inspection of the public at the office of the local authority for a period of one month from the date of their receipt and shall also be published in the vernacular of the district in any newspaper circulating in the district selected by the local authority within one month of the receipt by it of the copy of the report sent to the Commissioner under sub-section (3).

(5) If the president or chairman of a local authority fails to give the intimation or explanation referred to in sub-section (1) within the period therein mentioned the Commissioner may, at the instance of the Examiner, publish in the vernacular of the district the whole of the Examiner's report under section 8, together with any observations which the Commissioner may make thereon, in any newspaper circulating in the district which the Commissioner may select and the cost of such publication shall be paid by Government.

(6) Nothing in this section or in section 9 shall preclude the Examiner at any time from bringing to the notice of the Commissioner, for such action as the Commissioner may consider necessary, any information which appears to the Examiner to support a presumption of criminal misappropriation or fraud.

Notes.

Sub-clause (2) provides that on the receipt of reply from the President or Chairman the Examiner of Local Fund Accounts may accept the explanation given by the President or Chairman or may direct any further steps to be taken for removing or remedying such defects or irregularities.

Sub-clause (3) provides that the Examiner will send a report to the Commissioner and will also forward a copy of this report to the President or Chairman of the local authority. The proviso to this sub-clause is intended to provide for cases in which the accounts of bodies like the school boards under the Bombay Primary Education Act are required to be sent to such heads of Departments as the Director of Public Instruction who control grants which are made to the local authorities for the purpose of education. In such cases the head of the Department concerned will exercise all the powers of the Commissioner, except his power of ordering a charge or surcharge.

Sub-clause (4) requiries a local authority to publish in its administration report the defects or irregularities pointed out by the Examiner together with an explanation given by the President or Chairman. Such publication is to be made in the vernacular of the district in any newspaper circulating therein.

If, however, the President or Chairman of the local authority does not reply or does not give an explanation to the points raised by the Examiner, sub-clause (5)

empowers the Commisssioner to publish the Examiner's report with his own observations in any newspaper in the district.

Sub-clause (6) makes it clear that it is always open to the Examiner to bring to the notice of the Commissioner any instance of misappropriation or fraud (*Report of the Select Committee*).

11. *Commissioner to surcharge or charge illegal payment or loss caused by gross negligence or misconduct.*—(1) The Commissioner may, after considering the recommendation of the Examiner or of any head of a department under the proviso to sub-section (3) of section 10, as the case may be, and after taking the explanation of the person concerned, or making such further inquiry, as he may consider necessary, disallow any item which appear to him to be contrary to law and surcharge the same on the person making or authorizing the making of, the illegal payment; and may charge against any person responsible therefor the amount of any deficiency or loss caused by the gross negligence or misconduct of that person, or, any sum received which ought to have been but is not brought into account by that person and shall, in every such case, certify the amount due from such person :

Provided that no order of surcharge or charge shall be made under this Act in respect of any item included, or which ought to have been included in, but was omitted from, any accounts for any period prior to the 1st April 1930.

(2) The Commissioner shall state in writing the reasons for his decisions in respect of every surcharge or charge and shall send by registered post a copy thereof to the person against whom it is made.

(3) If a person to whom a copy of the Commissioner's decision is sent under sub-section (2) refuses to take delivery thereof, he shall be deemed to have duly received it on the day on which it was refused by him.

12. *Recovery of surcharges and charges how made.*—(1) Every sum certified by the Commissioner to be due from any person under sub-section (1) of section 11 shall be paid by such person into the treasury or Bank in which the funds of the local authority concerned are lodged, within one month from the receipt by him of the decision of a Commissioner, unless within that time such person has applied to the Court or to the Government as provided in section 13.

(2) The said sum, if not duly paid or, if an application has been made to the Court or to the Government against the decision of the Commissioner as provided in sub-section (1) of section 13, such sum as the Court or the Government shall declare to be due, shall be recoverable, on an application made by the Collector to the Court, in the same way as an amount decreed by the Court in favour of the Collector.

Note

Section 12 provides for the recovery of the amount of surcharge or charge due from the peraon concerned by an application made by the Collector to the District Court as if it were an amount due under a decree of that court.

13. *Application against order of surcharge or charge.*—(1) Any person aggrieved by any order of surcharge or charge made by the Commissioner under sub-section (1) of section 11 may, within one month from the receipt by him of the decision of the Commissioner, either—

(*a*) apply to the District Court to set aside such order; and the Court, after taking such evidence as it thinks necessary, may confirm, modify or remit such surcharrge or charge and make such orders as to costs as it thinks proper in the circumstances; or

(*b*) in lieu of such application apply to the Government which shall pass such orders thereon as it thinks fit.

(2) Pending disposal of the application all proceedings on the certificate shall be stayed if the person aggrieved makes out a *prima facie* case for a stay order.

Note

This section provides that any preson aggrieved by the order of surcharge or charge may, instead of paying the amount within one month, either apply to the District Court or appeal to the Government and may also obtain, pending the appeal or application, an order to stay further proceedings for recovery of the amount payable by him.

14. *Expenses in rsspect of requisitions of auditors to be payable out of local fund.*—All expenses incurred by a local authority in complying with any requisition of an auditor under sub-section (1) of section 6 shall be payable out of its local fund.

Note—This section authorities a local authority to pay from its local fund all expenses incurred by it in complying with an auditor's requisition under clause 6 (*b*).

15. *Rules.*—(1) The Government may make rules, not inconsistent with this Act, for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the manner and form in which the accounts of a local authority, whose accounts are subject to audit under this Act, shall be kept and presented;

(*b*) the powers and duties of auditors and the procedure to be followed by them for conducting an audit and the times at which such audit may be conducted; and

(*c*) the manner in which all matters required to be published under this Act shall be published.

(3) The making of rules under this section shall be subject to the condition of previous publication. Such rules shall be laid on the table of the Bombay Lgislative Council fo one month previous to the next Session thereof and shall be liable to be rescinded or modified. If any rule is modified, Government may accept the modification and re-issue the rule accordingly, or, may rescind the rule.

16. *Amendments in Bom. III of 1901, Bom. VI of 1923 and Bom. XVIII of 1925.*—(1) In the Bombay District Municipal Act, 1901—

(*a*) for sub-section (1) of section 170 the following shall be substituted, namely :—

"(1) Independently of the audit provided for under the provisions of the Bombay Local Fund Audit Act, 1930, the municipal accounts may be audited at such intervals and by such agency as may be prescribed in the rules of the municipality."

(*b*) in sub-section (3) of section 170—

(*i*) for the comma after the word "upon" a full stop shall be substituted ; and

(*ii*) the words "or if the auditor is a Government auditor, then such charges as may be prescribed by the Governor in Council" shall be repealed.

(2) For sub-section (1) of section 92 of the Bombay Local Boards, Act 1923, the following shall be substituted, namely :—

(1) Independently of the audit provided for under the provisions of the Bombay Local Fund Audit Act, 1930, the accounts of local boards may be examined and audited at such intervals, in such manner, and by such agency as Government, on the application of the local board or local boards concerned, directs ; and

(3) In the Bombay Municipal Boroughs Act, 1925, for sub-section (1) of section 210 the following shall be substituted, namely :—

" (1) Independently of the audit provided for under the provisions of the Bombay Local Fund Audit Act, 1930, the municipal accounts may be audited at such intervals and by such agency as may be prescribed in the rules of the municipality."

A SUPPLEMENT

TO THE

Mamlatdars Courts Act (II of 1906)

(*Corrected upto the end of 1935*)

Sec. 5

Co-owner dispossessed by tenant of another co-owner.—A co-owner who has been within six months of the suit dispossessed otherwise than in due course of law by the tenant of another co-owner is entitled to be restored to possession under this section. The explanation to this section has no application and does not exclude the remedy under this section to the dispossessed co-owner (*Appaji Waman v. Motiram*, 34 Bom. L. R. 109).

Sec. 5 (2)

"Subject to the provisions."—The expression "subject to the same provissions" in sub-section (2) of section 5 means simply subject to the provisions of secs. 6 and 26. Subject to those provisions the Court is to have power, when any person is otherwise than by due course of law disturbed or obstructed in the possession of any lands or premises and for agriculture and so forth to issue an injunction to the person causing or who has attempted to cause any disturbance or obstruction. An injunction may be granted even against a former owner (*Maruti v. Bankatlal*, 35 Bom. L. R. 576).

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THE

Mamlatdars' Courts Act

BEING

Bom. Act No. II of 1906.

(As amended by Bom. Act XI of 1928.)

[*29th October 1906.*

An Act to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the powers and procedure of Mamlatdar's Courts ; It is hereby enacted as follows :—

Short title.

1. (1) This Act may be called the Mamlatdar's Courts Act, 1906.

Local extent.

(2) It shall extend to the whole of the Bombay Presidency except the City of Bombay and Aden.

Construction of the Act.—The Mamlatdar's Act is a remedial measure and must be liberally construed so as to advance the remedy (*Deu v. Sitaram*, 9 Bom. L R. 1179).

Mamlatdar's Court whether a Civil Court.—The Mamlatdar's Court constituted under this Act, is a Civil Court within the meaning of s. 476 of Criminal Procedure Code (*Bavdu Dhondu*, 15 Bom. L. R. 53).

Short title.—The title of a statute is an important part of the Act, and may be referred to for the purposes of ascertaining its general scope (*Maxwell on Interpretation of Statutes*).

Bombay Presidency.—'Bombay Presidency' means the territories within British India for the time being under the administration of the Governor of Bombay in Council (*Bombay Act I of 1904, s 3, cl.* (7).

C. P. Code not applicable to Mamlatdars' Court.—Section 9 of the Code of Civil Procedure is not applicable to proceedings in Mamlatdars' Courts. The jurisdiction of Mamlatdar is purely a statutory creation and for his guidance he must look solely to the terms of the statute under which he exercises them (*Gulabbhai v. Kasanji*, P. J. 1897, p. 297).

Repeal of Bom. III of 1876.

2. The Mamlatdars' Courts Act, 1876, is hereby repealed.

Interpretation.

3. In this Act, unless there is anything repugnant in the subject or context,

(*a*) the word "Mamlatdar" shall include any Revenue-officer exercising for the time being the powers of a Mamlatdar, of a Mukhtyarkar or of a Mahalkari and any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mamlatdar under this Act ; and

(*b*) the words "plaintiff" and "defendant" shall include

(*i*) a pleader duly appointed to act on behalf of such plaintiff or defendant, and

(*ii*) the recognized agent of a plaintiff or defendant as defined in section 37 of the Code of Civil Procedure.*

Commentary.

Mamlatdar.—The word 'Mamlatdar' includes Mahalkari in charge of a defined portion of a taluka and duly invested with the powers and duties of a Mamalatdar.—*Bombay Land Revenue Code (Bom. Act V of 1894) s. 13.* "A Mamlatdar appointed under s. 12 of the Bombay Land Revenue Code, 1879, (Bombay V of 1879), is required to perform the duties and exercise powers which are expressly imposed or conferred upon him by that Code or by any other law for the time being in force" which expression includes the Mamlatdar's Courts Act. A Mamlatdar was formerly called a Kamavisdar (*Motilal v. The Collector of Ahmedabad,* 8 Bom. L. R. 1904).

Delegation of powers.—The Land Revenue Code (Bom. Act V of 1879) provides that the Mamlatdar should exercise such powers as the Collector may delegate to him. But these delegations must be made "under the general or special order of Government;" and also they must be made in all cases by name and not merely in virtue of the office held. These *ex-officio* powers are given in order XI. Therefore it is desirable that a printed form should be used by every Collector as follows :—

"To Mr. A. B.

"Whereas you have been appointed to be (or to do duty temporarily as) Mamlatdar (Mahalkari) of—you are hereby authorized during the tenure of that office to exercise the following powers :—

(Here print the powers below detailed.)

(The Collector should strike out whatever powers he elects to reserve.)

Collector of....."

The powers which may be delegated are these :—

Section of the L. R. Code.	Extent of power.
25, 26 ...	All.
32 and Watan Act ...	To fine hereditary or stipendiary village revenue officers.
42, 43, 70	All.
48 (4), 61 (6), 79A ...	To sign eviction notices approved by the Assistant or Deputy.
80, 86 ...	All [Mukhtyarkars in Sind included.]
90 ...	To sanction sale of moveables in alienated villages.
91 ...	To accept security from defaulting inferior holders.
117B ...	All.
135F ...	Up to limit of Rs. 15.

* The reference to section 37 of Act XIV of 1882 should now be altered to Rule 2 of Order III of the first schedule to Act V of 1908.

Sections of the L. R. Code.	Extent of power.
135H ...	All.
141-143, 145 ...	All.
148 ...	All.
149 ...	To issue certificates direct to other Mamlatdars (apparently in the same or other districts of the Presidency).
152 ...	To issue notices and remit notice-fees levied by mistake.
153, proviso (*a*)	To issue notices threatening forfeiture.
154 ...	To distrain and sell moveables in unalienated villages.
156 ...	To determine what property is exempt.
185, 166 (3) ...	All, in respect of such sales as he has himself power to make.
181 ...	To put in possession and give certificate.
186 ...	All.
190 (3)	All.
L. R. Rules—	
Rule 41 (and s. 68) ...	All (eksali sales).
Rule 58 ...	Permit tree-cutting in watan land.
Rule 80 and Sec. 65) ...	To specially selected Mamlatdars.
Rules 37, 42, 64, 65, 66 (and s. 170) ...	To confirm sale at any auction when the Collector has previously fixed (Rule 128) an upset price which is realized.

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

(1) to enter the heirs of Summary Settlement (Class II unstarred) Inams ;

(2) to appoint, give leave, and determine heirs of inferior village servants;

(3) to permit cutting of trees in uncommuted service lands.

The powers of a Mamlatdar's First or Aval Karkun are regulated by section 14 of the Land Revenue Code. He has been specially given power to sign notices of demand under s. 152 of the Code and may remit the fees if wrongly charged and to receive rajinamas under s. 74 of the Code. He can also levy fees up to a maximum of Rs. 15 in each case under s. 135 (F). An Aval Karkun can exercise in the absence of the Mamlatdar any powers specially given by the rules to Mamlatdars (see Rules 54, 67-69, 74 (2), 96, 108 and 138). A substitute appointed under section 15 of the Code can now exercise powers under this Act (25 Bom. 318 ; 36 Bom. 277).

Note.—An Aval Karkun cannot appararently exercise any of the powers delegated by the Collector by name to his Mamlatdar (32 Bom. 279).

Security—The revenue officers hereinbelow mentioned shall previously to entering upon their office, furnish security (sec. 23 of the L. R. Code) to the following amounts :—

		Rs.
1.	Mamlatdars	5,000
2.	First Karkuns to Mamlatdars	3,000
3.	Treasury Nagdi Karkuns (to Mamlatdars and Mahalkaris)	500

4. Mahalkari with treasury 3,000
5. First Karkun to Mahalkari with treasury ... 1,000
6. Mahalkari without treasury... 500

[Anderson's Bom. L. R. Rules (1931) pp. 5-9.]

Revenue Officer.—'Revenue Officer' means every officer of any rank whatsoever appointed under any of the provisions of the Land Revenue Code and employed in or about the business of the land revenue of the surveys, assesment, accounts, or records connected therewith [Bom. Land Revenue Code, s. 3 (1)]. Watandar village officers are not revenue officers (*Ibid.*) Talatis are executive and not ministerial officers for the purpose of Civil Service Regulations 459 (*a*).

"**Exercising for the time being.**"—These words are intended to cover the case of a subordinate designated under s. 15 of the Bombay Land Revenue Code, 1879.

Mukhtyarkar.—The 'Mukhtyarkar' in Sind corresponds to the Mamlatdar in the Presidency proper. A revenue officer exercising for the time being the powers of a Mukhtyar is included in the word Mamlatdar.

Mahalkari.—Mahalkaris are appointed by Collectors, who may, subject to the orders of Government and of the Commissioner, assign to them such of the duties and powers of a Mamlatdar as they may from time to time see fit (Bom. Land Revenue Code, s. 13). But under cl. (*a*) of this section any revenue officer exercising for the time being the powers of a Mahalkari is included in the word Mamlatdar.

Mahalkari.—A Mahalkari may perform the clerical work of preparing the Irrigation Record of Rights, but cannot be appointed a Canal Officer under s. 76 (1) of the Land Revenue Code.

An Extra Aval Karkun is frequently treated as such a Mahalkari. He has power to try Assistance (s. 86 of the L. R. Code) and possessory suits under this section.

Any other person means any person other than a revenue officer.

The Superintendent of Mahableshwar is invested with the powers of a Mamlatdar under Bom. Act V of 1864 (B. G. G. 1871, Pt. I., p. 424). This Notification, issued under Bom. Act V of 1864 was kept in force by Bom. Act III of 1876, s. 3. But now it appears he must be specially authorized by the Governor-in-Council to exercise the powers of a Mamlatdar under the present Act.

Law to be observed by Mamlatdar.—In being guided by the opinions of law officers or the Resolutions of Government, the Mamlatdars must remember that in disposing of points of law which are likely to come before the High Court on revision, they must exercise their own judgment and that Government cannot authoritatively decide such questions for them (*Nana v. Pandurang*, 9 Bom. 97 ; *Govinda v. Naiku*, 10 Bom 78 ; G. R. No. 7186 of 22nd October 1887 (Rev. Dep.) and G. R. No. 1809 of 9th March 1888)

It is a general principle of law that a person acting in a public capacity is duly authorized so to do. Therefore, the party who avers that a Mamlatdar is not duly empowered has to produce evidence to rebut this presumption (*Hari v. Shivram*, P. J. 1891, p. 342).

Pleaders.—"Pleader' means the pleader admitted under this or previous Act, and includes an attorney of the High Court appearing, pleading or acting for a client elsewhere than in the City of Bombay (Bom. Pleaders Act, 1920, s. 2 (3).

"Pleader duly appointed."—A party may appoint a pleader to do work for him. For the maximum of law is *qui facit per alium facit per se*, meaning he who does an act through another is deemed in law to do it himself (*Broom's Legal Maxims*). A pleader shall not be allowed to act in any suit or proceeding until he has obtained from the party, and filed in Court, a power-of-attorney (vaklatnama) according to the prescribed form appointing him pleader in the cause (*Bombay Regulation II of 1827*, s. 50) It is sufficient for the purposes of the Act if the plaint is signed and verified by the plaintiff's pleader, since the words "plaintiff and defendant" are deemed by the Act to include "a duly appointed pleader." (*Saifulla v. Haji Miya*, 1 Bom. L R. 664. S. C. 23 Bom. 752).

Recognized Agents.—For the definition of the expression "recognized agents" see Order III, Rule I, of the Civil Procedure Code (Act V of 1908).

Persons appointed by Military men to prosecute or defend suits, on their behalf under Order XXVIII, Rule I, of Act V of 1908, are not recognized agents within the meaning of this Act.

Power to appoint Joint Mamlatdar.

4. (1) The Governor in Council may, by notification in the *Bombay Government Gazette*, appoint in any taluka a Joint Mamlatdar under this Act, who shall be invested with co-extensive powers and a concurrent jurisdiction with the Mamlatdar, except that he shall dispose of such suits only as he may receive from the Mamlatdar.

Power to Mamlatdar to transfer suits to the Joint Mamlatdar.

(2) The Mamlatdar is hereby empowered to transfer to the Joint Mamlatdar for disposal any suit under this Act the plaint in which has been presented to the Mamlatdar under section 7, and to r-etransfer to his own file any such suit of which the Joint Mamlatdar is owing to death, sickness or any other case, unable to dispose.

Delegation of powers to Commissioner.

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

Commentary.

Joint Mamlatdar.—This section is new. The power to appoint joint Mamlatdar is considered necessary to meet cases where the work is too heavy for one man. A joint Mamlatdar has no independent power to receive a plaint under this Act. If the Mamlatdar receives it and transfers it to him, then only he can proceed with it. In other respects the jurisdiction is co-extensive and concurrent. The Mamlatdar cannot sit in appeal over or review the order of the joint Mamlatdar.

Commissioner.—'Commissioner' means, in Sind, the Commissioner in Sind, and elsewhere the Commissioner of a division appointed under the Bombay Land Revenue Code, 1879, or any other law for the time being in force in this behalf (*Bombay Act I of 1904*, s. 3, cl. 13).

Powers of Mamlatdars' Courts.

5. (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall subject to the provisions of sections 6 and 26 have power within such territorial limits as may from time to time be fixed by the Governor in Council, to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner :

provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion re-refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

Power to issue injunction.

(2) The said Court shall also, subject to the same provisions, have power within the said limits, when any person is otherwise than by due course of law disturbed or obstructed, when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or permises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any further such disturbance or obstruction.

Suits to be filed within six months.

(3) No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

Cause of action.

(4) The cause of action shall be deemed to have arisen on the date on which the dispossession, deprivation, or determination of tenancy or other right occurred; or on which the disturbance or

obstruction, or the attempted disturbance or obstruction, first commenced.

Explanation.—The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section.

Illustration I.

A lets *B* his field to cultivate for a specific period of one or more years. *B* refuses to resign possession after the expiration of that period. *A* can sue for possession in the Mamlatdar's Court at any time within six months from the date of the expiration of the said period, unless *B* is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property, or who is the legal representative of such former owner or part-owner.

Illustration II.

B is a yearly tenant of *A*, who gives him notice to vacate, as he is bound to do under section 84 of the Bombay Land Revenue Code, 1879, at least three months before the end of the then current year of tenancy. At the commencement of the next year *B* refuses to vacate. *A* can sue *B* in the Mamlatdar's Court at any time within six months from the commencement of that year, unless *B* is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property, or who is the legal representative of such former owner or part-owner.

Illustration III.

A allows *B* the use of water from his well, or from his water-course, for a specific period, at the expiration of which *B* continues to take water from the well or water-course without *A*'s consent. *A* may sue *B* in the Mamlatdar's Court at any time within six months from the expiration of the said period to obtain an injunction to stop *B* from taking the water, unless *B* is a person who has been a former owner or part-owner within a period of twelve years, before the institution of the suit of the use of the water, or who is the legal representative of such former owner or part-owner.

Illustration IV.

A and *B* hold lands adjacent to a पाट or फांस, or similar artificial water-course, which has hitherto been exclusively used by *B*. *A* draws water therefrom. *B* may sue in the Mamlatdar's Court, at any time within six months from the date on which *A* commences to take the water, for an injunction to prevent *A* from so doing.

Commentary.

Sub-section (1)—Construction.—The words "not being a person who has been a former owner or part owner" in cl. (1) qualify only the words immediately preceding "of any other person," the determination of whose tenancy or other right is in question (*Kesan Yemaji v. Shripat Tatya*, 30 Bom. L R. 889).

Premises.—In law the term "premises" is applied to a building with its adjuncts. It also includes houses, and the jurisdiction of a Mamlatdar's Court consequently extends over a house for purposes of this Act (*Bai Jamna v. Bai Jadav*, 4 Bom. 118).

It is not incumbent upon a Mamlatdar to go to inspect premises, unless an application is made for the purpose—(G. R. No. 4590, dated 26th August 1874).

Well.—The right to draw water from a public well and pour it into a trough does not come within any of the objects mentioned in this section of which the Mamlatdar could give immediate possession. Of course, if the plaintiff had alleged that the trough was his own or that he was in possession of it and claimed the right to an exclusive possession of the trough itself subject to the right of the public to allow their cattle to drink out of it, the case might be different. There is, therefore, no right to be protected in this case and nothing upon which the order of the Mamlatdar can operate (*Laxman v. Gopal*, P. J. 1895, p. 324).

If the defendant by building a wall has prevented the plaintiff from having access to a well from which he had the use of water, he would clearly have obstructed the plaintiff in the possession of that use, and the Mamlatdar would have jurisdiction to try the case (*Vohora v. Tayaballi*, 2 Bom. L. R. 243).

Where the plaintiff had a right to the use of a well-water, in common with others, his preferring not to use water, or even his omission to pay his share of expenses, did not of itself destroy that right by mere non-exercise of it, but there should be some direct evidence of adverse enjoyment on the part of the defendants. (*Bali v. Dnyanu*, 2 Bom. L.R. 620).

"Whether natural or artificial."—These words are new and are inserted after the words "water-course" to embody the result of the decision in *Som Gopal v. Vinayak Bhikambhat*, 25 Bom. 395.

"Otherwise than by due course of law."—By due course of law means 'in execution of a legal process.' Section 9 of the Specific Relief Act, 1877, contains provisions similar to those of the present section. In *Rudrapa v. Narsingrao* (7 Bom. L. R. 12) the Bombay High Court has decided that a thing said to be done 'in due course of law' when it is submitted to the consideration and pronouncement of the law, means 'the regular, normal process and effect of the law, operating on a matter which has been laid before it for adjudication.' The expression 'due course of law' must be read as referring to the process and operation of the law invoked by the ordinary method of a Civil suit.

In the following instances a person dispossessed of immoveable property cannot be said to be dispossessed otherwise than by due course of law:—

(*a*) The Civil Procedure Code (Act V of 1908) prescribes certain rules for the delivery of possession of immoveable property. Order XXI, rules 35 and 36 provide for the delivery of possession to a decree-holder. Order XXI, rules 95 and 96, provide for the delivery of immoveable property to the purchaser at an auction-sale held by a Civil Court.

(*b*) Under section 9 of the Specific Relief Act (I of 1877) a plaintiff may obtain possession of immoveable property under the circumstances mentioned in that section.

(*c*) Under sections 145 and 522 of the Code of Criminal Procedure (Act V of 1898) a Magistrate may dispossess a person of immoveable property in certain cases.

(*d*) Under section 181 of the Bombay Land Revenue Code, after a sale of any occupancy or alienated holding has been confirmed, the Collector delivers the possession of the land included in such occupancy or alienated holding to the purchaser.

Under ss. 16 and 36 of the Land Acquisition Act (I of 1894), the Collector may take possession of land.

It is probable that a person other than the judgment-debtor may be dispossessed in execution of a decree of a Civil Court. But such person cannot be said to be dispossessed otherwise than by due course of law. There is, moreover, a special remedy for him to regain possession provided in s. 33 of the Civil Procedure Code. Consequently such person cannot bring a possessory suit in a Mamlatdar's Court (*Ramchandra v. Ravji*, 20 Bom. 351; *Manikchand v. Daji*, P. J. 1898, p. 665; *Gulabbhai v. Jinabhai*, P. J. 1888, p. 133).

If a third person, who is not a party to a Mamlatdar's decision, is dispossessed in execution of that decision, he is dispossessed otherwise than by due course of law, and he can recover possession by a suit under the Mamlatdar's Act (*Ningappa v. Adveppa*, 24 Bom. 397).

WHO CAN SUE.

Right to sue.—Possession of tenant is not possession of landlord under this Act and where a tenant of one co-sharer is obstructed in his possession by another co-sharer, it is not the landlord but the tenant who must sue. And the Court in such cases need not consider if the lease of the tenant would conclude by the time the Court's order would be enforced (*Kisan Yemaji v Shripat Tatya*, 30 Bom. L. R. 889). *Ref.* 20 Bom. 260, F. B. and P. J. 1893, p. 147 followed).

A landlord in constructive possession.—A landlord who has only a constructive possession of lands through his tenant, cannot obtain relief by way of injunction under cl. (2) of s. 4 of the Mamlatdar's Act (Bom Act III of 1876). This was the law laid down in *Desai Malabhai Bapubhai v. Keshavbhai Kuverbhai* (12 Bom 419) and followed in *Nemawa v. Devendrapa*, 15 Bom. 177. In this case *D* sued in the Mamlatdar's Court, as A's constituted attorney, for an injunction restraining defendants from causing any obstruction to his possession of certain lands. The lands belonged to A's husband, who was alleged to be a lunatic. But there was no adjudication of his lunacy, nor was A appointed a manager of his estate under Act XXXV of 1858. *Held*, that *D* had no right to sue. A, not having been appointed a manager of her husband's estate, had herself no right to sue in respect of a disturbance of her husband's possession. She could not, therefore, authorize her agent to sue on her behalf. There must be physical possession to enable an aggrieved person to invoke the Mamlatdar's assistance in a case falling under the second clause of sec. 4 of the Mumlatdar's Act of 1876. A person who is in possession through his tenant cannot, therefore, sue for an injunction for disturbance of possession under the Act (*Aba v. Parvatrao*, 18 Bom. 46).

Possessory suit by lessor.—The plaintiff, a lessor, is not entitled to sue under the 1st clause of s. 4 of Bom. Act III of 1876 to recover possession of land leased to and in the occupation of his tenants, who were dispossessed otherwise than by due course of law by the defendant (*Vohru Uka v. Bai Jivi*, P. J. 1894, p. 217. See also *Khanderao v. Narsingrao*, P. J. 1894, p. 130).

A landlord who has let out his land to tenants cannot, on the tenants being dispossessed, bring a possessory suit in the Mamlatdar's Court under the provisions of the Mamlatdar's Act (Bom. Act III of 1876). The tenants cannot be said to be in possession "on behalf" of the landlord under s. 15, cl. (*a*) of the Act. The

expression in its plain and natural meaning refers to actual possession by a servant or agent such as a steward or bailiff, and that this was the meaning in which it was intended to be used, derived or confirmation from s. 4, which shows that the object of creating the Mamlatdar's Court was to give "immediate" possession, and also from the language of s. 18, which implies that the plaintiff, if successful, is to be put into immediate possession which is to continue until the plaintiff is ousted by a decree of the Civil Court. The policy of the Act seems to have been to afford summary relief to the same persons as would have been entitled to sue in ejectment, that is, the persons legally entitled to the actual possession (*Goma v. Narsingrao*, 20 Bom. 260; see also *Bhimaji v. Gopal*, 20 Bam. 264). The decision in Civil App. No. 81 of 1892 is, however, contrary and overruled.

Tenant in actual possession.—The plaint stated that the plaintiff was in possession, but the Mamlatdar found that the land in question was in the possession of a tenant of the plaintiff, and not in the possession of the plaintiff himself. *Held*, following the above case of *Goma v. Narsingrao* (20 Bom. 260) that the Mamlatdar had no jurisdiction to pass a decree for the platntiff (*Krishnaji v. Dhana*, P. J. 1895, p. 383).

Master and servant.—Whether the question for consideration is whether the servants of the plaintiff are actually in enjoyment in his behalf of the use of water from the well, the mere circumstance that the persons who use the well are the plaintiff's servants and live in his compound and draw water from the well is not sufficient to show that they use the well in his behalf. Servants in India generally make their own arrangements for food and water; and from the fact of the plaintiff's servants drawing water from the well, no presumption arises that they draw it for their master. They may use the water entirely for their own purposes. If it is shown that they draw water to bring to the plaintiff's house for his household purposes, or to water the plaintiff's garden, or that, in any other way, they use the well on his behalf, then a finding to that effect would alone justify a finding on the first issue in the plaintiff's favour (*Govind v. Frank*, P. J. 1888, p. 301).

Third parties let into possession by trespassers.—A person obtaining possession of land otherwise than by due course of law cannot alter or improve his position by letting third parties into possession as his tenants. Such tenants stand in the shoes of their lessor and jointly with him or liable to be ousted by proceedings taken in the Mamlatdar's Court (*Antu v. Vishnu*, 22 Bom 630).

Mortgagor.—A mortgagor who was never in possession of the land mortgaged by him after he passed the mortgage cannot claim under the Act (*Narayan v. Bhau* P. J. 1893, p. 159. see also *Aba v. Parvatrao*, P. J. 1892, p. 417).

Heirs of tenants.—If heirs succeed to their father's rights under a lease, the jurisdiction of the Mamlatdar in a suit for possession arises on the determination of that lease against such heirs as though the original tenant were then alive (*Amarchand v. Savlia*, 21 Bom. 738).

Joint tenants.—Where a Mamlatdar rejected a claim in a possessory suit without taking evidence on the ground that the suit would not lie as the opponent was one of two joint tenants, the other of whom was not sued, it was *held* that the claim could only have been rejected, if, after taking evidence, it had been found that the opponent was not in possession by a right derived from the applicants, but that if the opponent was in possession under a lease, granted by appli-

cants to opponent and another person which had expired within six months of the filing of the suit, applicants would be entitled to possession as against opponent even though the other tenant was not sued (*Antaji v. Tukaram*, P. J. 1891, p. 99).

Assignee of Mortgagee.—An assignee of a mortgagee can sue the mortgagor in possession as a tenant on the expiry of the lease. A Mamlatdar rejected under s. 15 of Act III of 1876, a suit by the assignee of a mortgagee for possession against the mortgagors who had leased the lands from the mortgagee, but whose lease had expired *Held*, that defendants were holding by a right derived from a person through whom the plaintiff claimed, and that the Mamlatdar was in error in declining jurisdiction (*Merwanji v. Ganpati*, P. J. 1897, p. 418).

Dewasthan Panch.—The plaintiff, a member of a Dewasthan Panch, brought a suit to recover possession of certain lands belonging to the Dewasthan, on the ground that defendant obstructed the possession of persons to whom the lands were let out by the Panch. *Held*, that this gave no cause of action to the plaintiff, because it was not alleged that he was in possession and was dispossessed personally (*Ghelabhai v. Dajibhai*, 1 Bom. L. R. 199).

Under-lessee.—Under the Mamlatdars' Courts Act an under-lessee is to be regarded in possession by a right derived from the landlord's lessor (*Vaghoji v. Sriram*, 4 Bom. L. R. 52. See also *Kasturchand v. Sriram*, 1 Bom. L. R. 71).

Joinder of Plaintiff.—Where B sued for possession in a Mamlatdar's Court and A alleged that B was her agent but that she had cancelled B's power, the Mamlatdar made B a co-plaintiff. *Held* that under Bom. Act III of 1876, A should not have been joined but B's suit should have been dismissed, as he had no right to sue (*Balwant v. Ambabai*, P. J. 1891, p. 350).

Plaintiff building wall on his land.—Plaintiff began to build a wall on his own land, when the Defendant, claiming a right of way over the land, obstructed him. Plaintiff then sued in the Mamlatdar's Court for an injunction restricting the defendant from obstructing him. *Held*, following *Ganesh v. Ramchandra* (P. J. 1891, p. 96) that Mamlatdar's Court had jurisdiction in the case (*Joshi Purushotam v. Joshi Naihabhai*, P. J. 1896, p. 540).

Dispossession by a rightful owner.—In Pollock on Torts, p. 312, the English law on the effect of possession obtained by the true owner by peaceful or forcible entry is stated after an examination of the somewhat conflicting authorities to be that the possession of a rightful owner gained by forcible entry is lawful as between the parties, but that he may be punished for the breach of the peace by losing it, besides paying fine to the king. The Indian Legislature has, however, provided for the summary removal of any one who dispossesses another, whether peaceably or otherwise than by due course of law, but subject to such provision there is no reason for holding that the rightful owner so dispossessing the other is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. This would also appear to be the view taken by West J. in *Lillu v. Annaji* 5 Bom. 387. (*Bandu v. Naba*, 15 Bom. 238).

Dispossession in execution of a decree of Civil Court.—It is probable that a person other than the judgment-debtor may be dispossessed in execution of a decree of a Civil Court But such a person cannot be said to be dispossessed otherwise than by due course of law. There is moreover a special remedy for him to regain possession provided in s 332 of the C. P. Code. Conse.

quently such a person cannot bring a possessory suit in a Mamlatdar's Court (*Ramchandra v. Ravji*, 20 Bom. 351); (*Manikchand v. Daji*, P.J. 1896, p. 665) (*Gulabbhai v. Jivabhai*, P.J. 1888, p. 133.) V, a tenant of M's judgment-debtor, who was dispossessed in execution of a decree obtained by W, sued W in the Mamlatdar's Court. It was *held* that as V was not dispossessed otherwise than by due course of law, he had no cause of action (*Magan v. Vithal*, P. J. 1890, p. 159.) The same view was expressed in *Manikchand v. Daji*, P. J. 1895 p. 655, where a Mamlatdar was *held* to have no jurisdiction to oust a person placed in possession in execution of a decree of a Civil Court and the remedy of the plaintiff ousted improperly was pointed out to be by way of complaint to the Civil Court and not to the Mamlatdar.

Ramchandra obtained a Civil Court's decree against R. S. and another for partition of certain lands and recovery of possession of a third share therein, and in execution of that decree recovered possession through the Collector of Belgaum. The opponent Ravji then brought a possessory suit against Ramchandra in the Mamlatdar's Court, alleging that he had been in possession and enjoyment of the lands for many years, and that Ramchandra wrongfully obstructed his enjoyment thereof. He prayed for the removal of the obstruction. The Mamlatdar awarded the claim and passed a decree for the plaintiff Ramchandra then applied to the High Court under its extraordinary jurisdiction. The case was argued before a Division Bench and the following questions were referred to a Full Bench :—

1. Whether a delivery of possession in execution of a decree for partition has the effect of dispossessing a third person not a party to the suit who was previously in possession and was not present when the delivery took place.

2. If so, whether such dispossesion constitutes a cause of action under the Mamlatdars' Act.

The judgment of the Full Bench was delivered by—

Sargent C. J.—The delivery of possession, which is directed to be given by s. 263 of the Civil Procedure Code, contemplates the decree-holder being placed in actual possession, and the language of s. 332 of the Civil Procedure Code shows that the possibility is assumed that in effecting such delivery a third person may become dispossessed, by which must be understood that such a state of things may have occurred as would amount to his dispossession in the eye of law, or what is sometimes called juridical dispossession. The mere formal delivery of possession, which consists in the reading by the officers on the land of the order for putting the decree-holder in possession and taking a receipt from him, cannot of itself effect such dispossession. Whether what occurs on the occasion of giving such formal delivery has that effect, is a question of law and fact; but it is clear, we think, on the authorities, that there is no dispossession in the eye of the law, unless the deprivation of possession is complete as a fact, a conclusion which the Court has to form on the whole of the evidence—(See Lindley's Jurisprudence, p. cxxiii—although what may occur may amount to a disturbance or obstruction of possession.

Again he who occupies land in the absence of the possessor does not, according to Savingny, "at the moment acquire juridical possession," Savingny, p. 361. In other words, it must be followed up by other acts of possession of which the third party has notice. This would seem to afford the only possible answer to the

abstract question referred to us; for as regards in third person—assuming, as we do, that he was not affected by the decree—it cannot matter that the decree was in a partition suit. In *Ramji Govind v Yeswada* (P. J. for 1878, p. 57), it is quite possible that the Court considered the third person was present and did not obstruct.

With respect to the second question, we are of opinion that, in the case of dispossession of a third party in execution of a decree, s. 332 of the Code of Civil Procedure applies and that it does not constitute a cause of action within the jurisdiction of the Mamlatdar (*Ramchandra Subrao v. Ravji bin Vithu Parit*, 20 Bom. 351).

Joint possession.—In execution of the decree obtained in 1886 in a Civil Court, the plaintiff and defendants were put into joint possession of certain land. The plaintiff subsequently brought this suit in the Mamlatdar's Court to recover possession of the said land, alleging that the defendants by taking cocoanuts from trees standing thereon had dispossessed him of the said land otherwise than by due course of law. The Mamlatdar held that the plaintiff had been thereby dispossessed, and passed a decree ordering the defendants to deliver up possession of the land to the plaintiff, together with the trees growing thereon. On an application under the extraordinary jurisdiction the High Court *held*, that the Mamlatdar had no jurisdiction to pass the decree. The Civil Court had passed a decree giving the parties joint possession of the land, and the Mamlatdar had no jurisdiction to override that decision and to place the plaintiff in exclusive possession. By the decree of the Civil Court they were determined to be joint owners, and the remedy in case of unequal possession or taking of produce was a suit for an account or for partition (*Bhau v. Dada*, 21 Bom. 777).

A Mamlatdar has no jurisdiction to award joint possession in proceeding under this Act. Any action of one co-owner who has rights over the whole property, although it may interfere with the joint ownership of the co-owner does not amount to dispossession under this section. It is not intended that the ouster by one co-owner of the other can amount to dispossession within the meaning of the Act so as to entitle the Mamlatdar to award joint possession (*Jiva v. Mathur*, 23 Bom. L. R. 1016).

Immediate possession.—In a possessory suit the Mamlatdar declined to make a decree for immediate possession of the land on the ground that the defendant had sown crops in the land. *Held*, that the Mamlatdar was not justified in refusing to give immediate possession as contemplated in this section (*Adarji v. Umar*, 1 Bom. L. R. 50).

Irregular decree made by consent of parties.—The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in these suits, that unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant thereupon applied to the High Court in its extraordinary jurisdiction and alleged that the money had not been tendered. *Held*, that the decrees were

such as the Mamlatdar could not legally make under the provisions of the Act, and the consent of parties could not give him power to do so. *Held*, also, that the High Court would not go into the question as to the due tender of the money. It was not open to the High Court, in the exercise of its extraordinary jurisdiction, to go into this question of fact, nor would it be proper to further the execution of an irregular decree, especially as the applicant had a clear remedy by suit (*Ramrao v. Babaji*, 20 Bom 630).

Obstruction by only one or more of the members of Hindu family.—As the authorities (see *Babaji v. Gopal*, 3 Bom. 23, *Guni v. Moran* and *Durga v. Joy Narayan*, 4 Cal. 96 and *Radha Proshad v. Esuf*, 7, Cal. 414) show that some of the members of a Hindu family cannot, without the consent of the others, eject tenants, it follows that an obstruction by one or more of the members of the family, without the consent of the other member or members, such as preventing the tenant from enjoying the fruits of his tenancy, must be regarded as an illegal interference with the tenant's rights and the proper subject of an injunction (*Shidappa v. Vishnu*, P. J. 1893, p. 147).

Obstruction to common door.—The plaintiff and defendant were members of a joint Hindu family. The plaintiff sued to recover joint possession with the defendant of the door of a certain house and for an injunction against the defendant who (he alleged) obstructed his use of the door. He alleged that he and the defendant were owners of the house in equal shares, and that the door was jointly used by both of them. The defendant pleaded that the plaintiff was not entitled to an injunction, and that his remedy lay in a suit for partition On second appeal the High Court decided that assuming that the plaintiff was in possession and enjoyment of portion of the house before the door was closed, and that the only ingress to that portion was by the door, the closing of it would amount to ouster (*Anant v. Gopal*, 19 Bom. 269).

Resjudicata.—A, against whom a Mamlatdar's order had been passed under the Mamlatdar's Act declaring that he had wrongfully dispossessed B of the land in dispute and ordering him to deliver up possession, subsequently filed a suit for a declaration that the property belonged exclusively to him, giving as his cause of action the Mamlatdar's order, and failing in that suit filed a further suit to set aside the same order of Mamlatdar and to obtain a share in the land by partition. It was *held* that A was as much bound by the Mamlatdar's order in the one suit as in the other, since, relating as it did to the whole land, it was a direct bar to his rights whether as sole or co-owner and that he could not shift the date of his cause of action from the order of the Mamlatdar awarding possession to B to a subsequent date on which B was actually put into possession under the order (*Bai v. Haji*, P. J. 1893, p. 559).

DETERMINATION OF TENANCY.

Where the Kabulayat provided for the immediate determination of the tenancy on the tenant failing to pay the rent for two successive years with interest during the intervening period, it was *held* that this section gives the Mamlatdar power to give immediate possession when the plaintiff is entitled to the restoration of the lands by reason of the "determination of any tenancy", which includes not only the expiry of the tenancy by efflux of time, but its determination by any other cause agreed upon by the parties at the time of creating the tenancy. The case was, there-

fore, sent back to the Mamlatdar with direction to proceed with trial (*Shridhar v. Bhagwant*, P. J., 1882, p 370; *Shrinath v. Khanderao*, P J., 1893, p. 34).

Where the agreement between the parties created a tenancy for two years, at the expiration of which the plaintiff was entitled to possission, it was held that the Mamlatdar had jurisdiction and he was directed to hear the case and decide on it (*Bechar v. Rama*, P. J. 1885, p. 54).

It is within the jurisdiction of the Mamlatdar to come to the conclusion that a rent-note was not intended to be acted on but only to be used to resist a possible claim by certain relations and to hold that no tenancy had been created (*Parbhudas v. Fulba*, P. J., 1892, p. 406).

Plaintiff agreed to sell her house to defendant; but the terms not being settled allowed defendnnt to live in it. Defendant agreed to pay certain rent per month until execution of the deed. Owing to disputes the deed could not be executed and the plaintiff required the defendant to vacate it within eight days. *Held*, that the defendant was not entitled to possession as the tenancy was not determined as the deed had not been executed and that the arrangement under which defendant took possession did not create tenancy under this section (*Krishnaji v Satyabhamabai*, P. J., 1894, p. 116).

If heirs succeed to their father's right under a lease, the jurisdiction of the Mamlatdar in a suit for possession arises on the determination of that lease against such heirs as though the original tenant were then alive (*Amarchand v. Savlya*, 21 Bom. 738).

When a lease says that possession is to be given back in a month, the whole of that month must be understood to have been intended to be included, and a suit in the Mamlatdar's Court to recover possession would be in time if brought within six months of the last day of the month, and if the last day on which the suit could be brought is a Sunday, it can be brought on the next following day (*Umabai v. Dattu*,, P. J., 1898, p. 34).

The defendants sold some land to the plan tiff, who without apparently entering into its physical occupation leased it to the defendants for five years which ended within six months of the plaintiff's suit for possession which he brought in the Mamlatdar's Court. The Mamlatdar of Satara held that the plaintiff never came into actual possession of the land leased under his sale and dismissed the suit. On an application by the plaintiff to the High Court under s. 622 of the Code of Civil Procedure, 1882, it was held that the Mamlatdar improperly declined to exercise jurisdiction vested in him by law. The defendants, to use the exact language of s. 15 (*b*) *post* were at the time the suit was brought "in possession of the property by a right derived from the plaintiff." And to that possession, to use the language of this section, the plaintiff had become entitled by reason of the determination of the defendants' tenancy (*Bala v. Mahadu*, P. J., 1898, p. 69).

Under this Act an under-lessee is to be regarded in possession by a right derived from his landlord's lessor (*Vaghoji v. Shivram*, 4 Bom. L. R. 52. See also *Kasturchand v. Shriram*, 1 Bom. L. R. 71).

The plaintiff brought a possessory suit on a lease the period of which had expired, in the Mamlatdar's Court, against the defendant No. 1 as tenant and defendants Nos. 2 to 5 as sub-tenants of defendant No. 1. The Mamlatdar rejected the plaint on the ground that the defendants Nos. 2 to 5 could not be held

as having derived their possession through the plaintiff. *Held*, that the defendants Nos. 2 to 5 did hold under a right derived from the plaintiff, and that the Mamlatdar should accept the plaint and hear the suit on its merits (*Kasturchand v. Shriram, Ibid.*).

When a tenant holds under a rent-note creating a tenancy for one year, the landlord can sue the tenant for recovery of possession in a Mamlatdar's Court within six months of the determination of the tenancy. It makes no difference if the tenant in the course of his tenancy attempted to deny the landlord's title and declined to pay him the rent, provided the landlord did not show an intention to determine the tenancy then (*Kharsetji v. Ardeshir*, 1 Bom. L. R. 796).

The plaintiff let his lands to defendants Nos. 1 and 2 on the 5th June 1905. In November 1905, the defendants Nos. 1 and 2 were dispossessed by a trespasser, defendant No. 3. The tenancy ended on the 6th June 1906. On the 29th October 1906 the plaintiff filed a suit in a Mamlatdar's Court to recover possession of the lands from defendants Nos. 1 to 3. It was contended by defendant No. 3 that the Mamlatdar had no jurisdiction to try the suit so far as it affected her. *Held*, (1) that a trespasser like defendant No. 3 could not defeat the right of the landlord to recover immediate possession of the land on the determination of defendant No. 1 and 2's tenancy by resorting to the summary remedy given by the Mamlatdar's Courts Act, 1906; (2) that the plaintiff's remedy having been to bring his suit under s. 19, cl. (*b*) of the Act, on the expiry of tenancy, the fact that a trespasser got into possession during the continuance of the tenancy, but more than six months before its determination, is not sufficient to oust the Mamlatdar's jurisdiction (*Deu v. Sitaram*, 9 Bom. L. R. 1179).

A rent-note provided, among other things, a stipulation that in case the lessee not vacating the lands at the end of the period fixed, he was liable to pay rent as might be fixed. In a possessory suit brought by the lessor, at the termination of the tenancy, for the possession of the lands, the Mamlatdar held that owing to the above provision in the rent-note, the tenancy had not determined and he accordingly dismissed the suit. *Held*, that the provision as to rent had not the effect of extending the lease and that, therefore, the plaintiff was entitled to be put into possession (*Navroji v Kalidas*, 1 Bom. L. R. 464).

Presumption.—In order to create the presumption, contemplated in s. 83 of the Land Revenue Code, it is not necessary that the tenancy should have existed for a stated number of years, as it is not possible to lay down any one rule, and each case is to be decided according to the facts found to exist; the presumption can arise whenever by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming (*Narayan v. Raghavendracharya*, 2 Bom. L. R. 281).

Tenant on sufference.—A tenant holding over after the lease is determined is a tenant on sufference and is not entitled to notice to quit, except when there is subsequent acceptance of rent (*Vishnu v. Anant*, 14 Bom. 384).

Perpetual tenancy.—'Perpetual tenancy' is a tenancy for indefinite period and lasts so long as the relation of landlord and tenant continues. In the Presidency of Bombay there are *mirasdars* or persons claiming perpetual tenancy, which is regulated by the usage or custom of the country. Mirasi right or perpetuity of tenure is, like other facts, susceptible of proof by various means. Where

a family of Kulkarnis in the Konkan was proved to have been in actual occupation of land under an Inamdar for 90 years at a fixed rent, it was *held* that in the absence of proof of a lease for a more limited term, it might be inferred that the land was demised on a perpetual lease, and that the defendants could not be ejected so long as they paid the usual rent (*Annagi v. Kasi*, 3 Bom. H. C. A. C. J. 124). Although a person is admitted to have been in possession as a tenant for more than 30 years, yet the presumption of law is that he is only a tenant from year to year; and, therefore, unless there is evidence of strong counter-presumption of a perpetual lease, the proprietor can oust (*Bai Ganga v. Dullabh Parag*, 5 Bom. H. C. A. C. J. 179).

The plaintiff's predecessor-in-title acquired the lands in dispute in A. D. 1780. The defendants were in possession as tenants. They proved their possession so far back as 1812. But it did not appear that they were put in possession first in that year. There was no evidence either of the commencement or of the duration of their tenancy. *Held* that, under s. 83 of the Bombay Land Revenue Code (Bombay Act V of 1879), the defendants' tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary (*Daulata v. Sakharam Gangadhar*, 14 Bom. 392). A tenure in perpetuity cannot be established merely by evidence of long possession at an invariable rent, unless it appears that such tenancy may be so acquired by local usage (*Narayanbhat v. Davlata*, 15 Bom. 647). Section 83 of the Bombay Land Revenue Code (Bom. Act V of 1879) is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case (*Kalidas Laldas v. Bhaiji Naran*, 16 Bom. 616). Section 83 of the Land Revenue Code (Bom. Act V of 1879) does not apply to a tenancy which commenced about forty years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of the tenancy (*Lakshman v. Vithu*, 18 Bom. 221). The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure does not prevent the application of s. 83 (1) of the Bombay Land Revenue Code (Bom. Act V of 1879), in cases where, by reason of the antiquity of the tenancy, no satisfactory evidence of its commencement is forthcoming. G held certain lands as a tenant under M, an Inamdar. The lands continued in G's family for nearly 80 years. It was found that owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evidence. *Held*, that in the absence of any local usage to the contrary, G's tenancy must be presumed to be permanent. (*Ramchandra Narayan Mantri v. Anant*, 18 Bom. 433). The existence of perpetual lease cannot be presumed merely from the fact that the tenant has been in possession at a uniform rent for 43 years.—P. J. 1871, S. A. 242 of 1871, 11th Sep. 1871. The mere circumstance that a lease provides for a fixed annual rent, and that for many years the fixed rental was alone levied is not sufficient to hold the lease as one for permanent tenancy in the absence of words of inheritance in the lease as well as anything in the circumstances under which it was made or the subsequent conduct of the parties, to warrant such construction (*Ramkrishna v. Kesho*, P. J. 1886, p. 61). Where the lease did not contain the word "*Mulgeni*" nor any expression from which the intention to create a permanent tenancy could be distinctly inferred and there was a clause allowing the tenant to surrender the land when he chose,

but there was a provision allowing the tenant to build a house and the tenant had held at a uniform rent for about thirty years ; *Held*, that there was no permanent tenancy created, the uniform payment of rent in the absence of an acknowledgment of permanent tenancy by the landlord did not lead to that conclusion and that the condition about permission to build and to surrender the land showed a certain want of equality of benefit inconsistent with the theory of permanent tenancy (*Nagapaya v. Anantaya*, P. J. 1891, p. 248). A sold a shop to B on the terms that he, A, should retain the ownership of the land below it, and receive a yearly rent of Rs. 5 in respect of it, and that if B erected another shop on the same land, he was to remain there as long as he liked, but that if B should no longer want it but wish to sell it, he should first offer it to A, and on his declining to buy might sell it to another or pull it down and remove the materials, restoring the land to A. *Held*, that this amounted to a lease in perpetuity of the land so long as the shop should be there (*Ramchandra v. Tukaramshet*, P. J. 1884, p. 250).

Lease.—In the district where Marathi and Kanarese are the prevailing languages, a lease of lands to be held *nirantar* must be taken to confer a perpetual interest (*Gangava v. Konher*, P. J. 1876, p. 227). A lease containing no words denoting permanency and not granted for building purposes or in contemplation of the lessee making repairs cannot be construed into a permanent lease. The provision that the lessee was to pay a certain rent from year to year creates only a tenancy (*Krishna v. Ladu*, P. J. 1893, p. 292).

Notice to Quit.

Notice to quit not rendered unnecessary by tenants' death.—A notice to quit is not rendered unnecessary by the death of the tenant. His representatives take his place and have the same right to notice, and, if the tenancy has not been legally put an end to, can sue for possession of a tenant put in by the landlord (*Tavnapa v. Kalapa*, P. J. 1889, p. 79).

Want of Notice.—The plaintiff sues to eject defendants alleging them to be trespassers but who are found to be tenants. *Held*, that they are entitled to notice and the plaintiff not having given notice, his suit must fail (*Raghunathrao v. Krishnarao*, P. J. 1892, p. 405).

Notice to quit to whom to be given.—Plaintiff brought a suit for possession efendants os. 1 and 2 were in possession as mortgagees of defendants Nos. 6 to 7, tenants of the plaintiff and transferees of their interests but liable to be redeemed. *Held*, that defendants Nos. 1 and 2 stand in the shoes of defendants Nos. 6 and 7, and notice to them would be good notice if they hold under an annual tenancy (*Khansi v. Ajramal*, P. J. 1895, p. 409).

Notice to quit when necessary.—A notice to quit is necessary in the case of a yearly tenant but not in the case of a tenant who holds over after the expiry of the lease (*Annaji v. Balkrishna*, P. J. 1895, p. 321).

Notice to quit when not necessary.—A tenant who denies his landlord's title is liable to be treated as a trespasser and to be ejected without the customary notice to quit (*Mahadaji v. Soma*, P. J. 1874, p. 82 ; *Rahim v. Kasam*, P. J. 1875, p. 181 ; *Santo v. Venkaji*, P. J. 1888, p. 314 ; *Vishnu v. Morshet*, P. J. 1887, p. 4).

Where a yearly tenant sets up, but fails to prove, permanent tenancy, a notice to quit is not necessary (*Shambhu v. Balya*, P. J. 1873, p. 66.)

Six months' notice necessary to a yearly tenant.—A notice to a yearly tenant in November to quit in the following March, is an insufficient notice. Six months' notice is necessary. (*Ramchandrara v. Daulatraj*, P. J. 1880, p. 10; *Yadneshwar v. Rama*, P. J. 1881, p. 180; *Balaji v. Bhikaji*, P. J. 1881; p. 181).

A yearly tenant is entitled to six months' notice to quit independently of Bom. Act I of 1865, s. 49, which does not apply to alienated villages unless expressly extended to them (*Amarsang v. Bai Man*, P. J. 1880, p. 209.)

Sufficiency of notice.—On 28th September 1891, plaintiff gave defendants, who held his land as annual tenants, a notice in the following terms :—..... "Therefore, within two days from the receipt of this notice meet us, increase the rent and give us a legal writing, or in default, on 31st March 1892, we shall keep present two good men and take full possession of the said land with all trees &c." *Held*, that the notice was a good and valid notice to terminate the defendant's tenancy (*Kikabhai v. Kalu*, P. J. 1896, p. 318).

Notice given in decree.—Where the defendants on termination of their lease had remained in possession paying the stipulated rent and the Court in a suit to eject them had held that they were entitled to reasonable notice and thereupon passed a decree for surrender of the land after six months. *Held*, that the notice to which the defendants were entitled could not in this way be given in the judgment and that the suit must be dismissed (*Abu v. Venkatrama*, P. J. 1893, p. 44).

Rent-note creating tenancy for one year.—When a tenant holds under a rent-note creating a tenancy for one year, the landlord can sue the tenant for recovery of possession in a Mamlatdar's Court within six months of the determination of tenancy; it makes no difference if the tenant in the course of his tenancy attempted to deny the landlord's title and declined to pay the rent, provided the landlord did not show an intention to determine the tenancy then (*Kharsedji v. Ardeshar*, 1 Bom. L. R. 797.)

"Not being a person, &c.....or part-owner."—This important amendment is effected to save the former owners or part-owners and their representatives from liability to the ejectment jurisdiction on determination of a tenancy or other right. This is inserted because it had been found on enquiry that the old Act had largely been used virtually for collecting debts from mortgagors and debtors who occupied the nominal position of tenants in regard to their own property and bound themselves to pay heavy rents, and that much hardship had been caused in this way. As a further safeguard in the same direction, power is now given to the Mamlatdar by the proviso to sub-clause (1) of this section to refuse to exercise his powers in cases of determination of tenancies and the like, where he thinks that such exercise would be inequitable or unduly harsh, or that the case could be more suitably dealt with by a Civil Court. This restriction is confined to persons who have been owners or part-owners within 12 years of the institution of the suit, this being the period of limitation for recovery of immoveable property (*Report of the Select Committee*).

"Discretion."—"Discretion" means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion, but according to law and not humour. It is not to be arbitrary, vague and fanciful.

but legal and regular, and it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself (*Parvati Mahipati Sonar v. Ganpati Rohdaji Naik*, P. J. 1898, p. 380).

"In the use of roads or customary ways thereto."—Formerly the expression used was "of the use of roads, &c." The word 'of' was a misprint for the word 'in' as pointed by Rusell J. in *Bhau v. Ahmedbhoy*, 8 Bom. L. R. 312 at p. 320. It is now corrected in this Act.

A customary way is an easement, but it may or may not be an eassment of necessity. If a person can reach his field by a road and also by a customary way through the land of another the way is not a way of necessity; but if there be no other way except the foot path, then it is a way of necessity.

An easement of way must not be used for any purpose not connected with the enjoyment of the dominant heritage (*Easements Act*, s. 21.)

Plaintiff complained that defendant obstructed him in a certain right of way from his house to the street in the heart of the city. *Held*, that the subject-matter was the use of way to the street. That was not within the provisions of this section, the use of roads or customary ways to *fields* being the only use of way referred to in this section (*Dharamchand v. Chunibhai*, 2 Bom. L R. 607).

Suit for restoration of the use of road.—*Bombay Act III of 1876, ss. 4 and 15.*—Section 15 of the Mamlatdars' Courts Act, 1876, must be read subject to section 4, which is the section which gives jurisdiction to the Mamlatdar. A person is in the enjoyment of a use within the first issue of s. 15, cl. (*c*), when but for the obstruction he complains of, he would be in use. The enjoyment of the user mentioned in the issue does not refer to any enjoyment on the date of suit (*Nanabhai v. Dwarkadas*, 3 Bom. L. R. 681).

Stopping way to the well.—Plaintiff sued defendant for restoration of the use of a well, the defendant having stopped his way to the well by building a wall. The Mamlatdar rejected the plaint saying, "The real question in this case is whether plaintiff's prayer for the obstruction in the right of way to the well can be heard by me. I doubt this as I am not empowered by the law." On having applied, the High Court decided as follows: If the defendant by building a wall has prevented the plaintiff from having access to a well from which he had the use of water, he would clearly have obstructed the plaintiff in the possession of that use, and the Mamlatdar would have jurisdiction to try the case. The fact that the Act mentions roads or customary ways to fields only would not exclude the jurisdiction (*Vohra v. Tayaballi*, 2 Bom. L. R. 243).

Sub-section (1)—Proviso—Summary remedy.—Where subsequent to the filing of a possessory suit in a Mamlatdar's Court the defendant brings a suit in a Civil Court for a declaration that he is a permanant tenant, it is open to the Mamlatdar, under this section to refuse to exercise the power vested in him and to refer the matter to the Civil Court (*Vasudeo Sadashiv v. Bhiva Pandu*, 32 Bom. L. R. 85).

A co-sharer, when he actually has sole possession, and is dispossessed by another co-sharer who has taken the law into his own hands, is entitled to the summary remedy of this Act (*Kishan Yemaji v. Shripat Tatya*, 30 Bom. L. R. 889).

Injunction.—An injunction is an order remedial, the general purpose of which is to restrain the commission or continuance of some wrongful act of the party enjoined.—*Joyce on Injunctions.* The only person bound by an order under

this Act would be the actual party to the suit causing the obstruction, because the order cannot be executed against any one else (*Janibai v. Appaya*, P. J. 1898, p. 834). When cl. (2) is compared with cl (1) of this section, the inference that can be drawn from the omission from it of the words "profits of the same" (that is, of lands), is that only an interruption of physical possession or enjoyment was intended to be removed by the injunction for which the clause peovides (*Keshabhai v. Kuberbhai*, 12 Bom. 419). A landlord who has only a constructive possession of lands through his tenant cannot obtain relief by way of injunction under cl. (2) of this section (*Nemawa v. Devendrappa*, 15 Bom. 177). There must be possession to enable an aggrieved person to invoke the Mamlatdar's assistance in a case falling under cl. (2) of this section. A person who is in possession through his agent, cannot therefore, sue for an injunction for disturbance of possession under this Act (*Aba bin Sadoba v. Parvatrao*, 18 Bom. 46). If a plaintiff begins to build a wall on his land, and the defendant claiming a right of way obstructs him, the plaintiff can sue in a Mamlatdar's Court for an injunction against him (*Joshi v. Joshi*, P. J. 1896, p. 540). The plaintiff's suit to have the defendants restrained by injunction from causing disturbance to him in cultivating his fields was rejected by the Mamlatdar on the ground that his allegations were not proved against all the defendants, having been found not to have disturbed the plaintiff. *Held*, reversing the order of the Mamlatdar, that there was nothing in the Act to prevent the Mamlatdar from granting the injunction as against the defendants against whom the case was proved. The High Court directed an injunction to go under this section restraining the said defendants from causing alleged disturbance of the plaintiff (*Chintaman v. Bala*, 14 Bom. 17). A Mamlatdar has jurisdiction, under this section, to grant an injunction under this section in case of obstruction or disturbance to the use of roads or customary ways thereto. A deprivation of an use is a disturbance. A Mamlatdar is not, therefore, to suppose that the terms in which the statutory issues are framed for a case where the plaintiff does noe aver deprivation of the use, deprive the Mamlatdar of the jurisdiction to try tht issues, and give such relief as he has jurisdiction to give under the second paragraph of this section (*Bhau v. Ahmedbhoy*, 8 Bom. L. R. 312). Where a decree contains an injunction directing certrin persons to do and not to do a certain thing, the injunction being an order directed to particular persons, will not run with the land. Such a decree, therefore, cannot be executed against a transferee of the judgment-debtor having purchased the property at an auction-sale (*Vithal v. Sakharam*, 1 Bom. L. R. 854 ; *Dahyabhai v. Bapalal*, 3 Bom. L. R. 564. See also 10 Bom. L. R 18). The plaintiff complained to the Mamlatdar that he had a right of passing water from the roof of his house and his ground on to, and having it carried away over the land of the defendant had been obstructed by the act of the latter. The Mamlatdar granted the injunction asked for, *held* that the Mamlatdar had no jurisdiction in the case as the words of s. 5 giving jurisdiction to the Mamlatdar cannot be construed so as to include the use of the easement (*Jaga v. Dahyabhai*, P. J. 1896, p. 340 ; *Fatmabibi v. Bhandari*, P. J. 1896, p. 592).

Jurisdiction—Injunction.—A Mamlatdar has no jurisdiction to entertain a suit brought by the plaintiff for an injunction restraining defendants from disturbing him in his possession of a certain field (*Ramrao v. Fernandes*, 2 Bom. L. R. 515).

Disobedience of injunction.—A Mamlatdar deciding a possessory suit under the provisions of this Act has not the power as a Court to commit to prison for contempt of court for failure to carry out an injunction (*Ravji v. Fraser*, 8 Bom. L. R. 638).

Cause of action-Explanation.—This explanation is newly inserted in view of a doubt expressed in *Shivdeorao v. Bhagwantrao*, P. J. 1895, p. 302, whether he had not jurisdiction in cases of joint possession and follows the law as interpreted in *Keso v. Moro*, P. J. 1882, p. 120; *Krishna v. Gopala*, P. J. 1890, p. 316, and *Bhau v. Dade*, P. J. 1896, p. 196. The exercise by a joint owner towards his co-owners of any right which he has over the joint property should not come within the purview of this Act (*Statement of Objects and Reasons*).

Explanation-jurisdiction.—A court has no jurisdiction under the Explanation to this section to decree—joint possession in favour of one who claimed, to be in joint possession but was ousted by the co-sharer (*Ibid.*) *Ref.* P. J. for 1883, p. 120; P. J. for 1890, p. 316 and A. I. R. 1922, Bom. 126 followed. P. J. for 1895, p. 502 not followed.

Where a tenant was in possession at the time of the dispossession but at the time of the suit the tenancy has ended, the tenant having relinquished the same and the landlord brings his suit for possession against the trespasser within six months of dispossession, the Mamlatdar has jurisdiction to pass an order in favour of the landlord (*Moro Kushanath v. Ganesh Hari*, 52 Bom. 453. *Ref.* 20 Bom. 260, F. B. and 32 Bom. 46 distinguished).

In a possessory suit against a co-share the Mamlatdar has no jurisdiction to award joint possession under this Act (*Jina Jijibhoy Baria v. Mathur Jijibhoy Baria*, 46 Bom. 289, s. c. 23 Bom. L. R. 1016).

Co-owner dispossessed by tenant of another co-owner.—A co-owner, who has been within six months dispossessed otherwise than in due course of law by the tenant of another, co-owner, is entitled to be restored to possession under this section. The explanation to this section has no application and does not exclude the remedy under this section to the dispossessed co-owner (*Appaji Waman v. Motiram*, 34 Bom. L. R. 109).

Power of Collector to transfer suits.

6. The Collector may, after due notice to the parties, by order in writing transfer any suit from any Mamlatdar's Court in his district to any other Mamlatdar's Court in his district, and the Mamlatdar's Court to which the suit is so transferred shall thereupon exercise jurisdiction in such suit; but any order issued to village-officers under section 21 shall be issued by the Mamlatdar to whom such village-officers are subordinate.

Commentary.

Note.—This section is new.

Collector.—'Collector' means, in places other than the City of Bombay, the Chief Officer in charge of the revenue administration of a district.—Bombay Act I of 1904, s. 3 (11). The Collectors have now been invested with power to transfer cases. There was no such power, either of the Collector or any other authority, in the repealed Act. The High Court had jurisdiction to transfer a suit under the Mamlatdars' Act from the Court of one Mamlatdar to that of another

(*Bhangwandas v. Jedu*, 4 Bom. L. R. 970). The present section has vested the power primarily in the Collector of the District.

Notice.—If a notice is issued by the Collector *suo motu*, no fee is leviable. But if on the application made by one party, a notice is to be issued to the other party, the fee chargeable for the notice will, on the analogy of a notice issued under s. 14, be 3 annas; and this notice also will have to be served in the same manner.

Transfer of case.—Even supposing that the Mamlatdar is so superior to the motives which influence ordinary individuals as to entertain no bias, we still think that if from facts of the case there are grounds enough to create a reasonable apprehension in the applicant that he may not have an impartical trial, the case ought to be transferred (*Bhagwandas v. Jedu*, 4 Bom. L. R. 970).

Where the Judge is personally interested, *e. g.*, where the party is his priest (*In re Pandurang*, 2 Bom. L. R. 755).

Suits commenced by plaint. Contents of plaint.

7. All suits under this Act shall be commenced by a plaint, which shall be presented to the Mamlatdar in open Court by the plaintiff, and which shall contain the following particulars:—

(*a*) the name, age, religion, caste, profession and place of abode of the plaintiff;

(*b*) the name, age, religion, caste, profession and place of abode of the defendant;

(*c*) the nature and situation of the property of which possession or use is sought, or the nature of the injunction to be granted, as the case may be;

(*d*) the date on which the cause of action arose;

(*e*) the circumstances out of which the cause of action arose; and

(*f*) a list of the plaintiff's documents, if any, and of his witnesses, if any, shewing what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day at the place to be fixed under section 14.

Commentary.

Note.—This section is the same as section 5 of the old Act, except that word "fixed" is substituted for the word "appointed" and ages of the plaintiff and defendant have now to be mentioned.

Plaint.—A plaint is the statement in writing of a cause of action; it is the first process in a Court of original jurisdiction.

In a possessory suit under this Act the Mamlatdar has no power to order the plaintiff to append a plan to the plaint showing the situation of property in dispute (*Chenbasava v. Rudrappa*, 14 Bom. 581). When in a plaint there is an obvious misdescription which does not mislead a defendant, a Mamlatdar ought, under this section, to correct the mistake, and order the necessary amendment (*Mervanji v. Hormusji*, 1 Bom. L. R. 77).

Court fee.—Under the Court fees Act, Sch. II, art. 4, the plaint should be stamped with an eight anna Court-fee.

Open Court.—The section requires a plaint to be presented to a Mamlatdar in open Court. If, therefore, a plaint is presented to a Mamlatdar in his Chamber, or left in his box, or in a place which is not his open Court, the presentation is illegal. So also presentation by post won't do.

Name.—Name probably includes father's name and surname.

Age.—Age is newly inserted. Under Act III of 1876 it was not required to be mentioned.

Religion and Caste.—Parsis, Mahomedans or Christians have no caste. In such cases the religion only should be mentioned.

Language.—This Act is silent as to the language in which the plaint is to be written. But it should probably be written in the language of the particular District.

Cause of action.—'Cause of action' means that bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the case (*Musa v. Manilal*, 29 Bom. 368).

Informal petitions to be treated as plaints.

8. Where a petition not in the form of a plaint is presented to the Mamlatdar and the subject-matter thereof appears to fall within the scope of section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the petitioner desires to obtain relief thereby. If the petitioner expresses a desire so to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a plaint presented under section 7.

Commentary.

Note.—This section is new and is inserted to safeguard the interests of the ignorant plaintiff and informal petitioner.

Presentation of plaint.—The plaint must be presented either by the plaintiff, his recognized agent or his pleader, to the Mamlatdar himself.

Object.—The village agriculturist, particularly in Sind, frequently presents his grievance in the form of a petition, not of a plaint under this Act. The petition is, therefore, sent to the village officers for report in the ordinary way and for one reason or another, it may happen that the period of limitation elapases before the petition has realised the proper procedure to follow. Sections 8 and 9 are, therefore, inserted to safeguard the interests of the informal petitioner and ignorant plaintiff (*Report of the Select Committee*).

Examination of plaintiff on oath.

9. Where the plaint does not contain the particulars specified in section 7 or is unnecessarily prolix, the Mamlatdar shall forthwith examine the plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the plaint and shall reduce the examination to writing in the form of an endorsement on or annexture to the plaint which

shall thereupon be deemed to be part of the plaint. Where the plaintiff requires time to obtain any of the particulars specified in section 7, the Mamlatdar shall grant him such time as may under all the circumstances appear reasonable.

Note.—This section is new.

Oath.—'Oath' includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. By Act X of 1873, s. 6, it is provided that whether the witness is a Hindu or a Mahomedan, or has an objection to take an oath, he shall, instead of taking an oath, make an affirmation. In every other case he shall take an oath.

Forms of oaths and affirmations.—For Forms of oaths and affirmations, *vide* Bombay High Court Civil Circulars of 1925, p. 195.

Endorsement is any thing written or printed upon the back of a writing (*Wharton*).

Annexure.—The examination of a plaintiff may be reduced to writing on a separate piece of paper and annexed to the plaint.

Plaint to be subscribed and verified.

10. When the plaint is presented, and has, if neeessary, been treated in the manner specified in section 9, the Mamlatdar shall require the plaintiff to subscribe and verify the plaint in his presence, in open Court, in the manner following, or to the like effect:—

"I, A. B., the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

Commentary.

Note.—This is section 6 of the old Act with the addition of the words "and has, if necessary, been treated in the manner specified in section 9."

Plaintiff.—The word 'plaintiff' includes his pleader or recognized agent, but does not include a co-plaintiff.

Signing and verifying the plaint.—It is sufficient if the plaint is signed and verified by a plaintiff's pleader, since the words 'plaintiff and defendant" are defined by the Act to include a 'duly appointed pleader' (*Sayad v. Sayad*, 1 Bom. L. R. 664).

Punishment.—For punishment for verification of false plaint, see s. 25 *post*.

Endorsement by Mamlatdar.

11. (1) The Mamlatdar shall endorse the plaint to the effect that it was duly subscribed and verified.

Procedure where plaintiff cannot write.

(2) Where the plaintiff cannot write, the verification may be written for him in open Court and he shall affix his mark to his name in token of the authenticity of the verification, and the Mamlatdar shall, in such case, record that the verification was made in his presence at the request of the plaintiff, and that his mark was so affixed.

Note.—This is section 7 of the old Act.

Rejection of plaint.

12. The Mamlatdar shall reject the plaint—

(*a*) where the plaintiff declines to make a statemsnt on oath under section 9 ; or

(*b*) where the plaintiff is willing to make or has made a statement on oath under section 9, but fails to furnish the particulars specified in section 7 within the time fixed under section 9 or altogether ; or

(*c*) where it appears upon the face of the plaint,

(*i*) that the property or use claimed is not one of the kind specified in section 5, or

(*ii*) that the cause of action arose more than six months before the plaint was presented; or

(*d*) where the plaintiff declines to subscribe or verify the plaint as required by sections 10 and 11.

Commentary.

Note.—This is section 9 of the old Act with certain additions.

Rejection of plaint for cause of action having arisen more than six months.—A Mamlatdar cannot reject a plaint on the ground that the cause of action arose more than six months before the plaint was presented, unless it so appear on the face of the plaint (*Nemawa v. Dhakya*, P.J. 1891, p.101).

Rejection of plaint for misjoinder of parties.—Defendant No. 1 having obtained a decree against the plaintiffs for possession of certain land in the Mamlatdar's Court, leased the land to defendants Nos. 2 and 3. Shortly afterwards the Mamlatdar's decree was reversed by the High Court on the plaintiff's application. Thereupon the plaintiffs sued the first defendant and his tenants (defendants Nos. 2 and 3) who were in actual possession of the land to recover the land. The Mamlatdar rejected the plaint, holding that there was a misjoinder of causes of action, one suit being brought against different persons for different causes of action arising at different times. *Held*, that the Mamlatdar should accept the plaint and hear the suit on its merits. The defendant who had obtained possession under a decree which had been reversed could not improve his position by letting third parties into possession as his tenants. They stood in the shoes of their lessor and were jointly liable with him to be ousted by proceedings taken in the Mamlatdar's Court (*Antu v. Vishnu*, 22 Bom. 630; 14 Bom. 581).

Amendment of plaint.—When in a plaint there is an obvious misdescription which does not mislead defendant, a Mamlatdar ought to correct the mistake and order the necessary amendment and dismiss it (*Merwanji v. Hormusji*, 1 Bom. L. R. 67).

Return of the plaint.

13. Where it appears to the Mamlatdar that the subject of the plaint is not within his jurisdiction, he shall return the plaint to be presented in the proper Court.

Commentary.

Notes.—This is section 10 of the old Act with the words "to be presented" substituted for "in order to its being presented." The plaintiff or defendant need not necessarily be within the local jurisdiction of the Mamlatdar as both can appoint a recognized agent on their behalf by virtue of s. 3 (*b*) (2). It is sufficient if the subject of plaint, *i. e.* the land etc. is within his jurisdiction.

Return of plaint.—The Mamlatdar can legally return a plaint under this section only if it appears that he has no jurisdiction (*Bapu v. Ganesh*, P. J. 1888, p 164).

Jurisdiction means territorial jurisdiction.

Procedure where plaint admissible.

14. (1) Where a plaint is admissible, the Mamlatdar shall receive and file it. He shall then fix a convenient day and place for the trial of the case and shall issue, at the expense of the plaintiff, notice in the form of schedule A to the defendant. He shall then require the plaintiff to appear with his documents, if any and witnesses, if any, on the day and the place fixed.

(2) The date to be fixed for the trial of the case shall not be earlier than ten days, nor latter than fifteen days, from the day on which notice is issued, except for sufficient reason to be recorded in writing by the Mamlatdar with his own hand.

(3) The place to be fixed for the trial of the case may be in the Mamlatdar's office, or at or near the scene of dispute, or at any other spot that the Mamlatdar considers convenient to the parties.

Commentary.

Notes.—This is section 11 of the old Act with some verbal alterations and the addition of clause 3 which is new.

There are cases, with regard to irrigated lands in Sind where a speedy remedy is required and the minimum of 10 days' notice would entail hardship. In such cases it is improbable that the consent of both parties could be obtained to an earlier date for trial as such a course would presumably be contrary to the interest of the defendant. Sub-clause (2) will enable the Mamlatdar to hear the case within a shorter period for sufficient reason (*Report of the Select Committee*).

Service of Notice.—For service of notice under this Act, *vide* s. 191 of the Land Revenue Code, 1879.

The peons of the Mamlatdar's establishment are employed to serve the summons. But bailiffs may be employed for this purpose and paid out of the process fee (G. R. No. 4707, dated 18th Aug. 1873).

One Mamlatdar can send to another Mamlatdar notices for being served.

The period of ten or fifteen days is to be counted from the day on which the notice is issued. The first day is to be excluded [*Bom. General Clauses Act, 1904, s. 10 (1) (a)*].

Fees.—The fee chargeable for every notice is three annas.

Attendance of witnesses.

15. (1) Where either party required any witness to be summoned to appear on day the and at the place fixed, the Mamlatdar shall issue a summons for that purpose.

(2) The Mamlatdar may issue, after recording his reasons in writing, a warrant for the arrest of any such witness if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

(3) The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be in force in regard to the attendance of witnesses in Subordinate Civil Courts.

Commentary.

Note.—Cl. (2) is new. Under this clause the Mamlatdar is now invested with the power to issue a warrant if he believes that a witness has absconded or will not obey the summons.

Attendance of witness.—For the procedure to be followed for procuring the attendance of witnesses, see sections 189, 190 and 192 of the Bombay Land Revenue Code, 1879.

Contents of summons.—Every summons shall be in writing in duplicate and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal, shall also bear his seal; and shall be served by tendering or dilivering a copy of it to the person summoned, or if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence. If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in the manner above described (*Bom. L. R. Code, s. 190*).

Disobedience of Summons.—For disobedience of summons, *vide* 18 Bom. 381).

Travelling and other expenses.—For rules made by the High Court with regard to travelling expences &c. of witnesses, *vide* B. G. G. 1921, Pt. I, p. 2562.

Where plaintiff makes default, plaint to be rejected with costs.

16. (1) Where the plaintiff fails to attend, or to produce his documents, if any, or to adopt measures to procure the attendance of his witnesses, if any, on the day and at the place fixed, the Mamlatdar shall reject the plaint with costs, whether the defendant appears or not, unless the defendant admits the claim.

Where defendant does not appear, case to be heard *exparte*.

(2) Where the plaintiff attends as required by section 14, sub-section (1), but the defendant fails to attend, and the Mamlatdar is satisfied from the evidence before him that the notice has been duly served on the defendant and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear and decide the plaint *ex parte* :

But case may be reheard on sufficient cause being shown.

provided, *firstly*, that, if either party satisfies the Mamlatdar at any time within thirty days from the date of the rejection of a plaint under sub-section (1), or of an *exparte* decision under sub-section (2), that he was prevented by some unavoidable circumstance from attending, or from producing his documents, or from adopting measures to procure the attendance of his witnesses, as the case may be, it shall be lawful for the Mamlatdar to issue a notice in the form of schedule B at the expense of the appli-

cant to the opposite party, and, if still satisfied after hearing the opposite party that the applicant was prevented as alleged, to re-hear the case at such time and place as he may then fix:

provided, *secondly*, that nothing in the foregoing provisions shall prevent the plaintiff from withdrawing his suit on payment of the defendant's costs.

or plaintiff may withdraw his suit.

Commentary.

Note.—This is section 13 of the old Act with certain alterations. The proviso is new. The Act now empowers a plaintiff to withdraw his suit on payment of defendant's costs and he can do so without the permission of the Mamlatdar and without assigning any reason for withdrwal.

"Document".—'Document' includes any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used, for the purpose of recording that matter (*Bom. General Clauses Act* (Bom. Act I of 1904), s. 3, cl. (16).

Non-appearance of plaintiff and defendant.—In a possessory suit instituted in a Mamlatdar's Court neither the plaintiff nor the defendant appeared at the hearing. The case was, therefore, disposed of by the Mamlatdar under the first part of s. 13 of Act III of 1876. *Held*, that the order of the Mamlatdar was an order rejecting the plaint (*Purshotam v. Chatargir*, 25 Bom. 82).

Service of notice.—As the proceedings under this Act are necessarily summary, it is very desirable to guard against the possibility of any inequitable decision being come to in consequence of notices not being properly served. The Mamlatdars, are, therefore, compelled to satisfy themselves that notices have reached the defendants. The sub-section (2) authorizes the Mamlatdar to proceed *ex parte* with the case, if from the evidence before him he is satisfied that the notice had been duly served on the defendant *Expressio unius est exclusio alterius*. If not so satisfied he cannot so proceed. He is then *in statu quo ante*, and as the notice has not been issued (*fo de non apparentibus et non existentibus eadem est ratio*), section again becomes applicable and still remains to be satisfied by due issue thereof as a preliminary to further proceedings. This section leaves it to the Mamlatdar to decide in each case whether he is satisfied that notice has been duly served on the defendant. The Mamlatdar must in each case exercise his own discretion. He could not be held to have exercised the wise and sound discretion which the Legislature expresses when conferring discretionary powers, if he held "substituted service" or such as that provided by section 82 of the Civil Procedure Code, or service by fixing the notice on the defendant's door as provided for summonses in section 80 of the Civil Procedure Code was due service on the defendant.—G. R. No. 1707, dated 7th March 1893.

A summons is not duly served, if the defendant proves that he has not been served with summons at all (*Anund v. Anund*, 13 W. R. 237) or not in sufficient time to appear (*Shaik Awlad v. Shaikh Abdol*, 18 W.R. 141) or has been improperly served (*Chanbasappa v. Mainaba*, 7 B. H. C. R. 138).

Before hearing a case *ex parte*, a Mamlatdar must be satisfied from the evidence before him as to the service of notice of the suit on the defendant (*Faki v. Faki*, P. J, 1890, p. 261).

Ex-party decision under sub-sec. 2.—A Mamlatdar refused to allow a Mukhtyar to appear for a defendant in a possessory suit or to adjourn in order that a pleader might appear, and made a decree against the defendant. This defendant applied to the Mamlatdar for a re-hearing under s. 13 of the Mamlatdars Act, 1876. But the application was refused on the ground that the plaint had not been heard *ex parte*. The High Court *held* that the Mamlatdar was wrong in holding that the decision was not *ex parte*, and reversed his order directing him to hear the application (*Jankibai v. Dadabhai*, P. J. 1890, p. 326).

"Unavoidable circumstance."—Plaintiff failed to attend in a Mamlatdar's Court when his case was called on. Sixty days after he explained he was present before his case was called on, but left as one of the defendants was not present. Then he broke his leg and could not attend Court till then. Thereupon the Mamlatdar issued summons to the defendants. *Held*, that in placing the suit again on the file the Mamlatdar acted illegally and without jurisdiction (*Gohee v. Vali*, P. J. 1888, p. 219).

The onus of proving unavoidable circumstance" lies on the applicant (*Shaik Torab Ali v. Chooraman Singh*, 24 W. R. 262).

Form of Schedule B.—For form of Schedule B, See at the end of the Act.

Application for re-hearing.—A plaintiff who fails to attend with his proofs on the day appointed for re-hearing of his suit (whether the defendant then attends or not) and whose plaint is rejected under this section has a right to apply to the Mamlatdar for a re-hearing of the case under the proviso, but cannot bring a new suit on the same cause of action. The Legislature has indicated his remedy and he must observe it (*Golabhai v. Kasanji*, P. J. 1897, p. 246).

When proceedings may be adjourned.

17. (1) Where, in the case mentioned in sub-section (2) of section 16, the Mamlatdar is not satisfied from the evidence before him that the notice has been duly served on the defendant, and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall adjourn the trial of the case and issue a fresh notice under section 14, sub-section (1) to the defendant.

(2) Where any witness who has been duly summoned, or for whose arrest a warrant has been issued under sub-section (2) of section 15, fails to attend on the day and at the place fixed, the Mamlatdar may, if he considers there is sufficient reason, after taking the evidence of those present, adjourn the hearing of the suit from time to time till the attendance of such witness can be enforced.

(3) The Mamlatdar may, for any other sufficient reason to be recorded in writing, adjourn the trial of the case for such time as he thinks fit, but not ordinarily exceeding ten days.

(4) The provisions of sections 15 and 16 shall apply in respect of any day to which the trial of the case may be adjourned under this section, as if such day were the day originally fixed for the trial.

Commentary.

Note.—This is section 14 of the old Act.

Late service of summons.—Defendant was served with a summons on 23rd December 1887 ; next day the case was disposed of. The Mamlatdar refused to adjourn to enable defendant to adduce evidence. *Held,* that under this section the defendant was entitled to proper notice and that another day should have been fixed for the trial on account of the late service of the summons (*Muse Saleman v. Vali,* P. J., 1888, p. 185).

Minor may be a party.

18. (1) A minor may sue or be sued, if he is represented by a natural or duly appointed guardian.

Power to add parties.

(2) The Mamlatdar may, at any stage of the proceedings, order that the name of any person to whom possession or enjoyment of the property or use claimed, or of any part thereof, may have been transferred, or the addition of whom as a party appears necessary in order to enable the Court effectually and completely to adjudicate upon the issue, be added as a plaintiff or defendant, as the circumstances of the case may require:

provided that no person shall be a added as a plaintiff without his consent:

provided also that in respect of any person so added, not being a transferee pending the suit, the suit shall for the purposes of section 5, sub-section (3), be deemed to have been instituted on the day when his name was so added.

Procedure in case of death of party.

(3) In case of the death of any party while the suit is pending,

(*i*) if application is made within one month of such death, the Mamlatdar shall determine summarily who is the legal representative of the deceased party and shall enter on the record the name of such representative;

(*ii*) if no such application is made, the suit shall abate.

(4) Where the Mamlatdar orders the name of any person to be added as a defendant or enters on the record the name of any person as the legal representative of a deceased defendant, the Mamlatdar shall issue to such person a notice as provided in section 14, and the trial shall proceed on the date fixed in such notice.

Commentary.

Note—This section is new.

Minor means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority.

Cl. (1).—This clause is inserted to make the law clear on the point that a minor can sue and be sued under the usual conditions (*Dattatraya v. Waman,* 21 Bom. 88 ; *Shidappa v. Narsinhacharya* , P. J. 1886, p. 727 and *Sayad v. Sayad,*

1 Bom. L. R. 664). In the former case (21 Bom. 88) it was *held* that the Mamlatdar's Act, 1876, makes no provision for infants suing in the Mamlatdar's Court. But there is no reason why they should not. An infant is as much entitled to have his possession protected as an adult. The Code of Civil Procedure of 1859 made no provision for infants' suing, and yet suits were often brought by infants' suing by their next friend when that Code was in force. It is an axium of English law that an infant can sue by his next friend, and it is proper that a Mamlatdar's jurisdiction should not be restricted by holding that an infant cannot sue in his Court in the usual way in which infants sue. *Simpson on Infants*, p. 469 shows that miscellaneous applications made by an infant are always made through their next friend.

Guardian.—'Guardian' means a person having the care of the person of a minor or of his property, or both his person and property (*Guardians and Wards Act* (VIII of 1890), s. 4, cl. (2).

Natural guardian—'Natural guardian' is one who is entitled to under the personal law to which he is subject to act as the guardian by virtue of his relationship to the minor.

Legal representative.—For the definition of the term "legal representative" *vide* Civil Procedure Code, s. 2 (11).

Cl. 2—Power to add parties.—This proviso is added on the analogy of the similar provision in s. 32 of the Code of Civil Procedure (*Statement of Objects and Reasons, Notes*). The power to add parties is intended to prevent disturbers of possession from evading recovery by a transfer of possession to third parties on the eve of suit or *pendente lite*.—(*Report of the Select Committee*). In *Balwant v. Ambabai* (P. J. 1891, p. 350), which was a case under the repealed Act the Mamlatdar was held not to have jurisdiction to add new parties. In this case B sued for possession in a Mamlatdar's Court and A alleged that B was her agent, but that she had cancelled B's power. The Mamlatdar made B a co-plaintiff. *Held* that under Bom. Act III of 1876, A should not have been joined but B's suit should have been dismissed, as he had no right to sue.

Cls. (3) and (4).—In view of the fact that the death of a party would already preclude a new suit being brought under this Act in cases where the period of limitation had expired, we have made provision, for a summary procedure, enabling representative to be brought on the record (*Report of the Select Committee*).

Cl. (4), Sub-cl. (ii).—This sub-clause is inserted to make the law clear that suits abate on the death of either party (*Gaupatram v. Ranchhod*, 17 Bom. 645)—(*Statement of Objects and Reasons*).

Abatement of Suit.—When a suit abates or is dismissed no fresh suit shall be brought on the same cause of action (*Civil Procedure Code*, O. 22, Rule 9).

Points to be decided by Mamlatdar at hearing.

19. (1) On the day fixed, or any day to which the proceedings may have been adjourned, the Mamlatdar shall, subject to the provisions of section 16, proceed to hear all the evidence that is then and there before him, and to try the following issues, namely :—

(*a*) If the plaintiff avers that he has been unlawfully dispossessed of any property or deprived of any use :—

(1) whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed ;

(2) whether the defendant is in possession at the time of the suit, and if so, whether he obtained possession otherwise than by due course of law ;

(*b*) if the plaintiff avers that he is entitled to possession of any property or restoration of any use by reason of the determination of any tenure or other right of the defendant in respect thereof:—

(1) whether the defendant is in possession of the property or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims ;

(2) whether such right has determined at any time within six months before the suit was filed ;

(3) whether the defendant is other than a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, and other than the legal representative of such former owner or part-owner ;

(*c*) if the plaintiff avers that he is still in possession of the property, or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has attempted to disturb or obstruct, him in his possession or use :—

(1) whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed ;

(2) whether the defendant is disturbing or obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment ;

(3) whether such disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months before the suit was filed.

Power of Mamlatdar to examine other witnesses and inspect property in dispute.

(2) The Mamlatdar may, after due notice to, and in the presence of, the parties, summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interests of justice so to do, and may, if he thinks fit, make a personal inspection of the property in dispute in the presence of, or after due notice to, the parties. [*a*] He shall without unnecessary delay record a memorandum after hearing the parties on the spot, if present, of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case. [*a*].

[*a*—*a*] These words were added by Bom. XI of 1928, First Schedule.

(3) The Mamlatdar shall with his own hand make or sign a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, and briefly record his reasons for his finding.

Record of proceedings by Mamlatdar.

(4) Where the Mamlatdar's finding upon the issues is in favour of the plaintiff, he shall make such order, not being in excess of the powers vested in him by section 5, as the circumstances of the case appear to him to require ; and where his finding is in favour of the defendant, he shall dismiss the suit. In either case the costs of the suit, including the costs of execution, shall follow the decision.

Orders to be passed by Mamlatdar upon decisions in favour of plaintiff and defendant.

Commentary.

Note.—This is with some additions to section 15 of the old Act. It should be read with sec. 5 *ante* which is the section which gives jurisdiction to the Mamlatdar (*Nanabhai v. Dwarkadas*, 3. Bom. L. R. 681).

Cl. (*1*).—**Written statements.**—This Act does not require defendants to file written statements, nor is it contemplated by that Act that a written statement should ever be put in. The Mamlatdar is apparently expected by examination of the defendant or his pleader to ascertain what his defence is. But if in a rare case the Mamlatdar permits the defendant to file a written statement, there is nothing in the Court fees Act that renders such a statement liable to a court fee. If it takes the form of an application or petition, then under the second paragraph of cl. (*b*), Art. I of Sch. II of the last named Act, it will be liable to a Court fee of 8 annas. (*G. R. No. 1267, dated 11th February 1885, R. D.*)

"**Deprived of any use.**"—'Any use' must be taken to mean any use of roads or customary ways as well as any use of water from any wells, &c. (*Bhau v. Ahmedbhoy*, 8 Bom. L. R. 312 at p. 321).

A Mamlatdar having an impression from his examination of the parties unfavourable to the claim of the plaintiff to an injunction, is bound to take the evidence offered by the plaintiff as to actual user and the nature and extent of the obstruction to it caused by the defendants (*Keshav v. Damodar*, P. J. 1887, p. 46).

Second dispossession within six months of first dispossession.—Plaintiff obtained a Mamlatdar's decree for possession against G on the 19th May 1895. When he went to take possession in accordance with the decree, he was obstructed by the first defendant. He filed within six months from the first dispossession a fresh suit stating the obstruction as his cause of action. The defendant contended that the action could not lie until plaintiff proved actual possession. The Mamlatdar laid down the proper issues under this section, but instead of proceeding to try and determine them dismissed the suit without examining witnesses. The High Court *held* that the Mamlatdar failed to exercise jurisdicrion and directed him to proceed to hear and determine those issues and pass decree accordingly (*Virappa v. Virbhadrapa*, P. J. 1896 p. 593).

Right derived from the Plaintiff.—A Mamlatdar rejected, under this section, a suit by the assignee of mortgagee for possession against the mortgagors who had leased the lands from the mortgagee, but whose lease had expired.

Held, that the defendants were holding by a right derived from a person through whom the plaintiff claimed, and that the Mamlatdar was in error in declining jurisdiction (*Merwanji v. Ganpati*, P. J. 1897, p. 418).

Enjoyment of use.—A person is in the enjoyment of a use within the first issue when but for the obstruction he complains of he would be in use. This is the only reasonable interpretation of this clause having regard to the fact that the enjoyment of the user mentioned in the first issue prescribed by it does not refer to any enjoyment on the date of the suit (*Nanabhai v. Dwarkadas*, 3 Bom. L R. 681).

Possession of mortgagee.—The possession by a mortgagee is not possession "*on behalf*" of his mortgagor within the meaning of s. 15 of Bom. Act III of 1876 so as to give the Mamlatdar jurisdiction under that section (*Khanderao v. Narsingrao*, 19 Bom. 289).

Right of landlord to sue if tenant dispossessed.—A landlord who has let out his land to tenants cannot, on the tenants being dispossessed, bring a possessory suit in the Mamlatdar's Court under this Act. The tenants cannot be said to be in possession "on behalf of the landlord" under cl. (1) and the Mamlatdar has, therefore, no jurisdiction to try the suit (*Goma v. Narsingrao*, 20 Bom. 260. See also *Bhimaji v. Gopala*, 20 Bom. 264 note).

Denial of landlord's title.—In a possessory suit before a Mamlatdar under Act III of 1876, though it is not competent to a tenant to deny his landlord's title at the date of his lease, it is open to him to show that it has since determined, *e. g.*, on account of a sale by the landlord to the tenant, in which case the tenant would no longer be holding under a title derived from the landlord (*Vedu v. Nilkanth*, P. J 1896, p. 498).

As mortgagee in possession from the defendants the plaintiff let the mortgaged land to the defendants themselves under a rent-note dated 19th June 1894 for 11 months. The defendants having refused to vacate after the expiry of the term, he sued them in the Mamlatdar's Court for possession. The Mamlatdar finding that after the expiry of the term the defendants sold the land to the plaintiff, found on both issues against the latter and rejected his claim. The High Court on an application under its extraordinary jurisdiction passed the following judgment:—

"We do not see how the fact, if fact it be, that the plaintiff purchased the land after the period fixed in the kabulayat for cultivation had expired, could justify the Mamlatdar in finding both the issues against the plaintiff. The plaintiff is the mortgagee, the defendants are his tenants. The Mamlatdar finds that the defendants are in possession by virtue of a right derived from the plaintiff, but he does not say whether that right has determined at any time within six months before the suit was filed. We do not understand that the defendants plead any agreement under which their right to hold the land is prolonged. If there is no such agreement, and if the right has determined, a decree for plaintiff seems necessarily to follow. We reverse the order and direct the case to be re tried." (*Swarupchand Govindji v. Lalbhai Nhanubhai*, P J. 1896, p. 533).

Suit against one of joint tenants.—Where a Mamlatdar rejected a claim in a possessory suit without taking evidence on the ground that the suit would not lie as the opponent was one of two joint tenants the other of whom was not sued, it was *held* that the claim could only have been rejected if, after taking evidence, it had been found that the opponent was not in possession by a right derived by the applicants but that if the opponent was in possession under

a lease, granted by applicants to opponents and another person, which had expired within six months of the filing of the suit, applicants would be entitled to possession as against opponent even though the other tenant was not sued (*Antajt v. Tukaram*, P. J. 1891, p. 99).

Use on plaintiff's behalf.—Where the question for consideration is whether the servants of the plaintiff are actually in enjoyment in his behalf of the use of water from the well, the mere circumstance that the persons who use the well are the plaintiff's servants and live in his compound and draw water from the well is not sufficient to show that they use the well in his behalf. Servants in India generally make their own arrangements for food and water; and from the fact of the plaintiff's servants drawing water from the well, no presumption arises that they draw it for their master. They may use the water entirely for their own purposes. If it is shown that they draw water to bring to the plaintiff's house for the household purposes, or to water the plaintiff's garden, or that, in any other way, they use the well on his behalf, then a finding to that effect would alone justify a finding on the first issue in the plaintiff's favour (*Govind Kamala Patel Dandekar v. Frank Chalk*, P. J. 1888, p. 301).

Local inquiry.—A Mamlatdar holding a local inquiry of which there is no record and without notice to the parties commits a serious error in procedure; he cannot call a witness not summoned by the parties (*Krishna v. Vithu*, P. J. 1896, p. 726). It is a material irregularity in a Mamlatdar to make, behind the back of the parties, inquiries on the spot of several villagers and to keep no legal record thereof. A Mamlatdar, however, is at liberty to inspect, in the absence of the parties and without notice to them, the property in suit if he thinks it necessary to do so; but he cannot allow his mind to be influenced by the statements made to him on the spot in the absence of the parties (*Dari v. Revubai*, 2 Bom. L. R. 138). With reference to these rulings it appeared necessary to insert provisions in sub-cl. (2) to specifically enable the Mamlatdar to make personal inspections and to examine any person as a witness, although not summoned or produced on either side (*Statement of Objects and Reasons*).

Transfer of case.—The fact that there has been some slight disagreement between the Mamlatdar and the pleader for the defendants does not make it necessary for us to transfer the case, but we would point out to the Mamlatdar that it would be advisable for him to leave the examination of witnesses to the parties at any rate, in the first instance, and that it was not a proper procedure for him to read out to one witness the evidence of another and ask him if he had anything to add to that evidence. Witnesses should be examined independently and made to tell their own story (*Jibhai v. Desai*, P. J. 1896, p. 669).

Duty of Mamlatdar to take evidence.—A Mamlatdar, having an impression from his examination of the parties unfavourable to the claim of the plaintiff to an injunction, was bound to take the evidence offered by the plaintiff as to the actual user and the nature and extent of the obstruction to it caused by the defendant (*Keshaw v. Damodar*, P. J. 1887, p. 46).

Dispossesion of a third person in execution.—The opponent claiming to be entitled to unobstructed possession of the land in dispute, had obtained a decree to that effect in a suit in the Mamlatdar's Court at Karad, in the Satara District. The applicant was not a party to that suit. In execution of that decree the applicant was put out of possession of the land. The applicant, there-

fore, brought the present suit against the opponent, alleging that he had been in possession of the land under a registered deed of mortgage executed to him by N. The Mamlatdar, relying on G. R. No. 1673 of 11th March 1882, rejected the applicants' suit as *res judicata* by the former suit in respect of the same land. The applicant applied to the High Court under its extraordinary jurisdiction. It was *held* that the decree made by the Mamlatdar in the former suit under cl. (*c*) of sec. 15 of the Mamlatdars' Courts Act (III of 1876) was clearly no bar to the exercise by him of jurisdiction in the present suit inasmuch as the present plaintiff was not a party to the former proceeding (*Govinda v. Naiku*, 10 Bom. 78).

Compromise of suit.—In a suit before a Mamlatdar's Court the plaintiff stated that the matter had been compromised and that he was willing that the suit should be dismissed and to bear his own costs. The defendant admitted this and that the plaintiff was in possession but denied that he had obstructed his possession, *Held*, that the Mamlatdar should not have passed a decree for the plaintiff with costs and without notice of obstruction (*Shivdevrao v. Bhagwantrao*, P. J. 1895, p 502).

A memorandum of the substance.—A Mamlatdar trying a suit under Bombay Act III of 1876 may, if he sees sufficient cause, direct any document or book produced to be impounded and kept in the custody of an officer of the Court for such period and subject to such conditions as he thinks fit. After the decision any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document has been impounded by the Court, be entitled to receive back the same, provided that the document may be returned at any time before the decision of the suit, if the person applying for such return deliver to the Court a certified copy of such document to be substituted for the original. On the return of document which has been admitted in evidence, a receipt shall be given by the party receiving it in a receipt book to be kept for that purpose.

The practice of recording the issues and findings apart from the judgment is one which causes great inconvenience and should be discontinued. Distinct issues and findings should be recorded in every case and incorporated in the judgment.

The records of suits in Mamlatdars' Courts, under Bombay Act III of 1876, may be destroyed after the expiration of 6 years from the date of final decision. The registers in which suits have been entered will be permanently preserved, and a book should be kept, showing the numbers and years of the suits of which the records have been destroyed. The records of the older suits should be destroyed first.—Bom H. C. Civil Cir. Order Book, pp. 27 and 28.

Dismissal of suit.—Ganpat brought a suit against Ganesh under Mamlatdars Act, 1876, to recover possession of a *Math*. The Mahalkari of Parola found that the *Math* was not in the possession of any of the parties and that it was public property. He, therefore, decided the suit by ordering the Police Patel to take possession of the *Math*. Against this order Ganesh applied in the High Court under its extraordinary jurisdiction. The High Court decided that in disposing of the plaintiff's suit the Mamlatdar's jurisdiction was confined to determining whether the defendant was in possession of the *Math*. Having dismissed the suit, his jurisdiction ceased, and he could not make any further order in the matter authrizing the Police Patel to take possession as against the defendent. That part of the order is without jurisdiction (*Ganesh v. Ganpat*, P.J. 1895, p. 56).

"Costs of the suits."—The fee to be allowed to a pleader in suits before Mamlatdars' Courts is ordinarily to be Rs. 5, subject to increase by special order to a sum not exceeding Rs. 15—(*B. G. G*, 1884, Pt. I, p. 605).

Mamlatdar's order to be endorsed on plaint and read out in open Court.

20. Every order of the Mamlatdar, whether for rejecting or returning a plaint or whether for allowing or disallowing a claim, shall be endorsed by the Mamlatdar on the plaint and shall be read out by him in open Court, either at once or on some future day of which due notice shall be given to the parties or their pleaders, and brief reasons for the order shall be placed by him on record.

Note.—This is section 16 of the old Act with the addition of the requirement of reading the judgment in open Court.

Mamlatdar's decision how executed.

21. (1) Where the Mamlatdar's decision is for awarding possession or restoring a use, he shall give effect thereto by issuing such orders to the village-officers, or to any subordinate under his control, or otherwise, as he thinks fit:

Proviso as to growing crops.

provided that, notwithstanding anything contained in this Act, where, at the time when a decision is recorded by the Mamlatdar for awarding possession of any land, there is a crop on such land which has been sown by, or at the expense of, the defendant, and the Mamlatdar is satisfied that it has been so sown in good faith, the Mamlatdar may, and if the defendant makes an application for the purpose and furnishes sufficient security, or deposits in Court a sufficient sum, for the payment of the costs of the suit, shall pass an order staying delivery of possession of such land to the plaintiff seeking possession thereof, either

(*a*) until the plaintiff agrees to take the crop at a valuation, to be made under the orders of the Mamlatdar, according to the value of the crop at such time, including any instalments of the Government assessment which the defendant may have paid for the current year; or

(*b*) where the plaintiff is unwilling to take the crop at such valuation, until after the expiration of sufficient time for the crop to be gathered by the defendant.

The amount of any valuation made under clause (*a*) of the proviso to this sub-section shall be paid to the defendant through the Mamlatdar, and shall be recoverable from the plaintiff as an arrear of land-revenue.

Mode of serving injunction.

(2) Where the Mamlatdar's decision is for granting an injunction, he shall cause the same to be prepared in the form of schedule C, and shall deliver or tender the same then and there to the defendant, if present, or, if the defendant is not present, shall send it

to the village-officers, or to any subordinate under his control, to be served upon the defendant.

Recovery of costs awarded.

(3) Where the Mamlatdar awards costs, such costs, together with the costs of execution, shall be recoverable from the party ordered to pay them as an arrear of land-revenue.

Disobedience to an injunction how punishable.

(4) Any person disobeying an injunction granted under sub-section (2) shall be punishable under section 188 of the Indian Penal Code.

Commentary.

Note.—Compare section 17 of the old Act.

This section is imperative.—Sec. 17 of the Mamlatdars Courts Act, 1876, is imperative, and leaves to the Mamlatdar no decision as to the duty of enforcing the decree (*Rakhama v. Tulaji*, 19 Bom. 675).

Rules for execution.—This Act does not purport to provide detailed rules as to the application for execution, and a Mamlatdar's Court is not governed as to execution of decree by the ordinary rules of procedure; and provided the procedure followed gives effect in the end to the intention of s. 17, the Court will not interfere (*Ibid*).

Directions of Collector to Mamlatdar.—A Mamlatdar having under the direction of the Collector executed a decree passed by himself directing the removal of a dam, it was *held* that though it might be improper for the Collector to issue such direction, which legally could only issue from the High Court, the High Court would not set aside the execution if otherwise valid (*Ibid*).

"Mamlatdar's decision."—The decision of the Mamlatdar is binding only upon the parties to it. They are not binding on the third parties (G. R. No. 7416 of 31st March 1884).

Mamlatdar's duty on awarding possession.—When a Mamlatdar's decision awards possession, Sec. 17 of the Mamlatdar's Act, 1876, imposes on him the duty to issue an order to the village officers to give effect thereto. The duty is in no sense conditional on an application being made to the Mamlatdar for the purpose; it is absolute and qualified (*Balaji v. Kushaba*, 30 Bom. 415).

Limitation for execution.—If it be brought to the notice of a Mamlatdar that the duty imposed upon him has not been carried out, that is not an application without which the Mamlatdar could not act; it is merely a means of apprizing the Mamlatdar of the omission on the part of himself or his officers. There is a long line of authorities in India (*Kailasa v. Ramasami*, 4 Mad. 172; *Vithal v. Vithoji*, 6 Bom. 586; *Ishwardas v. Doshibhai*, 7 Bom. 316 and *Devidas v. Pirjade*, 8 Bom. 377), whereby it is established that where an imperative duty of the character described above is imposed upon a Court, then the Limitation Act has no application (*Ibid*).

Village officers

The term 'Village Officers' includes both the Patel and Kulkarni, and the order may be executed by either or both of them.

The Collector of Surat raises the question whether the village officers of alienated village are bound under this section to give effect to decision under this

Act. He remarks that except the Police Patel, village servants in such villages are mere private servants of the Inamdar. It is questioned whether village officers from neighbouring Government villages can legally give effect to decisions under the Act.

2. The difficulty does not seem to arise elsewhere than in Guzerat, as village officers are generally available and in Kolaba execution is entrusted, where there are no other officers to answer the description, to the talati to whose 'Saza' the inam village is for other purposes (*e. g.* for Vital Records) attached.

3. The Police Patel, it appears, is always available even in Surat and he is bound to give effect to the order, and if necessary, to use force in so doing. The village officers are acting in disobedience of the Mamlatdar's order to give effect to his decree if they refrain from all action on the mere objection of the losing party.' If the village establishment is insufficient, they should apply to the Mamlatdar whose duty it would be to represent to the higher officers of Government any necessity which might exist for the employment of any force not available on the spot to carry out the decree of the Court.—(15 Bom. 159.)

4. Apparently if the village staff were inadequate, the village officer might be authorized to give effect to the order by such agency as might be placed under his orders for the purpose. It is not necessary that the village officer should give possession with his own hands. It is his duty to 'give effect to' the order and a door, if necessary, may be broken open or other force used for the purpose (*Baji v. Sadashiv*, 5 Bom. H. C R. A. C. J. 158).

5. When an Act confers a jurisdiction, it impliedly grants also the power of doing all such acts or employing all such means as are essentially necessary to its execution.

6. If there is no hereditary village officer, it is competent to a Collector to appoint a stipendiary Petel or village accountant who shall perform all the duties of an hereditary Patel or village accountant 'as prescribed in any law for the time being in force' (Sec. 16, Bombay Land Revenue Code, 1879). It is provided of course that such appointment should not effect any rights of holders of alienated villages in respect of the appointment of the Patels. And, therefore, it would not be competent to a Collector to supersede any Patel whom an inamdar has of right appointed.

7. But it is legal and evidently customary to appoint for purposes which the inamdar's nominee is not intended to fulfil, such as the preparation of Vital Registers, and such matters of general administration ; and an officer so appointed might combine his duties in the alienated village with duties in other villages. A Talati, to whose 'Saza' an alienated village is attached for such purposes, as in Kolaba, appears, therefore, to be legally competent as a village officer to give, when required, effect to a decree of a Mamlatdar's Court, and for that purpose to use such means as he may be directed and such force as may be necessary.

8. It does not appear in what way village servants in alienated village are or have become mere private servants of the inamdar.

9. If watandars, even though under s. 17, Bombay Act III of 1874, are payable and nominated by inamdars, they would, it seems, be legally bound to render such service as is required by law (s. 69, Bombay Act III of 1874).

10. Government could in such villages confer on the holder of the village or on any agent of his all or any of the powers and duties of a Commissioner or

Collector under that Act, subject to such conditions as the Governor in Council shall think fit to prescribe.

11. The Act, though it guards the rights of holders of alienated villages, does not do away with the duties required by law from hereditary officers in such villages.

12. Bombay Act III of 1874 extends to 'alienated villages' so far as its provisions shall not conflict with the terms on which any such alienated villages may have been secured to the holder thereof. But there is nothing to show that it contemplated the conversion into mere private servants of the inamdar of hereditary village servants holding office 'connected with * * matters of civil administration.'—G. R. No 5626, dated 9th July 1892, R. D.

Use of force—When a Mamlatdar passes a decree for possession, it is his duty under s. 17 of the Mamlatdar's Act of 1876, not, merely to issue orders to the village officers to execute the decree, but also to see that effect is really given to his decision. For this purpose he may use force, if necessary, to eject the person against whom the decree is passed (*Shankar v. Martand*, 14 Bom. 157).

Building on land.—A Mamlatdar's order in a possession suit, permissive as to the removal of a house, imperative as to the delivery of the site, is such a one as can be enforced. The owner of the house can remove it if he likes (P. J. 1875, p. 287).

Cl. (2) provides some means of giving effect to decisions other than through the agency of the village officers, who are often interested, and even partizans, on one side or the other—(*Statement of Objects and Reasons*)

Dispossession of third party.—Where a person is dispossessed in execution of a Mamlatdar's decree against a third party, his proper remedy is by a suit, and not by a miscellaneous application Though the Mamlatdars' Courts, as constituted under this Act, are Civil Courts, subject to the revisional jurisdiction of the High Court, it does not follow that the provisions of the Code of Civil Procedure shall apply to cases for which the special procedure makes no provision. This section and the following, which relate to the execution of the Mamlatdar's decrees cannot be supplemented, as to matters, not referred to in those sections, by any of the provisions of the Code relating to the execution of decrees of Civil Courts (*Kasam v. Maruti*, 13 Bom. 552).

G got a decree for possession against P in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of O, who was in possession and who was not a party to the decree, *held*, that the Mamlatdar's order for the execution of the decree by the ouster of O was without jurisdiction, and that, it should be set aside under s. 622 of the Civil Procedure Code. If, however, the third person O has actually been dispossessed under that order, his remedy to recover possession is, as pointed out in *Kasam v. Maruti* (13 Bom. 552), by suit either before Mamlatdar or in a Civil Court (*Chinaya v. Gangava*, 21 Bom 775, P.J. for 1896, p. 194).

A obtained an order in a Mamlatdar's Court against G for possession of a house, and in execution N, who was found in possession of the house and who was reported by the village officers as holding possession for G, was evicted by order of the Mamlatdar. N then applied to the High Court. *Held*, that the Mamlatdar's order was, strictly speaking, beyond his authority, but that, as N's petition to the High Court contained no distinct denial that he was occupying merely on behalf of

the defendant, the High Court would not interfere in its extraordinary jurisdiction (*Nathekha v. Abdul Ali*, 18 Bom. 449).

Where a Mamlatdar's Court directed the decree in a possessory suit to be executed by the ouster of the applicant as against whom, however, he had dismissed the suit, the High Court following *Nathekha v. Abdul* (18 Bom. 449) reversed the order as being without jurisdiciion, leaving the applicant if dispossessed under it, to his legal remedies pointed out in *Chinaya v. Gangava*, P. J. for 1896, p. 194 (*Antu v Vishnu*, P. J. for 1896, p. 488).

Suit for possession in Mamlatdar's Court by person ousted.—A person ousted in execution of a decree of the Mamlatdar's Court to which he was no party can himself bring a suit for possession in the Mamlatdar's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree against other parties as a bar to the jurisdiction of the Mamlatdar (*Ningappa v. Adveppa*, 24 Bom. 397.)

Proviso as to growing crops.—There were frequent cases in which the exercise of the summary powers under the former Act had been known to cause great hardship to agricultural tenants, who were evicted either at or before harvest time, without any compensation for the crops they may have raised on the land. The hardship is especially great in cases where the tenant, often ignorant and in debt to the landlord, had been under a belief or expectation that his tenancy would be renewed and had, in consequence of such impression, sown crops on the land. Such an impression might be mistaken and incapable of any legal justification, but the hardship was none the less real. The former Act did not provide the Mamlatdar in such cases with any express power to deal equitably with growing or standing crops, so as to defer delivery of possession either until compensation had been paid to the tenant or until the crop had been removed by him. This equitable power is, therefore, given to him by the proviso to s. 20, cl. (1) of this Act. This proviso has been adapted, with some necessary modifications, from the provisions of rule 87 at pages 33 and 34 of the Bombay High Court Civil Circulars, regarding the practice generally followed in civil cases when there is a crop on the land of which possession has been awarded (*Statement of Objects and Reasons*).

Sown in good faith.—A person in possession of the land is entitled to the benefit if he has sown the field in good faith. But if he had any fraudulent motive at the time of sowing his field, then that is wrong, and the maxim of law is *Nullus Commodum capere potest de injuria sua propria, i.e.,* no man can take advantage of his own wrong (*Broom's Legal Maxims*).

As an arrear of land-revenue.—As to the provisions of law for the recovery of land-revenue, *see* Bombay Land Revenue Code, 1879, s. 150 *et seq.*

Form of schedule C.—As to the form of schedule C, see at the and of the Act.

Sub-Cl. (4).

In the case of *Reg. v. Krishnashet* (5 B. H. C. R. 46) when Bombay Act V of 1864 was in force, it was *held* that disobedience to a Mamlatdar's order regarding a right of way was punishable under s. 188 of the Penal Code. But the High Court have since *held* (Cr. Rg. No. 27 of 1896) that section refers to orders made for the public purposes and does not apply to an order made in a possessory suit between party and party. The result is that orders of the Mamlatdar can be

disobedyed with impunity. The sub-clause is inserted to restore the original intention. (*Cf.* Proceedings of the Legislative Council, Vol. XV, p. 23). (*Statement of Objects and Reasons*).

"Such costs."—These words evidently refer to the costs awarded by the Mamlatdar. Costs may be divided as follows :—

I. Costs awarded by the law itself, *e. g.*, costs awarded by sub-sec. 4 of s. 10, sec. 16, proviso 2. Bom. H. C. Civ. Cir. Or. (1903), para 69, p. 26, which awards a fee of Rs. 5 to a pleader.

II. Costs awarded by Court, viz :—

(1) Mamlatdar, *e. g.*, Bom. H. C. Civ. Cir. Or. (1903) para, 69, p. 26, which authorizes a Mamlatdar to award more than Rs. 5.

(2) The High Court.

III. Costs for *awarding* which there is no provision in the Act, viz :—

(1) By Mamlatdar, *e. g.*, when the suit abates under cl. *ii*, sub-section 3 of section 18

(2) By Collector, *e. g.*, s. 6 and sub-section 2 of s. 23.

(3) By the Hight Court.

IV. Costs for the *recovery* of which there is no express provision in the Act, viz :—

(1) Those incurred in the Collector's Court.

(2) Those incurred in the High Court. (*Venkatrao's Mamlatdars' Courts Act-5th Edition*, pp. 234-235).

Power of Mamlatdar to execute order of High Court regarding costs.—Where a Mamlatdar refused to levy costs ordered by the High Court in a case referred to it, on the ground that he had no jurisdiction to do so under s. 17 of Bom. Act III of 1876, it was *held* that he has the same power as regards costs decreed by the High Court as he has as regards costs decreed in his own Court, the litigation in the High Court being a continuation of of the suit in the Mamlatdar's Courts and any costs incurred being subject to the rules laid down in the Act (*Nemawa v. Devendrappa*, 16 Bom 238).

Disobedience of order.—An order passed by a Mamlatdar under Act V of 1864 (Bombay) directing the accused to keep open a right of way to privy, being in reality an injunction to refrain from disturbing the possession of the parties, was, therefore, within the jurisdiction of the Mamlatdar ; and a disobedience of such order is an offence under s. 188 of the Penal Code (*Reg. v. Krishnashet*, 5 B. H. C. R. Cr. 46).

A Mamlatdar has no power to commit a person to prison for contempt of Court for disobeying an injunction (*Ravji v. Frazer*, 8 Bom. L. R 638).

Possession to be given without prejudice to rights of parties.

22. Subject to the provisions of section 23, sub-section (2), and section 24, the party to whom the Mamlatdar gives possession or restores a use, or in whose favour an injunction is granted, shall continue in possession or use until ousted by a decree or order of a competent Civil Court:

provided, *firstly*, that nothing in this section shall prevent the party against whom the Mamlatdar's decision is passed from recovering by a suit in a competent Civil Court mesne profits for the

time he has been kept out of possession of any property, or out of enjoyment of any use :

provided, *secondly*, that in any subsequent suit or other proceeding in any Civil Court between the same parties, or other persons claiming under them, the Mamlatdar's decision respecting the possession of any property or the enjoyment of any use or respecting the title to or valuation of any crop dealt with under the proviso to sub-section (1) of section 21, shall not be held to be conclusive.

Commentary.

Note.—This section is the same as s. 18 of the old Act with some verbal alterations and additions.

Until ousted by decree or order of Civil Courts.—Section 1 of Bom. Act V of 1864 gives to Mamlatdar's Courts jurisdiction in case of dispossession within six months from the date of such dispossession, and relates to immediate possession; and under s. 15 of that Act (s. 22 of this Act) the party to whom such immediate possession is given by Mamlatdar shall continue in possession until evicted by a decree of a Civil Court. (*Basapa v. Lakshmappa*, 1 Bom. 642).

Though an order passed by a Mamlatdar under Bom. Act III of 1876 may be superseded by a decree of a Civil Court, a suit to set aside the order will not lie not being contemplated by s. 18 of that Act (*Tuljaram v. Bamanji*, P. J. 1894, p. 354).

Person bound by order.—A person is not bound by an order within the meaning of Art. 47 of Sch. II of Act XV of 1877, when that order was passed by a Mamlatdar without jurisdiction under Bom. Act. III of 1876. See *Shidlingapa v. Karibasapa*, 11 Bom. 594. The plaintiff's suit to redeem is, therefore, not time-barred (*Hasanbhai v. Lakshman*, P. J. 1889, p. 55).

Mesne profits.—'Mesne profits' means profits deprived from land whilst the possession of it has been improperly withheld.

Shall not be held to be conclusive.—A Mamlatdar's order is not conclusive evidence of the facts of possession and dispossession between the parties.—See *Basapa v. Lakshmapa*, 1 Bom. 624. (*Lillu v. Annaji*, 5 Bom. 387).

In a suit to recover possession brought within 6 months from the date of dispossession, the Mamlatdar's decision, in a proceeding under Bom. Act V of 1864, that the plaintiff was not in possession, is not conclusive (*Mudkappa v. Ningapa*, P. J. 1877, p. 115).

Decree for possession by head karkun.—A decree under the Mamlatdar's Act, having been passed by a head karkun having jurisdiction in the matter, confirming one in possession, a Mamlatdar cannot pass a second decree depriving him of such possession. He is entitled under s. 18 of the Mamlatdar's Act of 1876 to be continued in such possession until ousted by a decree or order of a Civil Court (*Bhimaji v. Genu*, P. J. 1898, p. 71).

What person is affected by Mamlatdar's order.—The only person who is contemplated as being affected by the Mamlatdar's giving possession to the plaintiff is the person against whom the decree is passed. This view of the Act may lead to a practical difficulty in the working of which it would be per-

haps advisable to remove by Legislation, but which is beyond the power of a Government Resolution to remedy as was apparently attempted to be done by G. R. No. 1673, 11th March 1882 (*Natheka v. Abdul Ali*, 18 Bom. 449).

Res judicata.—The rule of *res judicata* is laid down in s. 13 of Act X of 1877, and the rejection of a plaint under s. 13 of Bom. Act III of 1876 is a hearing and final decision of the suit within the meaning of s. 13 of the Civil Procedure Code. Consequently a plaintiff, whose plaint has been rejected for default in the Mamlatdar's Court under the Act, is debarred from bringing another possessory suit on the same cause of action in the Civil Court under s. 9 of the Specific Relief Act (*Ramchandra v. Bhikibai*, 6 Bom. 477). But see 24 Bom. 251.

A plaintiff who fails to attend with his proofs on the day appointed for the hearing of his suit, whether the defendant then attends or not, and whose plaint is rejected under s. 13 of the Mamlatdar's Act, 1876, has a right to apply to the Mamlatdar for a rehearing of the case under the proviso to that section, but cannot bring a new suit on the same cause of action (*Gulabbhai v. Kasanji*, P. J. 1897, p. 246).

Bar of appeal.

23. (1) There shall be no appeal from any order passed by a Mamlatdar under this Act.

Collector's power to revise Mamlatdar's proceedings.

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

Collector deemed to be a Court.

(3) Where the Collector takes any proceedings under this Act he shall be deemed to be a Court under this Act.

Commentary.

Note.—This is section 19 of the old Act with the addition of clauses 2 and 3. Under Bom. Act III of 1876 the Collector had no power to interfere with the Mamlatdar's order either by way of revision or by way of reference. But under cl. 2 of this section the Collector is now invested with the power to revise the Mamlatdar's proceedings.

Procedure.—An applicant or his pleader is entitled to a hearing before the Collector (*Vasudev Sadashiv v. Bhiwa Pandu*, 32 Bom L. R. 85).

Ref. A. I. R. 1925 Bom 522 followed.

A person dissatisfied with the decision of the Mamlatdar under this Act is entitled to be heard either in person or through his pleader when he applies to the Collector under this section to revise the order of the Mamlatdar before his application is rejected (*Ganpati Kondaji v. Maruti Gangaji*, 27 Bom. L. R. 1115).

Collector.—The Collector cannot pass any order in revision without due notice to the parties. Under the old law a Mamlatdar was not subordinate to the Collector and, therefore, the Collector had no authority to grant sanction for the prosecution of a person for having given false evidence before a Mamlatdar.—*R.*

v. Dhondi, Cr. Rg. of 21st November 1876. But now under this section a Mamlatdar is subordinate to the Collector and under cl. (*c*) of this section the Collector is a Court. The Collector is, therefore, for the purposes of this Act, a Civil Court, and can, therefore, give sanction for the prosecution of a person under s. 195 of the Criminal Procedure Code for any offence mentioned therein and committed either before a Mamlatdar or before himself.

Reference by Collector.—As no appeal or reference lies to the High Court from the Court of the Mamlatdar, it is not open to the Collector to make an application to the High Court under s. 50 of the Stamp Act, in reference to a document received in evidence by the Mamlatdar (*Dayalji v. Waman*, P. J. 1894, p. 118).

Power of Collector for revision.—The provisions of cl. (2) of this section which give the Collector power to interfere by way of revision when he considers any proceeding, finding or order in a suit to be improper, must be harmonized with the provisions in cl. (1), that there shall be no appeal from any order passed by a Mamlatdar. The Collector has, therefore, no power to weigh the evidence which was before the Mamlatdar and come to a different conclusion of fact with reference to the plaintiff's possession upon the evidence upon the record (*Kashiram v. Rajaram*, 35 Bom. 487).

When the finding of a Mamlatdar is based on nothing but the unsupported allegations of the plaintiff, it must be called a finding based on a total misappreciation of what evidence was. It is not based on evidence such as is necessary to establish a disputed claim and the error in the Mamlatdar's finding amounts therefore, not only to an error of fact but also an error of law. In such a case, therefore, the Collector is perfectly justified in setting aside the finding of Mamlatdar (A. I. R. 1922 Sind 18, s. c. 16 S. L. R. 106).

An order of the Mamlatdar can be set aside only if he considers that it is illegal or improper. He cannot set aside an order on the gaound that the Mamlatdar has entered upon complicated questions which are outside the province of the Act and which ought to have been referred to Civil Court However complicated a question may appear to be, he is entitled to go into it in order to determine whether possesion could be given to one party or the other (*Jagannath v. Dhondu*, 26 Bom. L. R. 265).

Where the Collector set aside in revision the Mamlatdar's order under this section and ordered him to proceed with the trial, it was held that the Mamlatdar is bound to give a decision after trial and cannot submit the evidence taken by him to the Collector for decision (*Rasul Musa Mafat v. Asman Musa Dadi*, 24 Bom. L. R 1311).

"Improper," interpretation of.—The word "improper" in cl. (2) of this section has reference to some proceeding, finding or order on the face of it tained with some impropriety akin to illegality. The word has no different meaning from the word "irregular" as occuring in the expression "irregularity" in s. 622 of the Civil Procedure Code of 1882 or s. 115 of the Code of 1908 (*Ibid*).

Collector not an appellate Court.—A possessory suit was decided by a Mamlatdar on a consideration of the documentary evidence in the case. In an application against the decision under this section the lower Court reversed the decision on appreciation of the documentary evidence. *Held*, that there was no illegality and no impropriety in the case giving rise to any need for revision under

this section; that the lower Court could not give itself jurisdiction by saying that the order appealed against was illegal or improper when its conclusion simply turned upon appreciation of documentary evidence and that, in arriving at its conclusion, it had exercised the powers of an appellate Court (*Hasan v. Rasul*, 37 Bom 595).

Collector does not include District Deputy Collector.—The term "Collectorr' in this section does not include "District Deputy Collector." Therefore, a District Deputy Collector has no authority to pass an order under this section. Where District Deputy Collector has assumed to act judicially, he will be treated as a Court under the superintendence of the High Court and his proceedings can be revised under the extraordinary jurisdiction (*Sonu v. Arjun*, 39 Bom. 552).

Assistant Collector can exercise the powers.—An Assistant Collector who is put in revenue charge of any portion of a district is empowered by s. 16 of the Land Revenue Code to exercise all the powers conferred upon the Collector of the District by this section (*Keshav v. Jayram*, 36 Bom 123).

Reference to High Court.—The Collector hearing an application under the provisions of this section has no power to make a reference to the High Court under s. 115 of the C. P. Code, inasmuch as he is not a Court trying a suit or appeal or executing a decree (*Dalpat v. Mahadu*, 14 Bom. L. R. 259).

Collector subordinate to High Court.—The High Court can, under s. 115 of the C. P. Code, interfere with the order made by the Collector under this Act. The Collector as a Court, under this Act, is subordinate to the High Court. The enumeration of Courts subordinate to the High Court in s. 3 of the C. P. Code is not exhaustive. Under this section the Collector has no authority to reverse decision come to by the Mamlatdar upon evidence (*Parshottam v. Mahadu*, 14 Bom. L. R. 947).

Sanction to prosecute.—A District Judge is authorized, under s. 195 (7) (*c*) of the Cr. P. C. to grant sanction for prosecution in respect of offences committed in the course of a possessory suit before a Mamlatdar in the District (*In re Gurunath, In re Ramchandra*, 5 Bom. L. R. 206).

Appeal to District Judge.—An appeal from an order passed by a Mamlatdar refusing sanction to prosecute for perjury in a possessory suit under this Act lies to the Disirict Court. The Collector has only the revisionary power, granted to him by this section, for the limited purpose specified in the clause. It does not on that account become the principal Court of Jurisdiction within the meaning of the expression as used in sub. cl. (3) of cl. (7) of s. 195 of the Code of Criminal Procedure (*Narayan v. Tukaram*, 9 Bom. L. R. 896).

Retrospective effect.—This Act being an enactment relating to procedure should be given a retrospective effect. No person has a vested right in any course of procedure. He has only right of the prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues (*Gulam v. Balu*, 9 Bom. L. R. 527). On the 24th September 1906 a suit was brought in the Mamlatdar's Court at Dohad for possession of a certain house in the town. Evidence was taken on the 22nd, 24th and 26th October. The judgment was delivered on the 17th November 1906 and possession was given under the decree on the 29th November 1906 In the meanwhile on the 29th October 1906 this Act came into force; it repealed the whole of the former Act of 1876

without any saving as to pending proceedings The new Act restricted the jurisdiction of the Mamlatdar to "lands or premises used for agriculture." *Held*, reversing the decree, that after the 29th October 1906, when the new Act received the sanction of the Governor General, it must be held that the Mamlatdar's Court had no further jurisdiction with regard to houses in towns or cities. (*Vajechand v. Nandram*, 9 Bom. L. R. 1028). But see *contra* the following case which has negatived the effects of the above two decisions. A suit in the Mamlatdars' Courts' Act, 1876, was commenced on the 24th February 1906. On the 29th October 1906, this new Act came into operation, which repealed the former Act. On the 26th January 1907 the Mamlatdar dismissed the suit. The plaintiff presented on the 12th March 1907, a petition for revision to the Collector It was under this section. The Collector held on the 6th April 1907, that he had no jurisdiction to entertain the application. *Held*, (1) that the Repealing Act should not give the right of revision in respect of proceedings commenced under the Act of 1876; (2) that on the words of the General Clauses Act, 1904, s. 7, it would be wrong to hold that the Collector had jurisdiction; because, so to hold would be to affect a legal proceeding in respect of a right which accrued under the old Act. To disturb an existing right of appeal is not a mere alteration of procedure (*Nana Aba v. Sheku Andu*, 10 Bom. L. R. 330).

High Court's powers of revision.—The High Court will be slow to exercise its powers of revision under s. 115 of the Code of Civil Procedure, unless the party, applying to the Court has no other remedy. It will not exercise these powers where the proceedings which are sought to be revised are purely summary proceedings which do not finally decide the dispute between the parties (*Irbasappa v. Basangowda*, 22 Bom. L. R. 746).

Extraordinary jurisdiction of High Court.—The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdition illegally or with material irregularity and may pass such order in the case as the High Court thinks fit (See section 622 of the Civil Procedure Code, 1882). This applies to the Mamlatdar's Courts in the Bombay Presidency (*Nana v. Pandurang*, 9 Bom. 97).

A suit was brought by *Sonu* against *Mahadji Govind* for restoration of possession of certain immovable property and the Mamlatdar ordered possession of the disputed property to be restored to Sonu. An application was made to the High Court for exercise of its extraordinary jurisdiction on the ground that as the suit was filed more than six months from the time of the dispossession, the Mamlatdar had no jurisdiction. It was contended by the opponent that the power vested in the Sudder Dewani Adawlut by Cl. 2, s 5 of Reg. II of 1827, was to be exercised only in the case of Courts which that Regulation constituted and not in the case of Courts constituted by any other law, and therefore the Mamlatdars' Courts are not subordinate Civil Courts within the meaning of that Regulation. *Held*, that the Mamlatdars' Courts, constituted under Bombay Act V of 1864, are subordinate Civil Courts within the meaning of cl. 5, s. 5, Reg. II of 1827. The High Court has, therefore, power, in the exercise of its extraordinary jurisdiction, to set side an order made by a Mamlatdar under Bombay Act V of 1864 (*Mahadji Govind v. Sonu bin Davlata*, 9 Bom. H. C. Rep. 249).

The grounds on which the jurisdiction of this Court was founded, were stated in *Mahadji v. Sonu* (9 Bom. H C. Rep. 249). It seems to us that the question whether that jurisdiction has or has not been abolished can only be answered by deciding whether the intention and effect of Bombay Act III of 1876 was to abolish the old Mamlatdars' Courts and creat new Courts under the same name, or whether the Act merely provided for the continuance of the old Courts with more extensive powers. In the latter case, we have no doubt that the jurisdiction of this Court continues ; in the former it might perhaps be necessary to hold that that jurisdiction had ceased and determined. It must be admitted that in portions of Bombay Act III of 1876, the phraseology employed is such as to afford some ground for the agreement that the Legislature intended to make a clean sweep of the existing Mamlatdars' Courts and of laws relating to them, and to call into existence and provide a constitution for an entirely new description of Courts. But this supposition is not in accordance with the preamble of the Act, which sets forth that the object was "to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts," or, in other words, to bring into one consolidating and amending Act so much of the old law and such new law as appeared neceesary for the continued regulation of the existing Courts. The phraseology of the Act seems to be borrowed from that of the Bombay Civil Courts' Act (No. XIV of 1869); and there is no mere reason to suppose that it was the intention to substitute new Courts for the old Mamlatdars' Courts than that it was the object of the latter Act to abolish the Zilla Courts and the Courts of Principal Sardar Amins and Munsifs, and to creat new Courts in their place. The intention of both Acts was to consolidate and amend, not to destroy and rebuild. If we had more doubt than we have on this question, it would be removed by the consideration of the very great improbability, that the Legislature, in giving largely increased powers to the Mamlatdars' Courts, would at the same time have exempted them from all supervision and control. The case will be returned to the Division Bench, with an intimation that in the opinion of this Bench, it has jurisdiction to deal with it (*Bai Jamna v. Bai Jadav*, 4 Bom. 168).

A Division Bench (*Pinhey and Nanabhai Haridas*, J. J.) of the High Court referred the following question for the determination of the Full Bench : "Whether the High Court should exercise its extraordinary jurisdiction under s. 622 of the Code of Civil Procedure, or otherwise, on behalf of persons who feel themselves aggrieved by orders passed by Courts below in cases in which it appears the law has specifically prescribed another remedy by suit or otherwise?" *Held* that the question did not admit of a precise categorial reply ; that the High Court could not impose on itself limitations without regard to circumstances ; but that the general principles govern the exercise, by the High Court, of its visitatorial or superintending powers to be deduced from a general survey of the authorities on the subject might be reduced to the form of the following seven propositions, the fifth of which would ordinarily govern in the class of cases alluded to in the question : (1) The visitatorial or superintending power of the High Court is so necessary and almost indispensable, that it is not to be wholly excluded even by a clause in a statute withdrawing cases under the statute from its control. When such a statute has been made a mere pretext or has been wholly misapplied, the case will be treated as one not really arising under the statute, but on an evasion or perversion of the Statute, and as such subject to the general control of the Court.

(2) The Court, having called up the record or proceedings of a subordinate Court, will itself investigate the facts on which a jurisdiction has been assumed or declined; on which it depends whether the subordinate Court could not legally deal with the matter in question, either at all or on the principle to which it has referred the case; or according to which its mode of inquiry or of action may or may not have been in contradiction rather than obedience to the rules of procedure, or the principles implied in them, to such a material extent as to defeat the purpose of the law. (3) If the Court finds that the external conditions of jurisdiction, of investigation, and of command, have been satisfied by the inferior Court, it will not substitute its own appreciation of evidence, or its own judgment thereon, for the determination of the inferior Court in any matter committed by the Legislature to the discretion of such Court. (4) Where an appeal is provided, the Court will not interfere by any peremptory order with the ordinary Courts of adjudication, save in cases wherein a defeat of the law and a grave wrong are manifest, and are irremediable by the regular procedure. (5) Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in another more formal suit, the Court will have regard to the intention of the Legislature that promptness and certainty should in such cases, be in some measure accepted instead of judicial perfection. It will rectify the proceedings of the inferior Court where the extrinsic conditions of its legal activity have plainly been infringed; but where the alleged or apparent error consists in a misappreciation of evidence or misconstruction of the law intrinsic to the inquiry and decision, it will intervene peremptorily only when it is manifest that by the ordinary and prescribed method an adequate remedy, or the intended remedy, cannot be had. (6) The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretional, and subject to considerations of the importance of the particular case, or of the principle involved in it of delay on the part of an applicant and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for or against the Court's intervention due weight is to be given to them, regard being always had to the principles already enunciated. (7) The Court will "sedulously abstain" from making any order or refusing to make it on grounds the appreciation of which is exclusively assigned by law to some other authority, provided the legal competence be exercised in good faith on matters that may reasonably be understood as within its lawful range (*Shiva Nathaji v. Goma Kashinath*, 7 Bom. 341).

The plaintiff sued in a Mamlatdar's Court for possession of certain lands, alleging that the defendants held them under a lease, the time of which had expired. The Mamlatdar found the execution of the lease proved, but held it to be colourable, and that the defendants did not hold under it. He, therefore, rejected the plaintiff's claim. The plaintiff applied to the High Court in its extraordinary jurisdicsion and obtained a rule to set aside the order contending that the Mamlatdar had no jurisdiction to decide that the lease was colourable, and that he ought not to have admitted evidence upon that point. *Held* (discharging the rule) that the matter was not one for the extraordinary jurisdiction of the High Court under s. 622 of the Civil Procedure Code (Act XIV of 1882). The Mamlatdar had not declined jurisdiction. He had considered the materials laid before him, and had come to a conclusion. That conclusion, if erroneous, ought to be corrected in

a regular suit and not by an application to High Court under s. 622 of the Civil Procedure Code (Act XIV of 1882) (*Kashinath Sakharam Kulkarni v. Nana*, 21 Bom. 732).

The opponents had obtained a decree for the possession of certain land against the brother and father of the applicants in the Court of the Mamlatdar at Karad, in the Satara district. The applicants were not parties to the suit. The decree was executed, and the opponents were put into possession. Thereupon the applicants, on the 19th May 1884, presented a petition in the Mamlatdar's Court, under s. 4 of Bombay Act III of 1876, alleging that they had been in actual possession of the lands and had been ousted from them in execution of the decree and praying that they might be again put into posseession. The Mamlatdar was of opinion that the matter was *res judicata*, and dismissed the petition. He relied on a circular of the Executive Government as his authority. The applicants applied to the High Court under its extraordinary jurisdiction. *Held* that it was not a case for the exercise of the extraordinary jurisdiction of the High Court. The Mamlatdar was no doubt guilty of a formal error. In the exercise of his judicial functions he was bound to be governed by the law as he understood it, or as it had been expounded by superior judicial authority, not as it was understood or expounded by unjudicial persons. This, however, was merely an irregularity on the part of the Mamlatdar not apparently involving an injustice to the applicants, who might bring a suit on their title if they had any (*Nana Bayaji v. Pandurang Vasudev*, 9 Bom. 97).

Where the finding of the Mamlatdar in favour of the plaintiff in a possessory suit is not satisfactory, the High Court would not interfere on behalf of the plaintiff although the Mamlatdar's judgment on the second issue were such as would ordinarily authorize the High Court to make an order in his favour (*Maneklal v. Jitsang*, P. J. for 1885, p. 156).

The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in the suits, that unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months, the applicant, alleging that the money had not been paid as agreed, applied for execution of the decree. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant thereupon applied to the High Court in its extraordinary jurisdiction and alleged that the money had not been duly tendered. *Held* that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so. *Held* also that the High Court would not go into the question as to the due tender of the money. It was not open to the High Court, in the exercise of its extraodrinary jurisdiction, to go into this question of fact, nor would it be proper to further the execution of an irregular decree especially as the applicant had a clear remedy by suit (*Ramrao v. Babaji*, 20 Bom. 630).

B had obtained a decree against S, the widow and heir of the plaintiff's husband's brother, and in execution, sold certain immovable property including a *thikan*, which was in plaintiff's possession, to the defendant, a karkun of the said B, possession having been delivered to him by the Court's bailiff. The plaintiff

brought this suit in the Mamlatdar's Court claiming that the thikan was in her possession and that the defendant caused her obstruction. The Mamlatdar awarded the claim. *Held*, declining to interfere with the decision, that there were circumstances in the case which made it doubtful whether the process of the Court under which the defendant was alleged to have been put into possession was not obtained by misrepresentation (*Ramji v Yaswda*, Prin. Judg. for 1878, p. 56 and *Gulabbhai v. Jinabai*, 13 Bom. 212, referred to (*Vinayak Narayan v. Jankibai*, P. J. for 1894, p. 165).

The High Court will not interfere under s. 622 of the C. P. Code, with the Mamlatdar's decision where he did not decline jurisdiction but wrongly admitted evidence and misappreciated it (*Kashinath v. Nana*, P. J. for 1896, p. 180).

Sub. cl. (3)—This sub-clause has been inserted for the technical reason that, failing such provision, any order of the Collector under the Act would be anomalous and might lead to difficulty in case of revision by the High Court (*Report of the Select Committee*).

Powers of the Court of the Judicial Commissioner of Sind.

24. The Court of the Judicial Commissioner of Sind may exercise over Mamlatdars' Courts in the Province of Sind the powers exercised by the High Court of Bombay over Mamlatdars' Courts in other parts of the Bombay Presidency.

Commentary.

Note.—This section is new which vests in the Court of the Judicial Commissioner of Sind the powers exercised by the High Court of Bombay over the Mamlatdar's Courts in this Presidency. The Sind Sadar Court having *held* that it is not vested with power of revision over the Mamlatdar's Court, the opportunity has been taken of providing for this Court in Sind revisional control identical with that exercised by the High Court in the rest of the Presidency (*Report of the Select Committee*).

Revisional powers of judicial Commissioner.—This section read with Bombay Regulation II of 1827 confers revisional powers on the part of the Judicial Commissioner in Sind. That Court has, therefore, the power to call for the proceedings of the Mamlatdar's Courts and to issue such orders thereon as the case may require. This Act itself enacts its own simple and summary procedure. The provisions of the C. P. Code have no application to the proceedings under this Act. A Mamlatdar should not proceed to pass an *ex parte* decision unless he is satisfied that the defendants had notice sufficient to enable them to appear on the date fixed for appearance at the place where the proceedings are held (*Khamiso v. Rasa*, 6 S L. R. 67).

Jurisdiction.—Under this section the judicial Commissioner's Court has the same powers as the High Court has in the presidency and that Court undoubtedly does exercise such revisional powers over the order of the Collector in its capacity as successors to the Sadar Diwani Adalat which exercised these powers under Reg. XI of 1917 and which powers were vested in the High Court by the Statute 24 and 25, Vict. Chapter 104. But two conditions are necessary for such revision: 1st is illegality or patent material irregularity and secondly, there should be no remedy except that by revision to the applicants (*Motumal Parumal v. Lachumal*, 16 S. L. R. 106; A. I. R. 1922 Sind 18).

25. Any plaintiff subscribing and verifying any plaint under this Act which he either knows or believes to be false, or does not believe to be true, in any material point shall be deemed to have committed an offence punishable under section 193 of the Indian Penal Code.

Punishment for verification of false plaint.

Commentary.

Note.—This is with some alterations, section 20 of the Bom. III of 1876.

Subscribing and verifying.—For an offence under this section subscribing and verifying a plaint must be done by one and the same person whether he be plaintiff or his pleader or recognized agent. If the plaint is subscribed by the plaintiff and verified by the pleader or recognized agent, it will not be an offence.

Section 193 of the Penal Code runs thus.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Giving false evidence—One Ravaji instituted a possessory suit against the applicant, Savanta, in the Court of the Chikodi Mamlatdar, Mr. Hayavadan. During the trial of the suit, he called a number of witnesses and also produced a lease on his behalf; but the Mamlatdar disbelieved them all and pronounced the lease to be a forgery. His claim was, therefore, rejected by the Mamlatdar, who, in his judgment, expressed an opinion that the witnesses should be prosecuted for giving false evidence; but before giving his formal sanction to such prosecution, he died. The successful defendant thereupon applied to the Collector to give the necessary sanction; but he ruled that the Court of the Mamlatdar was not a Civil Court within the meaning of section 468 of the Code of Criminal Procedure, and that no sanction was necessary to prosecute witnesses for giving false evidence in the Court of the Mamlatdar constituted by Bom. Act III of 1876. Savanta accordingly preferred complaints before Mr. Guerin, Magistrate (First Class) at Chikodi, who dismissed them holding that the Court of the Mamlatdar was a Civil Court, and that the complaints could not be proceeded with without a formal sanction of the successor in office of the deceased Mamlatdar. The defendant, therefore, applied to the High Court, praying for reversal of the Magistrate's order, or for a fresh sanction by that Court itself.

The judgment of the Court was delivered by —

Kemball, J.—"We have now heard this matter fully argued, and are of opinion that the First Class Magistrate was right in holding that he had no jurisdiction to entertain the complaint without sanction of the Court of the Mamlatdar in which the alleged offence was committed. It is contended for the applicant that the Mamlatdar's Court is not a Civil Court within the meaning of the Criminal Procedure Code, and in support of this contention we have been referred to sections 433 and 438 of the same Code in which a Revenue Court is spoken of as distinct

from a Civil Court, and also to section 18 of Bom. Act III of 1876, where a distinction is drawn between a Mamlatdar's Court and a Civil Court. To what class of Court the term "Revenue Court" in the Criminal Procedure Code relates we have no means of knowing; nor, indeed, do we understand why any distinction should have been drawn in the sections above quoted between it and a Civil Court, but that Code applies to the whole of British India, and it has been held in this Presidency in the cases of *Mahadji v. Sonu* and *Bai Jamna v. Bai Judav* that a Mamlatdar's Court is a Civil Court, so that the only question we have to consider is whether it is so in the sense of section 463 of the Criminal Procedure Code. No doubt, a distinction is taken in Bom Act III of 1876 between a Mamlatdar's Court and an ordinary Civil Court; but we are unable to discover any intelligible reason why the term Civil Court should be taken in the restricted sense of an ordinary Civil Court as distinguished from a Mamlatdar's Court, or why sanction for prosecution should not be as necessary and desirable in the case of an offence committed before or against the Mamlatdar's Court as in one committed against the ordinary Civil Court. (See sections 468 and 469 respectively.) The terms "a Civil Court" and "any Civil Court" seem to us necessarily to include a Mamlatdar's Court; and we cannot suppose that the Legislature intended to give to suitors in such Courts unlimited powers of prosecution. We understand that the Mamlatdar, who disposed of the particular case out of which this question has arisen, is dead; but he appears to have been prepared to give the requisite sanction. We are not aware whether any application has been made to his successor; but if not, it will rest with him on application being made, to consider whether or not to grant it now (*In re Savanta*, 5 Bom. 137.)

Bar of certain suits.

26. No suit shall lie under this Act

(*a*) against Government or against any officer of Government in respect of any act done or purporting to be done by any such officer in his official capacity, except where acting as a manager or guardian duly constituted under any law for the time being in force, or

(*b*) in respect of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure, 1898.

Commentary.

Note.—This section is new.

Cl. (a).—**Suit against Government or any officer of Government.**—The Bombay High Court in the case of *Balwantrav v. Spratt* (23 Bom. 761) decided that a Mamlatdar has jurisdiction under the Mamlatdars' Courts Act, 1876, to hear and determine a suit brought against officers of Government for acts purporting to have been done by them in their official capacity. In a subsequent case (*Motilal v. Collector of Ahmedabad*, 8 Bom. L R. 904), however, the same High Court *held* that a Mamlatdar's Court under Bom. Act III of 1876 has no jurisdiction to try a suit to which a Collector is a party. Now of course cl. (*a*) of this section settles this point finally.

Cl. (b).—This paragraph is inserted in view of the Rulings in *Ramchandra v. Narsinhacharya* (24 Bom. 251) and *Nagappa v. Sayad Budruddin*, (26 Bom. 353). Remedies under this Act on the one hand and the Specific Relief Act and the Code of Criminal Procedure on the other hand should, it is thought, be alternative and not cumulative. The amendment is intended to embody this view.

"Has been."—The words "has been" in cl. (*b*) of this section are used to include present proceedings, that is to say, proceedings that are pending (*Moti Jagta v. Indurai*, 52 Bom. 203; s c. 30 Bom. L. R. 98).

Clause (b) bars the jurisdiction of a Mamlatdar to try a possessory suit between parties when there is a civil suit pending between them in respect of any dispossession, recovery of possesion or disturbance of possession of the property in suit (*Ibid*).

Bar of suits.—This section clearly shows that a defendant in a possessory suit cannot *ipso facto* by filing a suit in the Civil Court oust the jurisdiction of the Mamlatdar. It is a question for the Mamlatdar whether he should proceed to decide the possessory suit or not (*Vasudeo Sadashiv v. Bhewa Pandu*, 32 Bom. L. R. 85).

A possessory suit filed in the Mamlatdar's Court was dismissed by the Mamlatdar on the merits. The plaintiff thereupon filed another suit under s 9 of the Specific Relief Act (I of 1877) in a Civil Court which allowed the claim and passed a decree in his favour. The Defendant applied to the High Court in its extraordinary jurisdiction and contended that the plaintiff's claim was *res judicata* and that the Mamlatdar's decree barred the second suit. *Held*, that having regard to s. 18 of the Mamlatdar's Courts Act (Bom Act III of 1876) the Mamlatdar's decision was not conclusive, and that the plaintiff was entitled to bring the second suit under s. 9 of the Specific Relief Act (1 of 1877) (*Ramchandra Balaji v. Narsinhacharya Yadunathacharya*, (24 Bom. 251). On the 22nd of December 1900, a Magistrate passed an order under s 145 of the Criminal Procedure Code (Act V of 1898), deciding, that, on the 20th of October 1900, one Sayad Martooza was in actual possession of certain land. On the 6th of March, 1901, the plaintiff brought this suit against the defendants (of whom the said Sayad Martooza was one) to recover possession of the said land, alleging that on the 10th of October 1900, the defendants had wrongfully dispossessed him of it. The Mamlatdar held that having regard to the Magistrate's order of the 22nd December, 1900, he had no jurisdiction to hear the suit.. On application to the High Court, *held* (remanding the case for disposal) that the Mamlatdar had jurisdiction to try the case. (*Nagappa v. Sayad Badruddin*, 26 Bom. 353) *Lillu v. Annaji*, (5 Bom. 387) distinguished.

SCHEDULE A.

FORM OF NOTICE TO BE ISSUED TO THE DEFENDANT UNDER SECTION 14.

Seal of
the
Court.

No. OF SUIT.

In the Court of the Mamlatdar of

Plaintiff;
Defendant,

TO DEFENDANT.—(Name, age, religion, caste, profession and place of obode).

WHEREAS (here enter the name, age, religion, caste, profession and place of abode of the plaintiff) has instituted a suit in this Court against you (here state the particulars of the plaint);

You are hereby summoned to appear in this Court at the village of in person or by duly authorized agent on the day of at o'clock m.. to answer the abovenamed plaintiff; and, as the plaint will be finally disposed of on that day, you must adopt measures to produce your documents and procure the attendance of your witnesses at the hour and place above fixed; and yoa are hereby required to take notice that, in default of such appearance at the before-mentioned time and place, the suit will be heard and determined in the absence of yourself and your agent.

Dated this day of 19 .

(Signed)

Mamlatdar.

Note—If you require your witnesses to be summoned by the Court, you should make an application to that effect to the Court without delay so as to allow of the service of the summonses a reasonable time before the within-mentioned date.

SCHEDULE B.

FORM OF NOTICE TO BE ISSUED UNDER SECTION 16.

Seal of
the
Court.

No. OF Suit.

In the Court of the Mamlatdar of

Plaintiff;
Defendant.

TO PLAINTIFF (OR DEFENDANT, as the case may be).

WHEREAS, in the suit above specified, instituted in this Court by the Court ordered on the day of last that and the said plaintiff (or defendant, as the case may be) has under date the day of applied to this Court to re-hear the case on the grounds that (here state the grounds);

This is to give you notice that the said application will be heard and determined on the day of at o'clock m, at the village of , and you are hereby required to take notice that, in default of your appearance personally or by agent at the said time and place, the application will be heard and determined in your absence and, if granted, a time and place for rehearing the suit will then be fixed.

Dated this day of 19 .

(Signed)

Mamlatdar.

SCHEDULE C.

FORM OF INJUNCTION TO BE ISSUED UNDER SECTION 21, SUB-SECTION (2).

Seal of
the
Court.

No. OF SUIT.

In the Court of the Mamlatdar of

Plaintiff;
Defendant.

To DEFENDANT

WHEREAS in the suit above specified the Court has this day found that you have disturbed or obstructed (or that you have attempted to disturb or obstruct) the said plaintiff in his possession of the under-mentioned property (or enjoyment of the under-mentioned use of water or use of roads, or otherwise as the case may be) by (here describe the disturbance or obstruction or attempted disturbance or obstruction found proved);

You are hereby prohibited from making any further attempt to disturb or obstruct (if necessary set forth the particular kind of disturbance or obstruction which the defendant is enjoined not to repeat) the said plaintiff in his possession of the said property (or otherwise as the case may be) otherwise than in execution of the decree of a competent Civil Court.

Dated this day of 19 .

(Signed)

Mamlatdar.

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THE MATADARS ACT, 1887.

Bombay Act No. VI of 1887.

[*30th January, 1888.*

An Act to amend the Bombay Hereditary Offices Act so far as it relates to Matadars.

Preamble.

WHEREAS some portions of the Bombay Hereditary Offices Act are found to be unsuited to matadars, and it is, therefore, expedient to amend the said Act and to enact special provisions for the regulation of the service of matadars ; It is enacted as follows :—

Short title.

1. This Act may be cited as the Matadars Act, 1887.

Extent.

It extends to the districts of Ahmedabad, Kaira, Broach and Surat ; but the Governor in Council may, from time to time, by notification in the *Bombay Government Gazette*, extend its provisions to any village in the Panch Mahals District.

Commencement.

It shall come into force at once : Provided that every appointment to any patel's office to which this Act applies, made under the provisions of the Bombay Hereditary Offices Act, or of Act [*a*] No. XI of 1843 (*an Act for regulating the service of hereditary officers under the Presidency of Bombay*) and still in force, shall hold good—

(*a*) until the time when, if this Act had not been passed, such appointment would become vacant, or until the expiry of two years from the coming of this Act into force, whichever first occurs, or,

(*b*) in the case of an appointment which has been made to have effect pending further orders, until such time as the Collector directs ;

and a fresh appointment under this Act in lieu of any such appointment as aforesaid shall only be made to have effect from the time when the latter appointment ceases to hold good.

Definitions

2. In this Act, unless there be something repugnant in the subject or context,—

(1) "matadar family" means a family to which the office of village patel, or some share in the discharge of the duties or in the exercise of the powers ordinarily appertaining to that office, belongs hereditarily ;

(2) "mata" means the aggregate of the rights, privileges and responsibilities vesting in a matadar family as such ;

(3) "member of a matadar family" does not include a female, or a person claiming through a female, whilst such female or person is, under section 2 of Act No. V of 1886 (*an Act to amend Bombay Act III of 1874*), postponed in the order of succession to the mata, or part thereof or interest therein, to a male member of the family ;

(4) "matadar" means a member of a matadar family whose name is entered in the register kept under section 5, and includes a representative matadar ;

(5) "representative matadar" means a member of a matadar family whose name is entered as a representative matadar in the said register ;

Act II of 1843 is repealed by Bom. Act 3 of 1874.

(6) "senior heir" means the heir who first acquired the right of inheritance, whether by birth, marriage or otherwise ;

(7) any word or expression which is defined in the Bombay Land-revenue Code, 1879, and is not hereinbefore defined, shall have the meaning given to it by that Code.

Expressions defined in the Bombay Land-revenue Code.

(8) In determining who is the heir to a matadar for the purposes of this Act, the rule of lineal primogeniture shall be presumed to prevail in the matadar family. (*Added by Bom. Act III of 1910, s. 3.*)

3. In applying the Bombay Hereditary Offices Act as amended by Bombay Act No. V of 1886 (*an Act to amend Bombay Act III of 1874*), and section 2 of the last-mentioned Act, to matadars, the term "watan" shall be deemed to mean all and each of the matas of a village, and a member of a matadar family shall be deemed to be a watandar, and the said Act, as so amended, shall be read subject to the following modifications, namely :—

Modifictions of Bombay Act III of 1874.

(1) sections 24 to 31, both inclusive, 36 to 59, both inclusive, 61, 62, 67, 69, 71 and clause (2) of section 73, and so much of section 73 as relates to orders passed under Part VI or Part VII or section 58 of the said Act, and in section 4 the definitions of "watandar" and "representative watandar," shall be deemed to be repealed ;

(2) in sections 33 and 34, the words "the coming into force of this Act" shall be taken to mean "the coming into force of this present Act," and the word "matadar" shall be substituted for the words "registered representative watandar" and "watandar" wherever they respectively occur :

(3) for the first four words of section 60, the words "when any person elected to officiate or a representative matadar" shall be deemed to be substituted.

4. Subject to the provisions of the last preceding section, this Act shall be read as one with the Bombay Hereditary Offices Act.

Construction.

Of the Register.

5. In the register of lands and allowances in consideration of which liability to perform service still exists, kept under section 65 of the Bombay Hereditary Offices Act the Collector shall specify for every village in which there are matadars :—

Matadars' service register what to contain.

(*a*) the number of distinct matadar families in the village separately recognized in the Collector's records ;

(*b*) the name of the representative matadar of each matadar family to which a right to hold the office of patel appertains ;

(*c*) the name of every other person directed by the Collector to be entered in the register under section 7 or 9 ;

(*d*) where there are more representative matadars than one, the order of rotation in which, failing the appointment of an officiator by election, the right to the patel's office is to vest in the said representative matadars ;

(*e*) the number of persons required to officiate as patels contemporaneously ;

(*f*) a description of the service lands held by each matadar family showing the area, survey numbers and the assessment thereof, together with the quit-rent, if any, payable, and the net amount of revenue alienated by Government;

(*g*) the amount and nature of the cash or other allowances, if any, held by each matadar family;

(*h*) the watan property or profits assigned under section 23 of the Bombay Hereditary Offices Act for the emoluments of officiators;

(*i*) such other particulars as Government from time to time direct.

The said register shall be amended from time to time whenever any change is made in any of the particulars therein specified in accordance with the provisions of this Act or of the Bombay Hereditary Offices Act.

Right to patel's office to appertain ordinarily to every matadar family.

6. In every village in which there are two or more distinct matadar families separately recognized in the Collector's records, a right to hold the office of patel shall ordinarily be deemed to appertain to each of the said families:

but exclusive right may be declared by Government to apperatin to one matadar family.

Provided that it shall be competent to the Governor in Council to declare, if, upon consideration of the past history of the tenure of the office in any village, and of the circumstances, so far as known, under which the village was founded, it shall appear to him equitable so to do, that the right to the patel's office in such village appertains [*a*] [to one or more than one of such families to the exclusion of the remainder of such families, and shall vest in such order as he may thereby determine, and every such declaration shall be conclusive evidence of the rights thereby affirmed].

Determination of matadars.

7. In the register prepared under section 5 the Collector shall enter the name of every member of a matadar family contained in any list of matadars made under the orders of Government subsequent to the year 1866: Provided that—

(*a*) if, for any village, no such list exists, or if, in respect of any matadar family, no person's name has been entered in any such list, or if at the time when this Act comes into force, there is any dispute pending as to the completeness or correctness of any such entry, the Collector shall hold a summary inquiry, and shall enter in the register the name of each member of a matadar family who shall appear to him to have been recognized in the records previous to the year 1867 as a matadar of the family for which such list or entry is wanting, or to which such dispute relates;

(*b*) if any person whose name should be entered in the register in accordance with any of the foregoing provisions is dead, the name of the heir next in succession, or, if there are two or more heirs of

[*a*] These words were substituted for the words "exclusively to one matadar family" and every such declaration shall be conclusive evidence of the exclusive right thereby affirmed by the Matadars Act amendment Act, 1890 (Bom. Act 3 of 1890), s. 1.

equal degree, the name of the senior heir, shall, subject to the provisions of section 2 of Bombay Act No. V of 1886 (*an Act to amend Bombay Act III of 1874*), be entered in the register instead of his.

Jurisdiction of Civil Courts.—The Civil Courts have no jurisdiction to entertain a suit brought by a person for a declaration that he was a representative Matadar of a Mata held by his father and grand-father, and to oust from the Mata another person whose name was already registered as a Matadar by the revenue authorities under this Act. Under this Act such disputes fall within the jurisdiction of the Collector (*Jivanbhai v. Narsidas*, 1 Bom. L. R. 180).

Determination of representative matadars.

8. (1) The name of one matadar shall be entered in the said register as the representative matadar of each matadar family to which a right to hold the office of patel appertains.

(2) For every such matadar family of which there is only one matadar, the said matadar shall be the representative matadar.

(3) If there are two or more matadars of any such matadar family, the Collector shall, as soon as may be after the passing of this Act, enter in the said register as representative matadar of the matadar family such one of the said matadars as shall appear to him to be the head of the matadar family.

Name of heir to be registered when a matadar dies.

9. On the death of a representative or other matadar, the fact shall be reported by the village officers to the Collector, and the name of the heir next in succession or, if there are two or more heirs of equal degree, the name of the senior heir, shall, subject to the provisions of section 2 of Bombay Act No. V of 1886 (*An Act to amend Bombay Act III of 1874*) "and to any declaration under the proviso to section 6 of this Act"* be registered in his stead.

"Provided that, in any case where the deceased matadar was not a sole representative matadar, if the heir next in succession is not a member of the branch of the matadar family to which the deceased matadar belonged but is another matadar of the same village, or is a member of the branch of another matadar of the same village, the share entered in the register against the name of the deceased matadar shall—

(*a*) if there is only one remaining representative matadar of the same village who is descended from the same original matadar as the deceased, pass to that remaining representative matdar,

(*b*) if there are more than one such remaining representative matadars, be divided among such remaining representative matadars in proportion to their shares,

and the register shall be corrected accordingly."

This proviso was added by Bom. Act III of 1910, s. 3.

Representative matadar.—Under this section "the heir next in succession" to a deceased representative matadar is to be ascertained by reference to the personal law which governs the parties. The grandson of the step-brother of a deceased matadar is entitled to succeed in preference to the mother's sister's son's daughter (*Daya Khushal v. Bai Bhiki*, 39 Bom. 478).

* The words in " " were inserted by Bom. Act III of 1910, s. 1.

Amendment of the register.

10. If at any time any person shall, by production of a certificate of heirship, or of a decree or order of a competent Court, satisfy the Collector that he is entitled to have his name registered under section 7 (*b*) or section 9 in preference to the person whose name the Collector has ordered to be registered, the Collector shall cause the entry in the register to be amended accordingly.

Of service.

Duties and privileges of matadars, as such.

11. Every matadar shall be bound, when so required by the Collector, to perform the duties customarily discharged by matadars, and shall have the privilege of signing the abstract of village-lands and revenues, and such other village-records as it may be customary for matadar to sign.

Area to which matadar's functions extend may in certain cases be reduced.

12. If within the limits of any village in which there are matadars a new village or hamlet has been, or shall hereafter any time be, formed, it shall be competent to the Collector, with the previous sanction of Government, to exclude the limits of such new village or hamlet from the area to which the functions of the said matadars extend.

Number of officiators requisite for patel's office to be fixed by the Collector.

13. The Collector may fix at his discretion, from time to time, the number of officiators requisite for the due discharge of the duties of every patel's office.

Right to office to vest in representative of families whose rights declared.

[*a*]14. In every village in which the Governor in Council makes a declaration under section 6, the right to the office of patel shall vest to the exclusion of all other matadars in the representative of each of the families whose rights are thereby declared, in such order as may therein be determined.

In every other case right of office to be enjoyed by matadar families in rotation.

15. In every other village the right to the patel's office shall vest in each of the matadar families entitled thereto in rotation.

Determination of order of rotation.

16. For the purpose of determining the order in which the said right shall vest in the said families, the Collector shall, as soon as may be after this Act comes into force, by written notice, require the matadars of the village to assemble in his presence.

On failure of majority of matadars to agree, Collector to determine order by lot.

If a majority of the matadars present in accordance with the said notice do not agree to some order of rotation, the order shall be forthwith determined by the Collector by lot, in the presence of the assembled matadars, in such manner as he shall think fit :

Proviso.

Provided that if, in the course of any proceeding held under the Bombay Hereditary Offices Act, an order of rotation for service of the representative watandars of the same families has been already settled by lot or by agreement

[*a*] This section was substituted by the Matadars (Amendment) Act, 1890 (Bom. Act III of 1890) s. 2.

of the parties, the order so settled shall hold good for the purpose of the last preceding section.

When officiator may be elected by matadars

17. On or in anticipation of the occurrence of a vacancy in the office of patel in any village to which section 15 applies, the matadars of the village [a] who are not deprived of the right of voting under sub-sectiod (2) of section 30 [a] may elect some member of the matadar family whose turn it is to enjoy the right of office to fill the vacancy.

Failing election of officiator by matadars, right of office to vest in representative matadar.

If a majority of the said matadars fail, within such reasonable period as shall be prescribed by the Collector in this behalf, to nominate some member of the matadar family aforesaid for the vacancy, or if the person nominated is disqualified for office, the right of office shall vest in the representative matadar of the said family.

Rules for elections to be prescribed by Government.

18. Elections under the last preceding section shall be held in accordance with such rules as the Governor in Council, by notification in the Bombay Government Gazette, from time to time, prescribes in this behalf.

Rules under this section regarding the election of Patels.

1. On, or in anticipation of, the occurrence of a vacancy in the office of Patel in any village to which section 15 of the above Act applies, the Collector, or with his sanction, an Assistant or Deputy Collector, shall issue a notice in the form hereto appended to all the Matadars of the village, fixing a date and place for the election of a Patel.

2. The date fixed for the election shall not be less than 14 days from the date of notice.

3. The notice shall be endorsed by all the Matadars of the village, or by as many of them as can be found, and a copy shall be posted up at the Chawri or at some other conspicuous place in the village. The original notice endorsed by the Matadars shall be returned to the officer issuing it before the date fixed for the election.

4. only females shall be allowed to vote by proxy, such proxy being in paper bearing one Rupee stamp and duly attested.

5. Each voter shall, in the presence of the presiding officer, write or cause to be written the name of his or her nominee on a piece of paper which shall be signed by the voter.

6. No elector shall vote for more than one person, provided that an elector, who is the guardian of a minor Matadar of the village, shall have two votes on each question.

7. An election fails,—

(1) if a majority of the Matadars do not attend in person (or in case of females, by proxy);

(2) if no person eligible under the Act obtains the votes of more than half the total number of matadars of the village;

(3) If the person elected is unfit or disqualified, or within 14 days declines, or fails to accept, the appointment.

[a-a] The words were inserted by Bom. Act VIII of 1922, s. 2.

8. If a majority of the total number of Matadars then and there agree upon the term, exceeding five years, during which their nominee is to serve, he shall be appointed for such term. Failing such agreement the term shall be five years (Section 23).

9. When an election fails, the presiding officer shall call on the representative Matadar of the family, whose turn it is to officiate, to serve in person or by deputy.

Form of Notice referred to in Rule 1.

Whereas a { Revenue and Police } Patel has to be appointed for the village of in the Taluka of the District, from the day of 18 , notice is hereby given to the undermentioned Matadars of the said village to appear at on the day of 18 , at o'clock in the office of the Collector of , there to elect a member of the family of Matadar, to serve in the abovementioned office for such term, not less than five years, as the Matadars may, on the date abovementioned, agree to fix :—

Matadars.

1.
2.
3.
4.

2. The abovementioned Matadars are also hereby informed that unless at lerst of them agree before me, on the date above specified, in nominating a qualified member of the family abovementioned, the representative Matadar whose turn has arrived will be appointed.

Date of issue.

Collector.

—*B. G. G. 1888, Pt I, p. 198.*

Representative matadar must ordinarily officiate in person.

19. Every representative matadar in whom the right of office vests under section 14 or 17 shall ordinarily be required by the Collector, if he is not disqualified for office, to officiate in person: but the Collector may, if he thinks fit, dispense with his personal service.

On refusal by one representative matadar to officiate in person, turn to enjoy right of office to pass.

If, in any village to which section 15 applies, the representative matadar of the family whose turn it is to enjoy the right of office declines, when so required by the Collector to officiate in person, the turn to enjoy the said right shall pass to the matadar family next in the settled order of rotation.

Other employment when prohibited to representative matadar's failure to reside in village.

A representative matadar who declines, whilst officiating, to forsake some other employment which, in the opinion of the Collector, is incompatible with the due discharge of the duties of the patel's office, or fails when so required by the Collector to reside in the village for which he is appointed, shall be deemed to decline to officiate in person.

When deputy may be appointed by representative matadar.

20. A deputy may be appointed at any time—

(*a*) by a representative matadar who is, or who whilst officiating in person becomes, disqualified for office; and

(*b*) with the Collector's permission, by a representative matadar who does not wish to officiate or to continue to officiate in person, although not disqualified for office; and

(*c*) by a sole representative matadar, who proposes to officiate or is already officiating in person, when one or more other officiators are necessary.

"Provided that no representative matadar, who is disqualified under clauses (*f*) (*g*) or (*h*) of sub-section (1) of section 30 shall be entitled to appoint a deputy."—*Inserted by Bom. Act III of 1910, s. 3.*

Removal of deputy.

A deputy appointed by a representative matadar may at any time be removed from office by the Collector at the request of the representative matadar, if, in the opinion of the Collector, there are good reasons for such request.

Procedure when appointment of deputy has to be made by representative matadar.

21. When an appointment of a deputy has to be made by a representative matadar, the Collector shall, by written notice, require him to nominate a fit person to be his deputy within twenty days from the date of service of the said notice.

Should the representative matadar fail, within the said period, to nominate any person, or if the person he nominates is not a member of a matadar family of the same village, or is disqualified for office, the Collector may, in his discretion, extend the period of nomination for a further term of ten days.

If within the prescribed period of twenty days, or, when the Collector extends the period, within the extended term, no person is nominated by the representative matadar, or the person nominated by him is not a member of a matadar family of the same village, or is disqualified for office, the turn to enjoy the right of office shall "pass to the representative matadar or matadar family next in the settled order of rotation according as section 14 or section 15 applies to the village."

Note.—The words in " " were substituted for the original words by Bom. Act III of 1910, s. 3.

Appointment of deputy when to be made by Collector.

22. If a sole representative matadar declines, when so required by the Collector, to officiate in person, or fails to appoint a fit person to be his deputy in accordance with the provisions of the last preceding section the Collector shall appoint a deputy.

Such deputy ordinarily to be a member of matadar family; but with sanction of Government may be any other person.

A deputy so appointed by the Collector shall ordinarily be a member of the matadar family of the village for which he is appointed, but, "if there is no member of such family fit and willing to officiate, any other person may be appointed."

Note.—The words in " " were substituted for the original words by Bam. Act III of 1910, s. 3.

"22A. When a representative matadar whose turn it is to enjoy the right of office is disqualified for office under clauses (*f*), (*g*) or (*h*) of sub-section (1) of section 30, he shall be deemed to have failed to appoint a deputy, and the turn of office shall pass in accordance with section 21, or a deputy shall be appointed by the Collector in accordance with section 22, as the case may be."—*Insrted by Bom. Act III of 1910, s. 3.*

Procedure where a disqualified representative matadar is not entiled to appoint a deputy.

23. If a matadar is under eighteen years of age, or is disabled by lunacy or imbecility of mind, the guardian or other legal curator of his person may act in his behalf in any of the matters provided for in sections 16, 17, 20 and 21.

Guardian may act on behalf of matadar legally incompetent.

24. The term of office of a sole representative matadar shall be for life, if the representative matadar shall not in the meantime become disqualified for office.

Term of office of sole representative matadar, and

The term of office of a person elected under section 17 shall be for five years, or for such longer period as a majority of the matadars shall, at the time of election, desire, if the person elected shall not in the meantime die or become disqualified for office.

of an elected officiator.

The desire of the matadars as to the duration of the term of office of any person elected by them under section 17 shall be ascertained in accordance with the rules prescribed under section 18 for determining nominations.

25. The term of office of a representative matadar in whom the right of office vests on failure of an election under section 17 shall be—

Term of office of representative matadar entitled to office on failure of election.

(*a*) five years, when the number of representative matadars exceeds nine ;

(*b*) seven years, when the number of representative matadars exceeds four but does not exceed nine ;

(*c*) ten years, when the number of representative matadars does not exceed four.

26. A deputy appointed by a representative matadar, or by the Collector in his stead, shall be appointed for the term, or for the residue of the term, of office of the representative matadar by or for whom he is so appointed ; and, if a deputy dies or resigns or becomes disqualified for office during the said term, another deputy may be appointed for the residue of the said term in accordance with the provisions of sections 21 and 22 :

Deputies to be appointed for period of their principal's term of office.

Provided that—

(*a*) if a representative matadar who has appointed a deputy because he himself was disqualified for office, or because he did not wish to officiate in person, subsequently at any time during his term of office wishes to officiate in person, he may, if he is not then disqualified for office, be permitted so to do by the Collector ;

(*b*) if a representative matadar dies during his term of office, the deputy, if any, officiating in his stead shall cease to officiate, and the

successor of the representative matadar shall, subject to the provisions of section 19, officiate in person for the residue of the said term, or a deputy shall be appointed by him or by the Collector in his stead for the said period, according to the provisions of sections 20, 21 and 22.

No change of officiator to be permitted during last year of representative matadar's term of office.

27. Notwithstanding anything hereinbefore contained to the contrary, no representative matadar in any village to which section 15 applies shall be permitted to commence to officiate in person, and no new deputy shall be appointed by or for a representative matadar in any such village during the last year of the term of office of such representative matadar.

If occasion arises for any such change, office to be deemed vacant.

If occasion arises during any such year for any change of an officiator in any such village, there shall be deemed to be a vacancy in the office.

Appointment of temporary officiators by Mamlatdar or Mahalkari.

28. During any interval between the occurrence of a vacancy in a patel's office and its being filled up in accordance with the foregoing provisions, and during the time that any officiator is suspended, the "mamlatdar or mahalkgri, as the case may be" may appoint such person as he thinks fit, whether a member of a matadar family of the village or not, to officiate temporarily.

Note.—The words in " " were substituted for the original word "Collector" by Bom. Act III of 1916, Sch. 1.

Officiators to retain substitutes during their absence or illness.

29. If an officiator is temporarily absent from his village, or is temporarily prevented by illness from discharging the duties of his office, he may depute some other fit person, whether a member of a matadar family of the village or not, to perform the said duties, but shall be responsible for the acts and omissions of the person so deputed as if they were his own acts and omissions.

Of the Disqualifications for the Patel's Office.

What persons to be deemed disqualified for office.

30. (1) The following persons shall be deemed to be disqualified for the patel's office, namly :—

(*a*) females ;

(*b*) persons under eighteen years of age ;

(*c*) any person who has not passed such educational test, if any, as Government think fit, from time to time, to prescribe in this behalf ;

(*d*) any person who has attained sixty years of age, except when such person's appointment or further continuance in office is specially permitted by the Collector ;

(*e*) any person who, in the opinion of the Collector, is disabled by lunacy or imbecility of mind, or by deafness, blindness or other permanent infirmity of body ;

"(*ee*) Any person who is considered by the Collector to be unfit for office on the ground that he is a wilful defaulter, in respect of land revenue or any sum expressly declared by any law for the time being in force recoverable as an arrear of land-revenue ;" (*Inserted by Bom. Act III of 1910, s. 3*).

(*f*) any person who [1] * * * is adjudged by the Collector, after a summary inquiry, to be of general bad character [2] and whose disqualification on account of this being so adjudged has not been removed by an order which the Collector is hereby empowered to make in this behalf; [2]

(*g*) any person who has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having subsequently been reversed or quashed, and whose disqualification on account of such sentence has not been removed by an order which the Commissioner is hereby empowered to make, if he shall think fit, in this behalf;

(*h*) any person removed from office "or declared to be ineligible for re-employment" under section 31, except when such person's re-employment is expressly sanctioned by the Commissioner.

Any officiator who during his term of office becomes disqualified for any of the above reasons shall cease to officiate.

Note—The words in " " were inserted by Bom. Act III 1910, s. 3.

[1] (2) Any matadar who is disqualified under clause (*f*) or clause (*g*) of sub-section (1) shall, so long as his disqualification has not been removed as aforesaid, be deprived of any right which he would otherwise have of voting at an election of an officiator, or of appointing a deputy to officiate.[1]

Of Penalties.

Punishment of matadars and officiators by fine, and

31. Any matadar who shall neglect or refuse to comply with any order made by the Collector under section 11, and any matadar or officiator who shall be careless or negligent in the discharge of his duties, may be punished by the Collector, for each such offence, by fine which may extend to one-fourth part of the annual emoluments of such matadar or officiator.

of Officiators by suspension or removal from office

If an officiator shall be accused of any misconduct which shall seem to the Collector to require a severer punishment than that aforesaid, the Collector may suspend him from office during investigation into such accusation, and, after holding a summary inquiry, may, if he consider the officiator guilty of misconduct meriting such punishment, suspend him from office for a further period not exceeding six months, or, if fraud or wilful framing of incorrect records or other grave misconduct or offence is proved against him, may, with the previous sanction of Government, remove him from office, "or, if he has ceased to officiate, may declare that he is ineligible for re-employment without the sanction of Government."

Note.—The words in " " were added by Bom. Act III of 1910, s. 3.

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[1] Words repealed by Bom. Act XXIV of 1936 are omitted.

[2—2] These words were added by *ibid.*

[1—1] Sub-section (2) was substituted for the original sub-section (2) by Bom. Act XXIV of 1936.

When a representative matadar has been so removed from office, he shall, if Government so direct, be deprived for the rest of his life of any right which he would otherwise have of voting at an election of an officiator.....[2]

Disabilities of representative matadar removed from office.

If any representative matadar or deputy is removed from office under this section, the Governor in Council may direct the forfeiture of the life interest in the mata of the representative matadar so removed from office, or the representative matadar by whom the deputy so removed from office was appointed, as the case may be.

Forfeiture of life interest of representative matadar in case of removal from office.

32. Nothing in the last preceding section shall affect the liability of an officiator to a criminal prosecution for any offence which he may be accused of having committed; and the Collector may suspend any officiator subjected to any such prosecution pending the inquiry and trial, and at its close may take the proceedings and the finding of the Criminal Court into his consideration for the purpose of dealing with the case under the last preceding section.

Liability of officiator to criminal prosecution and suspension pending inquiry and trial.

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[2] The words repealed by Bom. Act III of 1910 are omitted.

THE
Bombay Maternity Benefit Act
(Bom. Act No. VII of 1929)
AND
THE BOMBAY RULES THEREUNDER.

THE
Bombay Maternity Benefit Act, 1929

Bom. Act No. VII of 1929

[*23rd May, 1929.*

(As amended by Bombay Act No. V of 1934)

An Act to regulate the employment of women in factories some time before and some time after confinement and to provide for the payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in factories some time before and some time after confinement and to provide for the payment of maternity benefit to them in the manner hereinafter provided ; and Whereas the previous sanction of the Governor-General required by sub-section (3) of section 80-A of the Government of India Act and the previous sanction of the Governor required by section 80-C of the said Act have been obtained for the passing of this Act ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Maternity Benefit Act, 1929.

Note.—Nothing in sections 2, 3 and 4 of the Bombay Maternity Benefit (Amendment) Act, 1934 (which have amended sections 3, 5 and 6 of this Act) shall apply for a period of six months from the date when the Act of 1934 comes into force to any woman who shall have been employed on the said date and who shall continue to be employed by the same employer for a period of six months hereafter.

Such woman shall be paid the maternity benefit to which she is entitled under the said Act in accordance with the provisions thereof, as if the Act of 1934 had not been passed.

Extent and operation.

2. (1) This Act shall apply in the first instance to the Bombay Suburban District and the cities of Bombay, Ahmedabad, Viramgam, Surat, Broach, Jalgaon, Sholapur, Belgaum, Amalner and Karachi. The Government may, from time to time, by notification in the *Bombay Government Gazette*, extend this Act to such other places as it thinks fit.

(2) It shall come into operation on the first day of July, 1929.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Employer" includes an occupier of a factory as defined in the Indian Factories Act, 1911, [1] and the manger of a factory ;

(*b*) the expressions "employ", "employed", "factory", and "inspector of factories" shall have the same meanings as are respectively assigned to them under the Indian Factories Act, 1911 ; [1]

(*c*) "maternity benefit" means the amount of money payable under the provisions of this Act to a woman employed in a factory.

[1] The Indian Factories Act (XII of 1911) was repealed by the new Factories Act (XXV of 1934).

[1] (*d*) 'wages' includes the money value of any earned grain concession, and any money paid to cover high cost of living but does not include a bonus given for regular attendance, or any deduction or payment made on account of fines.[1]

Employment of or work by women in factories prohibited during certain period.

4. After this Act comes into operation,—

(1) no employer shall knowingly employ a woman in any factory during the four weeks immediately following the day of her delivery; and

(2) no woman shall work in any factory during the four weeks immediately following the day of her delivery.

Right to payment of maternity benefit.

5. (1) Subject to the provisions of this Act, every woman employed in a factory shall be entitled to the payment of maternity benefit at the rate of eight annas a day [2] "in the cities of Bombay, Ahmedabad and Karachi, and elsewhere at the rate of her average daily wage calculated to the nearest quarter of an anna on the total wages earned during a period of three months immediately preceding the date on which she gives notice under sub-section (1) of section 6, or at the rate of eight annas a day whichover is less"[2] for the actual days of her absence for the period immediately preceding her confinement and for the four weeks immediately following her confinement as mentioned in sub-section (2) :

Provided that a woman shall not be entitled to maternity benefit unless she has been employed in the factory of the employer from whom she claims maternity benefit for a period of not less than [3]nine months immediately preceding the date on which she [4] gives notice [4] under sub-section (1) of section 6.

(2) The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be [5]eight weeks, that is to say,[5]four weeks up to and including the day of her delivery and four weeks immediately following that day. If a woman dies during this period the maternity benefit shall be payable only for the days up to and including the day of her death.

Procedure regarding payment of maternity benefit.

6. (1) Any woman employed in a factory and entitled to maternity benefit under the provisions of this Act, who is pregnant may, on any day, give notice in writing to her employer stating that she expects to be confined within one month next following, that her maternity benefit may be paid to her, and that she will not work in any employment during the period for which she receives maternity benfit.

(2) The employer shall thereupon permit such woman to absent herself from the factory from the following day until four weeks after the day of her delivery.

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[1] Clause (*d*) was inserted by Bombay Act V of 1934.

[2] These words were inserted by *Ibid.*

[3] The word "nine" was substituted for the orginal word "six" by Bombay Act V of 1934

[4] The words "gives notice" were substituted for the original words "notifies her intention" by Bom. Act V of 1934.

[5] Substituted for original words "seven" and "three" respectively, by *ibid.*

[a] "(3) Maternity benefit shall be paid by the employer to the woman entitled thereto after taking her wishes into consideration in any one of the following three ways, namely:—

(*i*) for four weeks—within forty-eight hours of the production of a certificate signed by a registered medical practitioner certifying that the woman is expected to be confined within one month next following, and for the remainder of the total period for which she is entitled to maternity benefit under sub-section (2) of section 5—within forty-eight hours of the production of a certified extract from a birth register stating that the woman has given birth to a child ; or

(*ii*) for the period up to and including the day of delivery—within forty-eight hours of the production of a certified extract from a birth register stating that the woman has given birth to a child, and for the remainder of the total period for which she is entitled to maternity benefit under sub-section (2) of section 5—punctually four weeks after the production of such certified extract from a birth register ; or

(*iii*) for the entire period for which the woman is entitled to maternity benefit under sub-section (2) of section 5—within forty-eight hours of the production within six weeks of her delivery of a certified extract from a birth register stating that she has given birth to a child :

Provided that no woman shall be entitled to any maternity benefit or any part thereof the payment of which is dependent upon the production of a certified extract from a birth register under the provisions of this sub-section unless such extract has been produced within six months of the day of her delivery."

Payment of maternity benefit in case of a woman's death.

7. If a woman entitled to maternity benefit under this Act dies during the period for which she is entitled to maternity benefit the employer shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the child; and if the child does not survive her to her legal representative.

No notice of dismissal to be given to a woman during period of maternity benefit.

8. When a woman absents herself from work in accordance with the provisions of this Act it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

Forfeiture of maternity benefit.

9. If a woman works in any factory after she has been permitted by her employer to absent hereself under the provisions of section 6 she shall forfeit her claim to the payment of the maternity benefit to which she is entitled.

Penalty for contravention of the Act by an employer

10. If any employer contravenes the provisions of this Act he shall, on conviction, be liable to a fine which may extend to five hundred rupees.

Penalty for contravention of the Act by a woman.

11. If any woman works in any factory within four weeks of the date of her delivery she shall be liable, on conviction, to a fine not exceeding ten rupees.

[a] Sub-section (3) was substituted for the original sub-section (3) by Bom. V of 1934.

Cognizance of offences.

12. (1) No prosecution under this Act shall be instituted except by or with the previous sanction of the inspector of factories.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try any offence against this Act or any rules thereunder.

Limitation of prosecutions.

13. No Court shall take cognisance of any offence against this Act or any rule thereunder unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Rules.

14. (1) The Governor in Council may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,—

[a](a) the preparation and maintenance of a muster roll or register or a combined muster roll and register and the particulars to be entered in such muster roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 35 of the Indian Factories Act, 1911.

(b) the inspection of factories for the purposes of this Act by inspectors of factories;

(c) the exercise of powers and the performance of duties by inspectors of factories for the purposes of this Act;

(d) the method of payment of maternity benefit in so far as provision has not been made in this Act; and

(e) any other matter for which no provision has been made in this Act and for which provision is, in the opinion of the Governor in Council, necessary.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The making of rules under this section shall be subject to the condition of previous publication. Such rules shall be laid on the table of the Bombay Legislative Council for one month previous to the next session thereof and shall be liable to be rescinded or modified. If any rule is modified the Governor in Council may accept the modification and reissue the rule accordingly or may rescind the rule.

Copies of this Act and rules thereunder to be exhibited.

15. [1]An abstract[1] of the provisions of this Act and the rules thereunder in the local vernacular shall be exhibited in a conspicuous manner[2] by the employer in every [3]"part of a"[3] factory in which women are employed.

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[a] Clause (a) was substituted for the original sub-clause (a) by Bom. Act V of 1934.

[1-1] The words "An abstract" were substituted for the original words "A copy" by Bom. Act V of 1934.

[2] The word "manner" was substituted for the original word "place" by *ibid.*

[3-3] These words were inserted after the word "every" by *ibid.*

The Bombay Maternity Benefit Rules, 1929

(As amended by notification No. 9721, dated 7th December, 1933 and 29th January, 1934 and No. 8574, II, dated 20th September, 1934 of the Political and Reforms Department)

No. 1066.—In exercise of the powers conferred by section 14 of the Bombay Maternity Benefit Act, 1929 (Bom. VII of 1929), the Governor in Council is pleased to make the following rules, for the purpose of carrying into effect the provisions of the said Act, namely:-

1. *Short title.*—These rules may be cited as the Bombay Maternity Benefit Rules, 1929.

2. *Definitions.*—In these rules :—

(*a*) "Act" means the Bombay Maternity Benefit Act, 1929.

(*b*) "Inspector" means an inspector of factories appointed under sub-section (1) of section 4 of the Indian Factories Act, 1911,* and includes an additional inspector appointed under sub-section (4) of the said section.

(*c*) 'muster roll' means a muster roll, or register or a combined muster roll and register prepared and maintained under rule 3 and includes a register kept or deemed to have been kept under section 35 of the Indian Factories Act, 1911.*

3. *Muster roll.*—The employer of every factory in which women are employed shall prepare and maintain a muster roll and shall enter the following particulars in such muster roll, namely :—

(*a*) Name of woman ;

(*b*) department in which employed and name of factory ;

(c) ticket or departmental number ;

(*d*) dates with month and year on which employed and not employed ;

(*e*) total days employed in the payment period ;

(*f*) in the case of factories situated in places other than the cities of Bombay, Ahmedabad and Karachi ;

(*i*) 'wages' as defined in section 3 (*d*) of the Act ;

(*ii*) average daily wage calculated to the nearest quarter of an anna on the total wages earned during a period of three months immediately preceding the date on which the woman gives notice under section 6 (1) of the Act ;

(*g*) date on which the woman gives notice under section 6(1) of the Act ;

(*h*) date of birth of child ;

(*i*) date of production of a certificate signed by a registered medical practitioner certifying that the woman is expected to be confined within one month ;

(*j*) date of production of certified extract from birth register ;

(*k*) date of first payment of maternity benefit and amount of same ;

(*l*) date of subsequent payments of maternity benefit and amounts of same ;

(*m*) if the woman dies, amount of maternity benefit paid and date of payment and the names of persons to whom paid ; and

(*n*) remarks column for the use of the Inspector only.

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*The Indian Factories Act (XII of 1911) was repealed by the Factories Act (XXV of 1934).

All entries in the muster roll shall be maintained up-to-date and shall always be available for inspection by the Inspector.

The Employer may enter in the muster roll such other particulars as may be required for any other purpose.

4. *Responsibility of Inspector.*—The Inspector shall be primarily responsible for the administration of the Act within the area assigned to him under the Indian Factories Act, 1911; provided that in areas where there are more than one inspector, the Collector of Bombay may allocate the factories within such areas to such inspector as he shall deem proper.

5. *Powers of Inspector.*—(1) The Inspector may, within the area for which he is appointed, examine the muster roll maintained under rule 3 and shall have power to make such enquiries and to require the production of such papers or documents as he considers necessary for the purpose of ascertaining whether the provisions of the Act and of these rules are properly carried out in any factory or not; provided that he shall not require any employer to answer any question or to give any evidence tending to criminate himself.

(2) Every notice given under sub-section (1) of section 6 of the Act and every receipt for maternity benefit paid to any person under the provisions of the Act or of these rules shall, on demand, be produced before the Inspector.

6. *Penalty* —If any employer contravenes the provisions of rule 3 he shall be liable, on conviction, to a fine not exceeding fifty rupees.

7. *Penalty.*—Any person who willfully obstructs an Inspector in the exercise of his powers or the performance of his duties or fails to produce on demand the muster roll, or notices given under section 6(1) of the Act or receipts for maternity benefits paid or other papers or documents necessary to enable the Inspector to ascertain that the provisions of the Act and these rules have been complied with, shall be liable, on conviction, to a fine not exceeding fifty rupees.

8. *Return.*—Every employer of women in a factory shall furnish to the Chief Inspector of Factories by the 15th day of January in such year a return in the form of Schedule I to these rules.

9. *Records.*—Records relating to the payment of maternity benefit under the provisions of the Act or these rules shall be preserved for a period of two years from the date of their preparation.

10. *Liability of an employer for maternity benefit on closing of factory.*—A woman entitled to maternity benefit shall not be deemed dismissed within the provisions of section 8, if she is discharged on account of the closing of the factory in which she is employed.

11. *Exhibition of abstract of provisions of Act and rules.*—The abstract of the provisions of the Act and rules in the local vernacular required to be exhibited by section 15 of the Act shall be in such form as the Chief Inspector of Factories may approve and be exhibited in such manner as he may require. The Chief Inspector of Factories may prepare an abstract and supply copies to employers who make an application for the same to the Inspectors at Bombay and Ahmedabad.

(5) Schedule I to the said rules shall be deleted.

(6) Schedule II to the said rules shall be re-numbered as Schedule I.

SCHEDULE I.

(*See* Rule 3)

Form of muster roll.

Name of Factory.....

(Muster Roll to be maintained up to date under the Bombay Maternity Benefit Act, 1929.)

Month of 193 .

Name	Department	Ticket or departmental number	Date 4					Total days.	Date on which notice of pregnancy was given [section 6 (1)]	Date of birth of child	Date of production of certified extract from birth register	Date of first payment and amount of same [section 6 (3)]	Date(s) of subsequent payment(s) and amounts thereof [Section 6 (3)]	If the woman dies, date and amount of maternity benefit paid, and the name of persons to whom paid.	Remarks.
			1	2	3	...	31								
1	2	3						5	6	7	8	9	10	11	12

SCHEDULE II

(*See* rule 8.)

Return to be submitted to the Chief Inspector of Factories on or before the 15th January each year.

Name of Factory

Name of Occupier

Name of Manager

Year ending 31st December*

Average number of women employed daily

Number of women who claimed maternity benifit under section 6 (1) of the Act.

Number of women who were paid maternity benefit for actual births

Number of other persons who were paid maternity benefit (section 7)

Total amount of maternity benefit paid

(Signuture).....

Employer.

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*The return submitted on the 15th January 1934 shall cover the period from 1st July 1933 to 31st December 1933. Subsequent returns shall cover the period from 1st January to 31st December in each subsequent year.

The Bombay Medical Act, 1912

Bom. Act No. VI of 1912

[*25th June, 1912.*

An Act for the registration of medical practitioners

WHEREAS it is expedient to provide for the registration of medical practitioners in the Presidency of Bombay; 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 this Act; It is hereby enacted as follws:—

Short title, extent and definition.

1. (1) This Act may be called the Bombay Medical Act, 1912.

(2) It extends to the whole of the Bombay Presidency.

(3) In this Act the expression "the Medical Act" means the Medical Act, 1858, and any Acts amending the same.

Bombay Medical Council.

[1] 2. (1) A Council, herein referred to as "the Medical Council", which shall be called "the Bombay Medical Council', shall be esstablished for the Presidency of Bombay.

(2) The Medical Council shall consist of thirteen members registered under this Act who shall be appointed in the following manner, namely:—

(*a*) a President nominated by the Governor in Council;

(*b*) six members nominated by the Governor in Council;

(*c*) four members elected by the Doctors, Bachelors and Licentiates of Medicine, and the Masters, Bachelors and Licentiates of Surgery of the University of Bombay who are registered under this Act;

(*d*) two members elected by the medical practitioners who are registered under this Act, and who are not Graduates in Medicine or Surgery or Licentiates in Medicine or Licentiates in Medicine and Surgery of the University of Bombay.

(3) Elections of members shall be held at such time and place and in such manner as the Medical Council shall direct by rules or regulations made from time to time in this behalf.

Tenure of office.

3. (1) The members of the Medical Council shall hold office for a term of five years, and shall be capable of re-appointment.

(2) Any member may at any time resign his appointment by letter addressed to the President of the Medical Council.

(3) Upon the death or resignation of any member of the Medical Council, some other person shall be appointed a member of the Medical Council in his place by nomination or election, as the case may be, in accordance with the provisions of sub-section *(2)* of section 2, and such person shall hold office for the remainder of the period for which the member in whose place he is appointed was nominated or elected.

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[1] Section 2 was substituted by Bom. Act IV of 1918, s. 2.

(4) (*a*) Leave of absence from India may be granted by the Medical Council to any member thereof for a period not exceeding six months.

(*b*) If any member of the Medical Council leaves India without the leave of the Medical Council, or does not return to India within the period of the leave granted by the Medical Council, the Medical Council may forthwith declare his seat vacant and such declaration shall have the same effect as resignation of his seat by the member concerned.

(*c*) In any case not provided for in clauses (*a*) and (*b*) if any member of the Medical Council shall absent himself from three consecutive meetings of the Medical Council, the Medical Council may forthwith declare his seat vacant and such declaration shall have the same effect as resignation of his seat by the member concerned.

Time and place of meeting of Council.

4. The Medical Council [1] * * * shall make such rules and regulations as may be necessary with respect to the times and places of the meeting of the Medical Council, and the mode of summoning the same. In the absence of any rule or regulation as to the summoning of a meeting of the Medical Council, it shall be lawful for the President to summon a meeting at such time and place as to him shall seem expedient, by letter addressed to each member; and at every meeting, in the absence of the President, some other member, to be chosen from the members present, shall act as President; and all acts of the Medical Council shall be decided by the votes of the majority of the members present at any meeting, the whole number present not being less than eight, and at all such meetings the President for the time being shall, in addition to his vote as a member of the Medical Council, have a casting vote in case of any equality of votes.

Registrar and officers.

5. (1) The Medical Council shall appoint a Registrar, and may from time to time grant leave to the Registrar and appoint a person to act in his place. Any order of the Medical Council appointing, granting leave to or dismissing a Registrar or appointing a person to act as Registrar shall be subject to the previous approval of the Governor in Council. The Registrar and any person appointed to act as Registrar shall be paid by the Medical Council such salary and allowances as they may from time to time determine. Any person duly appointed to act as Registrar shall be deemed to be Registrar for all the purposes of this Act.

(2) The Medical Council with the previous approval of the Governor in Council may appoint such other officers or clerks as may be necessary for the purposes of this Act.

[1] The words repealed by Bom. Act IV of 1916, are omitted.

(3) The Registrar and any other officer or clerk appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Register.

6. The Registrar shall keep a register of medical practitioners in accordance with the provisions of this Act. The register shall be kept in such form as the Governor in Council from time to time directs. The name, residence and qualifications of every person who is registered under this Act shall be entered in the register with the date on which each qualification was granted. It shall be the duty of the Registrar under the orders of the Medical Council to keep the register correct and from time to time to enter any necessary alterations in the addresses of persons registered, and to enter any additional qualifications which any registered person may have obtained subsequent to his registration, and to erase the names of all registered persons who have died ; provided that the Governor in Council may prescribe a fee for the entry of any additional qualification. To enable the Registrar duly to fulfil the duties imposed upon him it shall be lawful for him to write a letter to any registered person according to his address on the register to enquire whether he has ceased to practise or has changed his residence, and if no answer is returned to such letter within a period of six months from the sending of the letter, it shall be lawful to erase the name of such person from the register : provided that the same may be restored by direction of the Medical Council if they think fit to make an order to that effect.

Persons entitled to be registered.

[1] 7. (1) Every person for the time being registered under the Medical Acts shall be entitled to be registered under this Act free of charge on informing the Registrar of the date of his registration under the Medical Acts and giving a correct description of his qualifications with the dates on which they were granted.

(2) Every person who is possessed of any of the qualifications described in the Schedule to this Act (subject to the provisions of sections 20) shall be entitled to be registered under this Act on payment of a fee of fifteen rupees, and on giving evidence to the satisfaction of the Registrar of his possession of a qualification fitting him for registration.

(3) The Governor in Council may, after consulting the Medical Council, permit the registration of any person who was actually practising medicine in the Bombay Presidency before the 25th day of June, 1912.

(4) The Medical Council may refuse to permit the registration of any person who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1898, or who, being or

Section 7 was substituted by Bom. Act III of 1916, s. 3.

having been subject to military law, has been convicted under the Army Act or under the Indian Army Act, 1911, of an offence which is also a cognizable offence as so defined, or who after due enquiry has been held guilty by the Medical Council of infamous conduct in any professional respect.

Appeals and erasure of incorrect entries.

8. (1) Any appeal against the decision of the Registrar respecting a first registration or any subsequent alteration shall be heard and determined by the Medical Council under regulations which shall be made by the Medical Council in this behalf.

(2) Any entry in the register which shall be proved to the satisfaction of the Medical Council to have been fraudulently or incorrectly made may be erased from the register under the orders of the Medical Council.

Removal from register.

9. The Medical Council may direct that the name of any medical practitioner who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1898, [1] (or who, being or having been subject to military law, has been convicted under the Army Act or under the Indian Army Act, 1911, of an offence which is also a cognizable offence as so defined) or who after due enquiry has been held guilty by them of infamous conduct in any professional respect, shall be removed from the register, and may direct that any name so removed shall be re-entered.

Qualified practitioners: certificates.

10. (1) [2] * * * The expression "legally qualified medical practitioner," or "duly qualified medical practitioner," or any words importing a person recognized by law as a medical practitioner or member of the medical profession, shall, in all Acts of the Governor of Bombay in Council and in all Acts of the Governor General in Council in their application to the Bombay Presidency, mean a medical practitioner registered either under the Medical Acts or under this Act.

(2) [2] * * * No certificate required by any Act from any medical practitioner or medical officer shall be valid unless the person signing the same shall have been registered uner the Medical Acts or under this Act.

Unregistered persons not to hold certain appointments.

11. 3 * * *4 [Except with the special sanction of the Governor in Council] no person shall hold any appointment as a Physician, Surgeon or other Medical Officer in any dispensary, hospital, infirmary or lying-in-hospital, not supported entirely by voluntary contributions, or in any public establishment, body or institution, or as a Medical Officer of Health, unless he be registered under the Medical Acts or under this Act.

[1] These words and figures were inserted by Bom. 4 of 1916.
[2] The words repealed by s. 3 of *ibid* are omitted.
[3] The words repealed by s. 3 of *ibid* are omitted.
[4] These words were inserted by s. 2, *Ibid.*

12. Every Registrar of deaths on receiving notice of the death of a medical practitioner registered under this Act shall forthwith transmit by post to the Registrar appointed under this Act, a certificate under his own hand of such death with the particulars of time and place of death, and may charge the cost of such certificate and transmission as an expense of his office.

Notice of death.

13. The medical Council shall have authority to call on the governing body or authorities of any Medical College or School and on any examining body included in or desirous of being included in the Schedule—

Medical Council authorized to call for information and attend examinations.

(*a*) to furnish such particulars as the Medical Council shall require of any course of study prescribed or examination held by such body or authority or in such School or College with reference to the grant of any medical or surgical qualification, and

(*b*) to permit any member of the medical Council deputed by the Medical Council in this behalf to attend and be present at any such examination.

14. Notwithstanding anything in any other law for the time being in force, every person who shall be registered under this Act shall be exempt, if he so desires, from serving on any inquest.

Exemption from serving on inquests.

15. There shall be paid to the members of the Medical Council such fees for attendance and such reasonable travelling expenses as shall from time to time be allowed by the Medical Council and approved by the Governor in Council.

Fees payable to members.

16. All monies received by the Medical Council as fees under this Act shall be applied for the purposes of this Act in accordance with such rules as may be made in this behalf by the Governor in Council.

Disposal of fees.

17. The Registrar shall in every year on or before a date to be fixed by the Medical Council cause to be printed and published a correct list of the names and qualifications of all persons for the time being entered in the register, and the dates when such qualifications were granted, in alphabetical order according to the surnames of the persons registered. Every Court shall presume that any person entered in such list is duly registered under this Act, and that any person who is not so entered is not registered.

Annual Medical List.

18. Whoever falsely pretends to be registered under this Act or not being registered under this Act uses in connection with his name or title any words or letters representing that he is so registered shall, whether any person is actually deceived by such pretence or represen-

Penalties.

tation or not, be punished on conviction by a Presidency Magistrate or a Magistrate of the first class with fine that may extend to three hundred rupees.

Rules and regulations.

19. (1) Subject to the provisions of this Act, the Medical Council may from time to time make rules and regulations generally to carry out the provisions of this Act:

Provided that no rules or regulations made by the Medical Council whether under this or under any of the foregoing sections of this Act shall have any force or effect unless the same shall have received the previous approval of the Governor in Council.

(2) All rules and regulations made by the Medical Council under this Act shall, when the same have received the approval of the Governor in Council, be published in the *Bombay Government Gazette*.

(3) It shall be lawful for the Governor in Council, by notification in the *Bombay Government Gazette*, to cancel any rule or regulation made under this Act.

Alteration in list of qualifications mentioned in the Schedule.

20. If it shall appear to the Governor in Council, on the report of the Medical Council or otherwise, that the course of study and examinations prescribed by any of the Colleges or bodies conferring the qualifications described in the Schedule are not such as to secure the possession by persons obtaining such qualification of the requisite knowledge and skill for the efficient practice of their profession, or if it shall appear to the Governor in Council, on the report of the Medical Council or otherwise, that the course of study and examinations prescribed by any College or body conferring a qualification not entered in the Schedule are such as to secure the possession by persons obtaining such qualification of the requisite knowledge and skill for the efficient practice of their profession, it shall be lawful for the Governor in Council from time to time by notification in the *Bombay Government Gazette* to direct that the possession of any qualification entered in the Schedule shall not entitle any person to registration under this Act, or to direct that the possession of any qualification not entered in the Schedule shall, subject to the provisions of this Act, entitle a person to be so registered, as the case may be, and the Schedule shall thereupon be deemed for all purposes to be altered accordingly.

Control.

21. If at any time it shall appear to the Governor in Council that the Medical Council has failed to exercise or has exceeded or abused any power conferred upon it under this Act or has failed to perform any duty imposed upon it by this Act, the Governor in Council may notify the particulars of such default, excess or abuse to the Medical

Council; and if the Medical Council fails to remedy such default, excess or abuse within such time as may be fixed by the Governor in Council in this behalf, the Governor in Council may for the purpose of remedying such default, excess or abuse cause any of the powers and duties of the Medical Council to be exercised and performed by such agency and for such period as he may think fit.

THE SCHEDULE.

1. Doctor, Bachelor and Licentiate of Medicine, and Master, Bachelor and Licentiate of Surgery of the Universities of Bombay, Calcutta, Madras, Allahabad and Lahore.

2. Any person trained in a Government Medical College or School who holds a diploma or certificate granted by Government declaring him to be qualified to practise Medicine, Surgery and Midwifery, or to be qualified for the duties of a Military Assistant Surgeon, Hospital Assistant or Sub-Assistant Surgeon.

The Bombay Motor Vehicles Tax Act, 1935.

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SCHEDULES.

LIBRARY

THE BOMBAY

Motor Vehicles Tax Act, 1935

Bom. Act No. XXXIV of 1935

[6th February 1936.

An Act to provide for the imposition of a tax on motor vehicles in the Bombay Presidency.

WHEREAS it is expedient to impose a tax on motor vehicles in the Bombay Presidency and to provide for certain other purposes hereinafter appearing; And whereas the previous sanction of the Governor General required under sub-section (3) of section 80A of the Government of India Act and the previous sanction of the Governor required under section 80C of the said Act have been obtained for the passing of this Act; It is hereby enacted as follows:—

Short title, commencement and extent.

1. (1) This Act may be called the Bombay Motor Vehicles Tax Act, 1935.

(2) It shall come into force on the 1st day of April 1936.

(3) It extends to the whole of the Presidency of Bombay excluding Sind.

Commencement.—This Act comes into force on the 1st of April 1936.

Extent.—This Act extends to the whole of the Presidency of Bombay excluding Sind.

"Presidency of Bombay".—"Bombay Presidency" or "Presidency of Bombay" shall mean the territories within British India for the time being under the administration of the Governor of Bombay in Council." (*Vide* Bombay General Clauses Act, s. 3 (7)).

Object.—This Act provides for the levy of taxation sufficient to replace the revenue from all tolls on motor vehicles, on provincial roads and on local bodies' roads, and the net provincial revenue, after deducting the cost of administration, realised under the Indian Motor Vehicles Act, 1914. Local Bodies will receive their present average revenue from tolls on motor vehicles plus ten per cent. Municipalities will still be able to levy wheel taxes on motor vehicles. A fresh provision has been introduced in the Act by which taxis, buses, and goods lorries which are intended to be used solely within municipal or cantonment limits will be charged at two-thirds of the general rate of tax. And it is also provided in the Act that any surplus revenue, after providing for the replacement of the existing Government and Local Bodies' revenues, plus a ten per cent. addition to the latter, will be spent solely on roads.

Definitions.

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

(1) "Certificate of registration" means a certificate of registration granted in accordance with the rules for the time being in force under the Indian Motor Vehicles Act, 1914, for the registration of motor vehicles and includes a general licence issued under the said rules to a dealer in or manufacturer of such vehicles.

(2) "Licence card" means a licence card issued under the rules for the time being in force under the Indian Motor Vehicles Act, 1914.

(3) "Local authority" includes a cantonment authority within the meaning of the Cantonments Act, 1924.

(4) "Motor vehicle" means a vehicle, carriage or other means of conveyance which is, or may be, propelled on a road by electrical or mechanical power either entirely or partially, but does not include a tram car or carriage within the meaning of the Indian Tramways Act, 1886, or the Bombay Tramways Act, 1874.

(5) "Prescribed" means prescribed by rules made under this Act.

(6) "Presidency" means the Presidency of Bombay excluding Sind.

(7) "Public road" means any street, road, square, court, alley, passage or riding path over which the public have a right of way, whether a thoroughfare or not, and includes the roadway over any public bridge or causeway.

(8) "Quarter" means a period of three months commencing from the 1st day of January, the 1st day of April, the 1st day of July or the 1st day of October in each year and the term "quarterly" shall be construed accordingly.

(9) "Registering authority" means the authority provided by rules for the time being in force under the Indian Motor Vehicles Act, 1914, for the registration of motor vehicles.

(10) "Registered owner" means the person in whose name a motor vehicle is registered under the Indian Motor Vehicles Act, 1914.

(11) "Schedule" means a schedule appended to this Act.

(12) "Tax" means a tax imposed under this Act.

(13) "Trailer" means any vehicle other than a side car drawn or propelled or intended to be drawn or propelled by a motor vehicle.

(14) "Year" means a financial year.

Levy of tax.

3. (1) As from the 1st day of April 1936 a tax at the rates fixed by the Local Government by notification in the *Bombay Government Gazette* not exceeding the maximum rates specified in the First Schedule shall be levied on all motor vehicles used or kept for use in the Presidency.

(2) The tax leviable under sub-section (1) shall be paid in advance by every registered owner of, or any person having possession or control of, a motor vehicle—

(*i*) annually at the rates fixed by the Local Government under sub-section (1), or

(*ii*) for one or more quarters on payment for each such quarter at one-fourth of the annual rates referred to in clause (*i*) *plus* six and one-fourth per centum, or

(*iii*) for any period less than a quarter, expiring on the last date of any quarter, at the quarterly rates referred to in clause (*ii*) less one-twelfth of the annual rate of the tax for every complete calendar month which has expired during such quarter :

Provided that in the case of motor vehicles kept by a dealer in or manufacturer of such vehicles for the purposes of trade, the tax at the rate specified in the said schedule shall be paid by such dealer or manufacturer on vehicles permitted to be used on roads in the manner prescribed by rules made under the Indian Motor Vehicles Act, 1914.

Note.—This section provides for the imposition of the tax on every motor vehicle used or kept for use from 1st April 1936. It also provides that the tax may be paid annually or by quarterly instalments at the rates specified in Schedule 1.

Grant or renewal of registration certificates.

4. Notwithstanding anything contained in the Indian Motor Vehicles Act, 1914, or any rules made thereunder, a certificate of registration shall not be granted or renewed in respect of any motor vehicle, until the tax in respect of such vehicle has been paid in the prescribed manner and a certificate of registration shall not be granted or renewed in respect of any motor vehicle for a period exceeding the period for which the tax has been paid in respect of such vehicle.

Note.—This section provides that the certification under the Indian Motor Vehicles Act, 1914, shall not be granted or renewed until the tax under this Act has been paid in the manner prescribed in the rules under this Act.

Refund of tax.

5. (8) When any person has paid the annual tax in advance in respect of a motor vehicle, he shall be entitled on the production of a certificate signed by a registering authority stating that the certificate of registration and licence card issued in respect of such vehicle have been surrendered to a refund, firstly, in respect of the quarter or quarters which may not have commenced when the certificate or registration and licence card are surrendered, of a sum equal to the difference between the sum paid as annual tax and the sum which would have been payable at the quarterly rate, for every quarter which has expired, when,andthe quarter in which, the certificate of registration and licence card are surrendered, and secondly, in respect of any unexpired portion of a quarter, in accordance with the provisions of sub-section (2) of this section as if he had paid the tax for that quarter at the quarterly rate.

(2) When any person has paid the quarterly tax in advance in respect of a motor vehicle, he shall be entitled on the production of a certificate signed by a registering authority stating that the certificate of registration and lience card issued in respect of such vehicle have been surrendered to a refund, for each complete calendar month in the period for which such tax has been paid and which has not commenced on the date on which the certificate and licence card are surrendered, of a sum equal to one-twelfth of the annual rate of the tax leviable in respect of such vehicle.

(3) When any person has paid the tax in advance in respect of a motor vehicle, he shall be entitled, on the production of a certificate signed by a registering authority stating that an application for the registration or for the renewal of registration of such vehicle has been refused, to a refund of the tax paid.

Note.—This section provides for the refund of the tax paid under this Act. No refund shall be granted, until the certificate of registrotion and licence card have been surrendered to the registering authority or the application for the renewal of the certificate has been refused.

Declaration by person having possession or control of a motor vehicle.

6. (1) Every registered owner of, or person who has possession or control of, a motor vehicle used or kept for use in the Presidency shall fill up and sign a declaration in the prescribed form, stating the prescribed particulars and shall deliver within the prescribed time the declaration so filled up and signed to a registering authority and shall pay to the registering authority the tax which he appears by such declaration to be liable to pay in repect of such vehicle.

(2) When a motor vehicle used or kept for use is altered so as to render the registered owner or person who has been in possession or control of such vehicle liable to the payment of an additional tax under section 7, such person shall fill up and sign an additional declaration in the prescribed form, showing the nature of the alteration made and containing the prescribed particulars and shall deliver such additional declaration so filled up and signed together with the registration certificate in respect of the motor vehicle so altered to a registering authority and shall pay to the registering authority the additional tax payable under section 7 which he appears by such additional declaration to be liable to pay in respect of such vehicle.

Note—This section requires every person who has possession or control of a motor vehicle to make a declaration in the prescribed form and to pay the tax in respect of the vehicle.

Payment of additional tax.

7. When any motor vehicle in respect of which a tax has been paid is altered in such manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the registered owner or person who is in possession or control of such vehicle shall pay an additional tax of a sum which is equal to the difference between the tax already paid, and the tax which is payable, in respect of such vehicle for the period for which the higher rate of tax is payable in consequence of its being altered and the registering authority shall not grant a fresh certificate of registration or renew any certificate of registeration in respect of such vehicle so altered until such amount of tax has been paid.

Note.—Whenever a motor vehicle in altered in such manner as to become liable to the tax at a higher rate, this section provides that an additional tax shall be paid in respect of such vehicle.

Power of police officer to stop a motor vehicle.

8. (1) Any police officer in uniform, not below such rank as may be prescribed by Government in this behalf, may require the driver of any motor vehicle on any public road to stop such vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that the amount of the tax due in accordance with the provisions of this Act in respect of such vehicle has been paid.

(2) Any person failing to stop a motor vehicle when required to do so by a police officer under sub-section (1) shall, on conviction, be punishable with the same penalty as provided in section 12.

Note.—This section empowers certain police officers to stop motor vehicles for the purpose of satisfying themselves that the proper amount of tax due in respect of such vehicle has been paid. Failure to stop a vehicle in disobedience of such direction is made punishable.

Utilization of the proceeds of the tax.

9. (1) The Local Government shall—

(*a*) pay annually to any local board which at the commencement of this Act was levying tolls on vehicles or animals and to any other local authority which at the said date was levying or collecting tolls on motor vehicles and trailers a sum determined by the Local Government, after consulting the local board or local authority concerned, as representing the net average annual income of such local board or local authority from such tolls, after deducting the cost of collection, during the three years ending on the 31st day of March 1936, plus 10 per centum ; and

(*b*) appropriate, from the proceeds of the tax collected under this Act, Rs. 23,17,000 annually to the general revenues for the purpose of provincial expenditure.

(2) The contributions to the local authorities fixed under sub-section (1) shall be paid in such instalments and in such manner and on such dates as the Local Government, after consulting the local authorities concerned, may determine.

(3) If in any year the net proceeds of the tax collected under this Act, after deducting the expenses of collection which shall be determined by the Local Government, does not exceed the sum of Rs. 26,57,000 such proceeds together with the sum of Rs. 9,29,000 shall be distributed among the local authorities and the Local Government proportionately to the sums determined under sub-section (1) as payable to each such local authority and to be credited to the Local Government, and any sum by which such proceeds fall short of the sum of Rs. 26,57,000 shall be made good in the same proportion in the earliest subsequent year or years in which such proceeds may exceed the aforesaid sum of Rs. 26,57,000.

(4) If in any year the net proceeds of the tax exceed the sum of Rs. 26,57,000 the excess amount, after satisfying the requirements, if any, of sub-section (3), shall be entered in a separate account and shall be expended in such manner as the Local Government may determine solely on the construction, improvement and maintenance of new and existing roads including roads vesting in, belonging to, or managed by, any local authority :

Provided that such expenditure shall be a supplement to and not in substitution for any funds which would otherwise be expended on road by the Local Government or local authorities.

Note,—This section provides how the proceeds of the tax are to be distributed between the Local Government and local authorities.

Explanation.—"Road" includes the slopes, berms and side drains of a road, all bridges, culverts and causeways built on or across a road and footways.

Penalty for possession or control of motor vehicle without payment of tax and for incomplete and untrue declaration.

10. (1) Whoever—

(*a*) as a Registred owner or otherwise has possession or control of any motor vehicle used or kept for use without having paid the

amount of the tax or additional tax due in accordance with the provisions of this Act in respect of such vehicle, or

(*b*) delivers a declaration or additional declaration wherein the particulars required by or under this Act to be therein set forth are not fully and truly stated,

shall, on conviction, be punishable with fine which may extend to a sum equal to the total tax payable on account of such vehicle, and in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to a sum equal to twice the amount of the total tax payable on account of the motor vehicle in respect of which the offence is committed; and the amount of any tax due shall be recoverable as if it were a fine.

(2) It shall be lawful for any person who is accused of an offence under this section to pay as penalty in the prescribed manner and in the prescribed time and to the prescribed officer by way of composition for the offence with which he is accused such sum as may be prescribed. On payment by such person of such sum together with the amount of tax due, if any, such person, if in custody, shall be set at liberty and if any proceedings in any criminal court have been instituted against such person in respect of such offence the composition shall be deemed to amount to an acquittal and on further criminal proceedings shall be taken against such person in respect of such offence.

Note.—This section provides for penalties for failure to pay the tax or to deliver a declaration in respect of a motor vehicle used or kept for use or for making a false declaration in respect of such vehicle. Provision is made for the composition of these offences.

Tax recoverable as arrear of land revenue.

11. Any tax due under this Act shall be recoverable in the same manner as an arrear of land revenue.

Other penalties.

12. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction, if no other penalty is elsewhere provided in this Act or the rules for such a contravention, be punishable with fine which extend to one hundred rupees and in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

Trial of offences.

13. No court inferior to that of a Presidency Magistrate or a Magistrate of the Second Class shall try an offence punishable under this Act.

Levy of toll on certain bridges.

14. Notwithstanding anything contained in this Act, it shall be lawful—

(*a*) for the Local Government or any local board to levy tolls on vehicles and animals, or

(*b*) for any other local authority to levy tolls on motor vehicles or trailers,

under any other law for the time being in force, on any bridge constructed after the commencement of this Act by the Local Government, local board or other local authority as the case may be :

Provided that the Local Government is satisfied that—

(*a*) the capital cost incurred in the construction of such bridge is not less than five lakhs of rupees, and

(*b*) such bridge is of special service to the public :

Provided further that such toll shall be levied only at such rate and for such period as the Local Government may, by notification in the *Bombay Government Gazette*, declare to be necessary for the recovery of the amount expended upon the construction of such bridge or such portion of the said amount as the Local Government may determine.

Note.—This section reserves the power of Government to levy tolls on motor vehicle on bridges which are of special service to the public and which are constructed, maintained and repaired by Government.

Bar to levy tolls on motor vehiles.

15. Except as provided in the Bombay Ferries Act, 1868, and in section 14, no toll shall be levied or collected—

(*a*) on any vehicle or animal by the Local Government or any local board, or

(*b*) on any motor vehicle or trailer by any other local authority.

Modification of leases.

16. (1) Where, before the commencement of this Act, the collection of tolls leviable at any toll station has been leased to any person under any law for the time being in force, other than the Bombay Ferries Act, 1868, and the lease relates wholly or in part to any period subsequent to the commencement of this Act, the amount which the lessee has contracted to pay to the local authority concerned or to the Local Government shall be reduced by the amount of the loss suffered by him in consequence of this Act having come into force.

(2) If the lessee and the local authority are unable to agree as to the amount of such loss or if any other dispute arises between them as to the effect of this Act on the contract of lease, such dispute shall be decided by the Collector of the district, and any such dispute arising between the Local Government and their lessee shall be decided by the Local Government. The decision of the Collector or the Local Government, as the case may be, shall be final.

Note.—As after the passing of this Act all leases granted for the collection of tolls will terminate, this section provides that the amount agreed to be paid by the lessee either to Government or a local authority shall be reduced in proportion to the unexpired period of the lease.

Protection for *bona fide* acts.

17. No prosecution, suit or other proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

Note.—This section protects persons acting in good faith in pursuance of the Act from frivolous actions.

Exemptions.

18. The Local Government may, by notification in the *Bombay Government Gazette*, exempt either totally or partially any motor vehicle or class of motor

vehicles from the payment of the tax. Every notification issued under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be rescinded or modified by a resolution of the said Council, and the rescission or modification so made shall, after publication by notification in the *Bombay Government Gazette*, be deemed to have come into force.

Exemption of motor vehicle used for agriculture.

19. All motor vehicles used solely for the purpose of agriculture shall be exempt from the payment of the tax.

Explanation.—A motor vehicle used for transporting agricultural produce shall not for the purposes of this section be deemed to be used solely for the purpose of agriculture.

Power to make rules.

20. (1) The Local Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provison, the Local Government may make rules for all or any of the following purposes, namely :—

(*a*) to prescribe the manner in which the tax shall be paid ;

(*b*) to prescribe the form of any declaration or certificate, the particulars to be stated therein and the time within which the declaration shall be delivered ;

(*c*) to regulate the manner in which refunds or deductions or exemptions may be claimed ;

(*d*) to specify the police officers employed to exercise power under section 8 ;

(*e*) to prescribe the amount of penalty payable under sub-section (2) of section 10, the manner in which, the time within which and the officer to whom, such penalty shall be paid ;

(*f*) to provide for the total or partial exemption from liability to payment of the tax of any motor vehicle brought into the Presidency by any person visiting the Presidency or making a temporary stay therein, the time within which the declaration shall be made by any such person, the amount which shall be payable on account of such vehicle and the token which any such vehicle shall carry ;

(*g*) to prescribe the manner in which an application shall be made under section 21 ;

(*h*) any other matter which may be prescribed.

(3) All rules made under this section shall be published in the *Bombay Government Gazette*.

(4) Rules made under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by a resolution of the said Council and the modification or rescission so made shall, after publication by notification in the *Bombay Government Gazette*, be deemed to have come into force :

Provided that when in the opinion of the Local Government, such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the Local Government may, by notification in the *Bombay Government Gazette*, declare that the modification or rescis-

sion shall have no effect and thereupon the rule shall remain in force as if it had not been modified or rescinded.

Existing certificates deemed to be cancelled unless application for fresh certificate made within certain time and this Act not to affect past liability.

21. (1) Any certificate of registration in respect of a motor vehicle used or kept for use in the Presidency in force at the commencement of this Act shall be deemed to have been cancelled unless an application for a fresh certificate shall have been made in the prescribed manner on or before the first day of May 1936. On such application being made, there shall be deducted from the sum payable as the tax a sum equal to one-twelfth of the registration fee paid under the Indian Motor Vehicles Act, 1914, in respect of the said motor vehicle for each remaining complete month of the period for which the former certificate would have been in force.

(2) Nothing in this Act shall affect the liability of any person to pay the arrears of any toll due from him on any motor vehicle on any day, or payable in respect of any period, prior to the 1st day of April 1936 under any enactment in force immediately before the commencement of this Act, and any such arrears shall be recoverable in accordance with the provisions of such enactment as if this Act had not been passed.

Amendment of certain enactments.

22. The enactments specified in the second Schedule are hereby amended to the extent and in the manner specified in the fourth column thereof.

Levy of registration fees under Act VIII of 1914 after passing of this Act.

23. Notwithstanding anything contained in the Indian Motor Vehicles (Bombay Amendment) Act, 1335, any fees payable in respect of and incidental to registration of motor vehicles for any period after the commencement of this Act shall be levied at such rates as may be prescribed under rules made under section 11 of the Indian Motor Vehicles Act, 1914, as if the said Act had not been amended by the provisions of the Indian Motor Vehicles (Bombay Amendment), Act, 1935:

Provided that the rates so prescribed shall be such that the total receipts from such fees shall not exceed the cost of administration of the Indian Motor Vehicles Act, 1914, as determined by the Local Government;

Provided further that the rates so prescribed shall not, in respect of matters specified in column 1, exceed the maxima specified in column 2.

1		2
Driving licence	...	Rs. 5
Renewal of driving licence	...	Re. 1
Temporary driving licence	...	Rs. 2
Registration of motor vehicle	...	Rs. 8
Renewal of registration of motor vehicle.	...	Rs. 2
Transfer of registration certificate of motor vehicle	...	Re. 1
Duplicate driving licence or registration certificate	...	Re. 1

Note.—This section provides that after the passing of this Act, the registration fees leviable under the rules under the Indian Motor Vehicles Act, 1914, shall be levied at such rates as may be prescribed under the said Act, as if the said Act had not been amended by the Indian Motor Vehicles (Bombay Amendment) Act, 1935.

SCHEDULE I.

(*See* section 3)

	Maximum annual rate of tax Rs.
A. Motor vehicles fitted solely with pneumatic tyres :—	
I.—Motor cycles and tricycles (including motor-scooters and cycles with attachment for propelling the same by mechanical power) not exceeding 8 cwt. in weight, unladen :—	
(*a*) Cycles not exceeding 200 lbs. in weight, unladen ...	18
(*b*) Cycles exceeding 200 lbs. in weight, unladen ...	24
(*c*) Tricycles ...	24
(*d*) Cycles or tricycles used for drawing a trailer or sidecar, in addition to above rates ...	3
II.—Motor vehicles not exceeding 5 cwt. in weight unladen adopted and used for invalids. ...	5
III —Motor vehicles including tricycles used for the transport or haulage of goods or materials weighing more than 8 cwt., unladen—	
(*a*) Vehicles not exceeding 15 cwt. in weight, unladen ...	180
(*b*) Vehicles exceeding 15 cwt. but not exceeding 30 cwt. in weight, unladen ...	300
(*c*) Vehicles exceeding 30 cwt. but not exceeding 50 cwt. in weight, unladen ...	400
(*d*) Vehicles exceeding 50 cwt. but not exceeding 70 cwt. in weight, unladen ...	450
(*e*) Vehicles exceeding 70 cwt. in weight, unladen. ...	500
(*f*) Additional tax payable in respect of such vehicles used for drawing trailers—	
(1) for each trailer not exceeding one ton in weight, unladen, ...	150
and	
(2) for each trailer exceeding one ton in weight, unladen ...	240
Provided that two or more vehicles shall not be chargeable under this clause in respect of the same trailer :	
Provided further that the rates for motor vehicles registered for use solely within municipal and cantonment limits shall be two-thirds of the aforesaid rates.	
IV.—Motor vehicles plying for hire and used for the transport of passengers :—	
(*a*) Vehicles licensed to carry in all not more than two persons (excluding the driver of the vehicle)...	88

	Maximum annual rates of tax Rs.
(b) Vehicles licensed to carry more than two persons (excluding the driver of the vehicle)—for every additional person which the vehicle is so licensed to carry ...	16
[1] "Provided that the rates for motor vehicles registered for use solely within municipal and cantonment limits shall be $\frac{2}{3}$ rds of the aforesaid rates :	
[1] Provided further that the maximum annual tax in the case of motor vehicles registered for use solely within municipal and cantonment limits shall not exceed Rs. 333-6-0 and in other cases shall not exceed Rs. 500.[1]	
V.—Motor vehicles other than those liable to tax under the foregoing provisions of the Schedule:—	
(a) Vehicles not exceeding 15 cwt. in weight, unladen ...	40
(b) Vehicles exceeding 15 cwt. but not exceeding 30 cwt. in weight, unladen ...	60
(c) Vehicles exceeding 30 cwt. but not exceeding 45 cwt. in weight, unladen ...	80
(d) Vehicles exceeding 45 cwt. in weight, unladen ...	110
(e) Additional tax payable in respect of such vehicles used for drawing trailers—	
(1) for each trailer not exceeding 1 ton in weight, unladen ...	25
(2) for each trailer, exceeding 1 ton in weight, unladen	50
Provided that two or more vehicles shall not be chargeable under this clause in respect of the same trailer.	
B. Motor vehicles other than those fitted solely with pneumatic tyres	The rates shown in class A plus 50 per centum.
C. Motor vehicles visiting the Presidency.	The rates prescribed in the rules.
D. Dealers in or Manufacturers of motor vehicles.	
For a general licence—	
(1) in respect of any seven or less number of motor vehicles ...	300
(2) in respect of any additional seven or less number of motor vehicles. ...	300

[1—1] These provisoes were substituted for the original provisoes by Bom. Act XXIV of 1936.

SCHEDULE II.

(*See* section 22)

Year.	Number.	Act.	Amendment.
1901	III	The Bombay District Municipal Act.	In clause (*b*) of section 59— (1) in sub-clause (*iii*), after the word "vehicles" the words and brackets "(other than motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" shall be inserted ; (2) in sub-clause (*x-a*), after the words "any other tax" the words and brackets "(other than a toll on motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" shall be inserted.
1923	VI	The Bombay Local Boards Act.	In section 99, after the words "any tax" the words and brackets "other than a toll on motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" shall be inserted.
1925	XVIII	The Bombay Municipal Boroughs Act.	In section 73— (1) in clause (*iii*) after the word "vehicles" the words and brackets "(other than motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" shall be inserted ; (2) in clause (*xiv*), after the words "any other tax" the words and brackets "(other than a toll on motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" shall be inserted.
1933	VI	The Bombay Village Panchayats Act.	In sub-section (2) of section 89, in clause (*vii*), after the words "[1] 'any' other tax" the words and brackets "(other than a toll on motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" shall be inserted.

[1] The word "any" was substituted for the original word "and" by Bom. Act XXII of 1936.

Notification under sub-section (1) of section 3

Bombay Castle, 26th February 1936.

No. 6832/3.—In exercise of the powers conferred by sub-section (1) of section 3 of the Bombay Motor Vehicles Tax Act, 1935 (Bom. XXXIV of 1935), the Governor in Council is pleased to direct that, with effect from the 1st day of April 1936, a tax at the rates specified in column 2 of the Schedule hereto annexed shall be levied in respect of all motor vehicles as shown in column 1 thereof used or kept for use in the Presidency :—

The Schedule above referred to.

Class of motor vehicles.	Rate of tax.
1	2
	Rs.
A. Motor vehicles fitted solely with pneumatic tyres—	
I.—Motor cycles and tricycles (including motor-scooters and cycles with attachment for propelling the same by mechanical power) not exceeding 8 cwt. in weight, unladen :—	
(*a*) Cycles not exceeding 200 lbs. in weight, unladen ...	18
(*b*) Cycles exceeding 200 lbs. in weight unladen ...	24
(*c*) Tricycles ...	24
(*d*) Cycles or tricycles used for drawing a trailer or sidecar, in addition to above rates ...	3
II.—Motor vehicles not exceeding 5 cwt. in weight, unladen, adapted, and used for invalids ...	5
III.—Motor vehicles including tricycles used for the transport or haulage of goods or materials weighing more than 8 cwt. unladen :—	
(*a*) Vehicles not exceeding 15 cwt. in weight, unladen ...	180
(*b*) Vehicles exceeding 15 cwt. but not exceeding 30 cwt. in weight, unladen ...	300
(*c*) Vehicles exceeding 30 cwt. but not exceeding 50 cwt. in weight, unladen ...	400
(*d*) Vehicles exceeding 50 cwt. but not exceeding 70 cwt. in weight, unladen ...	450
(*e*) Vehicles exceeding 70 cwt. in weight, unladen ...	500
(*f*) Additional tax payable in respect of such vehicles used for drawing trailers :—	
(1) for each trailer exceeding one ton in weight, unladen, ...	150
and	
(2) for each trailer exceeding one ton in weight, unladen ...	240
Provided that two or more vehicles shall not be chargeable under this clause in respect of the same trailer ;	

Class of motor vehicles.	Rate of tax.
1	2
	Rs.
Provided further that the rates for motor vehicles registered for use solely within municipal and cantonment limits shall be two-thirds of the aforesaid rates.	
IV.—Motor vehicles plying for hire and used for the transport of passengers :—	
(a) Vehicles licensed to carry in all not more than two persons (excluding the driver of the vehicle)...	88
(b) Vehicles licensed to carry more than two persons (excluding the driver of the vehicle) for every additional person which the vehicle is so licensed to carry ...	16
Provided that the maximum annual rate of tax shall not exceed Rs. 500;	
Provided further that the rates for motor vehicles registered for use solely within municipal and cantonment limits shall be two-thirds of the aforeshid rates	
V.—Motor vehicles other than those liable to tax under the foregoing provisions of the Schedule :—	
(a) Vehicles not exceeding 15 cwt. in weight, unladen ...	40
(b) Vehicles exceeding 15 cwt. but not exceeding 30 cwt. in weight, unladen ...	60
(c) Vehicles exceeding 30 cwt. but not exceeding 45 cwt. in weight, unladen ...	80
(d) Vehicle exceediag 45 cwt. in weight unladen...	110
(e) Additional tax payable in respect of such vehicles used for drawing trailers :—	
(1) for each trailer not axceeding 1 ton in weight unladen ...	25
(2) for each trailer exceeding 1 ton in weight, unladen ...	50
Provided that two or more vehicles shall not be chargeable under this clause in respect of the same trailer.	
B. Motor vehicles other than those fitted solely with pdeumatic tyres.	The rates shown in Class A *plus* 50 per centum.
C. Motor vehicles visiting the Presidency ...	The rates prescribed in the rules.
D. Dealers in or manufacturers of motor vehicles.	
For a general licence—	
(1) in respect of any seven or less number of motor vehicles ...	300
(2) in respect of any additional seven or less number of motor vehicles ...	300

THE BOMBAY

Motor Vehicles Tax Rules, 1936

No. 6832/3.—In exercise of the powers conferred by section 20 of the Bombay Motor Vehicles Tax Act, 1935 (Bom. XXXIV of 1935), the Governor in Council is pleased to make the following rules for carrying out the purposes of this Act, namely :—

1. *Title and commencement.*—(1) These rules may be called the Bombay Motor Vehicles Tax Rules, 1936.

(2) They shall come into force on the 1st day of April 1936.

2. *Definitions.*—In these rules unless there is anything repugnant in the subject or context—

(*a*) "Act" means the Bombay Motor Vehicles Tax Act, 1935 ;

(*b*) "Form" means a form appended to these rules ;

(*c*) "Registered" means registered under the Indian Motor Vehicles Act, 1914 ;

(*d*) "Registering authority" means the Commissioner of Police, Bombay ;

(*e*) "Section" means a section of the Act ;

(*f*) "Token" means a token issued under rule 27 ;

(*g*) Words and expressions defined in the Act shall have the same meaning which is assigned to them in the Act.

3. *Declaration.*—The declaration under sub-section (1) of section 6 shall be in Form "A" and shall contain the particulars specified therein.

4. *Declaration to be delivered to registering authority.*—Such declaration shall be delivered to the registering authority either in person or through an agent or shall be sent by registered post—

(*a*) in respect of a motor vehicle registered in the Presidency before the 1st April 1936 along with the application for a fresh certificate under section 21, on or before 1st May 1936 ;

(*b*) in respect of a motor vehicle to be registered for the first time on or after 1st April 1936 along with the application for a certificate of registration ;

(*c*) in respect of a motor vehicle registered at any place outside the Presidency but kept for use or regularly used in the Presidency, within seven days of the date of the entry of the motor vehicle into the Presidency or before the 1st of May 1936 whichevery date is later.

5. *Additional declaration.*—The additional declaration under sub-section (2) of section 6 shall be in Form "B" and shall contain the particulars specified therein. Such additional declaration shall be delivered or sent to the registering authority in the same manner as is prescribed in rule 4.

6. *Forms of declaration and additional declaration from whom to be obtained.*—Forms of declaration and additional declarations to be made under section 6 may be obtained from the registering authority or from a police station.

7. *Particulars to be mentioned in declaration or additional declaration*—At the time of the delivery of the declaration or additional declaration the registered owner or the person having possession or control of the motor vehicle shall, if the motor vehicle is liable to tax, state in such declaration or additional declaration the period for which he intends to pay the tax in advance. If the vehicle is one coming under the provisions of Article III or IV of Class A in Schedule I, he shall also state therein whether he intends to use the vehicle—

(*a*) within Municipal and Cantonment limits only ;

(*b*) both within and without such limits.

8. *Payment of tax.*—The payment of the tax shall be made in cash or by cheque or by money order or into a local Government Treasury :

Provided that—

(*a*) when payment is made in cash, the money shall be tendered to the Superintendent of Police, Motor Vehicles Department, office of the Commissioner of Police, Bombay, by the person liable to pay the tax under section 6 either personally or through any person acting on his behalf ;

(*b*) when payment is made by cheque or by money order, the cheque shall be crossed and shall be drawn in the name of, and the money order addressed to, the Superintendent of Police, Motor Vehicles Department, office of the Commissioner of Police, Bombay ;

(*c*) when the payment is made into a local Government treasury, the duplicate of the challan shall be sent along with the declaration or the additional declaration as the case may be.

(9) *Deduction to be allowed.*—In the case of a motor vehicle the registration of which is valid up to the 31st August 1936, and for which the registration fee has been paid, a deduction shall be made in accordance with the provisions of section 21 from the sum payable as tax.

10. *Registering authority to satisfy himself that declaration or additional declaration is complete.*—The registering authority shall satisfy himself that every declaration or additional declaration delivered or sent to him is complete in all respects and that the proper amount of the tax or additional tax, as the case may be, has been paid.

11. *Assessment of Tax.*—In the case of a motor vehicle coming within the provisions of Articles I, II, III, and V of Class A in Schedule I, the registering authority shall, after holding such

inquiry, if any, as he deems fit, determine the unladen weight of the motor vehicle or trailer and shall assess the tax accordingly.

Explanation.—For the purpose of this rule, the unladen weight of a motor vehicle or trailer shall be deemed to include the weight of all parts, equipment, stores and accumulators which are necessary for or ordinarily used with the vehicle or trailer when working. When alternative parts or bodies are used for a motor vehicle, only the heaviest of such parts or bodies shall be taken into consideration for the purpose of determining the weight.

12. *Ascertaining the number of persons licensed to be carried.*—In the case of a motor vehicle coming within the provisions of Article IV of Class A in Schedule I, the registering authority shall, after holding such inquiry, if any, as he deems fit, ascertain the number of passengers the motor vehicle will be licensed to carry. If the vehicle has been previously licensed, a copy of the licence or permit and in any other case, a certificate from the Officer authorised to grant a licence or permit indicating the seating accommodation shall be forwarded to the registering authority with the declaration.

13. *Power to order a motor vehicle to be produced.*—For the purpose of assessing the tax, the registering authority or any other officer authorised by him in writing in this behalf may require the registered owner or the person having possession or control of a motor vehicle to produce the same—

(*a*) when such vehicle is used or kept for use in the city of Bombay or in the Bombay Suburban District, before such authority or officer, as the case may be ;

(*b*) when such vehicle is used or kept for use at any other place, before the District Superintendent of Police.

14. (1) Any person claiming exemption from the payment of the tax by virtue of any notification under section 18 in respect of any motor vehicle shall, within thirty days of the Act coming into force or of the entry of such vehicle into the Presidency, whichever date is later, communicate to the registering authority the registered number of such vehicle and such other particulars as the registering authority may require.

(2) A motor vehicle exempted under sub-rule (1) shall, if so required by the registering authority, carry in a conspicuous position on its near side either a licence card or a token in Form "F" which may be issued by the registering authority with the word "Exempted" written on it in the space opposite "Class" or "Tax-paid", as the case may be.

15. *Application for refund under section 5 (1) and (2).*—Any person claiming a refund of the tax under sub-section (1) or sub-section (2) of section 5, shall submit an application in Form "C".

to the registering authority and shall surrender the certificate of registration and licence card along with the application.

16. *Application for refund under section 5 (3) on refusal of registration or renewal of registration.*—ANY person claiming a refund of the tax under sub-section (3) of section 5, shall submit an application in Form "C" to the registering authority together with a certificate from the registering authority that the application for registration or for the renewal of registration, as the case may be, has been refused.

17. *Certificate of refund.*—If on receipt of an application under rules 15 and 16, the registering authority, after making such inquiry, if any, as he deems fit, is satisfied that a refund is admissible, he shall calculate the amount of the refund due and issue to the applicant a certificate in Form "D".

18. *Payment of refund.*—Any person to whom a certificate in Form "D" has been issued shall on presentation thereof at the local Government Treasury within 15 days from the date of issue be entitled to the payment of the sum mentioned therein.

19. *Register of Refunds.*—The registering authority shall maintain a register of refunds of the tax under the Act. Every amount for which a certificate in Form "D" has been issued shall be entered in such register.

20. *Police Officer to stop motor vehicle.*—Any Police Officer in uniform of and above the rank of a constable may exercise the power prescribed in section 8.

21. *Composition of offences.*—When any person is accused of an offence under section 10, the registering authority or any officer authorised by him in writing in this behalf in the City of Bombay or the District Superintendent of Police elsewhere, after making such inquiry as he thinks fit and after giving an opportunity to any such person to be heard, may call upon such person by notice in writing under sub-section (2) of section 10, to pay as penalty within seven days from the date of notice a sum determined in accordance with the following provisions, *viz* :—

(*a*) If the offence falls under clause (*a*) of sub-section (1) of section 10, the penalty shall be for each month or part of the month for which the tax was due and has not been paid a sum equivalent to the following amount :—

(i) if the offence is reported voluntarily by or on behalf of the accused 1|16, and

(ii) if the offence is not reported by or on behalf of the accused 1/8

of the amount of the annual tax payable by the accused ;

(*b*) if the offence falls under clause (*b*) of sub-section (1) of section 10, the penalty shall be 1|10th of the annual tax or additional tax payable by the accused ;

(*c*) the penalty prescribed in clause (*a*) or (*b*) shall be doubled, if the accused has been previously convicted under sub-section (1) of section 10, or has paid penalty by way of composition under sub-section (2) of section 10 for a similar offence.

22. *Record of penalties to be kept.*—The registering authority or any other officer appointed by him or the District Superintendent of Police, as the case may be, shall maintain a record of all penalties imposed under rule 21.

23. *Declaration by owner of motor vehicle visiting Bombay Presidency.*—Any person bringing a motor vehicle temporarily into the Presidency shall within seven days of his arrival fill in and sign a declaration in Form "E" which can be obtained either from the Motor Vehicles Department of the Commissioner of Police, Bombay, or from a Police Station. The declaration shall contain the particulars prescribed therein.

24. *Declaration by owner of motor vehicle visiting Bombay Presidency to whom to be delivered.*—The declaration in Form "E" shall be delivered in the City of Bombay to the Superintendent of Police, Motor Vehicles Department, Office of the Commissioner of Police, and elsewhere, to the District Superintendent of Police.

25. *Visiting motor vehicles.*—Any person bringing into the Presidency a motor vehicle for temporary use and keeping it for use therein for a period not exceeding thirty consecutive days in any one financial year shall be exempt from the payment of the tax :

Provided that if he keeps such vehicle longer than this period he shall be liable for payment of the tax for the whole of the period of his stay.

Provided further that this exemption shall not be granted more than once in any one financial year.

26. *Registering authority to decide whether a motor vehicle is or is not used temporarily.*—The registering authority shall from time to time determine whether any vehicle is or is not temporarily used in the Presidency.

27. *Token.*—When an exemption from the tax is claimed on the ground that a motor vehicle brought into the presidency for temporary use will not be kept in the Presidency for a period exceeding thirty consecutive days, the registering authority or the District Superintendent of Police to whom the application in Form "E" has been submitted shall, if he is satisfied that the claim is valid, provide such person with a token in Form "F", after writing the word "Free" in the space opposite "Tax-paid."

28. *Payment of tax by owner of motor vehicle visiting Bombay Presidency.*—If a motor vehicle is brought into the Presidency for temporary use for a period exceeding thirty consecutive days, the

person bringing such vehicle shall pay within seven days to the registering authority or the District Superintendent of Police, as the case may be, the amount of the tax due for the number of months the vehicle is to be kept in the Presidency as computed on the last page of Form "A". Such payment shall be made either to the registering authority or to the District Superintendent of Police, as the case may be, and the person paying the tax shall be supplied with a token in Form "F" showing the amount of the tax paid.

Note 1.—For the purpose of this rule part of a calendar month shall be considered as one month.

Note 2—A temporary visitor's token need not necessarily expire at the end of a quarter, that is to say, if he comes into the Presidency for two calendar months, he shall be taxed for those two months only, whether the said months be in one or more quarters.

29. *Crediting of amount received on issue of token.*—The District Superintendent of Police who issues a token in Form "F" shall credit the amount so received into the Local Government Treasury and shall forward the application in Form "E" in consequence of which the token has been issued by him to the registering authority for record.

30. *Token to be carried on motor vehicle.*—A token in Form "F" shall be carried in a conspicuous position on the near side of the motor vehicle in the same manner as a licence card is carried under rule 7B (*b*) (*ii*) of the Bombay Motor Vehicles Rules, 1915.

31. *Application for a fresh certificate of registration.*—An application for a fresh certificate under sub-section (1) of section 21 shall be made by forwarding to the registering authority (*a*) the declaration prescribed in rule 3, and (*b*) the existing registration certificate and licence card.

32. *Failure to apply for registration immediately after expiry of previous registration.*—If any person applies for a renewal of the certificate of registration of a motor vehicle after the expiry of such certificate, he shall be liable to pay the arrears of the tax from the date on which such certificate expired unless the registration certificate has been surrendered to the registering authority before or within seven days after such expiry, or the applicant proves to the satisfaction of the registering authority that the motor vehicle was not used during the whole of the period for which the tax was not paid.

33. *Alteration, etc. of licence card or token and issue of duplicate.*—(1) No person shall alter, deface, mutilate or add anything to the licence card or token or shall exhibit it on a vehicle other than the vehicle for which such licence card or token has been issued.

(2) If the licence card or token is lost, destroyed, defaced or altered or has become illegible, the person to whom such licence card or token had been issued shall immediately report the fact to the registering authority and obtain a duplicate from him on payment of a fee of rupee one. If the original licence card or token which has been reported to be lost is subsequently found, it shall be surrendered without delay to the registering authority.

34. *Fraction of an anna to be eliminated.*—For the purpose of calculating the amount of the tax or penalty payable by, or the amount of refund due to, any person under the Act, a fraction of an anna shall be counted as one anna.

35. *Register of receipts of tax.*—The registering authority shall maintain a register of receipts of the tax.

36. *Notice of place and time of business.*—The registering authority may give public notice of the places at which, the date on which and the hours between which payment of the tax may be made and applications made and heard under the Act.

37. *Payment of further instalment of tax.*—When any further instalment of the tax becomes due, it shall be remitted to the registering authority in the manner prescribed by rule 8, along with the registration certificate and a renewal application in Form "G" within fifteen days from the date on which such tax becomes due.

FORM "A".

Form of declaration for motor vehicles kept for use or habitually used in the Presidency (section 6 of the Act and rule 3).

(1) Full name of owner (and hirer, if any).

(2) Full postal address of usual residence of owner (and of hirer, if any).

(3) Description of motor vehicle, car, bus, truck, heavy motor vehicle, etc.

(4) Registered Number (if any).

(5) Maker's name or name by which the motor vehicle is ordinarily known.

(6) Type of body.

(7) Year of manufacture.

(8) Number of chassis.

(9) Number on Engine.

(10) Number ofcylinders.

(11) Horse Power.

*(12) Weight unladen.

* *Note.*—The unladen weight of a motor vehicle shall be deemed to inclne all parts, equipment, stores and accumulators which are necessary for, or are ordinarily used with the vehicle when working, provided that when alterative parts or bodies are used, the heaviest shall be taken for the purpose of calculating the weight.

(13) Number of seats.
(14) Whether tyres peneumatic or solid.
(15) Certificate as required by rule 10 of the Bombay Motor Vehicles Rules, 1915.

Additional for heavy motor vehicles.

(16) Axle weight front.
Do. rear.
(17) Diameter of wheels.
(18) Width and material of tyres.
(19) Height.
(20) Length.
(21) Width.

I hereby declare that the above is a true statement of the motor vehicle in my possession and use.

* (*a*) I intend to use it in Municipal and Cantonment limits only.

*(*b*) I intend to use it both within and without the Municipal and Cantonment limits.

I desire that the vehicle shall be taxed up to

* 30th June,
30th September,
31st December,
31st March

of the current financial year and tender Rs. by
(state whether cash, cheque, money order, or Treasury chalan)
being the tax due on the above vehicle for that period after † deducting Rs. being the proportion of registration fee already paid for that period. I also tender a sum of ‡ Rs. as registration fee.

Date

Signature

Note.—Under section 10 of the Bombay Motor Vehicles Tax Act, 1935, the delivery of a declaration wherein the particulars required by the Act are not fully and truly stated involves a fine which may, on first conviction of the person liable therefor, extend to a sum equal to the total amount of the tax to which such person is liable and for each subsequent conviction to twice the sum aforesaid. Failure to deliver a declaration duly filled in on or before the proper date involves, for the first conviction, a fine up to Rs. 100, and for each subsequent conviction, a fine up to Rs. 200.

* Strike out whichever inapplicable.

† Strike out if inapplicable.

‡ Rs. 8 in the case of a motor vehicle not previously registered and Rs. 2 in the case of each subsequent renewal of registration.

Order of the Assessment Officer.

Certified that the abovementioned vehicle is liable to tax under Article Class of Schedule I and that Rs. is due for the period from to

Date

Signature

Assessment Officer.

The tax of Rs. mentioned above has been duly received by me. *Vide* receipt No. , dated

Signature

Cashier.

Licence card No. to expire on has been issued to-day.

Signature

Superintendent of Police,

Motor Vehicles Department, Bombay.

Rates of

Class	Type.	1 month.		2 months.		3 months.		4 months.	
		Rs.	a.	Rs.	a	Rs.	a	Rs.	a
I(*a*)	Motor cycle not exceeding 200 lbs.	1	13	3	5	4	13	6	10
(*b*)	Motor cycle exceeding 200lbs....	2	6	4	6	6	6	8	12
(*c*)	Motor tricycle ...	2	6	4	6	6	6	8	12
(*d*)	Additional for sidecar or trailer	0	5	0	9	0	13	1	2
II	Motor vehicle not exceeding 5 cwt. for invalids ...	0	8	0	15	1	6	1	14
III(*a*)	Motor goods vehicle not exceeding 15 cwt.	17	13	32	13	47	13	65	10
(*b*)	15 cwt. to 30 cwt. ...	29	11	54	11	79	11	109	6
(*c*)	30 cwt. to 50 cwt. ...	39	10	72	15	106	4	145	14
(*d*)	50 cwt. to 70 cwt. ...	44	9	82	1	119	9	164	2
(*e*)	Exceeding 70 cwt. ...	49	7	91	2	132	13	182	4
(*f*)(*i*)	Additional for trailer not exceeding 1 ton.	14	14	27	6	39	14	54	12
(*f*)(*ii*)	Additional for each trailer over 1 ton	23	12	43	12	63	12	87	8
IV(*a*)	Motor vehicles plying for passenger hire not more than two passengers.	8	11	16	0	23	6	32	1
(*b*)	For each additional passenger	1	9	2	14	4	4	5	13
V(*a*)	Other motor vehicles not exceeding 5 cwt.	3	15	7	4	10	10	14	9
(*b*)	15 cwt. to 30 cwt. ...	5	15	10	15	15	15	21	14
(*c*)	30 cwt. to 45 cwt. ...	7	14	14	9	21	4	29	2
(*d*)	Exceeding 45 cwt. ...	10	14	20	1	29	4	40	2
(*e*)(*i*)	Each trailer not exceeding 1 ton	2	8	4	9	6	11	9	3
(*e*)(*ii*)	Each trailer over 1 ton ...	4	15	9	2	13	5	18	4

Note.—1. In the case of motor vehicles having solid tyres, 50 per cent. should

2. In the case of motor vehicles included in classes III and IV above of the tax only should be sent.

3. In the case of motor vehicles which have been registered in the Presi- paid, as the case may be, should be deducted from the first instalment of tax.

4. Tax can only be paid for a period ending on 30th June, 30th September, ensuing financial year or first quarter thereof payment may be made at any time 1st. For example, a motor vehicle which is registered in May can pay tax for 2, months. No tax can be paid in any year for a period beyond the 31st March next

Taxation.

5 months.		6 months.		7 months.		8 months.		9 months.		10 months.		11 months.		12 months.	
Rs.	a.	Rs.	a.	Rs.	a.	Rs.	a.	Rs.	a.	Rs.	a.	Rs.	a.	Rs.	a.
8	2	9	9	11	6	12	14	14	6	16	3	17	11	18	0
10	12	12	12	15	2	17	2	19	2	21	8	23	8	24	0
10	12	12	12	15	2	17	2	19	2	21	8	23	8	24	0
1	6	1	10	1	15	2	3	2	7	2	12	3	0	3	0
2	5	2	11	3	3	3	10	4	1	4	9	5	0	5	0
80	10	95	10	113	7	128	7	143	7	161	4	176	4	180	0
134	6	159	6	189	1	214	1	239	1	268	12	293	12	300	0
179	3	212	8	252	2	285	7	318	12	358	6	391	11	400	0
201	10	239	1	283	10	321	2	358	10	403	3	440	11	450	0
223	15	265	10	315	1	356	12	398	7	447	14	489	9	500	0
67	4	79	11	94	9	107	1	119	9	134	7	146	15	150	0
107	8	127	8	151	4	171	4	191	4	215	0	235	0	240	0
39	6	46	12	55	7	62	12	70	2	78	13	86	2	88	0
7	2	8	8	10	1	11	6	12	12	14	5	15	10	16	0
17	14	21	4	25	3	28	8	31	14	35	13	39	2	40	0
26	14	31	14	37	13	42	13	47	13	53	12	58	12	60	0
35	13	42	8	50	6	57	1	63	12	71	10	78	5	80	0
49	5	58	7	69	5	78	8	87	11	98	9	107	12	110	0
11	4	13	5	15	13	17	14	19	15	22	7	24	8	25	0
22	7	26	9	31	8	35	11	39	14	44	13	49	0	50	0

be added to the above figures.

which are to be used solely within Municipal and Cantonment limits, two-thirds

dency prior to the 31st March 1936, 5/12ths of the registration or renewal fee

31st December and 31st March of the current financial year provided that for the in March, but this will not cover, not permit u e of Motor vehicle before April 5, 8 or 11 months and a motor vehicle registered in December can pay for 1 or 4 following.

FORM "B"

Declaration of additions or alterations to a motor vehicle.

(*Vide* sections 6 (2) and 7 of the Act and rule 5.)

I residing at hereby declare that I have on made the following alterations in my motor vehicle bearing registered No. thereby making it liable to a higher rate of tax under the Bombay Motor Vehicles Tax Act, 1935. The licence card granted in respect of motor vehicle No. is hereby surrendered.

I tender Rs. in payment of the additional tax due up to

Description of alterations

Date

Signature

FORM "C"

Application for refund of tax (section 5 of the Act and rules 15-16)

I residing at owner of motor vehicle registered No. , having paid the tax on the motor vehicle register No. for the period to hereby claim a refund of the tax on the following grounds:—

(*a*) That the certificate of registration and licence card in respect of motor vehicle bearing registered No. were surrendered on .

(*b*) That the registration of my motor vehicle No. was refused on .

(*c*) That renewal of registration of my motor vehicle No. was refused on .

Satisfactory proof of my claim is attached herewith.

Applicant.

Date 193 .

Note.—Strike out any clause which is not applicable.

FORM "D"

(*See Section 5 of the Act and rule 17*)

(Payable within 15 days from the date of issue)

Form of Order for Refunds.

To

The Treasury Officer
The Secretary and Treasurer, imperial Bank of India
The Manager, Reserve Bank of India, Bombay.

I registering authority hereby certify that *Mr. having paid on an amount of Rs. as tax on the motor vehicle‡ bearing registered number for is entitled under the provisions of section 5 of the Bombay Motor Vehicles Tax Act, 1935, to a refund of Rs. on account of reasons mentioned at item No. of the following items :—

(1) That he has been refused registration of his motor vehicle ;

(2) That he has been refused renewal of registration of his motor vehicle ;

(3) That the registration certificate and licence card of his motor vehicle have been surrendered.

A note of refund has been made on the original document.

Please pay to Mr. rupees (words and figures) on account of the above refund.

Date

Signature of Registering authority.

Received payment Pay Rupees

Claimant's signature. Officer i/c of Treasury / the Bank's Branch.

Date

FORM "E"

Form of declaration for motor vehicles brought temporarily into the Presidency.

(*Vide* rule 23)

I hereby declare that I have brought the undermentioned motor vehicle into the Bombay Presidency on and that I intend to keep it in the Presidency up to :—

(1) Description of the motor vehicle—
(2) Registered number—
(3) Maker's name—
(4) Type of vehicle—
(5) Number of chassis—
(6) Number on engine—
(7) Unladen weight—
(8) Seating capacity if plying for hire—
(9) (*a*) Date on which the motor vehicle was last brought into

* Full particulars and permanent address of the person who has paid tax should be inserted.

‡ A brief description of the motor vehicle should be inserted, if it has not been registered.

and

(*b*) Date on which it was last removed, from the Bombay Presidency.

(10) Signature of the declarant—

(11) Permanent postal address—

(12) Temporary postal address in Bombay Presidency—

Date

Signature of the declarant.

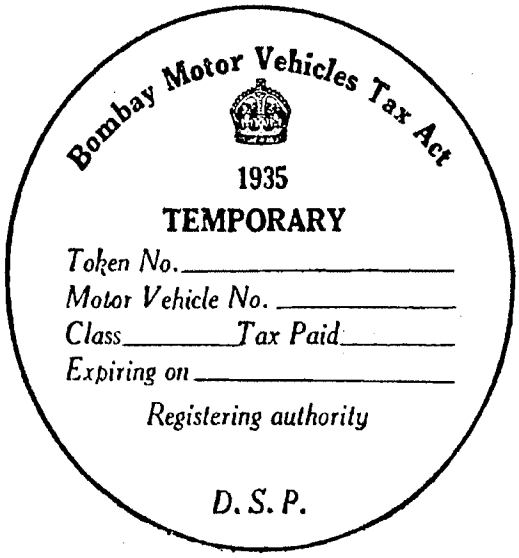
Forwarded to the Commissioner of Police (Motor Vehicles Department), Bombay.

Token No. expiring on has been issued by me after recovering Rs. being the tax due.

Date District Superintendent of Police.

FORM "F"

(See *rule 30*)



FORM "G"

Application for renewal of registration on payment of further instalment of tax

(*See* rule 37).

I residing at apply for the renewal of registration of my motor vehicle No. up to and tender Rs. by (state whether cash, cheque, money order, or treasury chalan) being the amount due as tax for that period.

Date

Signature.

NOTIFICATION UNDER SECTION 18

Exemption of motor vehicles

Bombay Castle, 24th June 1936.

No. 6832/3-XV.—In supersession of the previous orders on the subject and in exercise of the powers conferred by section 18 of the Bombay Motor Vehicles Tax Act, 1935 (Bom. XXXIV of 1935), the Governor in Council is pleased to exempt the motor vehicles or classes of motor vehicles mentioned in the first column of the Schedule hereto appended from the payment of the tax imposed under the said Act, to the extent shown in the second column thereof.

THE SCHEDULE ABOVE REFERRED TO.

Motor vehicles or classes of motor vehicles 1	Extent of exemption 2
(1) Mechanically propelled road rollers, fire engines and fire-escape tenders.	Total exemption.
(2) Motor ambulance cars owned by the following authorities or bodies and exclusively used for conveying patients to and from a hospital :—	Total exemption.
(a) Motor ambulance cars of the Parsi Division of the St. John Ambulance Brigade Overseas.	
(b) Motor ambulance cars of the Municipal Corporation of the City of Bombay.	
(c) Motor ambulance cars of the Masina Hospital.	
(d) Motor ambulance cars of the Parsi General Hospital.	
(e) Motor ambulance cars of the St. George's Hospital.	
(f) Motor ambulance cars of the Surat Cosmopolitan Division of the St. John Ambulance Brigade Overseas.	
(g) Motor ambulance cars of the Ashwood Memorial Hospital, Dhond, Poona District.	
(h) Motor ambulance cars belonging to the Muslim Division of the St. John Ambulance Brigade Overseas.	
(i) Motor ambulance cars belonging to the Bai Yamunabai L. Nair Charitable Hospital.	
(j) Motor ambulance cars belonging to the Poona City Municipality.	
(k) Motor ambulance cars belonging to the St. John Ambulance Brigade Overseas, Ahmedabad Division.	
(l) Motor ambulance car of the Ahmedabad Municipality.	
(m) Motor ambulance cars of the Sassoon Hospital Poona.	
(n) Motor ambulance cars of the Congress Free Hospital, Bombay.	
(o) Motor Ambulance cars of the Swastik League, Bombay.	
(p) Motor ambulance car belonging to the Satara Health Association.	
(q) Motor ambulance car belonging to the Broach Young Men's Parsi Association.	
(r) Motor ambulance car belonging the Sir William Wanless Tuberculosis Sanatoriam, Miraj.	

Motor vehicles or classes of motor vehicles. 1	Extent of exemption. 2
(3) Conservancy cars and watering carts maintained by the local authority or maintained under contract for a local authority and exclusively used for conservancy or watering purposes.	Total exemption.
(4) Motor vehicles other than those used for the conveyance of passengers which are certified by the Municipal Commissioner to be the property of the Bombay Municipal Corporation and used exclusively for Corporation work.	Total exemption.
(5) Motor vehicles other than those for conveyance of passengers owned and kept exclusively for use by any local authority situated within the Bombay Presidency.	Total exmption.
(6) Motor cars belonging to Consular officers *de carrier.*	Total exemption (subject to any general or speial order by Government).
(7) Motor vehicles owned by the Government of Bombay.	Total exemption.
(8) Motor vehicles—	
(*a*) registered as Military Motor vehicles by the Quartermaster General in India.	Total exemption.
(*b*) used by the Navy and Air Force and belonging to Government.	
(9) Motor vehicles exempted from taxation under the Auxiliary Forces Act, 1920, the Indian Territorial Forces Act, 1920, or any other law for the time being in force.	Total exemption.
(10) Motor vehicles owned by the Society for the Prevention of Cruelty to Animals and exclusively used for the conveyance of sick animals.	Total exemption.
(*a*) Travelling motor veterinary dispensary belonging to the Society for the Prevention of Cruelty to Animals, Poona.	Total exemption.
(11) Motor vehicles imported or arriving in Bombay under a triptique or "carnet de passage" system.	Exemption for a period of thirty days, after arrival.
(12) Motor vehicles used exclusively for the conveyance of children to and from school.	To be taxed only under article V of class A of Schedule I of the Act.
(13) Five motor vehicles being the personal property of the Ruler of an Indian State.	Total exemption.
(14) The undermentioned motor vehicles owned by the Bombay Electric Supply and Tramways Company, Limited, and used solely for the Tramway service—	Total exemption.
(*a*) Five Tower wagons used for the maintenance of Trolley wires.	
(*b*) One Tramway Breakdown Lorry.	
(*c*) Two Permanent-Way Welding Plant Lorries.	
(*d*) Two trailers utilised for carrying Drums of Trolley wires used in conjunction with the Tower wagons.	

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THE
Bombay Municipal Boroughs Act, 1925

BOMBAY ACT No. XVIII OF 1925

[*8th June 1926.*

An Act to give wider powers in the management of municipal affairs in certain cities.

WHEREAS it is expedient to amend the law relating to the management of municipal affairs in certain cities of the Bombay Presidency ; And Whereas the previous sanction of the Governor-General required by section 80-A of the Government of India Act has been obtained for the passing of this Act ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (1) * [1] This Act may be called the Bombay [*a*] Municipal Boroughs [*a*] Act, 1925.

(2) It extends to the whole of the Bombay Presidency.

Preamble.—The preamble of an Act is a key to its understanding and it generally fixes its scope or limit (*Edwards*, 1 Bom. 333).

Marginal notes.—Where a section of an Act is not quite clear in its language, it is legitimate to look at the marginal note to see what the drift of the section itself is (*In re, Smith*, 45 M. L. J. 731).

" Bombay Presidency".—'Presidency of Bombay' shall mean the territories within British India for the time being under the administration of the Governor of Bombay in Council (*Bombay General Clauses Act* (I of 1904), s. 3 (7)).

The whole of the Presidency of Bombay including Sind is at present governed by the four Municipal Acts—(1) The City of Bombay Municipal Act (III of 1888); (2) The Bombay Municipal Boroughs Act (XVIII of 1925); (3) The Bombay District Municipal Act (III of 1901) and (4) The City of Karachi Act (XVII of 1933). The City of Bombay is governed by the City of Bombay Municipal Act (III of 1888). The Municipal Boroughs of Ahmedabad, Nadiad, Broach, Surat and Thana (Northern Division), Bandra and Kurla (Bombay Suburban), Ahmednagar, Jalgaon, Bhusawal, Amalner, Chalisgaon, Dhulia, Nasik, Poona City, Poona Suburban, Lonavla, Satara City, Sholapur and Pandharpur, (Central Division), Belgaum, Bijapur, Dharwar, Hubli, Gadag Betigiri and Ratnagiri

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* This figure represents the figure of the section of the Bombay District Municipal Act (III of 1901)

[*a*—*a*] These words were substituted for the words "City Municipalities" by Bom. IV of 1930, s. 4.

(Southern Divison), and Hyderabad, Sukkur, Shikarpur and Larkana (Sind) are governed by the Bombay Municipal Boroughs Act (XVIII) of 1925). The Municipalities of Dholka, Viramgaon, Prantij, Modasa, Dhandhuka, Sanand and Ranpur in Ahmedabad District, Umreth, Anand, Borsad, Dakor, Kapadvanj, Mehmedabad, Kaira in Kaira District, Godhra, Dohad in Panch Mahals District, Ankleshwar, Jambusar in Broach District, Rander, Bulsar in Surat District, Kalyan, Bassein, Bhiwandi in Thana District, Ghatkopar-Kirol, Vile-Parle, Juhu in Bombay Suburban District, Sangamner in Ahmednagar District, Yawal, Faizpur, Raver, Savda, Parola, Chopda, Dharangaon, Erandol in East Khandesh District, Nandurbar, Shahada, Taloda, Sindkheda, Betawad, Shirpur in West Khandesh District, Igatpuri, Yeola, Nandgaon, Malegaon, Bhagur, Trimbak, Manmad, Sinnar in Nasik District, Saswad, Jejuri, Baramati, Indapur, Sirur, Talegaon Dhabhade, Alandi, Junnar in Poona District, Ashta, Islampur, Karad, Mahableshwar, Mhaswad, Panchgani, Rahimatpur, Satara Suburban, Tasgaon, Vita, Wai in Satara District, Barsi, Karmala, Sangola in Sholapur District, Nipani, Athni, Gokak, Saundhatti Yellamma, Bail Hongal in Belgaum District, Bagalkot, Guledgud, Ilkal in Bijapur District, Nargund, Haveri, Byadgi, Ranebennur, Gudguddapur, Navalgund in Dharwar District, Karwar, Kumta, Sirsi, Halyal, Honavar, Bhatkal, Gokarn, Ulvi in Kanara District, Alibag, Mahad, Matheran, Panvel, Pen, Roha Ashtami, Uran in Kolaba District, Chiplun, Malvan, Vengurla in Ratnagiri District,—*Sind*—Tatta, Keti Bunder in Karachi District, Hala, Tando Allahyar, Tando Mahomedkhan, Nasarpur, Matiari in Hyderabad District, Garhi Yasin, Rohri, Ghotki in Sukkur District, Kambar, Ratodero in Larkana District, Tando Adam, Shahdadpur in Nawabshah District, Mirpurkhas, Umarkot in Thar Parkar District, Shehwan, Manjhand, Kotri in Dadu District and Jacobabad in Upper Sind Frontier District, are governed by the Bombay District Municipal Act (Bom. III of 1901).

The City of Karachi is governed by the City of Karachi Municipal Act (XVII of 1933).

Construction.—The Municipal Act is a local Act of a highly technical nature, and one which touches the private rights of individuals. It has, therefore, to be most carefully construed, and the intention of the framers of the Act must be obtained from the particular language used (*Dassa*, 2 Ind. Cas. 408). The Municipal Act is a punitive enactment and must be strictly construed (*Patan Dai*, A. W. N. 1905, 19). In construing the fiscal provisions of an Act like the Municipal Act, the construction most beneficial to the subject ought to be adopted (*Somu Pillai v. Municipal Council, Mayavaram*, 28 Mad. 520).

Where in an Act of the Legislature the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy, and to execute the true intention of the Legislature (*Jennings v. Municipal Commissioner, Madras*, 11 Mad. 253).

Municipal Acts are not private Acts. The term 'private Act' applies to enactments conferring powers upon associations for purposes which, so far as the associations are concerned, are of a purely private character, although great public advantage may also result from their labours. Hence a Municipal Act is not to be construed strictly like a private Act (*Branson v. Municipal Commissioner of Madras*, 2 Mad. 362).

In construing a Statute the Court cannot refer to the Statement of Objects and Reasons attached to a Bill, or to the Report of the Select Committee, or to the Debates of the Legislature, but can only look to the Statute itself. (*Kadi*

Baksh v. Bhawani Prasad, 14 All. 145), nor to the Proceedings of the Legislature as legitimate aids to the construction of an Act (*Shri Churn Chungo*, 22 Cal. 1017, *Bal Gangadhar Tilak*, 22 Bom. 112).

Where an Act gives power to a Municipality or Corporation for the public benefit, a more liberal construction could be given to it than where powers are to to be exercised merely for private gain or other advantage (*Ollivant v. Rahimtulla Nur Mahomed*, 12 Bom. 474).

Where a Statute creates a right not existing at Common law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed (*Chunilal v. Ahmedabad Municipality*, 36 Bom. 47).

2. The provisions of the Commissioner in Sind Act (Act V of 1868) shall not apply to any powers hereby conferred upon Government.

Definitions.

3. In this Act and in the schedules, unless there be something repugnant in the subject or context—

(1) "Annual letting value" shall mean the annual rent for which any building or land, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year, and shall include all payments made or agreed to be made by a tenant to the owner of the building or land on account of occupation, taxes, insurance or other charges incidental to his tenancy.

Annual letting value.—The annual value of lands and buildings is the gross annual rent at which the land or building might *reasonably* be expected to let from month to month or from year to year (7 Mad. 63). The annual value is the gross annual rent minus a fixed percentage for repairs and for other expenses for maintaining the building or land in a state to command rent. The annual value means the annual letting value of the premises (11 Cal. 275). The annual value means the gross annual rent for which buildings and lands liable to taxation may reasonably be expected to let, and, in case of a house, may be expected to let unfurnished (*Vide* s. 42 (2) of the Punjab Municipal Act, 1891). In assessing a tax based on the annual letting value of premises it is illegal to take the annual income derived from the premises as the basis of calculation (*Secretary of State v. Hughes*, 38 Bom. 293).

Rent.—The rent of land is often taken as a percentage of the purchasing price of it (*Castle on Renting*).

Tenants.—All possible occupiers including the actual occupier must be taken into account as possible tenants from year to year (17 Q. B. D. 738).

(2) "Building" shall include any hut, shed or other enclsure, whether used as a human dwelling or for any other purpose, and shall also include walls, verandahs, fixed platforms, plinths, door-steps and the like.

Building.—Generally a building means a house, an out-house, hut, shed or roofed enclosure, whether used for human habitation or otherwise. It may be of masonry, bricks, wood, mud, metal or any other material whatever. It is a term

of much wider significance than "house." The structure need not be fastened to the ground or be above the surface of a street (*Aiyangar's Municipal Corporations in British India*, 2nd ed., p. 566).

Re-building a whole wall is erecting a building and sanction is necessary (*Emp. a. Katchan Sardarkhan*, 35 Bom. 235). The material reconstruction of a small wall, however, cannot be said to constitute the erection of a building (Emp. v. De Souza, 35 Bom. 412). See also 18 Bom. 547 ; Un-Rep. Cr. Cases 402 ; 8 C. W. N. 487. A mere wattle-fence is not a building. (Cr. Rg. 92 of 1898). So also a reed fence (Un-Cr. Cases 145). A *katta* or a broad extended door-step may be a building (Cr. Rg. 47 of 1889). Corrugated iron shed is a building (7 C. L. J. 243). A varandah is a building (1 Pat. 26). Re-building of a wall from its foundation is equivalent to a building (A. I. R. 1923 Bom. 407). No sanction is necessary for mere repair of a screening wall (11 A. L. J. 486). A boundary or compound wall is not a building (15 C. W. N. 84). See *contra* 45 Bom. 1151, where it was *held* that the erection of a compound wall at a distance from the building is erecting a building. Pumb is not a building (9 Cr. L. R. 331). An ordinary wire fence is not a building (41 Bom. 563). The word "building" as used in Sec. 66 (1) of the Central Provinces Municipal Act indicates a structure with a roof (22 Cr. L. J. 754).

A wooden shed mounted on wheels and intended to be a permanent fixture to the site is a building within the meaning of the Punjab Municipal Act, 1911.

The words "any building" in sec. 96 of the Bombay District Municipal Act, 1901 (corresponding to sec. 123 of this Act) are wide enough to cover a building in a private *Mohla* and permission of the Municipality is necessary to build any building within the *Mohla*. A High Court is prohibited under s. 439 (5) of the Criminal Procedure Code from entertaining proceedings in a case of acquittal by way of revision at the instance of the Local Government as the latter can appeal from the acquittal under s. 417 of the said Code (15 S. L. R. 171). The word "building" in this clause includes the foundations which form an essential part of a permanent building (*Emperor v. Chhaganlal*, 51 Bom. 818).

What are not new buildings.—Under the English Acts, the following have been held not to be new buildings :—

(1) Hoardings enclosing land used for preparing wood for hoardings (*Slaughter v. Sanderland Corporation*, 65 L. T. 250).

(2) A boiler cased in brick-work, partly under-ground (*Gery v. Black Lion Brewery Co.*, 55 J. P. 711).

(3) A conservatory of wood and glass (*Hebert v. Action Local Board*, 5 T.L.R. 274 C. A).

(4) A temporary storehouse for building purposes (*Fielding v. Rhyl Improvement Commissioners*, 3 C. P. S. 272).

(5) A wooden portable theatre (*Newell v. Ormskirk Urban District Council*, 17 J. P. 119).

"Include."—The word "include" in this clause should not be read as equivalent to the word "mean" (51 Bom. 818 = 29 Bom. L. R. 733). Where a term is interpreted in a Statute as "including" etc., the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all the circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should be (*Blaz*, 35 Bom. 412, s. c. 13 Bom. L. R. 494).

(3) "Commissioner" shall mean the Commissioner of a division appointed under the Bombay Land Revenue Code, 1879, and in Sind, the Commissioner in Sind.

(4) "Councillor" shall mean any person legally a member of the municipality in a municipal borough.

(5) "Dangerous disease" shall mean cholera, plague, small-pox, and any endemic, epidemic or infectious disease by which the life of man is endangered.

Dangerous disease.—With reference to dangerous diseases, if any medical practitioner attending on or called in to visit a patient becomes aware that the patient is suffering from an infectious disease in any private or public dwelling-house not being a hospital within the City, he must give information of the same to the officers of the municipal corporation with the least practicable delay. They must give notice within a reasonable time (*Thomas v. Nokes L.R.* 6 Eq., 521).

N. B.—In England, the obligation is imposed on relatives, persons in attendance and on occupiers (Halsbury, Vol. 23, p. 447). See also *Aiyangar's Municipal Corporations in British India*, 2nd Ed., p. 673.

(6) "House-gully" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or of affording access to a privy, urinal, cess-pool or other receptacle for filthy or polluted matter, to municipal servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom.

(7) "Judge" shall mean District Judge, Joint Judge, Assistant Judge, Judge of a Court of Small Causes, Subordinate Judge, or Joint Subordinate Judge.

(8) "Land" shall include land which is built upon or covered with water.

(9) "Municipal borough" shall mean a municipal district as defined in the Bombay District Municipal Act, 1901, included or hereafter included in Schedule I, during the period of such inclusion.

(10) "Municipal district" shall mean a municipal district as defined in the Bombay District Municipal Act, 1901.

The Bombay District Municipal Act (Bom. Act III of 1901) defines 'Municipal District' thus :—

"Municipal District" shall mean any local area which is at present a municipal district, and any local area which may hereafter be construed a municipal district under section 4, if such municipal district has not ceased to exist under the provision of the said section."

(11) "Nuisance" shall include any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smelling or hearing, or which is or may be dangerous to life or injurious to health or property.

Nuisance.—Nuisance is something that produces inconvenience or damage (*Webster*).

Nuisance may be described as any wrongful and substantially prejudical interfence (not being trespass with the enjoyment of public or private rights) through the act or omission of a person, either in the use of, or dealings with, public property, or in the purported exercise of his rights and powers (*Aiyangar's Municipal Corporations*, pp. 769-71).

Different kinds of nuisances.—There are many degrees in all nuisances: Those which (1) endanger life; (2) endanger health; and (3) diminish the comforts of the plaintiff. In the first two kinds of nuisances, the Court would not hesitate to prevent it by an injunction; but where the nuisance is of the third kind, there would always be a question whether the Court would proceed against him who causes the nuisance by injunction or compensate the sufferer in damages (*Bai Bhicaji v. Perojshaw*, 40 Bom. 401).

A legal nuisance is rather an evasive, shifting and intangible thing hard to be pinned down by a verbal definition. It must always be conditioned by time, place and circumstances. In estimating a nuisance, complained of, the Court must have regard to the station in life of the plaintiff and to the locality and the nature of the nuisance complained of (*Ibid*).

Nuisance distingnished from negligence.—Nuisance must be distiguished from negligence. In the acts or omissions which are classed as nuisances, the duty on the part of the wrong-door is an absolute one, and if damage be proved liability arises; while in the omissions which fall within the sphere of negligence, liability always depends on the failure to use the degree of care which was necessary to be used in the particular circumstances (*Halsbury*, Vol. 21, p. 507).

(12) "Octroi" shall include a terminal tax.

(13) "Official year" shall mean the year commencing on the first day of April.

(14) "Owner" shall include the person for the time being receiving the rent of any land or building, whether on his own account or as agent or trustee for any other person or for any society or for any religious or charitable purposes, or who would so receive the rent if such land or building were let to a tenent.

Owner—The term 'owner' is defined as including the person for the time being receiving whether on his own account or as agent or trustee for any other person the rent of any land or building. The person receiving the rent is *prima facie* liable to pay all the taxes due in respect of the land or building (See *Metropolitan Water Board v. Brooks*, 1 K. B. 289). Where an owner is himself the occupier, he must be dealt with as an occupier (*Rex v. Propsri*. 1 K. B. 289). An agent cannot get rid of an existing liability by resigning the agency, though he may, by resigning, escape liability for rates, made after his resignation (*Broadbent v. Shepherd*, 2 K. B. 274).

Lessees who are in possession under buiding agreements and who collect rents are the owners liable to be proceeded against (*Emperor v. Ramchandra Bhaskar*, 34 Bom. 503). In *Corporation of Calcutta v. Manmotha* (5 Cr. L. R. 383) it was *held* that notice to remove a buiding could be served on the landlord though the tenant was the owner of the building.

The person who receives the rack-rent from the occupier is deemed the owner (*Cook v. Montagu*, L. R. 7 Q. B. 418).

Receiver appointed by Court not the owner.—

A receiver appointed by Court is not the owner of the premises he holds as receiver within the definition of the term owner. If he receives rent for such premises, he does not do so on his own account or as agent and trustee for any person, but as officer of Court and as manager of the property on its behalf (*W. R. Fink v. The Corporation of Calcutta*, 30 Cal. 721 followed in *The Corporation of Calcutta v. Haji Cassim Ariff Bham*, 38 Cal. 714).

Mortgagees—Trustees.—Mortgagees-in-possession are liable as owners (*Tottenham L. B. v. Williamsom*, 69 L. T. (N. S.) 51). Trustees, although they are not beneficially interested in the estate, are owners (*In Re Barney Harrison v. Barney*, 3 Ch. 562). See also *Aiyangar's Municipal Corporations in British India*, 2nd Ed., p. 393.

(15) "Public securities" shall mean—

(*a*) securities of the Government of India and of the Local Government;

(*b*) stocks, debentures or shares in railway or other companies the interest whereon has been guaranteed by the Secretary of State for India in Council;

(*c*) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a legislature established in British India; or

(*d*) a security expressly authorized by any order which the Government makes in this behalf.

(16) "Public street" shall mean any street—

(*a*) over which the public have a right of way; or

(*b*) heretofore levelled, paved, metalled, channelled, sewered or repaired out of municipal or other public funds; or

(*c*) which under the provisions of section 115 or 116 is declared by the Municipality to be, or under any other provisions of this Act becomes a public street.

Public street—Private street.—The mere circumstance that a street is lighted and swept by a municipality is not of itself sufficient to convert a private into a public street (*Ankleshwar Municipality v. Rikhavchand*, 25 Bom. 315) So also the mere fact of draining (*Emperor v. Eduljí*, 14 Bom. L. R. 1169). A roadway in bustee-land is a private street (*Corporation of Calcutta v. Sreemathi Mahamaya Debi*, 17 C. W. N. 1250). A pathway made by joint owners for the convenient use of their buildings is not a private street (*Harimati Dasi v. Corporation of Calcutta*, 13 C. L. J. 219). Road belonging to a Railway Company and subject to public right is, however, a private street (*Municipal Commissioner of Bombay v. Mathurabhai*, 30 Bom. 558).

The mere fact that an old drain exists under a street does in any way make the street as one sewered out of municipal funds and if the public as such have no right to pass along or over the street the mere existence of the sewer does not make it a public street. A public street includes drains and gutters on either side but not any underground sewers (*Municipal Board of Benares v. Ramkrishna Das*, 1922, All. 386).

Under the term "public street" the space covered by a drain is included and is vested in the municipality even if it be private property (*The Corporation of Madras v. Mohan Lal Sowcar*, 30 I. C. 683).

A blind-lane though originally private property but used by the public generally for upward of 30 years, and lighted, drained and swept by the municipality is a public street (*Municipal Board of Bulandshahr v. Dakkhan Lal*, 30 All. 70). But a blind-lane which was not repaired at the public expense is not a public street (*Kington-upon-Hull Corporation v. N. E Ry*, 1 Ch. 31). See, however, *Kalidas v. Municipality of Dhandhuka*, 6 Bom. 689.

The plaintiff was the owner of two houses, and a mortgagee of a third house out of a set of six which surrounded an open court, originally belonged to a single individual. The plaintiff built an *ota or verandah* and put up a wooden bench in front of his house, which the municipality of the town ordered to be removed. In a suit by the plaintiff to have this order set aside, the District Court found that the occupant of each house had the right of way across the court, which was used as the means of access to the houses which surrounded it by persons having business with the house-holders. *Held*, that such limited access by the public was not sufficient to show that the court ceased to be private property, and was connected into a street vesting in the municipality within the meaning of ss. 3 and 17, Municipal Act VI of 1873, and that the municipality had not any right to interfere with the plaintiff's erection, whatever liability he might have incurred to an action by any of the other house-holders who occupied the court (*Kalidas v. Municipality of Dhandhuka*, 6 Bom. 689).

Repaired—Stopping up holes made by the rats and setting right slabs on stones by the Health Department of the Municipality is no proof of repair within the intent of the definition of public street. Nor would the use by the municipality of its powers to remove projections and obstructions be evidence that the street is public (*Commissioner of Bombay v. Vinayak Ramchandra*, Bom. H.C. Cr. Rg. No. 58 of 1895).

(17) "Private street" means a street which is not a public street.

(18) "Salaried servant of the Government" shall not include a retired servant of the Government in receipt of a pension, or a person in a receipt of a salary from the Government who is not a full-time servant of the Government.

(19) "Street" shall mean any road, footway, square, court, alley, or passage accessible whether permanently or temporarily to the public, whether a thoroughfare or not; and shall include every vacant space notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not; but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid.

Street.—A street in its ordinary popular sense means a roadway, not necessarily high-way, which has on one side or both sides a more or less continuous and regular row of houses (*Emperor v. Ram Rao*, 43 Bom. 123). A lane which is accessible to the public, whether permanently or temporarily, is a street (*Gangaram v. Municipal Committee, Amritsar*, (1922), 68 I. C. 675). Dustbin is not part of a street (*Perumal v. Municipal Commissioners for the City of Madras*, 28 Mad. 164). An open space of varying width in a *dehla* abutted by houses on its two sides is a street within the meaning of the clause (*Dayabhai v. Ahmedabad Municipality*, 25 Bom. L. R. 1218).

The accused had given notice of what he intended to build and the municipality did not answer the request within a month; so the accused was entitled to build, provided he did not contravene the provisions of the Act or any by-law there in force. The complainant contended that by-law 132 had not been complied with which provided that the height of the building should not be more than the width of the street on which it rebutted. Now the principal point at issue is whether the open space between the two buildings under construction of the accused is a street as defined by s. 3 (12) of the Bombay District Municipal Act, 1901 (corresponding to this clause). *Held*, that the accused did not contravene by-law 132, as his vacant space between his two buildings under construction was not a street within the meaning of the clause (*Emperor v. Tyabali*, 26 Bom. L. R. 216).

A municipality may use a street for any purpose not inconsistent with its use as a highway, as for instance, for laying down sewers, etc., but cannot erect a public market in a street, nor can it lease portions of it to private individuals (*Municipal Committee of Multan v. Tahlia Ram*, 73 I. C. 292). The streets are vested in the local authority only so long as they are streets and when they cease to be streets by being legally stopped up or diverted, the interest of the local authority determines. If the street ceases to be used as such, it revests in the original owner whose rights and property remain (*Gunendra v. Corporation of Calcutta*, 41 Cal. 689); and the owner is entitled to claim its possession (*Madhu Sudan v. Promoda Nath*, 20 Cal. 732).

When a street is vested in a municipality, such vesting does not transfer to the municipality the rights of the owner in the site or soil over which the street exists. The municipality does not own the soil from the centre of the earth *usque ad coelum*, but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street (*Basawaswaraswami v. Bellari Municipal Council*, 38 Mad. 6). See also *Aiyangar's Municipal Corporations*, 2nd Ed., p. 490.

(20) "Tax" shall mean any toll, rate, cess, fee or other impost leviable under this Act and shall include a water rate.

Tax.—Taxes are burdens or charges imposed by the legislature, or under its authority, upon persons and property to raise money for public as distinct from private purposes or to accomplish some end or object public in its nature. A public use or purpose is of the essence of a tax (*Dillion's Corporations*, Vol. 4, pp. 2312—14).

License fee for carrying on a business or revocation is a tax, only when revenue is the main object for which it is imposed. A municipal corporation may levy occupation or business taxes which, when imposed, must not be so oppressive as to prohibit the individual from following the ordinary and usual useful occupations (*Dillon*, Vol. 4, p. 2661).

Taxs distingnished from debts.—

Taxes are not debts in the ordinary acceptance of the term. Debts are obligations for the payment of money founded upon contract, express or implied. Taxes are imposts levied for the support of the Government, or for some special purpose authorized by it. The consent of the tax-payer is not necessary to their enforcement. They operate *in invitum* (*Meriweather v. Garret*, 102 U. S. 472 quoted in *Aiyangar's Municipal Corporations*, p. 270).

Grant of power to tax.—The taxing power delegated to Municipal Corporations is a continuing power, the exercise or non-use of which does not defeat the right to tax whenerver necessary, subject to legal limitations (*Wells v. City of Savannah*, 107 Ga. 1). Being a delegated power, a Municipal Corporation cannot in turn delegate the exercise of the power to some officer or inferior body (*Johnson v. City of Macon*, 62 Ga. 645). See also Aiyangar's Municipal Corporations, p. 271.

Taxation only within local limits—

A municipality can only tax persons or property within its own limits and not beyond its geographical limits (*Smith's Corporations*, Vol. 2, p. 1499). The power of taxation is entirely confined to the territorial limits of the municipality. The legislature may authorize Municipal Corporations to impose taxes upon persons residing outside, but carrying on business within the corporate limits. Statutory authority to tax occupations within the City does not authorize a tax upon non-residents who come to the City under special employment to transact specific business (*Evers v. Mayfield*, 120 Ky. 33, 77 quoted in *Aiyangar's Municipal Corporations*, p. 272).

Requisites for legal imposition of a tax.—The statutory requirements must be strictly complied with before any tax could be said to be legally imposed. Rates must be imposed by a body of councillors duly constituted. Otherwise, they are not legally imposed ; and a ratepayer is not bound to pay them (*Bepin Behary v. Chairman of Santpur Municipality*, 1 I. C. 388). A defect in the constitution of the Committee which imposed the tax is a mere informality and is protected by Statute (1 Mad. 162).

As the authority to levy taxs does not exist unless conferred by Statute, so it can be exercised no further than it is clearly given. For instance, where a municipality is authorized to levy taxes after contracts for lighting, and water purposes have been made, they have no power to levy a water and lighting tax before the contracts are made (See Dillon, Vol. 4, p. 2450). If the mode in which the authority shall be exercised is prescribed, that mode must be pursued (*See Aiyangar's Municipal Corporations*, p. 274).

Taxes when payable.—A tax can only be made payable from the dat of its levy as prescribed by Statute. It is generally payable at the expiration of the period for which it is declared payable, unless a rule has been framed specifiying the date on which it is payable (*Ramchanara, In re, Ratanlal's* Un.Cr.

Cases p. 574). When a Statute requires tax to be levied on a day, it was *held* that this provision was merely directory, and the duty may be performed within a reasonable time thereafter (*Gearhart v. Dixon*, 1 Pa. St. 224 quoted in *Aiyangar's Municipal Corporations*, p. 275).

Money due on a toll contract.—Money due from a contractor under a contract with the Municipality by which he has assigned to him the right to collect tolls, in consideration of a money payment to the Municipality does not come within any of the provisions of s. 269 of the Madras District Municipalities Act, 1884 (IV of 1884), and is neither a "rent" nor a "toll" (*Abdul Azeez Sahib v. Cuddapah Municipality*, 26 Mad. 475).

(21) "Vehicle" shall include bicyles, tricycles, motor cars, and every wheeled conveyance which is used or capable of being used on a public street.

Vehicle.—A vehicle which is kept outside, but plies for hire inside, a Municipality is not liable to pay any vehicle tax; but the Municipality is entitled to levy a toll whenever it enters its limits (*Surat Municipality v. Maneklal*, 22 Bom. L. R. 1104). It is not necessary that the owner should have possession of the vehicle in order to make it taxable. Even a vehicle that is under repair, and, therefore, unfit for immediate use, is a vehicle kept within the Municipality and liable to be taxed (*Krishna Row v. Madras Municipal Corporation*, 40 Mad. 345). It is a question of fact in each case whether a vehicle coming from outside the Municipality can be said to be used within the Municipality (*Legal Remembrancer v. Shma Charan*, 23 Cal. 52).

Vehicle with springs.—A bicycle with pneumatic tyres having two metal springs under the saddle is liable to taxation as a vehicle with springs (*Wilson v. The Madras Municipality*, 19 Mad. 83; *Emperor v. Kikabhai*, 41 Bom. 464 = 19 Bom. L. R. 349).

A threshing-machine and a straw-pressing machine on wheels are vehicles (*Smith and Sons v. Pickering* 79 J. P. 118). A motor car would include a motor cycle (*Webster v. Terry*, 1 K. B. 51 quoted in *Aiyangar's Municipal Corporations*, p. 356).

Hand-trollies running on rails laid on a public street and used by contractors for the purpose of carrying materials to fill up a tank are vehcles liable to be assessed (*Dayabhai v. Pestonji*, 17 Bom. L. R. 63).

CHAPTER II

CONSTITUTION OF MUNICIPALITIES

(1) *Municipal Boroughs*

Extension of Act to and withdrawal of Act from municipal districts and boroughs.

4. (1) [s. 4] The Government may, by notification in the *Bombay Government Gazette* and with effect from a date to be specified in the said notification, include in Schedule I any municipal district [a], or exclude any municipal boroughs from the said schedule.

[a] Words repealed by Bom. XVIII of 1933, s. 4, are omitted.

(2) The Government may, after consulting the municipality, by notification in the *Bombay Government Gazette* and with effect from a date to be specified in the said notification, extend, contract or otherwise alter the limits of any municipal borough.

Limits to be specified in notification altering area.

(3) A notification altering the limits of a municipal borough shall clearly set forth the local limits of the area to be included in or excluded from such municipal borough.

Property and rights of municipalities which have ceased to exist to vest in Government.

[a] (4) Save where it is otherwise provided in this Act, when a municipality ceases to exist on account of its members ceasing to hold office, or for any other reason whatsoever, the property and rights vested in the municipality shall, subject to all charges and liabilities affecting the same, vest in His Majesty, and the proceeds thereof, if any, shall be expended under the orders of the Government for the benefit of the local area in which such municip ality had jurisdiction.

Municipal Borough.—For the definition of "Municipal borough" see s. 3 (9).

In England "borough" is a city or town to which the Municipal Corporation Act, 1882 (45) and (46) Vict., C. 50) applies. Its area is defined by its charter, or by the provisional order or local Act altering the boundaries. In the latter two cases confirmation by Parliament of an order is necessary. The Municipal Corporation is the body corporate constituted by the incorporation of the inhabitants of a borough or city. Incorporation is now obtained by the grant of a charter. The Municipal Corporation is composed of the mayor, aldermen, and burgesses or citizens. The burgesses or citizens are those whose names appear for the time being, on the burgess roll. If the borough is a city, the burgesses are styled citizens. A person is not deemed to be a burgess unless enrolled. The corporate offices are those of mayor, aldermen, councillors and elective auditors (*Cumming's Bom. Municipal Boroughs Manual*, pp. 4-5).

Bom. III of 1901 not to apply to municipal boroughs. Municipal boroughs excluded from Schedule I. Continuance of acts, notifications, etc., in respect of boroughs.

5. (1) The provisions of the Bombay District Municipal Act, 1901, shall not apply to any municipal district included or hereafter included in Schedule I from the date of such inclusion :

Provided that—

(a) references in any other enactment or in any instrument to the Bombay District Municipal Act, 1901, shall, unless a different intention appears, be construed in respect of any municipal borough as references to this Act ;

[a] This sub-section was inserted by Bom. I of 1927, s. 2.

(*b*) any appointment, notification, notice, tax, order, scheme, license, permission, rule, by-law or form made, issued or imposed under the Bombay District Municipal Act, 1901, in respect of a municipal district included or hereinafter included in Schedule I, so far as is not inconsistent with the provisions of this Act, and any appointment, notification, order, scheme, rule, by-law or form made or issued under any other law in respect of such district shall continue in force and be deemed to have been made, issued or imposed under the provisions of this Act or of such other law in respect of the municipal borough constituted by such inclusion unless and until it is superseded by any appointment, notification, notice, tax, order, scheme, license, permission, rule, by-law or form made or issued under this Act or such other law.

(2) From the date specified in a notification under sub-section (1) of section 4, excluding a municipal borough from Schedule I, it shall cease to be a municipal borough and the provisions of the Bombay District Municipal Act, 1901, shall apply to it.

Transfer of rights, etc, on inclusion in Schedule I.

6. [s. (4)] The property, rights and liabilities of the municipality in a municipal district included or hereafter included in Schedule I shall vest in the municipality of the municipal borough constituted by such inclusion, from the date of such inclusion.

Preliminaries before notification.

7. (1) [s. 8] Not less than three months before the publication of a notification under section 4 the Government shall cause to be published in the *Bombay Government Gazette* in English, and in at least one of the local newspapers (if any) in the vernacular language of the district in which the municipal borough or municipal district is situate, and to be posted up in conspicuous places in such municipal borough or municipal district in such vernacular language, a proclamation announcing that it is proposed to include in or exclude from Schedule I the municipal district or municipal borough, as the case may be, or to alter the limits of the municipal borough in a certain manner, and requiring all persons who entertain any objection to the said proposal to submit the same, with the reasons therefor in writing, to the Collector within two months from the date of the said proclamation ; and whenever it is proposed to add to or exclude from a municipal borough any inhabited area, it shall be the duty of the municipality also to cause a copy of such proclamation to be posted up in conspicuous places in such area.

(2) The Collector shall, with all reasonable despatch, forward every objection so submitted to the Government.

(3) No such notification as aforesaid shall be issued by the Government unless the objections, if any, so submitted are in its opinion insufficient or invalid.

8. [s. 9] In every municipal borough there shall be a municipality, and every such municipality shall be a body corporate by the name of [1] "The....Boroughs Municipality" [1] ", and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name through its Chief Officer.

Incorporation of municipalities.

Name of municipality.—In England it is "The Mayor, Aldermen and Burgesses of the Borough of ." If the borough is a city, the burgesses are styled Citizens. (Cumming's B. D. M. Manual p. 25.).

Perpetual succession.—"Corporation or body politic, artificial persons established for preserving, in perpetual succession, certain rights which being conferred on natural persons only would fail in process of time ..... It has power to make bye-laws for its own government, and transacts its business under the authority of a common seal—its hand and mouthpiece ; it has neither soul, nor tangible form, so that it can neither be outlawed nor arrested ; it only enjoys a legal entity, sues and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law." (*Wharton's Law Lexicon*).

Seal.—Each municipality should have its own seal which should be kept in the custody of the President or such officer as he may direct.

A corporation may change its seal at pleasure and even may make use of the seal of an individual so long as the seal which is actually used is applied as the seal of the corporation for the time being in force (*Yarmouth Corporation v. Cooper, Godb*, 439. See also Cumming's Bom. D. M. Manual, 4th ed. p. 24).

"It is a general rule that a corporation must contract by its common seal, but where the observance of this rule would occasion great inconvenience, or tend to defeat the very purpose of the business, it is not observed" (*Wharton's Law Lexicon*),

Expenses of civil proceeding.—The expenses of any civil proceeding prosecuted or defended on behalf of a municipality shall be paid out of the municipal fund (*Vide* sub-section 4 of section 204 *post*).

Suits by or against Corporations—See the Code of Civil Procedure, 1908. 1st Schedule, Order XXIX.—Rule 1 provides that (1) In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. (2) Subject to any statutory provision regulating any process of service, where the suit is against a corporation, the summons may be served—

(*a*) on the secretary, or on any director, or other principal officer of the corporation, or

(*b*) by leaving it or by sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business."

[1—1] The words "The ..... Boroughs Municipality" were substituted for the original words "The Municipality of" by Bom. Act XXIV of 1936.

A corporation must sue in its corporate name.—*Ram Das Sein v. Stephenson*, 10 W. R, 366. It cannot be sued through its agent. (*Nobin Chander Paul v. Stephenson*, 15 W. R. 534.) Nor in the name of its Chairman or Secretary (*Santan v. The Chairman, Municipal Board, Allahabad*, A. W. N. (1908) 165). Nor in the name of its President (*Syed Amirsahib v. Venkata Rama*, 16 Mad. 296).

A suit brought by a Municipal Committee in the name of the wrong officer cannot by the subsequent substitution of the proper officer as defendant be deemed, with reference to s. 22 of the Limitation Act, to have been instituted against such Committee when such substitution is made (*Maunikasundhan v. Crooke*, 2 All. 296).

In all suits by or against municipal corporations, every individual councillor or member of the corporation must be regarded as a party to the proceedings (*Ahmedabad Municipality v. Mahamed Jamal*, 3 Bom. 146). See also *Gangadhar v. The Collector of Ahmednagar*, 1 Bom. 629. But the suit will not become defective by reason of the death of one of them (*Blackburn v. Jepson*, 3 Swan, 132).

A suit by a lessee of land for damages against a contractor of the Municipal Board, is not a suit against the Municipal Board. The contractor is not a member or officer or servant of the Municipal Board (*Muhammad Ghazanfar v. Babu Lal*, 43 All. 614, F. B).

Criminal prosecution.—A Municipal Committee is not a 'public servant within the meaning of s. 39 of Act IV of 1877, and, therefore, it may be prosecuted under the Penal Code without the sanction of Government (*Municipal Committee of Calcutta*, 3 Cal. 758].

Malicous prosecution.—A suit for damages will lie against a Municipal Committee for malicious prosecution (*Amar Nath v. Municipal Committee, Kartarpur*, P. R. 86 of 1906).

Through its Chief Officer.—The words "through its Chief Officer" were newly added. The reason why these words were added is that a municipality is a corporate body, and the councillors cannot go into a court of law to defend or sue. These words were, therefore, purposely added, so that the summons issued may be served on the Chief Officer.

(3) *Election of Councillors.*

Municipalities to consist of elected and nominated councillors.

9. (1) [s. 10] Every such municipality shall consist of—

(*a*) elected councillors ; and

(*b*) nominated councillors, that is to say, such persons as from time to time are by name appointed in this behalf, or are executing the functions of any office from time to time notified in this behalf, by Government :

In specified proportions.

Provided that the number of elected councillors shall not be less than four-fifths of the whole number, and that not more than one-half of the nominated councillors shall be salaried servants of the Government :

But all councillors may be elected.

Provided also that the Government may direct that all the councillors shall be elected.

Failure to elect.

(2) Any vacancy due to failure to elect the full number of councillors which under this section might be elected and any vacancy due to failure to elect a councillor under section 29 may, notwithstanding anything in this Act, be filled up by nomination by Government.

Continuance of councillors holding office at commencement of Act. Election in case of non-continuance.

(3) Councillors elected or nominated under the Bombay District Municipal Act, 1901, and holding office in a municipal district included or hereafter included in Schedule 1, immediately prior to such inclusion, shall be deemed to have been elected or nominated, as the case may be, under this Act : provided that where the Government has directed that all the councillors shall be elected, councillors nominated under the Bombay District Municipal Act, 1901, shall not be deemed to have been nominated under this Act, and councillors shall be elected under the provisions of this Act in place of such nominated councillors.

The Government shall determine number of councillors ; fix proportion of elected and nominated councillors, and make rules for regulating elections.

10. (1) The Government shall, from time to time, generally or specially for each municipality,—

(*a*) determine the number of councillors ;

(*b*) fix, subject to the provisions of section 9, the proportion of the councillors, if any, who shall be nominated ;

(*c*) make rules consistant with this Act prescribing the number of councillors to be elected, the number of wards to be constituted for Mahomedans, Non-Mahomedans and depressed classes in each municipal borough, the extent of such wards and the number of councillors to be elected by each ward, providing for the preparation and revision of the lists of voters from time to time, fixing the date after which no application for enrolment in any such list under preparation or revision shall be received, declaring the manner in which the right to vote of any undivided family, or any company or firm, or any other association or body of individuals or any trustees of any building or land being two or more in number entered in such list, may be recorded and exercised, and prescribing the restrictions, if any, on the number of votes which a voter may give ;

determining the manner in which and the authority by whom any objection to such lists in regard to the names entered therein or omitted therefrom may be heard and decided, and to what judicial authority the appeals as to such entries and omissions shall lie;

prescribing the date for the publication of the Municipal Election Roll;

regulating generally such elections.

Explanation.—A depressed class for the purpose of this section shall be one which in the opinion of the Government is a depressed class and the number of which is sufficient to require representation. There shall not be more than one ward for all such classes combined.

(2) The Government may from time to time delegate to the Commissioner any of the powers granted to the Government by clause (*c*) of sub-section (1), subject to such restrictions or conditions, if any, as the Government may attach to the delegation and such powers shall not be exercised without first receiving the opinion of the municipality concerned.

Explanation—Depressed classes.—The following have been declared to be "depressed classes" in various municipal districts:—

(1) Bhangi, (2) Chamgars or Chamars, (3) Holers or Holya, (4) Agers, (5) Hulswars, (6) Mahars, (7) Kotgars, (8) Dhors, (9) Metris, (10) Chalwadis, (11) Mochis, (12) Hallers, (13) Dheds, (14) Mukris, (15) Haslars, (16) Korars or Korgas, (17) Channayanavrus, (18) Kattekars, (19) Uppars, Bakats or Sungars, (20) Vajantris (only some of these are untouchables, (21) Madig., (22) Mang, (23) Mang Gardudi, (24) Burud, (25) (Kaikadi, (26) Phasepardhi, (27) Vadar, (28) Ghadsi, (29) Berad and (30) Ramoshi.

(*Cumming's Bom, Municipal B. Manual, p 13*)

Persons qualified to vote or be candidates at a municipal election. Electoral roll of taxpayer.

11. (1) Save as provided in section 16, every person whose name is entered in the current electoral roll or part thereof, prepared for a municipal borough which constitutes or forms part of a [1] "territorial constituency, and published under rule 23 (3) of the Bombay Legislative Assembly Electoral (Preparation, Revision and Publication of Electoral Rolls) Rules, 1936" [1] shall be qualified to vote at a municipal election in such Municipal borough.

(2) (*a*) Save as provided in section 16, every person—

(i) who in any municipal borough, on the first day of April next preceding the date of publication of the electoral roll, occupied as owner or tenant a house or building, or part of a house or building separately occupied, as a dwelling or for the purpose of any trade, business or profession of which the annual rental was not less than Rs. 12 or of which the capital value was not less than Rs. 200, or

[1-1] "These words were substituted with effect from 31st day of March 1937 for the original words "general constituency, and published under regulation 6 (3) of Part II of the Bombay Electoral Regulations, 1923" by Bom. Act XXIV of 1936.

[a] (ii) who for a period of not less than three months next preceding the last day before the preparation or revision of the list of voters upon which under the rules applications for enrolment may be received has been assessed to the qualifying tax,

and who within the three months next preceding the date referred to in sub-clause (ii) has paid all arrears of taxes, if any, due from him to the municipality, shall be qualified to be entered in the list of voters for such municipal borough and to vote at a municipal election in such municipal borough.

Explanation—A person shall be deemed to be in arrears of taxes if he has not paid within one month of the date of presentation any bill which has been presented under section 104 [a].

Provided that a person who—

(i) is not a British subject or a subject of an Indian State, or

(ii) has been adjudged by a competent court to be of unsound mind or,

(iii) is under 21 years of age,

shall not be entitled to have his name entered in such electoral roll.

Explanation.—For the purposes of this section, "the qualifying tax" means a tax, other than octroi, toll and the tax on vehicles and animals plying for hire or kept for the purpose of being let for hire, imposed in a municipal borough.

(b) The electoral roll of tax-payers for the time being in force shall be conclusive evidence for the purpose of determining whether any person is entitled to vote under the provisions of this sub-section at any election. If an electoral roll is not revised in accordance with the rules made under clause (c) of sub-section (1) of section 10, the roll shall continue in force until such revision has taken place.

(3) Every person so qualified to vote who for a period of not less than six months next preceding the last day before the preparation or revision of the electoral roll upon which under the rules applications for enrolment may be received has been resident in such borough or within seven miles of the limits thereof shall, subject to the provisions of this Act and of any other law for the time being in force, be qualified to be a candidate at a municipal election in such municipal borough.

[a–a] These figures, brackets and words were substituted for the figures brackets and words—

"(ii) who for a period of not less than three months next preceding the last day before the preparation or revision of the list of voters upon which under the rules applications for enrolment may be received has paid the qualifying tax and who within the three months next preceding the aforesaid date has paid all arrears of taxes if any due from him to the municipality;

shall be qualified to be entered in the list of voters for such municipal borough and to vote at a municipal election in such municipal borough" by Bom. IV of 1920 s. 4 (ii).

Explanation.—For the purposes of this section a person shall be deemed to be resident in or within seven miles of the limits of a municipal borough if he ordinarily resides or has his principal place of residence in or within seven miles of the limits of such borough.

"Save as provided in section 16."—This refers to mal practices in connection with an election.

General disqualifications for becoming a councillor. Vacation of seat. Decision of Government in case of dispute.

12. (1) [s. 15] No person may become a councillor—

(*a*) who—

(*i*) has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed, if and so long as such sentence has not expired, or

(*ii*) has been removed from office under section 27 and five years have not elapsed from the date of the expiry of such removal,

unless he has, by an order which the Government is hereby empowered to make, if it shall think fit, in this behalf, been relieved from the disqualification arising on account of such sentence or removal from office; or

(*b*) who is an uncertificated bankrupt or an undischarged insolvent, or

(*c*) who is a Judge.

(2) No person—

(*a*) who is a subordinate officer or servant of a municipality, or

(*b*) who, save as hereinafter provided, has directly or indirectly, by himself or his partner, any share or interest in any work done by order of a municipality, or in any contract or employment with or under or by or on behalf of a municipality,

may be a councillor of such municipality.

(3) A person shall not be deemed to have incurred disqualification under clause (*b*) of sub-section (2) by reason of his—

(*i*) having any share or interest in any lease, sale or purchase of any immoveable property or in any agreement for the same, or

(*ii*) having a share or interest in any joint-stock company or in any society registered or deemed to be registered under the Co-operative Societies Act, which shall contract with or be employed by or on behalf of the municipality, or

(*iii*) having a share or interest in any newspaper in which any advertisement relating to the affairs of the municipality may be inserted, or

(*iv*) holding a debenture or being otherwise interested in any loan raised by or on behalf of the municipality, or

(*v*) being professionally engaged on behalf of the municipality, as a legal practitioner, or

(*vi*) having a share or interest in the occasional sale to the municipality of any article in which he regularly trades, or in the purchase from the municipality of any article, to a value in either case not exceeding in any official year five hundred rupees or such higher amount not exeeeding two thousand rupees as the municipality with the sanction of the Government may fix in this behalf, or

(*vii*) having a share or interest in the occasional letting out on hire to the municipality or in the hiring from the municipality, of any article for an amount not exceeding in any official year fifty rupees, or such higher amount not exceeding two hundred rupees as the municipality with the sanction of the Government may fix in this behalf, or

(*viii*) being a party to any agreement made with the municipality under the provisions of section 91 or of proviso (*a*) to sub-section (1) of section 194.

(4) If any person is elected or nominated as a councillor in contravention of the provisions of this section his seat shall be deemed to be vacant.

(5) If any question or dispute arises whether a vacancy has occurred under this section, the orders of the Government shall be final for the purpose of deciding such question or dispute.

Disqualification—Contract:—A contract with a corporation though not under seal will disqualify (*R. v. Francis*, 18 Q. B. 526). A person is interested in a contract if he takes an assignment of it by way of security even before its election (*Hunnings v. Williamson*, 11 Q. B. D. 53). An interest in a contract must be pecuniary, or, at least, a material interest; but it need not be a pecuniary advantage.

A contract made colorably under the name of another person equally disqualifies although the interest is cancelled (*Welsh v. Grimsby*, (*1900*) *Times*—30th November. On the other hand, a contract made by the agent of a member, purporting to be made on his behalf, but contrary to his express directions, will probably not disqualify the member (*Miles v. Mc Iwraith*, 8 App. Cas. 120 P. C.)

The disqualification continues so long as the contract exists and the interest in it remains (*Lewis v. Carr*, 1 Ex. D. 454 C. A.); but if the contract is terminated no penalty can be recovered for subsequent acts, unless the interest on the contract has caused the defendant to cease to be a member altogether (*Fletcher v. Hudson*, 7 Q. B. D. 611 C. A.)

A member who received payment from the board in respect of the use of men and horses supplied by him at the request of the board's surveyor is disqualified (*Ibid.*).

Validity of election.—Where a candidate for a municipal election is not eligible for the election under s. 73 of the Provincial Insolvency Act, not having applied for a certificate to the effect that his insolvency was caused by misfortune without any misconduct on his part, the fact that since the election he has obtained the necessary certificate and has got rid of the disqualification does not help him. Provisions of the law must be strictly followed (*Dayaram v. Keshavji Walji*, A. I. R. 1933 Sind 416).

The disqualification mentioned in s. 73 of the Provincial Insolvency Act is a disqualification under s. 15 of the District Municipal Act (corresponding to this section) and applies to candidates for election to a Municipal Council (*Ibid*).

Subordinate Officer or Servant.—*Hospital Assistant not disqualified.*—An Hospital Assistant whose salary is either partly or wholly paid from Municipal funds, does not, therefore, cease to be a Government servant. The Municipality has no power to appoint, dismiss, transfer, degrade, promote, or fine him. He is not their servant, but is subject to the orders of the Surgeon-General and of Government, and is borne on the list of the Municipal Department as an employee of Government. In these circumstances he seems eligible for election or appointment as a Municipal Commissioner (*G.R. No. 3032 of 12th August 1885, G. D.*, See also *Cumming's District Municipal Manual, 1930*, 4th ed. p. 48).

School-master disqualified.—Under the rules, the master of a municipal school is a servant of the Municipality, even though his services be lent to the Municipality by Government, and, therefore, under s. 16, cl. (*c*) of the Act, such a master is disqualified for being a member of the Municipality (*G. R. No 1320 of 23rd April 1892, G. D.* See also *Cumming's District Municipal Manual*, 1930, 4th ed. p. 48).

Share or interest in municipal work &c.—If any person becomes a Councillor and has or subsequently knowingly acquires such an interest, he is liable, on conviction before a Criminal Court, to a fine which may extend to Rs. 500 (*See s. 55 post*).

Occasional sale or purchase.—A Councillor who purchases from the Municipality any article, whether or not it is an article in which he regularly trades, subject to certain pecuniary limits, is exempted from disqualification.

Operation of lists.

13. (1) [s. 13] When in accordance with rules framed under [*a*] clause (*c*) of sub-section (1) of section 10 [*a*], a list of voters has been prepared or, upon a general revision, completed, a copy thereof signed by such person as may be designated in this behalf in the rules aforesaid, shall be the Municipal Election Roll. A new Election Roll shall be published in each year on such date as may be prescribed by the rules, and shall continue in operation for a period of twelve months from that day :

Provided that if a new Election Roll is not published in any year before the date prescribed, the roll then in operation shall continue in operation until the new roll is published.

[*a*—*a*] These words were substituted for the original words by Bom. X of 1926, s. 2, which takes effect from the date when the original Act came into operation.

(2) At every election of councillors every person enrolled in the Municipal Election Roll as for the time being in operation under sub-section (1) shall be deemed to be entitled to vote, and every person not so enrolled shall be deemed to be not entitled to vote.

Right to vote to depend on entry in roll.

14. A person shall not be qualified to be elected a councillor unless he is enrolled in the Municipal Election Roll :

Enrolment in Municipal Election Roll necessary for elected councillor.

Provided that if any company, body corporate, or other association of individuals is enrolled in the Municipal Election Roll, any one person duly authorized in this behalf by a resolution of such company, body or Association to represent such association shall be deemed to be qualified to be elected a councillor.

Representative of an Association.

15. (1) [s. 22] If the validity of any election of a councillor is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, apply to the District Court of the district within which the election has been or should have been held, for the determination of such question.

Determination of validity of elections.

(2) An inquiry shall thereupon be held by a judge not below the grade of an Assistant Judge, appointed by the Government either specially for the case or for such cases generally; and such Judge may, after such inquiry as he deems necessary and subject to the provisions of sub-section (3) pass an order confirming or amending the declared result of the election, or setting the election aside. For the purposes of the said inquiry the said Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such inquiry shall be paid; such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure. The decision or order shall be conclusive.

Powers of Judge holding inquiry.

(3) (*a*) The Judge, if satisfied that a candidate has, within the meaning of sub-section (4) committed any corrupt practice for the purpose of the election, shall declare the candidate disqualified both for the purpose of that election and of such fresh election as may be held under sub-section (2), and shall set aside the election of such candidate if he has been elected.

Declaration in case of corrupt practice by a candidate.

(*b*) If in any case to which clause (*a*) does not apply the validity of an election is in dispute between two or more candidates, the Judge shall, after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the greatest number of valid votes in his favour, to have been duly elected :

Scrutiny of votes and declaration in other cases.

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

What is a corrupt practice.

(4) A person shall be deemed to have committed a corrupt practice within the meaning of sub-section (3)—

(*i*) who with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any gratification or holds out any promise of individual profit, or holds out any threat of injury to any person; or

(*ii*) who gives, procures, or abets the giving of a vote in the name of a voter who is not the person giving such vote ;

(*iii*) who pays or promises to pay any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote ;

(*iv*) who hires, employs, borrows or uses for the purposes of the election any boat, vehicle, or animal, usually kept for letting on hire or for the conveyance of passengers by hire :

Provided that any elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property to convey himself to or from the place where the vote is recorded ;

Candidates when deemed to have committed corrupt practice.

and a corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 1.—For the purposes of this section the term "gratification" is not restricted to pecuniary gratification or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward.

Explanation 2.—The expression "a promise of individual profit"—

(*i*) does not include a promise to vote for or against any particular measure which may come before a municipality for consideration, but

(*ii*) subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested.

Mere irregularities and informalities not to invalidate election.

(5) If the validity of the election is brought in question only on the ground of any error by the officer or officers charged with carrying out the rules made under clause (*c*) of sub-section (1) of section 10, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.

Explanation.—The expression "error" in this clause does not include any breach of or any omission to carry out or any non-compliance with the provisions of this Act or the rules made thereunder whereby the result of the election has been materially affected.

Disqualification of persons committing corrupt practice.

(6) If the Judge sets aside an election under clause (*a*) of sub-section (3), he may, if he thinks fit, declare any person by whom any corrupt practice has been committed within the meaning of this section, to be disqualified from being a candidate in that or any other municipal borough or district for a term of years not exceeding seven, and the decision of the Judge shall be conclusive : provided, however, that such person may by an order which the Government is hereby empowered to make, if it shall think fit, in that behalf, be at any time relieved from such disqualification :

Provided further that no such declaration shall be made in respect of any person being given an opportunity to show cause why such declaration should not be made.

Corrupt and illegal practices at elections :—An election of councillors must be free; and subject to this and to certain well defined restrictions, every candidate at an election has the same right, up to and including the day of the poll, to take all proper legitimate measures to canvass the electorate and persuade them to vote for him. And all persons may legally use their legitimate influence to pursuade the electors to vote for such persons as they think fit; and the ordinary methods which prevail at election times, up to and including the day of poll, of persuading the electors, holding meetings, posting placards, distributing handbills, and so on, are perfectly lawful subject to certain well defined restrictions. So likewise and upon the same conditions, the canvassing of voters which has for its chief end the bringing of every supporter to the poll, or the asking them to record their votes in favour of any particular candidate, is perfectly lawful in itself. Compulsory levies to obtain representation on municipal bodies is illegal (*Wilson v. Amalgamated Society of Engineers*, 2 Ch. D. 224). The election of any candidate as councillor may be avoided if that candidate by himself or his agents has been guilty of a corrupt or an illegal practice (*Aiyangar's Municipal Corporations in British India*, p. 93).

Corrupt practices, whenever committed, may avoid an election. The gist of the offence in corrupt practices is the corrupt inducement to the voter to vote or refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. There can be no corrupt practice without an intention; but with reference to illegal practices, whatever the intention may be, it could be committed. A corrupt practice is a thing the mind goes along with. An illegal practice is a thing the Legislature is determined to prevent whether it is done honestly or dishonestly (*Barrow-in-Furness*, 4 O. M. and H. 77). Associations cannot be found guilty of illegal practices. Such offences should be brought home to the committee or to the individuals guilty (*Hexham and Rochester*, Day's El. Cas. 14 and 104 quoted in *Aiyangar's Municipal Corporations in British India*, p. 94).

The following are corrupt practices :--

(1) Bribery; (2) undue influence; (3) personation; (4) publication of false statements.

(1) **Bribery**:-'Bribery' is defined to mean a gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being, a candidate, or

(*b*) an elector to vote or refrain from voting at an election, or as a reward to

(*i*) a person for having so stood or not stood, or for having withdrawn his candidature, or

(*ii*) an elector for having voted or refrained from voting.

Even grants made by way of charity may amount to bribery.

Among the various acts held by the Courts in England to be bribery and corrupt or illegal practices in election proceedings are: A promise to give refreshment to a voter to induce him to vote; a promise to procure a post or a situation for a voter; loans of money to a voter or to a person likely to influence him; employment given to voters, if not *bona fide*; payments of rates to enable voters to be registered; payment of a voter's travelling expenses; a promise to obtain reconsideration of a rejected claim to an old age pension and payment to a voter's wife in order to influence the vote.

To amount to a corrupt practice the bribe must be given at a time when it is operative on the election.

The distribution of charity may amount to a corrupt practice, if the chief motive of the person who makes the gift is to influence the voters.

The amount distributed by way of charity, as well as the circumstances, is a determining factor in the case. Thus, in the following cases the payments or gifts were held not to amount to bribery; a gift of a sovereign on the occasion of a birth or death; the gift of 5 *s.* to a poor woman in distress, gifts of money bedding and clothing to the poor on the occasion of the marriage of a member's son; and the throwing about of coppers among children on the election day.

(2) **Undue influence**—"Undue influence" is any direct or indirect interference on the part of a candidate or his agent or of any other person with the

connivance of a candidate or his agent, by the means hereafter specified, with the right of any person to stand or not to stand or to withdraw from standing as a candidate, or with the free exercise of the franchise of an elector.

The means above alluded to is:—(*a*) Any violence, injury, restraint, or fraud, and any threat thereof :

(3) **Personation.**—'Personation' means the procuring or abetting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person who has voted once at an election for a voting paper in his own name at the same election.

An election may be avoided if it is proved that personation exercised a material influence on the result. It does not appear, however, how general personation can be proved. It may be practicable to prove specific cases, in which case the only result would be that the vote of the personator would be disallowed.

A personation is a corrupt practice in any case ; if the candidate or his agent is proved to be privy to the offence, the election is avoided.

Personation may, however, be committed by a person at an election without any reference to the candidate or his agent.

(4) **The publication of false statements** regarding the personal character of a candidate is corrupt practice.

Validity of municipal election.—The validi ty of a municipal election can only be called in question by a "petition" presented in accordance with the rules made by the Local Government under s. 187 of the N. W. P. Municipal Act (I of 1900). No suit lies to contest the validity of such an election (*Mahomed Mamul Huq v. Mahomed Ahsan*, 12 A. L J. 459). See also 11 A. L. J. 945.

Application to the District Court is liable to a stamp duty of eight annas under the Court fees Act, Sch. II, Art. (1) (*b*).

District Judge is a Court—A District Judge determining the validity of elections under this section is a Court within the meaning of cl. (*b*) of s. 195 of the Criminal Procedure Code, 1898. A prosecution for attempting to fabricate false evidence (ss. 193, 511, Penal Code) before the District Judge when so acting cannot lie in the absence of sanction under s. 195, Cr. P.C. (In re *Nanchand Shivchand*, 37 Bom. 365). See also *Raghoobuns Sahoy v. Kokil Singh*, 17 Cal. 872.

Court—Revisional jurisdiction of High Court.—A District Judge acting under s. 23 of the Bom. District Municipal Act, 1884 (corresponding to this section) is not a "Court" within the meaning of the word in s. 622 of the Civil Procedure Code, 1882, and the High Court has no jurisdiction to revise his order refusing to set aside an election, nor can it interfere with an order made by him that the applicant shall pay the costs incurred by the opponent (*Balaji Sakharam v. Merwanji Nowroji*, 21 Bom. 279). See also *Gangadhar v. Hubli Municipality*, 28 Bom. L. R. 519.

An application was made to the Presidency Magistrate by the counter-petitioner to declare that the inclusion of the petitioner as a candidate for the Municipal election by the President of the Madras Corporation was illegal under rule 5 of the Rules framed by Government in pursuance of the powers given to them by s. 413 of the Madras City Municipal Act, 3 of 1904. The Magistrate allowed the

application. *Held*, following 21 Bom. 279, that the High Court has no jurisdiction to revise the order passed by the Magistrate either under s. 439 of the Cr. Pro. Code or under s. 15 of the Charter Act. The Presidency Magistrate in the particular instance is not a Court subject to the appellate jurisdiction of the High Court. He is in the position of a referee between the President and the candidate. The rule declares his position final (*Vijayaraghavulu Pillai, in re*, 38 Mad. 581).

Election made according to old rules.—Rules made in 1884 under Act XV of 1883 for the election of members of the Municipal Board of Bareilly provided that the validity of the election might be questioned by a petition to the District Magistrate, but they were superseded by the rules made in 1910, which recognized the right of recourse to a "competent Court" to challenge the election. The local Government, however, directed that the election during 1911 should be held under the rules of 1884. To contest an election held in 1911, an application was first made to the District Magistrate, and it was rejected. On a suit brought by a defeated candidate in a Civil Court it was held that the suit to set aside an election was a suit of civil nature and was maintainable by a Civil Court. *Held*, further, that the election should have been taken place under the rules of 1910 and was governed by those rules, and the Local Government was not competent to have the jurisdiction of the Civil Court by means of an executive order (*Raghunandan Prasad v. Sheo Prasad*, 35 All. 308).

"At any time within ten days"—A petitioner questioning the validity of an election is entitled to give evidence of additional cases of misconduct in the course of the election which are mentioned for the first time after the expiration of fifteen days prescribed by the rules for filing the application and the fact that the additional instances are given by means of amendment of plaint makes no difference. There is nothing in the rule which requires a petitioner to specify all the particulars in the petition, and it is enough if the ground mentioned is that the respondent was guilty of personation. The practice in England is to allow particulars of the charges to be furnished after the petition is presented, and there is no reason why the same practice should not prevail in India (*Nawab Khan v. Muhammad Zamin*, 34. All. 649).

Costs—*Held*, that a District Judge was authorized under s. 23 of the Municipal Act (2 of 1884) to award costs of the enquiry and the order of the District Judge as to costs was capable of being enforced by a separate suit (*Ramlal v. Bhagubai*, 2 Bom. L. R 260).

Decision shall be conclusive.—The order of a Collector under rule 36 of the election rules (corresponding to this section, which appears to have been passed after compliance with all requirements of the rules and purports to be based on proper grounds) cannot be questioned in a Civil Court, but is conclusive so far as the result of the election is concerned (Bhaishankar v. The Municipal Corporation of Bombay, 31 Bom. 604 at p. 609 followed. Vijaya Raghava v. The Secretary of State for India, 7 Mad. 466, Subhapat Singh v. Abdul Gaffur, 24 Cal. 107, Lalbhai v. the Municipal Commissioner of Bombay, 33 Bom. 354 distinguished.) If such an order had been passed without any enquiry at all or were based on grounds other than those set forth in rule 35, a suit would probably lie to set it aside. The status of a Municipal Councillor is the creation of s. 10,

Madras District Municipal Act (IV of 1884), and that creation is subject *inter alia* to the condition imposed by the election rules framed by the Governor in Council under s. 250 of the same Act and invested by cl. (3) with the force of law (*Nataraja Mudliar v. The Municipal Council of Mayawaram*, 36 Mad. 120).

Order of the Court not appealable—*Held* that the "Competent Court" mentioned in rule 42 (2) of the Rules made by the Local Government under s. 187 (1) (*h*) of the U. P. Municipalities Act (I of 1900) meant a Court of Civil jurisdiction. *Held*, further, that neither the Municipalities Act nor the Rules framed thereunder made any provision whatsoever for any appeal from an order which a competent Court might pass on a petition for setting aside an election. *Held*, also, that an order passed on an election petition was not an order passed in a suit and did not amount to a decree within the meaning of s. 2 of the Code Civil Procedure, and no appeal lay from such an order (*Kunni Lal v. Raghunandan Prasad*, 35 All. 450).

The provisions of s. 187 (*h*) of the U. P. Municipalities Act (I of 1900) confer a power on Local Government to frame rules for decision of questions relating to Municipal elections whether arising before or after the election. The rules framed by the Governmnt for decision of election petitions are not *ultra vires* *Held*, further, following the above case and Sundar Lal v. Mahomed Faiz, (16 Oudh cases 36) that no appeal lies from an order passed by a Court deciding municipal election petition. The rules 42 and 43 framed in pursuance of s. 187 of the Municipalities Act do intend to provide that the validity of Municipal elections should only be tested by an election petition presented to one tribunal and that the decision of that tribunal should be final (*Nand Ram v. Chhotey Lal*, 35 All. 578 (F. B.)).

Voters disqualified for corrupt practice.

16. [s. 22A.] Any person who has been convicted of an offence under section 171-E or 171-F of the Indian Penal Code, or has been disqualified from exercising any electorial right for a period of not less than five years on account of malpractices in connection with an election, shall be disqualified for five years from the date of such conviction or disqualification from voting at any municipal election in any municipal borough or district or at any election to a local board constituted under the Bombay Local Boards Act, 1923.

Publication of names of councillors in the *Bombay Government Gazette*.

17. [s. 20] The names of all councillors, finally elected to any municipality and the names of the nominated councillors, if any, appointed thereto shall be published, as soon as conveniently may be, in the *Bombay Government Gazette*.

(4) *Appointment of presidents and vice-presidents.*

Election of president and vice-president. Continuance of president or vice-president holding office at the commencement of this Act.

18. (1) [s. 23 (1) (2) (3)] A municipality shall be presided over by a president who shall be elected by the councillors from among their number. There shall be a vice-president similarly elected for each municipality. No salaried servant of the Government shall be eligible for election as president or vice-president of a municipality and the election of any such person shall be void.

(2) A president or vice-president holding office in a municipal district, included or hereafter included in Schedule I, at the time of such inclusion shall be deemed to have been elected under this section and shall continue to hold the office of president or vice-president as the case may be until a fresh election has been held under the provisions of this Act.

Note.—A municipal Committee presided over by a person who is not its president as required by this section is not a validly constituted Committee (*Chanda*, P. R. No. 46 of 1905, Cr.).

Term of office of president and vice-president.

19. (1) [s. 23 (7)] Save as otherwise provided in this Act a president or vice-president shall hold his office for such term, not less than one year and not exceeding three years, as the municipality shall, previous to the election of the president or vice-president determine, or until the expiry within the said term of his term of office as councillor, but shall be eligible for re-election :

Provided that the term of office of such president or vice-president shall be deemed to extend to and expire with the date on which his successor is elected.

(2) On the expiry of the term of office of a municipality the president and vice-president shall continue to carry on [*a*] the current administrative duties of their offices until such time as a new president and vice-president shall have been elected and shall have taken over charge of their duties : Provided that [*b*] on the constitution of a new municipality after the general election [*b*], a meeting for the election of a new president [*c*] and a vice-president [*c*] shall be called by the president of the retiring municipality [*d*] within twenty-five days from the date on which the term of office of the retiring municipality prescribed or extended, as the case may be, under sub-section (1) of section 25, expires or from the date on which the names of the new councillors are published in the *Bombay Government Gazette* under section 17, whichever date is later. [*d*] The president of the retiring municipality shall preside at such meeting and the new municipality shall then elect its

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[*a*]—The word "on" was substituted for the word "out" by Bom. XIX of 1935.

[*b-b*]—The words "on the constitution of a new municipality after the general election" were substituted for the original words "in the case of the new municipality constituted under this Act" by *ibid*.

[*c-c*]—The words "and a vice-president" after the words "for the election of a new president" were inserted by *ibid*.

[*d-d*] The words in [*d-d*] after the words "retiring municipality" were inserted by *ibid*.

own chairman for that meeting. [a] In case of an equality of votes the result of the election of the chairman shall be decided by a lot to be drawn in the presence of the president of the retiring municipality in such manner as he may determine. The meeting shall then [a] proceed to elect the new president. [b] The new president shall take the chair as soon as he is elected and the meeting shall then proceed to elect the new vice-president. [b]

[c] (3) On the dissolution of a municipality otherwise than on the expiry of its term of office and after a general election or on the re-establishment of a municipality under sub-section (5) of section 219 after its supersession or when a municipality is constituted under this Act for the first time, the Collector shall call a meeting for the purpose of an election of the president and vice-president, and shall appoint a person to preside at such meeting until the municipality elects its own chairman for that meeting. In case of an equality of votes, the result of the election of the chairman shall be decided by lot to be drawn in the presence of the person presiding in such manner as he may determine. The meeting shall then proceed to elect the president, who shall take the chair as soon as he is elected. The meeting shall then proceed to elect the vice-president." [c]

Resignation of president and vice-president.

20. [s. 15 (a)] A president may resign his office by tendering his resignation in writing to the municipality, and such resignation shall take effect on its acceptance by the municipality. Such acceptance shall be published in the *Bombay Government Gazette*. A vice-president may resign his office by tendering his resignation in writing to the president.

Liability of president and vice-president to removal.

21. [s. 23 (7)] A president or vice-president shall be removable from his office as such president or vice-president by the municipality by a resolution passed to that effect, provided that three-fourths of the whole number of the councillors of the municipality vote in favour of such resolution and provided, further, that before such resolution is passed the president or vice-president is given a reasonable opportunity of showing cause why such resolution should not be passed.

Consequences of absence of president or vice-president without leave.

22. (1) [s. 23 (5) (6)] Every president who for a period exceeding three months and every vice-president who for a period exceeding one month, shall absent himself from the municipal borough in such manner as to be unable to perform his duties as such president or vice-

[a-a]—The words in [a-a] were substituted for the words "and then the meeting shall" by Bom. XIX of 1935.

[b-b]—The words in [b-b] at the end of sub-section (2) were added by *ibid.*

[c]—Sub-section (3) was inserted by *ibid.*

president, shall cease to be president or vice-president unless leave so to absent himself has been granted by the municipality.

Limit to grant of leave, and arrangements pending absence of vice-president.

(2) Leave under sub-section (1) shall not be granted for a period exceeding six months, and whenever leave is granted to a vice-president under that sub-section, a councillor shall be elected by the councillors from among their number to perform all the duties and exercise all the powers of the vice-president, during the period for which such leave is granted.

[a]"(2A) All applications received under sub-section (1)—

(a) in which the validity of the election of councillors elected to represent the same constitutency is in question shall be heard by the same judge; and

(b) in which the validity of the election of the same councillor elected to represent the same constituency is in question shall be heard together.

Explanation.—For the purposes of this sub-section a constituency shall mean each ward or a public body or association constituted or entitled to elect councillors.

(2B) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not permit (a) any application to be compromised or withdrawn or (b) any person to alter or amend any pleading, unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is *bona fide*, and not collusive."[a]

Vacancies in office of president and vice-president to be filled up.

23. (1) [s. 23 (8)] In the event of the non-acceptance of office, death, resignation or removal from office of a president or of a vice-president or of his election being void, or of his becoming incapable of acting in such office or having ceased to be a president or a vice-president under sub-section (1) of section 22 or a councillor under sub-section (1) of section 28, previous to the expiry of his term of office as president or vice-president, the vacancy shall be filled up [b]"within twenty-five days from the occurrence of the vacancy"[b] by the election of some other councillor thereto.

[c] (2) When the president or the vice-president is unable or for any reason fails to call a meeting for the purpose of an election of the vice-president or the president, as the case may be, under sub-section (1) within the time specified therein, or when the president whose term of office has been determined under sub-section (1) of section 19 is unable or for any reason fails to call a meeting for the purposes of an election of his successor and of the successor of the vice-president whose term of office has been similarly determined, within twenty-five days from the date of the expiry of the term of office of the president or the vice-president, as the case may be, the Collector shall call such meeting within thirty days from the occurrence of the vacancy or the expiry of the term of office as the case may be."[c]

[a-a] Sub-sections (2A) and (2B) were inserted by Bom. Act XIV of 1936, s. 2.

[b-b] The words "within twenty-five days from the occurrence of the vacancy" were inserted after the words "filled up" by Bom. XIX of 1935.

[c-c] Sub-section (2) was substituted by *ibid.*

Collector to call meeting for election of president or vice-president in certain cases.

[a]23A. (1) When the president of the retiring municipality is unable or for any reason fails to call a meeting of the new municipality for the purpose of an election of the new president and vice-president under sub-section (1) of section 18 within the time specified in sub-section (2) of section 19 or when such meeting is called but the president or vice-president is not elected thereat, the Collector shall call such meeting within thirty days from the date on which the term of office of the retiring municipality prescribed or extended, as the case may be, under sub-section (1) of section 25, expires or from the date on which the names of the new councillors are published in the *Bombay Government Gazette* under section 17, whichever date is later.

(2) If the president of the retiring municipality is absent or does not preside at the meeting called by the Collector under sub-section (1), such person as may be appointed by the Collector shall preside thereat and shall have all the powers of the president of the retiring municipality in respect of such meeting."

Note.—This section provides for the calling of, and procedure at, the meeting of the new municipality for the election of the new president and vice-president, when the president of the retiring municipality is unable or fails to call a meeting for such purpose (*Statement of Objects and Reasons*).

(5) *Term of office of councillors.*

Term of office of councillors holding office prior to commencement of Act and of councillors then elected.

24. (1) [New] Save as otherwise provided in this Act councillors deemed to have been elected or nominated under sub-section (3) of section 9 shall continue to hold office for the term for which they were elected or nominated under the Bombay District Municipal Act, 1901. Councillors elected under the said sub-section shall hold office for the same period as councillors deemed to have been elected as aforesaid.

[b] Provided that—

(a) Government may, by a notification in the *Bombay Government Gazette* and subject to the other provisions of this Act, extend the term of office of any municipality for a period up to a date not later than the thirty-first day of December 1928 [c];

(b) any notification issued under proviso (a) after the expiry of the term of office of any municipality constituted under the Bombay District Municipal Act, 1901, and before the thirty-first day of May 1927 shall be deemed to have been issued and to have had effect as from the date of expiry of the term of office of such municipality; and any appointment, notification, notice, tax, order, scheme, license, permission, rule, by-law or form made, issued or imposed under the Bombay District Municipal Act, 1901, by any such municipality so far as is not inconsistent with the provisions of this Act shall be deemed to be valid and to have been made, issued or imposed under this Act and shall continue in force unless and until it is superseded by any appointment, notification, notice, tax, order, scheme, license, permission, rule, bye-law or form made, issued or imposed under this Act.

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[a] Section 23A was inserted by Bom. XIX of 1935.

[b] This proviso was added by Bom. I of 1927, s. 3.

[c] This figure was substituted for the original figure "1927" by Bom. II of 1927, s. 2.

(2) The provisions of clause (*b*) of sub-section (2) of section 25 shall apply to such councillors.

Validation of acts of expired municipalities.

[*a*] 24A [New] Any municipality of a municipal borough included in Schedule I which has not been constituted in accordance with the provisions of this Act and the rules made thereunder shall, save where it is otherwise provided in this Act, be deemed not to have been duly constituted and its members, both elected and nominated, shall be deemed not to have been duly elected and nominated.

Term of office of councillors after general election.

25. (1) [s. 17] Councillors nominated or elected at a general election under this Act shall, save as otherwise provided in this Act, hold office for a term of three years, extensible by order of the Government to a term not exceeding in the aggregate four years, if on any occasion the Government shall think fit, for reasons which shall be notified together with the order in the *Bombay Government Gazette*, so to extend the same :

Provided that before such order is made the Government shall invite and consider objections, if any, from the voters entitled to vote at the municipal election in the municipal borough concerned.

(2) (*a*) The term of office of such councillors shall be deemed to commence on the date of the first general meeting which shall be held after such election and after the expiry of the term of the outgoing councillors hereinbefore provided and at which a quorum shall be present ; and

(*b*) the term of office of the outgoing councillors shall be deemed to extend to and expire with the day before the date of such meeting.

Sub-section (2)—The old body after extended period upto the maximum of four years, can continue to transact business till the first meeting of the new board (*Vide* G. R. G. D. No. S. 120 of 1-4-1935).

Resignation of councillors.

26. [s. 15A] Any councillor may resign his office by giving notice in writing to that effect to the president.

Liability of councillors to removal from office.

27. [s. 16] The Government if it thinks fit, on the recommendation of the municipality supported by at least two-thirds of the whole number of councillors, may remove any councillor elected or nominated under this Act, if such councillor has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct or has become incapable of performing his duties as a councillor :

[*a*] S. 24A was inserted by Bom. I of 1927, s. 4.

Provided that no resolution recommending the removal of any councillor shall be passed by the municipality unless the councillor to whom it relates has been given a resonable opportunity of showing cause why such recommendation should not be made.

Unjustifiable removal.—Under a corresponding provision in the Towns Improvement Act (Mad. Act II of 1871) it was *held* that the Secretary of State for India in Council is liable for damages for illegal and unjustifiable removal of a Municipal Commissioner (*Vijaya Raghava v. Secretary of State for India*, 7 Mad. 466).

Has become incapable of performance of duties—This incapacity refers to some mental or physical or legal disability which incapacitates a person from acting in the office, such as insanity, paralysis, deafness, and the acceptance by non-official member of an appointment under Government. A person who is transferred on duty to another district, or who takes furlough, is not "incapable of acting". The capacity still remains to him, but it is unlikely that he will return to exercise the office.—*G. R. No. 2326 of 2nd July 1886, G. D.*, quoted in *Cumming's Distrcit Municipal Manual, 1930*, 4th Ed., p. 65.

Disabilities from continuing a councillor.

28. (1) [s. 15 (2) (3)] If any councillor during the term for which he has been elected or nominated—

(*a*) becomes subject to any disqualification specified in section 12, or

(*b*) acts as a councillor in any matter—

(*i*) in which he has directly or indirectly, by himself or his partner, any such share or interest as is described in clause (*i*), (*ii*), (*iii*), or (*vi*), (*viii*) or of sub-section (3) of section 12 whatever may be the value of such share or interest, or

(*ii*) in which he is professionally interested on behalf of a principal or other person, or

(*iii*) in which he is engaged at the time in any case against the municipality, or

(*c*) departs beyond the limits of the Presidency with the declared or known intention of absenting himself continuously for a period exceeding six months, or

(*d*) not being a president or vice-president or a salaried servant of the Government, absents himself during four successive months from the meetings of the municipality, except with the leave of the municipality,

Sub-section (1) (d)—*The period of four months* is to be reckoned from the date of the first meeting from which the member absented himself. In computing the period of time the general rule of interpretation is to exclude the first day and to include the last. For example, a meeting was held on 21-3-32 from which date a member absented. Then the period of four months will expire on 21-7-32 and not on 20-7-32. If, therefore, a meeting is held on 21-7-32 and the member presents himself at that meeting, he is not disabled but can continue to be a member.

(*e*) fails to pay any arrears of any kind due by him to the municipality within three months after a special notice in this behalf has been served upon him,

he shall be disabled from continuing to be a councillor and his office shall become vacant.

(2) If any question arises whether a vacancy has occurred under sub-section (1), the orders of the Government shall be final for the purpose of deciding such question after a reasonable opportunity has been given to the councillor.

Casual vacancies how to be filled up.

29. [s. 18] Where a vacancy occurs through the non-acceptance of office by a person elected or appointed to be a councillor, or through such person being disqualified for becoming a councillor, or through any election being set aside under the provisions of sub-section (2) of section 15, or through the death, resignation, removal or disability of a councillor previous to the expiry of his term of office, the vacancy shall be filled up, as soon as it conveniently may be, by the election or nomination as the case may be of a person thereto, who shall hold office so long only as the councillors in whose place he is elected or nominated would have held it if the vacancy had not occurred. [1] "Provided that no election shall be held to fill up a vacancy occurring within four months of the date on which the term of the municipality expires." [1]

A councillor whose office has become vacant under section 28 shall, if his disability has ceased, be eligible for re-election.

(6) *Municipal Government. Functions of President and Vice-President.*

Municipal government vests in the municipality;

30. [s. 23A] Except as in this Act otherwise expressly provided, the municipal government of a municipal borough vests in the municipality.

Executive power vests in the Chief Officer.

(2) The executive power for the purpose of carrying out the provisions of this Act vests in the Chief Officer appointed under section 33, subject, wherever it is in this Act expressly so directed, to the approval or sanction of the municipality or of the standing committee and subject also to all other restrictions, limitations and conditions imposed by this Act and the rules made thereunder.

Function of president.

31. [s. 24] It shall be the duty of the president of a municipality—

(*a*) to preside, unless prevented by reasonable cause, at all meetings of the municipality, and subject to the provisions of the

[1-1] This proviso was inserted by Bill No. XXII of 1935.

rules for the time being in force under clause (*a*) of section 58 to regulate the conduct of business at such meetings ;

(*b*) to watch over the financial and executive administration of the municipality and to perform such executive functions as may be allotted to him by or under this Act ;

Function of President.—The President has no power to override a resolution of a Managing Committee which can be overruled only by a resolution passed by the municipality at a quarterly or special general meeting (*G. R. No. 22 of 4th January 1887 G. D. quoted in Cumming's Bom. District Municipal Manual,* 4th Ed. of 1930, p. 95).

For other duties of a president, see s. 35 (2).

Duties of Chairman of meeting.—The most important duty of the Chairman of a meeting is to maintain order, or, in other words, to see that the proceedings and discussions are regularly and properly conducted. He must take care that there is a distinct motion before the meetings, and should allow no speeches to be made which are not strictly relevant to that motion. His decision on all points of orders is virtually final. The duty of deciding all questions as to the admissibility of motions and amendments under the rules in force as to notice, or in regard to the terms of the notice convening the meeting in question is specially imposed upon him. He should insist upon the use of decorous and temperate language, and call any person to order who indulges in unwarrantable personalities or imputations. Where two members rise at the same time it is for the Chairman to decide who is entitled to speak. When a motion or amendment is made, and the mover resumes his seat, the Chairman should allow no member to speak unless such member declares that he rises to second the motion or amendment. The Chairman is entitled to insist that all speeches should be addressed to him, and that members should not speak on the same motion more often than the rules permit. The general rule is, that, except in the case of a mover summing up by way of reply, no speaker is entitled to speak twice. "Perhaps it will be safe in a general way to allow a man to speak a second time, if he does so in good faith, for the purpose of commenting on some new point that has arisen since his first speech, or of making some new suggestion of his own, it being clearly understood both by him and by the meeting that he speaks by favour, and not of right." (Chamber's Hand-book for Public Meetings, p. 25).

Cheques by whom to be signed.—The proper person to sign municipal cheques is the President of the municipality, or the vice-president, if duly empowered to do so under s. 35 (*b*).

(*c*) to exercise supervision and control over the acts and proceedings of all officers and servants of the municipality in matters of executive administration and in matters concerning the accounts and records of the municipality ; and subject to the rules of the municipality at the time being in force, to dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.

(*d*) The president of a municipality may in cases of emergency direct the execution or stoppage of any work or the doing

of any act which requires the sanction of the municipality, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the municipal fund :

Provided that

(*a*) he shall not act under this section in contravention of any order of the municipality prohibiting the execution of any particular work or the doing of any particular act, and

(*b*) he shall report forthwith the action taken under this section and the reason therefor to the Standing Committee at its next meeting.

Functions of vice-presidents.

32. [s. 25] It shall be the duty of the vice-president of a municipality—

(*a*) in the absence of the president and unless prevented by reasonable cause, to preside at the meetings of the municipality and he shall when so presiding exercise the same authority as is vested in the president under clause (*a*) of section 31 ;

(*b*) to exercise such of the powers and perform such of the duties of the president as the president may from time to time depute to him ; and

(*c*) pending the election of a president, or during the absence of the president, to exercise the powers and perform the duties of the president.

(7) *Appointment and powers of chief and other municipal officers.*

Appointment of Chief Officer : Conditions of tenure.

[*a*] 33. (1) [New] There shall be a chief officer in every municipal borough who shall be a graduate of a recognized university or a qualified engineer appointed by the municipality :

Provided that a person permanently appointed as chief officer under the Bombay District Municipal Act, 1901, before the coming into operation of this Act, [*b*] for a person temporarily appointed as chief officer under this Act for a period not exceeding two months in the aggregate in a year [*b*] need not be a graduate of a recognized university or a qualified engineer :

[*c*] Provided further that, with the previous sanction of Government, a person who is not a graduate of a recognised uni-

[*a*] This section was substituted for the original section by Bom. X of 1926, s. 3, which takes effect from the date when the original Act came into operation.

[*b*—*b*] These words were inserted by Bom. IV of 1930, s. 4 (*iii*).

[*c*] This proviso was added by Bom. VII of 1932, s. 2.

versity or a qualified engineer, may be appointed Chief Officer of a municipal borough with an annual income of less than two lacs of rupees.

(2) No chief officer shall be removed from office, reduced or suspended unless by the votes of at least two-thirds of the whole number of councillors ; and no such officer shall be punishable with fine.

Powers and duties of Chief Officer.

34. (1) [New] The Chief Officer shall—

(*a*) subject to the general control of the president watch over the financial and executive administration of the municipality and perform all the duties and exercise all the powers specifically imposed or conferred upon him by, or delegated to him under this Act ;

(*b*) subject to the provisions of sub-section (4), exercise supervision and control over the acts and proceedings of all officers and servants of the municipality as regards appointments referred to in clause (*c*) in matters of executive administration and in matters concerning the accounts and records of the municipality ; and subject further to the rules of the municipality for the time being in force, dispose of all questions relating to the service of the officers and servants and their pay, privileges, leave and allowances ;

(*c*) subject to the provisions of sub-section (4) appoint to any post the monthly salary for which as fixed by rules made under clause (*c*) of section 58 does not exceed Rs. 50 and to any other post the appointment to which has not been otherwise provided for by such rules ;

Sub-section (1) (c) .—The municipality can empower the Chief officer to make appointments to posts with starting salaries above Rs. 50 (*Vide* G. M. No. S. 120-10839-A, dated 5-10-1934).

(*d*) with the permission of the President furnish to the Collector, or such other officer as the Collector shall from time to time nominate in this behalf, a copy of every resolution passed at any meeting of the municipality ;

(*e*) subject to the provisions of this Act and of the by-laws for the time being in force thereunder, grant, give and issue under his signature all licenses and permissions which may be granted or given by the municipality or the standing committee under this Act, other than licenses for markets or slaughter-houses ;

(*f*) receive and recover and credit to the municipal fund all fees payable for licenses and permissions granted or given by him under the powers aforesaid ;

(*g*) subject to the orders of the president, or of the standing committee or of the muniaipality, as the case may be, take prompt steps to remove any irregularity pointed out by the auditor appointed under section 210 ;

(*h*) report to the President and the standing committee all cases of fraud, embezzlement, theft, or loss of municipal money and property.

(2) The Chief Officer may—

(*a*) subject to the provisions of sub-section (4) fine, reduce, suspend or dismiss any municipal servant whose salary does not exceed Rs. 30 and subject further to the provisions of the rules for the time being in force, any other municipal officer or servant, not being the health officer, engineer or auditor of the municipality:

Provided that in respect of any punishment other than a fine not exceeding one week's salary his order shall be subject to an appeal either to the standing committee or, if the rules for the time being in force so provide, to the municipality ;

(*b*) subject to the provisions of this Act and of the by-laws for the time being in force thereunder, at his discretion suspend, withhold or withdraw any license, in any case in which he is empowered to grant or give a license and in which the municipality or the standing committee may suspend, withhold or withdraw such license ;

(*c*) with the sanction of the standing comm ittee, delegate any of his powers or duties to any municipal officer or servant :

Provided that such delegation shall be subject to such limitations, if any, as may be prescribed by the stand ing committe, and also to control and revision by the Chief Officer.

(3) The Chief Officer shall at any time supply any return, statement, account or report or a copy of any document in his charge, called for by the municipality or the standing committee and shall comply with any orders passed by the municipality or the standing committee thereon.

(4) The powers conferred on the municipality by or under any of the provisions of this Act to appoint, grant leave of absence to, punish or dismiss any master, teacher or other person employed in a primary or other school vested in or maintained by the municipality, or employed in any educational institution aided by the municipality, shall not be exercised by the Chief officer.

Appointment of health officer and engineer.

(5) (*a*) A municipality may appoint a health officer and an engineer or any one or more of such officers, whether temporarily or permanently.

(*b*) No such officer shall be removeable from office, reduced or suspended unless by the assent of at least two-thirds of the whole number of councillors, and no such officer shall be punishable with fine.

Power of Government to require the removal of a chief officer, health officer or an engineer.

[*a*] 34A. [New] (1) Notwithstanding anything contained in section 33 and sub-section (5) of section 34, it shall be lawful for the Government on the recommendation of any municipality supported by a resolution passed by a majority of the councillors present at a special general meeting called for the purpose to make in its discretion an order vetoing the continuance in office of any person holding the appointment of a chief officer, a health officer or an engineer :

Provided that

(*a*) Notwithstanding anything contained in sub-section (7) of section 35 no resolution shall be passed by such meeting unless a quorum shall have been present throughout ; and

(*b*) no order shall be made under this section unless an inquiry has been made into the matter by such person in such manner as Government may direct and unless the person affected by the order has been given a reasonable opportunity at the inquiry of explaining the allegations made against him.

(2) The tenure of office by any person whose continuance in office is vetoed under sub-section (1) shall cease and determine on and from such date as may be appointed by Government in that behalf.

CHAPTER III.

CONDUCT OF BUSINESS.

(*1*) *Municipal Meetings.*

Provisions in regard to meetings of a municipality.

35. [s. 26] The following provsions shall be observed with respect to the meetings of a municipality :—

Ordinary General meetings

(1) There shall be held four ordinary general meetings in each year for the disposal of general business, on or about the tenth day of the months of January, April, July and October, respectively, and such other ordinary general meetings as the president may find necessary. It shall be the duty of the president to fix the dates for all ordinary general meetings.

Clause (1).—This sub-clause makes it the duty of the President to fix the dates for all ordinary general meetings therein prescribed, and gives him power to call such other ordinary general meeting as he may find necessary.

[*a*] Section 34A was inserted by Bom. III of 1930, s. 2.

(2) The president may, whenever he thinks fit, and shall, upon the written request of not less than one-fourth of the councillors and for a date not more than fifteen days after the presentation of such request, call a special general meeting. If the president fails to call a special general meeting as provided in this clause the vice-president may call such meeeing for a day not more than thirty days after the presentation of such request.

Special general meetings.

(3) Seven clear days' notice of an ordinary general meeting, and three clear days' notice of a special general meeting, specifying the time and place at which such meeting is to be held and the business to be transacted thereat shall be served upon the councillors, and posted up at the municipal office or the local kacheri or some other public building in the municipal borough and also published in a local vernacular newspaper having a large circulation if such exists. The said notice shall include any motion or proposition which a councillor shall have given written notice, not less than ten clear days previous to the meeting, of his intention to bring forward thereat, and in the case of a special general meeting, any motion or proposition mentioned in any written request made for such meeting.

Notice of meetings.

Notice of meetings.—The provisions of sec. 11 (1) of Bom. Act 6 of 1873 (corresponding to cl. (3) of sub. s. (1) of this section) as to notice of meeting, are, not directory but obligatory; and notice to all the commissioners of the meeting being a material part of the machinery provided by the Act for imposing a legal tax, was a condition precedent to the validation of that tax. Consequently, where a resolution was come to without conforming to those provisions, it was *held* to be not legal, and whether sanctioned or not by the Government, it always retained its inherent defect (*Joshi Kalidas Sevakram v. Dakore Town Municipality*, 7 Bom. 399). Where, however, the notice is short, as for instance, three days' notice is not given as required, that fact by itself does not make the resolution passed at such meeting void, when all the members were served and were present and no one objected to the shortness of the notice (*Patvali Vithaldas v. Dhandhuka Town Municipality*, P.J. 1894, 445). In the case of *The Surat Municipality v. Ochchavram Jamnadas* (21 Bom. 630) it was *held* that a resolution imposing a tax was not invalid, although the notice convening the meeting at which such resolution was passed, did not specify the object of the meeting. See also *Hiralal v. The Thana Municipality*, 1891, P. J. 84.

The meeting of the municipal corporation to be legal must have been called by notice pursuant to the statutory authority and under the regulations and provi-

sions of the law with respect to them. The notice must give every member of the corporation an opportunity of attending, otherwise the meeting is not duly convened. The agenda is usually circulated with the notice; and both usually form one document. A corporate meeting may be valid where notice of it has not been given, provided all the members of the corporation are present and consent to the meeting being held (See Halsbury's Laws, Vol. VIII, p. 342). It is not necessary to file proof of service of notice required by law.

Want of notice will affect the validity of a meeting (See *Crew's Meetings*, pp. 8, etc.) Where a certain act is to be done, all the members entitled to attend must be summoned, if they are within a summoning distance, and the omission to summon any one so entitled will invalidate the proceedings (*Smith v. Darley*, 2 H. L. C. 789).

If a member was so ill as to be unable on that ground to appear, no notice need be sent to him (*Young v. Ladies Imperial Clul*, 36 T. L. R. 392).

The object of the meeting should be stated in the notice with sufficient particularity. If a statute required that notice of the special purpose for which a meeting is called should be specifically given, it should be complied with. Otherwise the notice will be insufficient and the resolution invalid (*Smith v. Deighton and Billington*, 8 Moore P. C. 187). If the notice for the previous meeting is ineffective, and if the same subject is brought up at a subsequent meeting after due notice, the resolution passed at the second meeting may be treated as a confirmation of the resolution passed at the previous meeting, or as a separate or distinct resolution in itself (*Longfield Parish Council v. Wright*, 88 L. J. Ch. 119). If a notice is sent to the registered address of a councillor, it is sufficient. It is immaterial that the notice has not been received by the addressee owing to change of address which has not been notified (*James v. Chartered Accountants*, 98 L. T. 225). In the absence of special provision, the number of days must be *clear, i. e.*, exclusive of the day of service and the day on which the meeting is held (*Labouchere v. Warncliffe*, 13 Ch. D. 346). See also Aiyangar's Municipal Corporations in British India, 2nd Ed., pp. 134-137).

Clear days—Memo. from the Remembrancer of Legal Affairs. The term 'clear days' means days free and distinct both from that on which notice is given and from that on which the action is to be taken. 'Both terminal days are excluded' (Maxwell on Interpretation of Statutes, s. 310.) The intention of the Legislature being to interpose an interval free for deliberation, the time expressed is essential to the carrying out of that intention, and, therefore, no consent on the part of the members served with notice, can validate a notice which does not allow that interval.

The Advocate General states:—The above interpretation of "three clear days' as excluding both terminals is clearly right. I also think it is right that the councillors could not by consent validate a notice which did not allow this interval, as the provision seems to me intended mainly for the benefit of the public and not of the councillors.—G. R. No. 4925 of 15th December 1899. G. D. See *Cumming's Bombay District Municipal Manual*, 4th ed. of 1930, p. 106.

"Notice shall be circulated."—As to the manner of service of notes, see s. 192 *post*.

A defendant who, in answer to a claim for arrears of taxes by a District Municipality, alleges that the taxes were illegal, because no notice had been issued by the Municipality to the Commissioners, must prove the defence and, in the absence of such proof, the court will presume that the municipality has used the regular procedure, and that the common course of business has been followed in the particular case (*Municipality of Sholapur v. Sholapur Spinning and Weaving Company*, 20 Bom. 732).

Meetings to be held at municipal office.

(4) Every meeting of a municipality shall, except for special reasons to be mentioned in the notice convening the meeting, be held in the buildings used as a municipal office by such municipality.

Place of meetings.—Meetings are usually held at the municipal office, and a meeting held at some other place is not authorised. But if the municipal corporation has no office, the councillors may assemble and organize at some convenient place within corporate limits, of which notice must have been duly given. The deliberations cannot be secret either as to time or place (*Dillon*, pp. 864-65, *Abbott's Corporations*, Vol. II, p. 1285).

Absence of the president and vice-president.

(5) Every meeting shall, in the absence of both the president and vice-president, be presided over by such one of the councillors present as may be chosen by the meeting to be chairman for the occasion, and such chairman shall exercise thereat the powers vested in the president by clause (*a*) of section 31.

Meeting must ordinarily be open to the public.

(6) Every meeting shall be open to the public unless the presiding authority deems any inquiry or deliberation pending before the municipality such as should be held in private :

Provided that the said authority may at any time cause any person to be removed who interrupts the proceedings :

Provided further that the presiding authority may cause to be removed from the meeting any councillor who does not obey his ruling.

Adjournment in absence of quorum.

(7) If less than one-third of the whole number of councillors be present at a meeting at any time from the beginning to the end thereof, the presiding authority shall after waiting for not more than 30 minutes adjourn the meeting to such hour on the following or some other future day as he may reasonably fix ; a notice of such adjournment shall be fixed up in the municipal office, and the business which would have been brought before the original meeting, had there been a quorum thereat, shall be brought before the adjourned meeting and may be disposed of at such meeting or at any subsequent adjournment thereof whether there be a quorum present or not.

The whole number of Councillors—That is, the number determined under s. 10 (1) (*a*) and not the number who may happen to be holding office at that time.

Business to be transacted at meetings and order of business.

(8) Except with the permission of the presiding authority, which permission shall not be given in the case of a motion or proposition to modify or cancel any resolution within three months after the passing thereof, no business shall be transacted and no proposition shall be discussed at any general meeting unless it has been entered in the notice convening such meeting or, in the case of a special general meeting, in the written request for such meeting. The order in which any business or proposition shall be brought forward at such meeting, shall be determined by the presiding authority, who in case it is proposed by any member to give priority to any particular item of such business or to any particular proposition, shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal.

Note—This clause gives the president the power to determine the order of business except in cases where the majority of members present claim priority for any particular item.

"Except with the permission of the presiding authority."—These words govern the whole of the rest of the clause (*The Surat City Municipality v. Ochhavram*, P. J. 1896, p. 97). Therefore, although the notice convening the meeting did not specify the object of the meeting, a resolution imposing a house-tax passed at that meeting was *held* not to be invalid (*Ibid*, 21 Bom. 630).

Minutes of proceedings.

(9) In every municipality there shall be kept in the vernacular language and if any councillor so desire, in English also, minutes of the names of the councillors and of the Government officers, if any, present under the provisions of sub-section (14), and of the proceedings at each general meeting, in a book to be provided for this purpose; such minutes shall be signed, as soon as practicable, by the presiding authority and shall at all reasonable times be open to inspection by any inhabitant of the municipal borough.

Minutes of proceedings.—The record of proceedings of municipal committees are "public documents" within the meaning of s. 74 of the Indian Evidence Act, 1872, and under s. 78 of that Act are proved by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of the committee (*Reference under Act of 1879*, 19 All. 293).

If proceedings are minuted in accordance with this sub-section, they are to be held good and valid until the contrary is proved (*Vide* s. 57 (2) *post*).

The usual course is for the presiding authority to count the votes for and against each proposition and declare which is the majority or whether there is an equality.

Open to inspection.—Obstruction to inspection is punishable on summary conviction.

Questions decided by majority of votes.

(10) All questions shall be decided by a majority of votes of the councillors present and voting, the presiding authority having a second or casting vote in all cases of equality of votes. Votes shall be taken and results recorded in such manner as may be prescribed by rules in that behalf for the time being in force under clause (*a*) of section 58.

Second or casting vote.—When the presiding authority has a vote, he should give that vote before declaring the number of votes for and against a motion, and when the votes are equally divided between the affirmative and negative, he should give his casting vote which will decide the question.

Notice to Government Officers.—*Executive Engineer*—The Executive Engineer should assist municipalities in the execution of smaller works whenever he can do so without prejudice to his other duties. But Government officers cannot be allowed to receive remuneration other than their authorized pay and allowances—G. R. 630—1399, July 11, 1886.—*Vide Cumming's Bom Dist. Municipal Manual*, 1930, p. 113. Nor are they allowed travelling allowances for attending the meetings of municipal boards. They can draw the travelling allowance for attending the meetings of municipal boards. They can draw the travelling allowances admissible to them under the Rules.

Adjournments.

(11) Any general meeting may, with the consent of a majority of the councillors present, be adjourned from time to time to a later hour on the same day or to any other day; but no business shall be transacted at any adjourned meeting other than that left undisposed of at the meeting from which the adjournment took place.

A notice of such adjournment posted in the Municipal office shall be deemed sufficient notice of the adjournment meeting.

Adjournment of meetings.—A chairman has no right to adjourn a meeting against the expressed wish of the members present, so as to prevent them proceeding to the transaction of the business for which they have been called together. A statutory chairman, however, may have the power to adjourn for a subsidary purpose as for taking a poll or where the meeting is so poorly attended as not to be representative of the general body (R v. D'Oyly, 12 A. & E. 139). The question of adjournment should be decided by vote and not by the chairman (Blackwwell's Meetings, p. 63).

Where a meeting cannot be held for want of a quorum, it is not competent to the members present to adjourn the meeting to another time unless notice of the adjournment be given to all the members or unless the rules specifically provide for the event (*Nilkanth v. Murari*, 25 Bom. L. R. 315).

Modification and cancellation of resolutions.

(12) No resolution of a municipality shall be modified or cancelled within three months after the passing thereof, except by a resolution supported by not less than one-half of the whole number of councillers and passed at a gene-

ral meeting, whereof notice shall have been given fulfilling the requirements of sub-section (3) and setting forth fully the resolution which it is proposed to modify or cancel at such meeting and the motion or proposition for the modification or cancellation of such resolution.

Notice of certain business to be given to the Government Executive Engineer or Educational Inspectors.

(13) Except for reasons which the presiding authority deems urgent, no business relating to any work which is being executed for the municipality by a Government Executive Engineer or to any educational matter, shall be transacted at any meeting of a municipality unless, at least fifteen days previous to such meeting a letter has been addressed to the said Executive Engineer or to the Deputy Educational Inspector of the district, informing him of the intention to transact such business thereat, and of the motions or propositions to be brought forward concerning such business.

Certain Government officers may attend and may be required to attend meetings.

(14) (*a*) The members of the Sanitary Board, and the Executive Engineer, Deputy Educational Inspector and the Assistant Director of Public Health, and the Civil Surgeon in a district when charged with any of the duties of a health officer therein, if not members of a municipality within the district, shall have the right of being present at any meeting of such municipality ; with the consent of the municipality, each of them may take part at such meeting in the discussion or consideration of any question on which, in virtue of the duties of his office, he considers his opinion or the information which he can supply will be useful to such municipality :

Provided that the said officers shall not, unless they are members of the municipality, be entitled to vote upon any question.

(*b*) If it shall appear to a municipality that the presence of the Executive Engineer, Deputy Educational Inspector, Assistant Director of Public Health or Civil Surgeon of or in the district is desirable for the purpose aforesaid at any meeting of such municipality, it shall be competent to such municipality, by letter addressed to such officer not less than fifteen days previous to the intended meeting, to require his presence thereat ; and the said officer, unless prevented by sickness or other reasonable cause, shall be bound to attend such meeting :

Provided that such officer on receipt of such letter may, if unable to be present himself, instruct a Deputy or Assistant or other competent subordinate as to his views, and may send him to the meeting as his representative instead of appearing thereat in person.

36. [New] The Chief Officer shall be present at every meeting of the municipality, and may with the permission of the president or of the municipality make an explanation or a statement of facts in regard to any subject under discussion at such meeting, but shall not vote upon or make any proposition at such meet-meeting.

The Chief Officer to be present at every meeting of the municipality but not to vote upon or make any proposition.

(2) *Committees.*

37. (1) [s. 27] In every municipality there shall be a commitee called the standing committee consisting of such number of councillors not being more than twelve nor less than six, as the municipality may determine and elected by the municipality in accordance with rules framed under section 58, clause (*a*). The members so elected shall hold office for a period of one year.

Standing committee.

(2) The standing committee shall exercise the functions allotted to it under this Act and subject to any limitations prescribed by the Municipality especially in this behalf or generally by rules made under clause (*a*) of section 58, and to the provisions of sections 34, [*a*] 37A and 38, shall exercise all the powers of the municipality.

Powers of standing committees.

[*b*] 37 A. (1) [New] In every municipality notified by Government in this behalf there shall be a committe called the Pilgrim Committee consisting of three councillors of whom one shall be the president of the muuicipality and the other two shall be elected in accordance with rules made under clause (*a*) of section 58 and of three persons nominated by the Commissioner of whom not more than two may be salaried servants of Government.

Pilgrim Committee.

(2) The members of the Pilgrim Committe shall hold office for the duration of the municipality and thereafter up to the date on which a new Pilgrim Committee is constituted in accordance with the provisions of this section.

In the case of supersession of the municipality or of the Pilgrim Committee, a new Pilgrim Committee shall be constituted by the Commissioner. Such Committe shall consist of six persons nominated by the Commissioner and shall continue until the municipality is re-established, and a new Pilgrim Committee is constituted in accordance with the provisions of this section, or, in case of supersession of the Pilgrim Committee, until the Prilgrim Committee is re-established.

[*a*] The figures and letter "37" were inserted by Bom. IV of 1930, s. 4 (*iv*).

[*b*] S. 37A was inserted by Bom. IV of 1930, s. 4 (*v*).

(3) The Pilgrim Committee shall manage and administer the pilgrim fund established under proviso *(c)* to section 65 and shall exercise the powers and perform the duties of the municipality in respect of the said fund [1] " and of works constructed or maintained out of the said fund and shall exercise such other powers and perform such other duties as may be allotted to it by the municipality" [1] subject to such limitations and restrictions as may be prescribed by the municipality by rules made in this behalf under clause *(aa)* of section 58.

(4) All the provisions of this Act relating to the duties, powers, liabilities, disqualifications and disabilities of councillors shall be applicable, so far as may be, to the members nominated on the Pilgrim Committee.

(5) In the event of the death, resignation, disqualification, disability or removal of a nominated member previous to the expiry of his term of office, the vacancy shall be filled up by the appointment of a person thereto who shall hold office so long only as the person in whose place he is appointed would have held it if the vacancy had not occurred.

(6) Section 45 shall not apply to the Pilgrim Committee; provided that the municipality shall have power, at any time, to call for any extract from any proceedings of the Pilgrim Committee and for any return, statement of account or report concerning or connected with any matter with which the Pilgrim Committe deals and every such requisition shall, without unreasonable delay, be complied with by the Pilgrim Committee.

(7) The provisions of sections 210, 211 and 212 shall, so far as may be, apply to the Pilgrim Fund Account and the Pilgrim Committee shall, with respect to the preparation and submission to the municipality of its annual budget, follow the following procedure, namely :—

"The Pilgrim Committee shall in sufficient time submit its annual budget and all alterations therein to the municipality for consideration, and, if the municipality agree to it, for its incorporation in the general municipal budget. If the municipality do not agree to the budget as framed by the Prilgrim Committee, they shall return it to the Pilgrim Committee for reconsideration, either in whole or in part, together with any alterations, which they may recommend, and if the Pilgrim Committee agrees to those alterations, the budget so altered shall be incorporated in the general municipal budget. If the municipality and the Pilgrim Committee fail to reach an agreement, the budget with a statement of the points in dispute shall be referred by the municipality to the Commissioner, whose decision on such points shall be final."

[1—1]—Those words were inserted by Bill No. XXII of 1935.

(8) The provisions of sections 213, 214, 215, 218 and 219 shall apply to a Pilgrim Committee and in their application to a Pilgrim Committee the said sections shall be construed so far as may be, as if for the word "municipality" occurring in the said sections the words "Pilgrim Committee" were substituted.

Notes.—"Government consider that the proceeds of a pilgrim tax should be used solely for the health, convenience and safety of pilgrims. Orders have been passed directing municipalities in places where a pilgrim tax is levied to keep separate accounts of the receipts from the tax and expenditure incurred in connection with the pilgrims but Government find that these orders are not properly observed by the local bodies concerned. This is merely due to the absence of a separate local executive authority whose duty it should be to look to the interests of pilgrims. Government therefore propose to make it obligatory on a local body within whose jurisdiction a pilgrim tax is levied and which is notified by Government in this behalf to appoint a Pilgrim Committee and to nominate officials on this committee to the extent of one-half of the total number of members. Government also propose to make it obligatory on the local body to open a separate Pilgrim Fund Account and to credit all receipts from the Pilgrim tax to that account and to spend the sums so credited on works conducive to the health, convenience and safety of pilgrims" (*Statement of Objects and Reasons*).

Other executive committees.

38. (1) [s. 29] Notwithstanding anything contained in section 37 (2) other committees consisting of such number of councillors as the municipality may decide, may be appointed to exercise the powers and perform the duties of the municipality in respect of any purpose [*a*] not being, where a Pilgrim Committee is appointed, powers or duties referred to in section 37A [*a*]. The standing committee shall not exercise any powers or perform any duties which such committee has been appointed to exercise or perform.

(2) The members of such committees shall be elected by the municipality in accordance with the rules framed under clause (*a*) of section 58 and such members shall hold office for a period of one year.

Consultative committees.

39. [s. 30] A municipality may from time to time appoint such other committees consisting of such councillors as it thinks fit, and may refer to such committees for inquiry and report or for opinion such special subjects relating to the purposes of this Act as the municipality shall think fit, and may at any time discontinue or alter the constitution of any such committee. The municipality may direct that the report of any such committee shall be made to the standing committee, or to a committee appointed under section 38, instead of to the municipality.

[*a*—*a*] These words were inserted by Bom. IV of 1930, s. 4 (*vi*).

When persons other than councillors may serve on committees.

40. [s. 31] Notwithstanding anything contained in this Act, it shall be lawful for a municipality from time to time, by a resolution supported by not less than one-half of the whole number of councillors, to elect as members of any committee appointed under section 39 or 38 any person of either sex, who is not a councillor but who in the opinion of such municipality possesses special qualifications for serving on such committee; provided that the number of persons so elected on any committee shall not exceed one-third of the total number of the members of such committee.

Duties, etc. of such persons.

All the provisions of this Act relating to the duties, powers, liabilities, disqualifications and disabilities of councillors shall be applicable so far as may be to such persons.

Casual vacancies; re-eligibility.

41. [s. 32] A vacancy occurring in a standing committee or in a committee appointed under section 38 shall, as soon as possible, and a vacancy occurring in any other committee may, be filled up by the election of a member thereto subject to the same provisions as those under which the member whose place is to be filled up was elected. A person elected under this section shalll hold office so long only as the person in whose place he is elected would have held it if the vacancy had not occurred. No person shall be ineligible at any time for election as a member of any such committee on the ground that he has previously been a member of that committee.

Ex-officio and appointed chairman—Non-attendance of chairman.

42. (1) [s. 33] The president or vice-president, if elected a member of any committee, shall be *ex-officio* chairman thereof:

[a] Provided that in the case of a Pilgrim Committee the President shall be *ex-officio* chairman thereof.

(2) A municipality may appoint a chairman for a committee of which there is no *ex-officio* chairman.

(3) A committee, of which there is an *ex-officio* chairman or a chairman appointed by the municipality, shall, at each meeting which such chairman does not attend, appoint from its members a chairman for such meeting.

(4) A committee, of which there is no *ex-officio* chairman or chairman appointed by the municipality, shall appoint from time to time a chairman from the members of such committee.

Procedure at meetings.

43. (1) (s. 34] The provisions of sub-sections (4), (9), (10) and (14) of section 35 shall be complied with in all proceedings of committees as if meetings of committees were included in all re-

[a] This proviso was added by Bom. IV of 1930 s. 4 (vii).

ferences to meetings of a municipality contained in those provisions, and as if for the word "municipality" where it occurs in the proviso to clause (*a*) of sub-section (14) of section 35, there was substituted the word "committee."

If the chairman of any committee has been absent from the municipal borough for a period exceeding fifteen days, the president or vice-president may, in his absence, call a meeting thereof:

Provided that, notwithstanding anything to the contrary contained in sub-section (9) of section 35, a committee may record its proceedings either in English or in the vernacular language, as it may think fit.

Meeting and adjournment of committees.

(2) A committee may meet and adjourn as it thinks proper; but the chairman of a committee may whenever he thinks fit, and shall, upon the written request of the president of the municipality or of not less than two members of the committee and for a date not more than two days after the presentation of such request, call a special meeting of such committee.

Quorum.

(3) No business shall be transacted at any meeting of a committee unless more than one-third of the members of the committee be present thereat.

Quorum.—The first thing is to see whether a *quorum* is present. Without a quorum, there cannot be a valid meeting (*Smith's Corporations*, Vol. 1, p. 289). The entire memership of the body need not be present to validate the transactions (though every member of the body must be summoned by notice to attend [*Smyth v. Darley*, 2 H. L. C. 789]), but only a quorum thereof which, under this Act, is more than one-third of the members of the committee. This quorum of the Council, when duly assembled in a corporate meeting, is clothed with the powers of the municipality and may perform all municipal functions, not expressly conferred on some other officer or agency. The chairman or president is to be included in the count when the Statute makes him a constituent member of the body. The acual presence of the *quorum* in the meeting is sufficient, although some members refuse to vote, or even though they be present under compulsion or arrest (*Amer. Encyclo.* Vol. 28, pp. 330, etc.)

When a meeting cannot be held for want of a quorum, it is not competent to the members present to adjourn the meeting to another time, unless notice of the adjournment be given to all the members or unless the rules specifically provide for the event (*Nilkanth v. Murari*, 24 Bom. 315).

Procedure by circular.

44. (1) [s. 35] Notwithstanding anything contained in section 43 the chairman of a committee may, instead of convening a meeting, circulate a written proposition of his own or of any other member of the committee or of any executive officer of the municipality for the observations and votes of the members of the committee,

(2) Previous to circulating any such proposition as aforesaid, the chairman may, if he thinks fit, and, if the business to which it relates is of the nature described in sub-section (13) of section 35, shall obtain thereupon the remarks, if any, which any Government officer whose presence the municipality would be entitled to require under the provisions of clause *(b)* of sub-section (14) of section 35, desires to record.

Propositions when to be sent to Government officers for remarks.

(3) The decision on any proposition so circulated shall be in accordance with the majority of votes of the members of the committee who vote upon it, unless a special meeting is convened to consider the said proposition.

Decisions how to be taken on propositions circulated.

(4) Every decision arrived at by a committee under this section shall be recorded in a minute book.

And how to be recorded.

45. (1) [s. 36] A committee shall conform to any instructions that may from time to time be given to it by the municipality; the municipality may at any time call for any extract from any proceedings of any committee and for any return, statement, account or report in connection with any matter with which any committee has been authorized or directed to deal; every such requisition shall, without unreasonable delay, be complied with by the committee so called upon.

Subordination of committees to municipality.

(2) Every order passed by a standing committe or by a committee appointed under section 38, other than orders under sub-section (3) of section 81, shall be subject to such revision and open to such appeal as may be required or allowed in respect thereof by any rules of the municipality for the time being in force under section 58.

Civil suit will lie notwithstanding right of appeal.—The plaintiffs having sued the Municipality for damages and for an injunction restraining the municipality from stopping the supply of water to their house, the first Court allowed the claim, but the Judge in appeal dismissed the suit, holding that it was premature, and that the plaintiffs had no right to sue the municipality for damages under Rule 16 of the rules framed by the municipality under s. 14 of the Act of 1873, that rule providing that "parties dissatisfied with a decision of the Managing Committee or any sub-committee may prefer an appeal to the municipality, whose decision shall be final." *Held*, reversing the decree, that the Rule must be construed as permissive, and not mandatory. It referred to departmental procedure only and did not debar the constitution of the Civil suit (*Vasudevcharya v. Municipality of Sholapur*, 22 Bom. 384).

Powers, duties and functions may be delegated to officers whose expense may be paid.

46. [s. 37] Any powers or duties or executive functions which may be exercised or performed by or on behalf of the municipality may be delegated in accordance with rules to be made by the municipality in this behalf, to the president or to the vice-president or to the chairman of the school or other committee, or to one or more stipendiary or honorary officers, but without prejudice to any powers that may have been conferred on the Chief Officer by this Act or on any committee by or under section 37, [a] 37A or 38, and each person, who exercises any power or performs any duty or function so delegated, may be paid all expenses necessarily incurred by him therein.

(3) *Joint transactions with other bodies.*

Joint committes of local bodies. Joint levy of octroi.

47. (1) [s. 39] A municipality may from time to time—

(*a*) join with any other municipality or with any local board, cantonment authority, sanitary board, sanitary committee or committee appointed for a notified area or with any combination of such municipalities, boards, authorities or committees—

(*i*) in appointing out of their respective bodies a joint committee for any purpose in which they are jointly interested, and in appointing a chairman of such committee ; and

(*ii*) in delegating to any such committee power to frame terms binding on each such body as to the construction and future maintenance of any joint work, and any power which might be exercised by any of such bodies ; and

(*iii*) in framing and modifying rules for regulating the proceedings of any such committee in respect of the purpose for which the committee is appointed ; and

(*b*) enter, subject to the sanction of the Government, into an agreement with a municipality, cantonment authority, board, committee or combination as aforesaid for the levy of octroi duty, and tolls whereby the octroi duties and tolls respectively leviable by the bodies so contracting may be levied together instead of separately within the limits of the area subject to the control of the said bodies.

[*b*] (1A) Where a municipality has requested the concurrence of any other local authority under the provisions of sub-section (1) in respect of any matter and such other local authority has refused to concur, the Commissioner may pass such orders as he

[*a*] The figures and letter "37A" were inserted by Bom. IV of 1930, s. 4 (*viii*).

[*b*] This sub-section was inserted by Bom. XIV of 1934, s. 4.

may deem fit, requiring the concurrence of such other local authority, not being a cantonment authority, in the matter aforesaid; and such other local authority shall comply with such orders.

(2) If any difference of opinion arises between bodies having joined or entered into an agreement for any purpose under this section, the decision thereupon of the Government or of such officer as it appoints in this behalf, shall be final.

(*4*) *Contracts.*

Power of municipality to sell, lease and contract.

48. (1) [s. 40] A municipality shall be competent, subject to the restriction contained in sub-section (2), to lease, sell or otherwise transfer any moveable or immoveable property which may, for the purposes of this Act, have become vested in or been acquired by it; and so far as is not inconsistent with the provisions and purposes of this Act, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes.

Right to levy fees for temporary occupation.—Under section 40 of the Bombay District Municipal Act, 1901 (corresponding to this section), a Municipality has no power to lease or sell the right to collect fees leviable from persons selling fodder on municipal land and consequently being in temporary occupation of the same (*Sholapur Municipality v. Shivram*, 52 Bom. 414).

(2) In the case of every lease or sale of land under sub-section (1) of section 114 and of a lease of immoveable property for a term exceeding seven years and of every sale or other transfer of such property, the previous sanction of the Commissioner is required.

Sanction by resolution at general meeting requisite to validity of certain contracts.

(3) In the case—

(*a*) of a lease for a period exceeding one year or of a sale or other transfer or contract for the purchase of any immoveable property;

(*b*) of every contract which will involve expenditure not covered by a budget grant;

(*c*) of every contract the performance of which cannot be completed within the official year current at the date of the contract;

the sanction of the municipality by a resolution passed at a general meeting is required.

Execution of contracts on behalf of municipality.

(4) In a municipality—

(*a*) every contract under or for any purpose of this Act shall be made on behalf of the municipality by the Chief Officer;

(*b*) no such contract for any purpose which the Chief Officer is not empowered by this Act to carry out without the approval or

sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first of all been duly given ;

(*c*) no contract which will involve an expenditure exceeding three hundred rupees shall be made by the Chief Officer unless otherwise authorized in this behalf by the municipality except with the approval or sanction of the standing commiitee ;

(*d*) every contract made by the Chief Officer involving an expenditure exceeding two hundred rupees and not exceeding three hundred rupees shall be reported by him, within fifteen days after the same has been made, to the standing committee ;

(*e*) the foregoing provisions of this section shall apply to every variation or discharge of a contract to the same extent as to an original contract.

(5) No contract shall be binding on a municipality unless the requirements of this section have been complied with.

Absence of written contract.—It is doubtful whether, in the case of a sale of land by a District Municipality, the absence of a written contract of sale as provided by this clause, is fatal to the vendee's title to the land (*Sholapur Municipality v. Abdul Wahab*, 23 Bom. L. R. 224).

Contract not properly made not binding.—An agreement falling within the scope of this section is invalid if the provisions of the section have not been complied with and is not binding on either of the parties to it. The fact that such an agreement was partially acted upon, cannot render it an operative contract (*Raman Chetti v. Municipal Council of Kumbhakonam*, 30 Mad. 290).

Contract not in writing not binding—In the absence of the contract in writing the municipality cannot maintain a suit for damages if the contract is broken by the defendant (*Madura Municipal Council v. Veeranna Kone*, 16 I. C. 890).

Contract voidable if not properly executed even if properly performed.—A municipality invited tenders for the supply of ballast and accepted the appellant's tender by a resolution at a meeting properly convened. It received some ballast from the appellant and paid for it, but refused to accept the rest. *Held*, that a contract or agreement is not binding on a municipality unless it is reduced to writing. An agreement entered into with a municipality not having been committed into writing and signed as required by this section cannot form the basis of a suit, notwithstanding any goods are supplied in pursuance of it (*Radha Krishindas v. Municipal Board, Benares*, 27 All. 592). See *contra Abaji Sitaram v. Trimbak Municipality*, 28 Bom. 66.

Though a contract by a corporation must ordinarily be made under seal, still where there is what is known as executed consideration, an action will lie though the formality has not been observed (*Abaji v. Trimbak Municipality*, 28 Bom. 66). See *contra* 27 All. 592 cited above, where the Allahabad High Court has dissented from this view as regards executed contract.

It is open to a defendant to show that the contract is not binding on him inasmuch as it was not binding on the plaintiff as the formalities prescribed by

the Act had not been complied with (*Ahmedabad Municipality v. Sulemanji*, 27 Bom. 618).

If not binding on the Committee, it follows that it is not binding on the other parties to the contract. When the corporation is not bound by a contract by reason of their common seal not being affixed, the other party to the contract is equally free from the obligation (*Keddarminster v. Harwick*, L. R. 9 Ex. 13).

Where in a suit by the chairman of the Municipality to set set aside a permanent lease executed by the defendant, it was found that the contract was sanctioned by the Commissioner at a meeting and that it involved a value exceeding Rs. 500, but the *Kabulayat* executed on behalf of the Municipality was signed only by the chairman and although two of the commissioners witnessed it, they did not sign it as contracting parties and furthermore it was not sealed with the seal of the Commissioner, *held*, that the contract was not binding on the commissioners (*Chairman S. Barrackpore Municitpality v. Amulya Nath Chatterjee*, 34 Cal. 1030).

Contract not signed properly void against Municipality.—A contract purporting to be made by a Municipality but not signed by the president or vice-president and a member as required by s. 45 of Act IV of 1884, is not binding on the Municipality (*Ramaswamy Chetty v. The Municipal Council, Tanjore*, 29 Mad. 260).

Where the contract is not so signed, the Municipality cannot be rendered liable on the ground of executed consideration (*Ibid*).

Powers of officers to make contracts.—A municipal corporation being an artificial person can only contract through its agents and officers duly authorized for the purpose. A distinction has been drawn to exist between the acts of an agent of a municipal corporation and those of an agent of a private individual. In the case of public agents, all persons dealing with the corporation are bound to take notice of the extent of their powers and of the limitation of their authority. It is a general and fundamental principle of law that all persons contracting with a municipal corporation must *at their peril inquire into the statutory power* of the corporation or of its officers to make the contract (*Amer. Encyclo.*, Vol. 28, p 649).

Where the statute empowers the corporation, it can enter into contracts for improvements, for water-supply, for the lighting of the streets, public places and buildings, for the construction of sewers and drains and for carrying out general sanitary powers conferred upon it (*Abbott's Corporations*, Vol. I, p. 574).

A contract which has been induced by illegal or fraudulent means used either in its original procurement or in its actual execution is void and incapable of enforcement (*Abbott's Corporations*, Vol. I, p. 573) See also *Aiyangar's Municipal Corporations in British India*, 2nd Ed. pp. 173-174.

Mode of executing contracts.

49. (1) [s. 186 O] Every contract entered into by a Chief Officer on behalf of a municipality shall be entered into in such manner and form as would bind such Chief Officer if such contract were on his own behalf, and may in the like manner and form be varied or discharged:

Provided that—

(*a*) where any such contract, if entered into by a Chief Officer, would require to be under seal, the same shall be sealed with the common seal of the municipality ;

(*b*) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding five hundred rupees, shall be in writing and shall be sealed with the common seal of the municipality and shall specify the work to be done or the materials or goods to be supplied, as the case may be, the price to be paid for such work, materials or goods and in the case of a contract for work, the time or times within which the same or specified portions thereof shall be completed.

(2) The common seal of the municipality shall not be affixed to any contract or other instrument except in the presence of two members of the standing committee, who shall attach their signatures to the contract or instrument in token that the same was sealed in their presence. The signatures of the said members shall be distinct from the signatures of any witnesses to the execution of any such contract or instrument.

(3) A contract not executed in the manner provided in this section shall not be binding on the municipality.

Tenders to be invited for contracts involving expenditure exceeding Rs. 1,000.

50. (1) [s. 186 P] Except as is otherwise provided in sub-section (3), a Chief Officer shall, at least seven days before entering into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees, give notice by advertisement in a local newspaper, inviting tenders for such contract.

(2) The Chief Officer shall not be bound to accept any tender which may be made in pursuance of such notice, but may, with the approval of the standing committee, accept any of the tenders so made which appears to him, upon a view of all the circumstances, to be the most advantageous or may reject all the tenders submitted to him.

(3) A municipality may authorise the Chief Officer, for reasons which shall be recorded in its proceedings, to enter into a contract without inviting tenders as herein provided or without accepting any tender which he may receive after having invited them.

Security when to be taken for performance of contract.

51. [s. 186 Q] A Chief Officer shall require security for the due performance of every contract into which he enters under section 50 and may, in his discretion, require security for the due performance of any other contract into which he enters under this Act.

(5) *Compulsory acquisition of land.*

Recourse to the Land Acquisition Act, 1894.

52. [s. 41] When there is any hindrance to the permanent or temporary acquisition by a municipality upon payment of any land or building required for the purposes of this Act, the Government may, after obtaining possession of the same for itself under the Land Acquisition Act, 1894, or other existing law, vest such land or building in the municipality on its paying the compensation awarded, and on its repaying to Government all costs incurred by Government on account of the acquisition.

Jurisdiction of Civil Court—A Civil Court has no jurisdiction to entertain a suit for an injunction to restrain a municipality from acquiring, through the medium of Government under the Land Acquisition Act, 1894, a piece of land for purposes of widening a street (*Shastri Ramchandra v. Ahmedabad Municipality* 24 Bom. 600).

Acquired land liable to Government assessment even though originally exempt.—An inam land was acquired by the Government for municipality. By successive sale, the plaintiff became the owner of the land. He claimed that the Government was entitled to quit rent as from inamdar, and not ground rent. *Held*, that when the land became vested in the Government, it became ordinary Government land liable to assessment in the hands of any person who might afterwards become the occupier. If the plaintiff claims to hold the land free from the payment of such assessment as the Government may fix, he must show some grant exempting him from the payment of ordinary assessment. Where a Government Order permitted Municipal Councils to transfer lands vested in them by sale, mortgage or otherwise but contained no condition that the assignee would be liable to pay such assessment as might be fixed by the Revenue authorities, *held*, that it cannot be contended that the order granted an exemption for payment of land revenue to all persons who might purchase lands from the municipality. No exemption can be claimed without a grant or exemption in express words (*Chellapalli Hanumanulu Panthulu v. The Secretary of State for India in Council*, 36 Mad. 373).

(6) *Liabilities of councillors, officers and servants.*

Councillors to be held responsible for misapplied funds.

53. [New] Every councillor shall be personally liable for the misapplication of any fund to which he shall have been a party, or which shall have happened through, or been facilitated by the gross neglect of his duty as a councillor and may be sued for recovery of the moneys so misapplied as if such moneys had been the property of Government :

Provided that no councillor shall be personally liable in respect of any contract or agreement made, or for any expense incurred, by, or on behalf of the municipality ; the funds at the disposal of each municipality shall be liable for, and be charged with, all costs in respect of any such contract or agreement and all such expenses.

Misapplication of Municipal funds.—The word "misapplication" in this section means the wrong application of funds, or the use of funds for purposes outside the scope of the Act. A primary school maintained by a Municipality out of its funds does not cease to be a primary school within the meaning of s. 68 *post*, merely because the municipality does not permit its inspection by a Government Inspector. The money spent by the municipality in maintaining such a school cannot be treated as misapplied within the meaning of this section (*Secretary of State for India v. Manilal Harivallavdas Bhagat*, 27 Bom. L. R. 371, S. C. 40 Bom. 166). The context in which the word "misapplication" occurs in this section indicates that the word is employed rather in the broad and popular sense than in the narrow or etymological sense. There is no requirement that the misapplication must be by the councillors themselves or by any specified persons whatsoever and the use of the passive word "happened" seems to suggest also that the scope of this section extends to misappropriation of the municipal funds by municipal employer, provided only that the misappropriation was facilitated by the councillors' gross neglect of their duties (*Ibid. Per Bachelor J*).

Section 42 of the District Municipal Act (corresponding to this section) applies only to a case of misapplication of the funds of the municipality. It does not apply to a suit by the municipality against the members of the Managing Committee for the recovery of monies paid out in consequence of completion certificates improperly issued by them without satisfying themselves that the contract had been properly carried out, because it was not the defendants who paid out the money and the suit is in substance one for damages for negligence (*Govind Dhondshet v. Chiplun Municipality*, 56 Bom. 448).

In a suit falling under this section, the Government would be the only possible plaintiffs. But this section does not deprive the municipality of the right it possesses under the ordinary law of suing any person, whether or not he be a councillor, who misappropriates the property of the municipality. The reasons for providing in this section that moneys may be recovered from a councillor "as if such moneys had been the property of Government" was to give Government the power to take action in cases in which the municipality neglects to do so (*Ib'd*).

A suit will lie at the instance of individual tax-payers for an injunction restraning the corporation from misapplying the fund (*Vaman v. Municipality of Sholapur*, 22 Bom. 646).

The payment of money under contracts not legally valid is not a misapplication of the municipal fund (*R v. Prest*, 16 Q. B. 32). A corporation can also spend moneys out of the municipal fund for defending itself and its property, rights or powers (*A. G. v. Wigan Corporation*, 23 L. J. Ch. 429).

Unless expressly empowered by statute a municipal corporation cannot pay costs incurred by its officers in actions brought against them arising out of the discharge of their duties (*R. v. Exeter Corporation*, 6 Q. B. D. 135).

Personal liability of Municipal Councillors.—Under Bengal Act III of 1864, the personal liability of the Municipal Councillors was considered and it was *held*, that the Municipal Councillors and their servants incur no personal responsibility for what they do so long as they act in the line of their duty. But if they do or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they

are empowered to do, then they render themselves personally liable to an action. There is no special law extending to members of municipalities, which protects them so long as they act *bona fide* (*Sundar Lal v. Bareilli*, 24 W. R. 287.)

Officer or servant of municipality not to be interested in contract with such municipality.

54. (1) [s. 43] Any person who has, directly or indirectly, by himself or his partner, any share or interest in any contract with, by or on behalf of a municipality, or in any employment with, under, by or on behalf of a municipality, other than as a municipal officer or servant, shall be disqualified for being an officer or servant of such municipality.

(2) Any municipal officer or servant who shall acquire, directly or indirectly, by himself or his partner, any share or interest in any such contract or employment as aforesaid, shall cease to be a municipal officer or servant, and his office shall become vacant.

(3) Nothing in this section shall apply to any such share or interest in any contract or employment with, under, by or on behalf of a municipality, as under clauses (*i*), (*ii*) and (*iv*) of sub-section (3) of section 12 it is permissible for a person to have without his being thereby disqualified from becoming a councillor.

Penalty for councillor, officer or servant of a municipality being interested in contract, etc., with that municipality.

55. (*a*) [s. 44] Any councillor who knowingly acquires directly or indirectly any share or interest in any contract or employment with, under, by or on behalf of a municipality of which he is a member, not being a share or interest such as under section 12 it is permissible for a person to have without being thereby disqualified from becoming a councillor, and

(*b*) any municipal officer or servant who knowingly acquires directly or indirectly any share or interest in any contract, or, except in so far as concerns his own employment as municipal officer or servant, in any emloyment with, under, by or on behalf of a municipality of which he is an officer or servant, not being a share or interest such as under clauses (*i*) and (*iv*) of sub-section (3) of section 12 it is permissible for a person to have without being thereby disqualified from becoming a councillor, shall be liable, on conviction before a criminal court, to a fine which may extend to five hundred rupees.

"Shall be liable."—This section does not absolutely require the infliction of a penalty. Its language is different from that of most of the penal clauses of the Indian Penal Code. An offence against this section is only "liable" to a penalty. It is not compulsory on the Court to inflict a penalty in every case in which the law is broken (Sadar Court, Sind Criminal Appeal No. 18 of 1882).

Procedure.—This offence is triable by any Magistrate; it is bailable; a summons shall ordinarily issue in the first instance, and the police cannot arrest the

offender without a warrant from the Magistrate.—See at the end of Sch. II of the Criminal Procedure Code, 1898, under the heading *"Offences against other laws"*

Councillors, etc., to be deemed public servants.

56. (*1*) [New] Every municipal councillor, officer or servant, and every lessee of the levy of any municipal tax, and every servant or other person employed by any such lessee shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(2) The word "Government" in the definition of "legal remuneration" in section 161 of that Code shall, for the purposes of sub-section (1) of this section, be deemed to include a municipality.

Public servant.—Every municipal officer or servant, every contractor or agent to whom the collection of any tax, toll or other sum due to the municipal corporation is entrusted and every person engaged in the collection of such tax, toll or sum are public servants within the meaning of the Indian Penal Code. A municipal servant being a public servant is liable to be treated accordingly (*Emp. v. Ezekiel*, 6 Bom. L. R. 54). He is not an officer of the Government (*President, District Board, South Canara v. Gopalkrishna Bhatta*, 40 Mad. 808).

A clerk in the cess collection department (*Emp. v. Babu Lal*, 33 Bom 213), a tax collector (*Government Advocate v. Ganga*, 1 Pat. 423) and a municipal inspector (*Queen v. Ramasami*, 13 Mad. 131) are public servants.

Municipal Commissioner is a public Servant—(I P. C., s. 21, cl. 10, (ill.). A Municipal Commissioner appointed under Act XIII of 1884 (now Act XX of 1891) is a public servant, he not being removable from his office except by Government; therefore, he cannot be prosecuted for any act done by him in his capacity as a Commissioner except with the sanction of Government (*Bakshi Ram*, 14 P. R. 1890 followed in *Nur Buksh*, 17 P. R. 1902). Similarly, as regards a municipal Chairman (*Chairman, Ellore Municipal Council*, 1 Weir, 243). But a chairman delegate is not so protected for acts done by him as such, even though he be also a Municipal Councillor (*Venkateswaloo*, 2 Weir 226).

An engineer is a public servant.—An engineer, who receives and pays to others municipal monies, is a public servant within the meaning of s. 21 of the Penal Code, although he may not have the power of sanctioning the expenditure of such monies (*Nantamram Uttamram*, 6. B. H. C. R Cr. 64).

Municipal Corporation not a public servant.—A Municipal Corporation is not a public servant, and, therefore, it may be prosecuted under the Penal Code without the previous sanction of Government (*Municipal Corporation of the Town of Calcutta*, 3 Cal. 758). A Corporation is liable to prosecution for nuisance under the Penal Code in the same way as any ordinary individual (*The Birmingham and Gloucester Ry. Co*, 3 Q. B. Rep. 547 ; *The Great North of England Ry. Co.*, 9 Q. B. Rep. 345). Labourers or menial servants employed to do work or labour on account of the Government are not public servants (*Nuchimuttu*, 7 Mad. 18).

Sanction to prosecute a public servant, when necessary.—Under s. 341 of the City of Madras Municipal Act (I of 1884), any one bringing timber within Madras without a license got on payment of a fee is liable to be prosecuted.

The Superintendent of the Gun Carriage Factory brought certain timber without license. *Held*, following *Nando Lal Basak v. Mitter* (26 Cal. 852) that sanction was not necessary, as the offence charged was not one which could be committed only by a public servant, nor did it involve as one of its elements that it was committed by a public servant (*The Municipal Commissioner for the City of Madras v. Major Bell*, 25 Mad. 15).

Where the Administrator-General of Bengal appointed by the Court as administrator of an estate failed to comply with a certain notice from the municipality requiring him to remodel a privy on certain premises belonging to the estate, *held*, the fact of his being also the Administrator-General being merely an accident, and the offence for which he is charged not being one committed in his official capacity, no sanction of Government is necessary for the prosecution (*Corporation of Calcutta v. Administrator-General of Bengal*, 30 Cal. 927).

Municipal servant when discharging a public function.—A municipal servant cannot be considered to be discharging a public function in putting down pegs and strings, in order to mark out a road, unless the road is public property vested in the municipality. A person between whom and the municipality there is a *bona fide* dispute as to the ownership of the road, commits an offence under s. 186 of the Penal Code, if he pulls up the pegs and cuts the strings in assertion of his rights (*Sagan Vasudev Bangle*, Cr. Rg. 13 of 1888).

(7) *Validity of proceedings.*

Acts and proceedings of Municipality and committee not vitiated by disqualifications, etc. of members thereof.

57. (1) [s. 38] No disqualification of or defect in the election or appointment of any person acting as councillor, or as the president or presiding authority of a general meeting, or as chairman or member of a committee appointed under this Act shall be deemed to vitiate any act or proceeding of the municipality or of any such committee, as the case may be, in which such person has taken part, whenever the majority of persons, parties to such act or proceeding, were entitled to act.

No resolution of a Municipality or of any committee appointed under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any councillor or member, provided that the proceedings of the municipality or committee, were not prejudicially affected by such irregularity.

Proceedings presumed to be good and valid.

(2) Until the contrary is proved, every meeting of a municipality or of a committee appointed under this Act in respect of proceedings whereof a minute has been made and signed in accordance with this Act, shall be deemed to have been duly convened and held and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are the proceedings of a committee, such committee shall be deemed to have been duly constituted and to have had the power to deal with the matters referred to in the minute.

Vacancy not to affect proceedings.

(3) During any vacancy in a municipality or committee the continuing councillors or members may act as if no vacancy had occurred.

CHAPTER IV :

RULES AND BY-LAWS

Municipalities to make rules.

58. [New] A municipality shall make rules not inconsistent with this Act and may from time to time alter or rescind them—

(*a*) regulating the conduct of its business and the delegation or any of its powers or duties to any committee or to the Chief Officer or [*a*] "subject to the provisions of section 37-A" [*a*] the powers or duties of any committee to any other committee or to the Chief Officer and the appointment and constitution of committees ;

[*b*] (*a-a*) prescribing the limitations and restrictions subject to which the Pilgrim Committee shall exercise the powers and perform the duties of the municipality in respect of the Pilgrim Fund;"

Defining the functions of the President and others.

(*b*) determining the executive functions to be performed by the president, vice-president and the chairman of any committee ;

(*c*) determining the staff of officers and servants to be employed by the municipality and the respective designations, salaries, fees and absentee or other allowances of such officers and servants and their powers and duties ;

establishment ;

general guidance of municipal servants ;

(*d*) generally for the guidance of its officers and servants in all matters relating to the municipal administration ;

(*e*) fixing the amount and nature of the security to be furnished by any officer or servant from whom it may be deemed expedient to require security;

amount of security ;

(*f*) determining, subject to the limitations imposed by sections [*c*] 33, 34 (5) and 34A [*c*] the mode and conditions of appointing, punishing, or dismissing any officer or servant ; and delegating to officers designated in the rules the power to appoint, fine, reduce, suspend or dismiss any officer or servant ;

mode of appointing, etc., municipal servants ;

Amendment.—The word and figures "33, 34 (5) and 34-A were substituted for the original word and figures "33 and 34 (5)" by Bom. Act III of 1930, s. 3.

[*a*]-[*a*] In clause (*a*) the words "subject to the provisions of section 37-A" were inserted by Bom. Act IV of 1930, s. 4.

[*b*] Clause (*a-a*) was also inserted by the same Act.

[*c*]-[*c*] The word and figures 33, 34 (5) and 34A were substituted for the word and figures 33 and 34 (5) by Bom. III of 1930, s. 3.

leave to municipal servants;

(g) regulating the grant of leave to its officers or servants, and fixing the remuneration to be paid to the persons, if any, appointed to act for them whilst on leave;

pensions, etc.

(h) regulating the period of service of its officers and servants and determining the conditions under which such officers and servants or any of them shall receive pensions, gratuities or compassionate allowances on retirement, or on their becoming disabled through the execution of their duty, and the amount of such pensions, gratuities or compassionate allowances; and prescribing the conditions under which any gratuities or compassionate allowances may be paid to the surviving relatives of any such officers or servants whose death has been caused through the execution of their duty;

provident funds;

(i) authorizing the payment of contributions, at such rates and subject to such conditions as may be prescribed in such rules, to any pension or provident fund which may be established by the municipality or, with the approval of the municipality, by its officers and servants;

Prescribing taxes;

(j) prescribing the taxes to be levied in the municipal borough for municipal purposes, the circumstances in which exemption will be allowed, the conditions on which and the extent to which remissions will be granted, and the system on which rebunds will be allowed and paid, in respect of such taxes; the limits of the charges or payments to be fixed in lieu of any tax under section 91, the fees to be charged for licenses or permissions granted under section 90 and for giving copies and stamping weights and measures; the fees for notices demanding payments due on account of any tax and for the [a] issue and [a] execution of warrants of distress, and the rates to be charged for maintaining any live-stock distrained; and the time at which and the mode in which such taxes, charges, payments, fees or rates shall be levied or recovered or be payable and the persons authorised to receive payment of the same and the manner in which auctions of moveable and immovable property under section 106 shall be held;

writing off amounts due.

(k) prescribing the conditions subject to which sums due on account of any tax or of costs in recovering any tax may be written off as irrecovereble, and the conditions subject to which the whole or any part of any fee chargeable for distress may be remitted by the standing committee:

[a]-[a] The words "issue and" were inserted by Bom. XII of 1931, s. 3 (i).

Provided that—

Approval required to rules.

(*a*) no rule or alteration or rescission of a rule made under this section shall have effect unless and until it has been approved by the Government;

Officers transferred from or to the service of Government.

(*b*) if an officer serving or having served under a municipality has been or is transferred from or to the service of the Government, or is partly employed by the Government and partly by a municipality, the municipality shall contribute to his pension and leave allowances to the extent required by the rules in force for the time being, made by the Governor General in Council in this behalf;

Notice required in certain cases of dismissal.

(*c*) a municipality shall not, unless with the assent of the Government, dispense with the services of any officer transferred from the service of the Government to the service of the municipality or employed partly by the Government and partly by the municipality, or finally dismiss from the service of the municipality any officer transferred from the service of the municipality to the service of the Government, without giving the Government six months' previous notice.

Cl. (a).—Section 58 (*a*) empowers the municipality to make a rule delegatting the powers or duties of one committee to another and the municipality is, therefore, competent under a rule framed for the purpose to delegate to a sanitary committee the powers or duties allotted to the Standing Committee; and when such a rule appoints the sanitary committee to be the controlling and Executive Committee in all matters relating to a particular department, that committee has power to issue a notice to call upon a person to abate a nuisance or discontinue an improper issue of premises under s. 186 of this Act, and, on failure to obey it, to prosecute the offender. The prosecution or conviction following on it, will not be invalid simply because action is taken by the Sanitary Committee and not by the Standing Committee (*Emperor v. Jesinghbhai Chhaganlal Shah*, 37 Bom. L. R. 184).

Cl (J)—Levy of terminal tax—"Personal use" equivalent to "private use."—One of the rules framed by the Dhulia Municipality provided for the levy of a terminal tax on all goods imported within the municipal limits. Another of such rules (rule 5) exempted from the tax "all goods for *bona fide* personal use and not for sale. The plaintiff, a cotton spinning and weaving company limited, imported within Dhulia Municipal limits building materials required to build its own will, upon which the defenfendant municipality levied the terminal tax. The plaintiff having sued for the refund of the tax money, it was *held* that the plaintiff was entitled to exemption under rule 5, for the expression "personal use" was equivalent to "private use," and the plaintiff corporation was included in the term "person" (*Municipality of Dhulia v. The New Pratap Spinning, Weaving, and Manufacturing Company, Limited*, 37 Bom. L. R. 703).

Discretionary power to make rules.

[a]58-A. [New] A municipality may, at its discretion, make rules, not inconsistent with this Act, determining the conditions under which gratuities or compassionate allowances may be paid to the surviving relatives of its officers and servants or any of them who die during service and the amount of such gratuities or compassionate allowances :

Provided that no rule or alteration or recission of a rule made under this section shall have effect unless and until it has been approved by the Government.

Rules made with approval of Commissioner or without approval.

59. (1) [New] Notwithstanding anything contained in clause (*a*) of the proviso to section 58, the approval required to be given in respect of rules framed under clause (*c*) of section 58 may be given by the Commissioner instead of by Government, subject to the condition that any such rules relating to Chief Officers, health officers or engineers or to the salaries, fees or absentee or other allowances of such officers shall require the sanction of the Government.

(2) Notwithstanding anything contained in clause (*a*) of the proviso to section 58 or in sub-section (1) of this section, a municipality shall have power to make without sanction a rule under clause (*c*) of section 58, creating an appointment or increasing the salary of an appointment or granting or increasing an allowance in any case where the salary of such appointment or the amount of such allowance or the amount of such increase, as the case may be, does not involve a charge on the municipal fund exceeding rupees one hundred in the month :

Provided that the Government may withdraw this power from any municipality either permanently or for such period as they think fit to prescribe when, in their opinion, there are good reasons for doing so.

Power to suspend, reduce or abolish any existing tax.

60. (1) [New] Subject to the requirements of clause (*a*) of the proviso to section 58 a municipality may, except as otherwise provided in clause (*b*) of the proviso to section 103 at any time for any sufficient reason, suspend, modify or abolish any existing tax by suspending, altering or rescinding any rule prescribing such tax.

(2) The provisions of Chapter VII relating to the imposition of taxes shall apply so far as may be to the suspension, modification or abolition of any tax and to the suspension, alteration or rescission of any rule prescribing a tax.

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[a] This section was inserted by Bom. Act IX of 1930, s. 2.

Power to make by-laws ;

61, (1) [s. 48] A municipality may from time to time, with the previous sanction of the Government, make, alter or rescind by-laws not inconsistent with this Act--

markets and slaughter-houses, etc., etc.:

(*a*) for the regulation and inspection of markets and slaughter-houses and all places used by or for animals which are for sale or hire, or the produce of which is sold, and for the proper and cleanly conduct of business therein ; and for fixing the rents and other charges to be levied for the use of any of them which belong to the municipality, for regulating the sale of fruit and vegetables in the municipal market or other specified places ;

Market.—A market is a public place appointed by public authority where all sorts of things necessary to the subsistence or for the convenience of life are sold ; or, in other words, it is a designated place in a town or city to which all persons can repair who wish to buy or sell articles there exposed for sale (*Caldwell v. City of Alton*, 33 Ill. 416). A market is a public place for buying and selling (*Abu Baker v. The Municipality of Negapatam*, 29 Mad 185.) Butchers' shops are not private markets (*Queen-Empress v. Brodur Bhai*, 10 Mad. 216). The authority to establish and regulate markets falls within the police power of the State, which is delegated to Municipal Corporations. The power of the public authority to inspect and control the sale of articles of food intended for human consumption being conceded, the object being the preservation of the health of the community, the power exists in Municipal Corporations to establish and regulate and control markets within their respective local jurisdictions (*Aiyangar's Municipal Corporations of British India*, pp. 647, 848).

Slaughter-house.—The word "slaughter-house" means a place used for the preparation of beasts for the market (*Proceedings of the Madras High Court*, 6 M.A.C.K. 18 App.). It includes premises used at the time not for actual slaughtering, but for incidental purposes connected therewith (*Hides v. Little John*, 60 J. P. 101). If cattle are only occasionally slaughtered at a place and not for sale, the place will not be a slaughter-house (*Elias v. Nightingale*, 22 J. P. 131). A person who kills a goat in his own house for his own consumption cannot be said to use the place as a slaughter-house (*Queen Empress v. Bhiva*, Ratanlal's Un Rep. Cr. Cases. 399). See, however, *Government Pleader v. Sheikh Saheb*, , 1 Weir 742) where the slaughtering of a sheep by a person in his own premises for the purpose of private consumption was *held* punishable.

Slaughter-houses are established for the slaughter of animals for sale. There is no penalty for slaughtering an animal not intended for sale at a place other than a slaughter-house (L. B. R. 1893-1900, 383).

licensing, regulating and inspecting certain businesses ;

(*b*) prescribing the conditions on or subject to which and the circumstances in which and the areas or localities in respect of which, licenses may be granted, refused, suspended or withdrawn for the use of any place not belonging to the municipality—

(*i*) as a slaughter-house ;

(*ii*) for the manufacture, preparation, storing, sale or supply for the purpose of trade of any article or thing intended for human food or drink, whether such food or drink is to be consumed in such place or not ;

(*iii*) for any of the purposes mentioned in sub-section (1) of section 186 ;

and providing for the inspection and regulation of the conduct of business in any place used as aforesaid, so as to secure cleanliness therein or to minimise any injurious, offensive or dangerous effect arising or likely to arise therefrom ;

use of steam whistles, etc.;

(*c*) prescribing the conditions on or subject to which and the circumstances in which and the areas or localities in respect of which licenses may be granted, refused, suspended or withdrawn for the use of whistles and trumpets operated by steam or mechanical means in factories or other places for the purpose of summoning or dismissing workmen, or persons employed ;

pilgrims' lodging houses.

(*d*) prescribing the conditions on or subject to which and the circumstances in which and the areas or localities in respect of which licenses may be granted, refused, suspended or withdrawn for the use of any place or building for the purpose of lodging pilgrims, and providing for the inspection and regulation of such places or buildings ;

stalling of cattle, etc. ;

(*e*) prohibiting the stalling or herding of horses, camels, cattle, donkeys, sheep or goats, otherwise than in accordance with such regulations prescribed in such by-laws in regard to the number thereof, and the places to be used for the purpose, as may be necessary to prevent danger to the public health ;

milk shops ;

(*f*) prescribing the conditions on which sweetmeats may be sold and on which licenses may be granted, refused, suspended, or withdrawn for the use, for purposes of trade, of any place for stabling milch cattle, for storing or selling milk, or for making, storing or selling butter or other milk products ;

for regulating dairies and cattle-sheds ;

(*g*) (*i*) for the inspection of milch cattle ; and prescribing and regulating the construction, dimensions, ventilation, lighting, cleansing, drainage and water-supply of dairies and cattle-sheds in the occupation of persons following the trade of dairy-men or milk-sellers ;

(*ii*) for securing the cleanliness of milk-stores, milk-shops and vessels used by milk-sellers or buttermen for milk or butter ;

milk-stores, etc. ;

[*a*] (*h*) and (*i*).

(*j*) for the registration of births, deaths, and marriages and the taking of a census within the municipal borough and for enforcing the supply of such information as may be necessary to make such registration or census effective ;

registration of births, etc. ;

(*k*) regulating the disposal of the dead and the maintenance of all places for the disposal of the dead in good order and in a safe sanitary condition, due regard being had to the religious usages of the community or section of the community entitled to the use of such places for the disposal of the dead ;

regulating the disposal of the dead ;

(*l*) for enforcing the supply of information as to any cases of dangerous disease, and carrying out the provisions of sections 179 and 180 ;

for enforcing supply of information as to epidemics ;

(*m*) for enforcing the supply of such information by inhabitants of the municipal borough as may be necessary to ascertain their respective liabilities to any tax imposed therein ;

for enforcing information as to liability to municipal taxation ;

(*n*) fixing octroi limits and stations ; providing for the exhibition of tables of octroi ; regulating, subject to any general or special orders which the Government may make in this behalf, the system, under which refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody or storage of animals or goods declared not be intended for use or consumption within the municipal borough ; and prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the minimum amount for which any claim to refund may be made ;

Octroi ;

(*o*) fixing terminal tax limits and stations, providing for the exhibition of tables of terminal tax, and regulating the mode of recovery of such tax ;

terminal tax ;

(*p*) for conserving and preventing injury to sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the municipal borough,

for protecting water ;

[*a*] Clauses (*h*) and (*i*) were repealed by Bom. XV of 1932, second Schedule Part II.

and regulating all matters and things connected with the supply and use of water and the turning on or turning off and preventing the waste of water, and the construction, maintenance and control of municipal water-works, and of pipes and fittings in connection therewith, whether the property of the municipality or not;

Explanation.—Sources and means of water-supply shall include private wells which are used by the public.

public baths, etc.; (*q*) regulating the use of public bathing and washing places within the municipal borough;

conservancy; (*r*) regulating sanitation and conservancy and the disposal of the carcasses of dead animals;

(*s*) regulating the conditions on which permission may be given for the temporary occupation of, or the erection of temporary structures on, public streets or for projections over public streets;

temporary structures and buildings;

(*t*) regulating the structure and dimensions of plinths, walls, foundations, roofs and chimneys of new buildings for the purpose of securing stability and the prevention of fires, and for purposes of health, and determining the purposes for which existing or newly erected buildings may be used in any area;

buildings;

(*u*) for preventing the erection of buildings without adequate provision being made for the location and laying out of streets; and for the payment of compensation in such cases when necessary;

streets;

(*v*) for ensuring the adequate ventilation of buildings by the provision and maintenance of sufficient open space either internal or external and of doors and windows and other means for securing a free circulation of air;

ventilation:

(*w*) prescribing the qualifications of surveyors or persons by whom plans required under section 123 are to be prepared, or of plumbers; for licensing persons to be surveyors or plumbers and, fixing the fees chargeable for such licenses; and for modifying the provisions of or revoking such licenses; and prohibiting any alterations or repairs or fittings to water or drainage-pipes or house-connections being carried out or made except by such persons;

qualified surveyors;

(*x*) regulating, in any other particular not specifically provided for in this Act, the construction, maintenance and control of drains, sewers, ventilation shafts, receptacles for dung and

drains;

manure, cesspools, water-closets, privies, latrines, urinals and drainage or sewerage works of every description whether the property of the municipality or not ;

requiring information and plans in certain cases ;

(*y*) determining the information and plans to be required by the municipality under sections 117 and 123 ;

controlling unwieldy traffic.

(*z*) prohibiting vehicular traffic in any particular street, so as to prevent danger, obstruction or inconvenience to the public, by fixing up posts at both ends of such street or portion of such street, prohibiting the transit of any vehicles of such form, construction, weight or size or laden with such heavy or unwieldy objects as may be deemed likely to cause injury to the roadways or to any construction thereon, or risk or obstruction to other vehicles or to pedestrians along or over any street, except under such conditions as to time, mode of traction or locomotion, use of appliances for protection of the roadway, number of lights and assistants, and other general precautions as may be prescribed either generally in such by-laws or in special licenses to be granted in each case upon such terms as to time of application and payment of fees therefor as may be prescribed in such by-laws :

Provided that no such by-law relating only to any particular street or portion of a street shall be deemed to be in force, unless and until notices of such prohibition shall have been posted up by the municipality in conspicuous places at or near both ends of such street or portion of a street ;

public parks ;

(*aa*) securing the protection of public parks, gardens and open spaces, vested in or under the control of the municipality, from injury or misuse, regulating their management and the manner in which they may be used by the public, and providing for the proper behaviour of persons in them ;

[*a*] "(*bb*) prescribing the conditions on or subject to which licenses may be granted, refused, suspended or withdrawn, for the use of hand-carts and hand-barrows, other than those plying for hire in respect of which licenses have been granted under the Bombay Public Conveyances Act, 1920, and providing for the seizure and detention of any hand-carts or hand-barrows which have not been duly licensed in pursuance of the bye-laws made under this section;

[*a*] "(*cc*) prescribing the conditions on or subject to which licenses may be granted, refused, suspended or withdrawn for hawking or exposing for sale in any public place or street any article whatsoever, whether it be for human consumption or not ;

[*a*] Clauses (*bb*) and (*cc*) were inserted by Bill No. XXIV of 1935.

[a]"(*dd*) prescribing the conditions on or subject to which permission may be granted, renewed, refused, suspended or withdrawn for erecting, exhibiting, fixing or retaining any sky-sign or advertisement, over any land, building or structure.

"*Explanation.*—The expression "sky-sign" shall mean any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported on or atached to any post, pole, standard, framework or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard, frame work or ther support. The expression "sky-sign" shall also include any ballon, parachut or other similar device employed wholly or in part for the purposes of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street, but shall not include—

"(*a*) any flag-staff, pole, vane or weather-cock, unless adapted or used wholly or in part for the purpose of any advertisement, announcement or direction,

"(*b*) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof :

Provided that such board, frame or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall, parapet or ridge to, against, or on which it is fixed or supported ;

"(*c*) any word, letter, model, sign, device or representation as aforesaid, relating exclusively to the business of a railway company, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway company, and so placed that it cannot fall into any street or public place ;

"(*d*) any notice of land or building to be sold or let, placed upon such land or building."

general regulation.

fine may be imposed for infringement of by-laws.

[b] (*ee*) generally for the regulation of all matters relating to municipal administration; and the municipality may, with the like sanction, prescribe a fine not exceeding five hundred rupees for every infringement of any such by-law.

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[a] Clause (*dd*) was inserted in Bill No. XXII of 1935.

[b] Original clause (*bb*) was relettered (*ee*) by Bill No. XXII of 1935.

(2) A municipality shall, before making any by-law under this section, publish in such manner as shall in its opinion be sufficient, for the information of the persons likely to be affected thereby, a draft of the proposed by-law, together with a notice specifying a date on or after which the draft will be taken into consideration; and shall, before making the by-law, receive and consider any objection or suggestion with respect to the draft which may be made in writing by any person before the date so specified.

Publication of drafts of proposed by-laws.

(3) When any by-law made by a municipality is submitted to the Government for sanction, a copy of the notice published and of every objection or suggestion received under the provisions of sub-section (*2*), shall be submitted for the information of the Government along with the said by-law.

Objections and suggestions to be submitted to Government.

By-laws must be reasonable.—The English law as to the necessity of by-laws being reasonable is applicable to by-laws framed in the exercise of their statutory powers by Municipal Boards in India. The Municipal Board of Nainital passed a by-law under the powers conferred upon it by s. 128, cl. (*c*), of Act I of 1990 (U. P.) to the following effect, namely:—No coolie, whether bearing loads or not, no servant, except in attendance on his master, and no prostitute shall use the Upper North Mail (one of two parallel roads running along the north side of the Nainital lake) at any any time." *Held*, that as regards the words "no servant, except in attendance on his master" this was under the circumstances an unreasonable by-law and the Court declined to give effect to it (*Balkishan*, 24 All. 349).

By-law requiring external structures ultra vires.—A by-law framed by a District Municipality provided that "every place used for drying fish or fins shall be surrounded with a wall not less than six feet in height or with a fence made of bambu mats or double cadgan leaves." *Held*, that the by-law was *ultra vires* of the powers conferred by s. 33 (*b*) of the Bom. District Municipal Act, 1884, and s. 48 of the Bom. District Municipal Act, 1901, as both these sections extended only to the regulation of business within the place used and gave no authority to require external structures (*Raghunath*, 4 Bom. L. R. 585).

62. [s. 49] The rules and by-laws for the time being in force shall be kept open to public inspection at the municipal office at all reasonable times; printed copies thereof and of this Act in the vernacular language of the district and in English shall be kept on sale at cost price.

Rules and by-laws to be printed and sold.

Omission to exhibit printed copies of rules in vernacular.—The omission by a District Municipality to keep printed copies of the rules in the vernacular language for sale does not affect the validity of the rules (*Bahadur Shah*, Cr. Rg. 37 of 1892).

CHAPTER V.

MUNICIPAL PROPERTY AND FUND.

Power to acquire and hold property for the purposes of the Act.

63. (1) [s. 50] A municipality may acquire and hold property both moveable and immoveable, whether within or without the limits of the municipal borough.

(2) All property of the nature specified in the clauses to this section, not being specially reserved by the Government, shall be vested in and belong to the municipality, and shall, together with all other property of what nature or kind soever, which may become vested in the municipality, be under its direction, management and control, and shall be held and applied by it as trustee, subject to the provisions and for the purposes of this Act :—

(*a*) All public town-walls, gates, markets, slaughter-houses, manure and night-soil depots, and public buildings of every description.

(*b*) All public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other water works ; and all bridges, buildings, engines, works, materials and things connected with or appertaining to such water works ; and also any adjacent land, not being private property, appertaining to any public tank or well.

(*c*) All public sewers and drains ; all sewers, drains, tunnels, culverts, gutters and water-courses in, alongside or under any street, and all works, materials and things appertaining thereto ; all dust, dirt, dung, ashes, refuse, animal matter, filth, or rubbish of any kind collected by the municipality from the streets, houses, privies, sewers, cesspools or elsewhere.

(*d*) All public lamps, lamp-posts and apparatus connected therewith, or appertaining thereto.

(*e*) All lands transferred to it by the Secretary of State for India in Council, or by gift or otherwise, for local public purposes.

(*f*) All public streets, and the pavements, stones and other materials thereof and also all trees, erections, materials, implements and things provided for such streets.

Property vested in the Municipality.—Improvements made by municipality to private property does not make it municipal. In a dispute between the municipality and the Inamdar of the village regarding the right of the former to extend the foundations of a building into a lake or tank situated in the village but not situated within the municipal limits, the question turned on the possession and ownership of the lake and the evidence showed that the Municipality had, ever since it was established, expended large sums of money on cleaning the lake and on the improvements of its ghats and approaches with the concurrence and assent of the Inamdar, and also that the Inamdar had all along been in the enjoy-

al clause

ment of his rights over the lake which the municipality never attempted to interfere with. The District Judge, upon the evidence as a whole, entertained no doubt but that the possession of the lake was with the Inamdar, and also that as admittedly the lake was included within the village, it, as such, must have been included in the original grant to the Inamdar. *Held*, on second appeal, that as there was evidence to support the finding as to possession and ownership, they were conclusively binding in second appeal. *Held*, also, following *Premraj v. Narayan* (6 Bom. 315) that it was not open to the municipality under the circumstances of the case to set up the *jus tertii*—the title of Government of the lake (*Manohar v. Dakore Municipality*, P. J. 1897, p. 15).

Private pathways—Under s. 30 of the Bengal Act, private pathways do not vest in the municipality (*Chairman, Howrah Municipality v. Haridas Datta*, 43 Cal. 130). See also *Chairman, Howrah Municipality v. Khetra K. Mitter*, 33 Cal. 1290.

The difference between roads vested in the Municipality and other roads is that in the former case the municipality is responsible for lighting and watering, &c. and in the other it has only power of control to prevent the road from becoming nuisance or the rights of the public being interfered with (*Ibid*).

Decision of claims to property by or against the municipality.

64. (1) [s. 50A] In any municipal borough to which a survey of lands, other than lands ordinarily used for the purposes of agriculture only, has been or shall be extended under any law for the time being in force, where any property or any right in or over any property is claimed by or on behalf of the municipality, or by any person as against the municipality, it shall be lawful for the Collector after formal enquiry, of which due notice has been given, to pass an order deciding the claim.

(2) Any suit instituted in any civil court after the expiration of one year from the date of any order passed by the Collector under sub-section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204 of the Bombay Land Revenue Code, 1879, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order: provided that the plaintiff has had due notice of such order.

(3) (*a*) The powers conferred by this section on a Collector may also be exercised by an Assistant or Deputy Collector or by a Survey officer as defined in the Bombay Land Revenue Code, 1879.

(*b*) The formal enquiry referred to in this section shall be conducted in accordance with the provisions of the aforesaid Code.

(*c*) Any person shall be deemed to have had due notice of an enquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Government.

Government not a necessary party.—Government introduced survey within the municipal limits on the application of a District Municipality under s. 50A of the Bombay District Municipal Act (corresponding to this section). The City Survey Officer decided in the course of the Survey that certain land was a "public street." The plaintiff sued the municipality for a declaration that the land in question was of his private ownership. It was objected that the Secretary of State for India was a necessary party to the suit. *Held*, overruling the objection, that the mere fact that Government would have some interest in all public streets vested in municipalities was no reason for holding that Govnrnment was a necessary party in a suit which really concerned a private party on the one hand and the municipality on the other (*Bai Parvati v. Nadiad Municipality*, 25 Bom. L. R. 63).

As to whether Secretary of State is not a necessary party, see 5 Bom. L. R. 58.

Limitation.—When an order has been passed by a Collector under s. 50A of the Bombay District Municipal Act (corresponding to this section) after formal enquiry of which due notice has been given to the plaintiff, the plaintiff should bring his suit to set aside the order within one year from the date of the order. The proviso to this section does not, however, apply where no such notice was given and in such a case the date on which the order would, in the ordinary course of events, have reached the plaintiff but for his own default, would be the date from which limitation would run (*Municipality of Hyderabad v. Allahdino*, 25 S. L. R. 230).

Where an appeal has been filed against a part of an order, the limitation for a suit to set aside the whole order including that part which has not been appealed from, runs from the date of the order passed in appeal (*Ibid*).

Municipal fund.

65. [s. 51] All moneys received by or on behalf of a municipality by virtue of this or any other Act; all taxes, fines and penalties paid to or levied by it under this Act; all proceeds of land or other property sold by the municipality and all rents accruing from its land or property; and all interest, profits and other moneys accruing by gift or transfer from the Secretary of State for India in Council or private individuals or otherwise, shall constitute the municipal fund, and shall be held and dealt with in a similar manner to the property specified in section 63 :—

Provided that—

Special trusts.

(*a*) nothing in this section or in section 63 shall in any way affect any obligation accepted by or imposed upon any municipality by any declarations of trust executed by or on behalf of such municipality or by any scheme settled under the Charitable Endowments Act, 1890, for the administration of any trust, or by a trust of the nature specified in clause (*b*) of this proviso;

(*b*) a municipality may, subject to the condition that reasonable provision shall be made for the performance of all obligations imposed or that may be imposed on it by or under this Act or any other law for the time being in force, credit to a separate heading

in the municipal accounts any portion of the municipal fund received or set apart by it specially for the purposes of schools or dispensaries or water works or fire-brigades or other such purposes as the Commissioner in this behalf approves, and the municipality may apply any sums properly so credited exclusively to the special purposes for which such sums were received or set apart ;

[a] (c) (1) every municipality in a municipal borough in which a tax on pilgrims resorting periodically to a shrine within the limits of the municipal borough is levied shall, subject to the condition that reasonable provision shall be made for the purposes specified in clause (2), credit the proceeds of the said tax to a separate heading in the municipal account, to be called the "Pilgrim Fund Account."

(2) The purposes for which provision shall be made by a municipality before proceeds of the pilgrim tax are credited to Pilgrim Fund Account shall be the following, namely, the payment to the municipality of such percentage of the proceeds of the said tax as may be determined from time to time by the municipality with the approval of the Commissioner for

(*i*) making reasonable provision for the performance of all obligations imposed or which may be imposed on it by or under this Act or any other law for the time being in force :

(*ii*) such general duties of the municipality as are connected with the health, convenience and safety of the said pilgrim ; and

(*iii*) the cost of collection of the said tax.

(3) The sums credited under clause (1) shall be devoted to such works conducive to the health, convenience and safety of the said pilgrims as may be approved by the Commissioner.

Municipal fund—All moneys payable to the credit of a municipal corporation constitute a fund called *the municipal fund*; and the said fund is held in trust by the corporation for the purpose on which it may be lawfully extended by statute (*Arnold v. Glanesend Corporation*, 2 K. and J. 574). The municipal fund is the common purpose of the Corporation for all purposes in respect of which they act as the municipal authority. The rents and profits of all corporate property, all taxes, license fees, interest, etc. realised out of valuable securities, every fine or penalty levied under the Act—all these go to form the municipal fund (*Halsbury's Laws*, Vol. 19, p. 319). The position of a municipal corporation with reference to the fund is the position of a trustee ; and if the corporation commits breach of trust, it may be restrained from doing so (*A. G. v. Aspinall*, 2 M. and C. 406). The application of moneys to purposes not warranted is a breach of the trust reposed in the corporation ; and persons procuring such breach of trust may be made personally liable for the same (*A. G. v. Wilson*, Cr. and Ph. 1).

Application of municipal property and funds within and without the municipal borough.

66. [s. 52] The municipal fund and all property vested in a municipality shall be applied for purposes of this Act within the limits of the municipal borough :

[a] Proviso (c) was inserted by Bom. Act IV of 1930, s. 4.

Provided always that it shall be lawful for the municipality, with the sanction of the Government or any officer duly authorised by it in this behalf,—

(*a*) to incur expenditure in the acquisition of land or in the construction, maintenance or repair of works beyond the said limits for the purpose of obtaining a supply of water required for the inhabitants of the municipal borough, or of establishing slaughter-houses or places for the disposal of night-soil or sewage or carcasses of animals or for drainage works, or for any other purpose calculated to promote the health, safety or convenience of the inhabitants of the said borough ; or

(*b*) to make a contribution towards expenditure incurred by any other local authority or out of any public funds for measures affecting the health, instruction, safety or convenience of the public and calculated to benefit the residents within the limits of the contributing municipality ; or

(*c*) to create scholarships tenable outside the limits of the municipal borough :

Provided, further, that nothing in this section or in any other provision of this Act shall be deemed to make it unlawful for a municipality, when with such sanction as aforesaid it has constructed works beyond the limits of the municipal borough for the supply of water or for drainage as aforesaid—

(*a*) to supply or extend to or for the benefit of any person or buildings or lands in any place, whether such place is or is not within the limits of the said borough, any quantity of water not required for the purposes of this Act within the said borough, or the advantages afforded by the system of drainage works, on such terms and conditions with regard to payment and to the continuance of such supply or advantages as shall be settled by agreement between the municipality and such person or the occupier or owner of such buildings or lands, or

(*b*) to incur any expenditure, on such terms with regard to payment as may be settled as aforesaid, for the construction, maintenance, repair or alteration of any connection pipes or other works necessary for the purpose of such supply or for the extension of such advantages.

Rate-payer may sue for misapplication of fund.—Any person having a direct personal interest, however small, in the proper application of the Municipal Fund created by s. 17 of the Act, can maintain a suit to prevent fund being applied to purpose, not allowed by the Act. That personal interest exists in the case of every individual tax-payer, since every person who contributes, and is liable to contribute, to the fund is personally interested, in the due application of it, and does not, therefore, fall within the prohibition of cl. (*k*) of s. 56 of the Specific Relief Act (*Vaman Tatyaji v. The municipality of Sholapur*, 22 Bom. 646).

Notifications.—In exercise of the powers conferred by the first proviso to section 66 of this Act, the Government of Bombay are pleased to authorize all Collectors, including the Deputy Commissioner, U. S. F. to grant sanction to expenditure to be incurred by municipalities under cls. (*a*), (*b*) and (*c*) of the said proviso, provided such expenditure does not exceed Rs 200. Government are further pleased to authorise the Commissioner in Sind and the Commissioners of Divisions to grant sanction to such expenditure when it exceeds Rs. 200. (G. R. G. D. No. 547 dated 30th August 1934).

Power of sanctioning expenditure up to Rs. 200 is delegated to the Collectors and expenditure above Rs. 200 can be sanctioned by the Commissioner (*Vide* G. R. G. D. No. 547-33 of 30-8-1934).

The Commissioners in Sind and the Commissioners of the Divisions have have been invested with powers to authorize expenditure to be incurred under cls. (*a*), (*b*) and (*c*) of the 1st proviso (G. R. G. D. No. 6795 of 12th Oct. 1926).

Power to deposit and invest surplus funds.

67. (1) [s. 53] It shall be lawful for a municipality to deposit [*a*] with the Imperial Bank of India or such other bank as may hereafter be appointed to conduct the business of His Majesty's treasury at Bombay, or with the sanction of the Government in any bank in the Presidency of Bombay, any surplus funds in its hands which may not be required for current charges, and to invest such funds in public securities in the name of the municipality, and from time to time to dispose of such securities as may be necessary.

Surplus not so deposited or invested how to be dealt with.

(2) All surplus funds over and above what may be required for current expenses, unless deposited or invested as provided for in sub-section (1), shall be deposited in the local Government treasury or such other place of security, as may be sanctioned in the rules of the municipality.

CHAPTER VI.

OBLIGATORY AND DISCRETIONAL FUNCTIONS OF MUNICIPALITIES.

Duties of municipalities.

68 [s. 54] It shall be the duty of every municipality to make reasonable and adequate provision—

(1) for the following matters within the municipal borough under its authority, namely :—

(*a*) lighting public streets, places and buildings ;

(*b*) watering public streets and places ;

(*c*) cleansing public streets, places, and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the municipality or not ; removing noxious vegetation ; and abating all public nuisances ;

[*a*] The words "at interest" deleted by Bom. Act XXIII of 1931, are omitted.

(*d*) extinguishing fires, and protecting life and property when fires occur ;

(*e*) regulating or abating offensive or dangerous trades or practices ;

(*f*) removing obstructions and projections in public streets or places and in spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the municipality or in His Majesty ;

(*g*) securing or removing dangerous buildings or places, and reclaiming unhealthy localities ;

(*h*) acquiring and maintaining, changing and regulating places for the disposal of the dead ;

(*i*) constructing, altering and maintaining public streets, culverts, municipal boundary marks, markets, slaughter-houses, latrines, privies, urinals, drains, sewers, drainage-works, sewerage works, baths, washing places, drinking fountains, tanks, wells, dams and the like ;

(*j*) obtaining a supply or an additional supply of water, proper and sufficient for preventing danger to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, when such supply or additional supply can be obtained at a reasonable cost ;

(*k*) naming streets and numbering houses ;

(*l*) registering births, marriages and deaths ;

(*m*) public vaccination ;

(*n*) suitable accommodation for any calves, cows or buffaloes required within the municipal borough for the supply of animal lymph ;

(*o*) establishing and maintaining public hospitals, and dispensaries, and providing public medical relief ;

(*p*) establishing and maintaining primary schools ;

(*q*) printing such annual reports on the municipal administration of the borough as the Government by general or special orders requires the municipality to submit ;

(*r*) paying the salary and the contingent expenditure on account of such police or guards as may be required by the municipality for the purposes of this Act or for the protection of any municipal property ;

(*s*) erecting substantial boundary marks of such description and in such position as shall be approved by the Collector, defining the limits or any alteration in the limits of the municipal borough ; and

(2) subject to such reasonable and adequate provision as aforesaid, for the following special matters, namely :—

(*a*) providing special medical aid and accommodation for the sick in time of dangerous disease ; and taking such measures as may be required to prevent the outbreak or to suppress and prevent the recurrence, of the disease ;

(*b*) giving relief and establishing and maintaining relief works in time of famine or scarcity to or for destitute persons within the limits of the municipal borough.

Cleansing public streets —*Refuse carts.*—The provision of refuse carts is essential for the cleansing of public streets, and is, therefore, an obligatory duty necessarily deducible from the obligatory duty of cleansing the public streets laid upon a municipality under this clause (*Hansraj Hirji v. The Karachi Municipality*, 4 S. L. R. 65).

Public nuisances —For the definition of "nuisance," see s. 3 (11).

The term "public nuisance" is not defined ; reference will, therefore, have to be made to the definition in s. 268 of the Indian Penal Code.

Extinguishing fires.—When a municipality purchased through Government a narrow strip of land at the entrance of a private street for the purpose of widening the street, in order to facilitate the effective use of fire engines, *Held*, that the acquisition for such purpose was within the powers of the municipality, as it comes under one of the duties of the municipality to extinguish fire, etc., and to take any other measure likely to promote the public safety, health, convenience, etc. (see s. 71 (*r*)) and that the Civil Courts have no jurisdiction to restrain the municipality from exercising such powers. All questions of relative necessity, advantage or facility are questions of municipal detail and it is not the province of a Civil Court to regulate these details (*Shastri Ramchandra v. Ahmedabad Municipality*, 24 Bom. 600).

Offensive or dangerous trades of practices.—Sections 186-189 relate to "nuisances from certain trades and occupations."

Obstructions and projections.—See sections 143 and 152.

Dangerous buildings—Unhealthy localities.—See section 149.

Vaccination.—Bom. Acts I of 1877 and IV of 1892 provide respectively for compulsory vaccination in the City of Bombay and the town of Karachi.

The Bombay District Vaccination Act, 1892 (Bom. Act I 1892) is an Act to prohibit the practice of Inoculation and to mske the vaccination of ohildren in certain provinces of the Bombay Presidency compulsory.

Provision for anti-rabic treatment of indigent persons.

69. [New] Every municipality shall, out of the municipal property and fund, make payments, at such rates and subject to such conditions as the Government from time to time by general or special order prescribes, for the maintenance and treatment in any institution which the Government declares by notification to be suitable for such purpose either within or without the municipal borough, and for other necessary expenses, of persons undergoing anti-rabic treatment as indigent persons according to the rules applicable to each institution and proceeding from the municipal borough :

Provided that the municipality shall not be liable under this section for the maintenance, treatment and other necessary expenses of any person undergoing anti-rabic treatment as an indigent person in any such institution as aforesaid, unless such person, previous to his admissiom thereto, has been resident in the municipal borough for at least one year.

By G. R. G. D. No. 175-33 dated 18-6-1934, Government have withdrawn the concession of free railway tickets, but Government have agreed to be debited with the cost of 3rd class Railway tickets with effect from 1st July 1934 and have authorized the chief officers and Presidents of the municipalities to sign the requisition for 3rd class railway tickets to indigent persons.

Provision for lunatics and lepers.

70. [s. 55] Every municipality shall also, out of the municipal property and fund, make payments at such rates as the Government from time to time by general or special order prescribes, for the maintenance and treatment either in the municipal borough or at any asylum, hospital or house, whether within or without such borough, which the Government declares by notification to be suitable for such purpose,—

(*a*) of lunatics, not being persons for whose confinement an order under Chapter XXXIV of the Code of Criminal Procedure, 1898, is in force, and

(*b*) of lepers,

resident within, or under any enactment for the time being in force removed from, such borough :

Provided that the municipality shall not be liable under this section for the maintenance and treatment of any lunatic or leper in any such asylum, hospital or house as aforesaid, unless such lunatic or leper, immediately previous to his admission thereto, has been resident in the municipal borough for at least one year :

Provided further that [1] " where an application is made to the High Court or a District Court under the provisions of section 88 of the Indian Lunacy Act, 1912, no order for the payment of the cost of maintenance of the lunatic by a municipality shall be made without an opportunity being given to such municipality to show that the lunatic has an estate applicable to his maintenance or that there is a person legally bound, and having the means, to maintain him. [1]. The officer in charge of any asylum to which lunatics for whose maintenance and treatment a municipality is liable under his section are admitted shall maintain a clear account of the cost of maintenance and treatment incurred on account of each lunatic

[1-1] These words were substituted for the original words by Bom. Act XV of 1936.

detained in the asylum and shall furnish a copy thereof to the municipality on application.

Lunatics.—In G. R. No 4091 of 18th May 1915, G.D. Government concur in the view that under s. 69, it is one of the obligatory duties of municipalities to bear the charges in respect of the maintenance and treatment of poor lunatics coming from the respective municipal areas. The Governor in Council is accordingly pleased to direct that henceforth municipalities should pay the cost of maintaining such lunatics at lunatic asylums at the following rates :—

			Rs	A.	P.	
For Europeans,	First class	... ...	4	0	0	per diem.
For „	Second class	... ...	2	0	0	„
For „	Third class	... ...	1	0	0	„
For Indians	First class	... ...	2	0	0	„
For „	Second class	... ...	1	0	0	„
For „	Third class	... ...	0	8	0	„
For „	Fourth class	... ...	4	0	0	„

For Europeans and Anglo-Indians the asylum is at Yerrowda, Poona, for Indians it is the Cowasji Jehangir Lunatic Asylum Gidu, Hyderabad-Sind—*Cumming's* B. *D. M. Manual*, 4th Ed. of 1930, pp. 225, 226.

Lunatics under Criminal Procedure Code.—That is, under s. 466 of Act V of 1898 accused persons found to be of unsound mind and incapable of making a defence, or under section 471 persons found to have committed an act, which but for the unsoundness of mind should be an offence.

Lepers.—See the Lepers Act, 1898, for the segregation and medical treatment of paupers, lepers and the control of lepers following certain callings.

Asylums.—For asylums, *vide* G. R. G. D. of 3 4-1934.

Discretionary powers of expenditure of municipalities.

71. [s. 56] A municipality may, at its discretion, provide, either wholly or partly, out of the municipal property and fund for—

(*a*) laying out, whether in areas previously built upon or not, new public streets, and acquiring the land for that purpose, and the land required for the construction of buildings or curtilages thereof, to abut on such streets ;

(*b*) constructing, establishing, or maintaining public parks, gardens, libraries, museums, lunatic asylums, halls, offices, dharmshalas, rest houses and other public buildings ;

(*c*) furthering educational objects other than those set forth in clause (*p*) of sub-section (1) of section 68 ;

(*d*) planting and maintaining road-side and other trees ;

(*e*) providing music for the people ;

(*f*) taking a census, and granting rewards for information which may tend to secure the correct registration of vital statistics;

(*g*) making a survey ;

(*h*) paying the salaries and allowances, rent and other charges incidental to the maintenance of the Court of any stipendiary or honorary Magistrate, or any portion of such charges ;

(*i*) arranging for the destruction or the detention and preservation of dogs which may be destroyed or detained under section 157 of this Act or under section 49 of the Bombay District Police Act, 1890 ;

(*j*) securing or assisting to secure suitable places for the carrying on of the offensive trades specified in sub-section (1) of section 186 ;

(*k*) supplying, constructing and maintaining, in accordance with a general system approved by the sanitary board, receptacles, fittings, pipes and other appliances whatsoever, on or for the use of private premises, for receiving and conducting the sewage thereof into sewers under the control of the municipality ;

(*l*) the acquisition and maintenance of grazing grounds ; and the establishment and maintenance of dairy farms and breeding stud;

(*m*) establishing and maintaining a farm or factory for the disposal of sewage ;

(*n*) the construction, maintenance, management, organisation or purchase of telephone lines, or for guaranteeing the payment of interest on money expended for the construction of a telephone line subject to the previous sanction of the Commissioner when the line extends beyond the limits of the municipal borough ;

(*o*) providing accommodation for any class of servants employed by the municipality ;

(*p*) the construction of sanitary dwellings for the poorer classes ;

(*q*) the construction, management and maintenance of light-railways and tramways ;

(*r*) any other measure not specified in section 68 likely to promote the public safety, health, convenience or education ; and

(*s*) by a resolution passed at a general meeting and supported by two-thirds of the whole number of councillors any public reception, ceremony, entertainment or exhibition within the munipal borough.

Arrangements purporting to be binding permanently or for a term of years.

72. [s. 57] Where a municipality has entered into any arrangement or made any promise, purporting to bind it or its successors for a term of years or for an unlimited period, to continue to any educational or charitable institution a yearly contribution from the municipal property or fund, it shall be lawful for the municipality or its successors with the sanction of the Government to cancel such arrangement or

promise, or to discontinue, or to diminish such yearly contribution, provided that it shall have given at least twelve months' notice of its intention so to do to the manager or managers of such institution.

CHAPTER VII.

MUNICIPAL TAXATION

(1) *Imposition of Taxes.*

Taxes which may be imposed.

73. [s. 59] Subject to any general or special orders which the Government may make in this behalf and to the provisions of sections 75 and 76, a municipality may impose for the purposes of this Act any of the following taxes, namely :—

(i) a rate on buildings or lands or both situate within the municipal borough ;

(ii) a tax on all vehicles, boats or animals used for riding, draught or burden and kept for use within the said borough, whether they are actually kept within or outside the said borough ;

(iii) a toll on vehicles [1] "(other than motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" [1] and animals used as aforesaid, entering the said borough but not liable to taxation under clause (ii) of this section ;

(iv) an octroi on animals or goods or both, brought within the octroi limits for consumption or use therein ;

(v) a terminal tax on goods imported into or exported from the terminal tax limits :

Provided that, save as provided in clause (xiv) no such tax shall be leviable in a borough in which an octroi was not levied on or before the 6th July 1917 ;

(vi) a tax on dogs kept within the said borough :

(vii) a special sanitary cess upon private latrines, premises or compounds cleansed by municipal agency, after notice given as hereinafter required ;

Sanitary cess—Where the Bandra municipality sued to recover the amount of sanitary cess from the defendant either personally or from his property and the municipality claimed a first charge on the property in respect of the tax, it was *held* that the charge could not be declared in view of the provisions of this Act and the rules of the Bandra municipality. (*Bandra Municipality v. Vanechand*, 35 Bom. L R. 599)

(viii) a general sanitary cess for the construction and maintenance of public latrines, and for the removal and disposal of refuse ;

(ix) a drainage tax ;

(x) a general water-rate or a special water-rate or both for water supplied by the municipality, which may be imposed in the form of a rate assessed on buildings and lands or in any other form, including that of charges for such supply, fixed in such mode

[1-1] These words were inserted by Bom. Act XXIV of 1936.

or modes as shall be best adapted to the varying circumstances of any class of [1] "cases" or of any individual case ;

(xi) a lighting tax ;

(xii) a tax on pilgrims resorting periodically to a shrine within the limits of the municipal borough ;

Tax on pilgrims.—It is beyond the power of the municipality to grant a lease of the right under cl. (xii) to collect fess from pilgrims attending a shrine (*Saundhatti-Yellamma Municipality v Shripadbhat Sheshhat Joshi*, 57 Bom. 278)

(xiii) a special educational tax ;

(xiv) any other tax [2] "(other than a toll on motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935) which under rules made under clause (*a*) of sub-section (3) of section 80-A of the Government of India Act, a local authority may be authorised to impose by any law made by the local legislature without the previous sanction of the Governor General ;

(xv) any other tax to the nature and object of which the approval of the Government and of the Governor General in Council shall have been obtained prior to the selection contemplated in clause (*a*) of section 75 :

Provided that—

(*a*) no tax imposed as aforesaid, other than a special sanitary cess, a drainage tax or a water-rate, shall, without the express consent of the Government, be leviable in respect of any building or part of any building or of any vehicle, animal or other property, belonging to His Majesty and used solely for public purposes and not used or intended to be used for purposes of profit ; and no toll shall be leviable in respect of any animal or vehicle used for the passage of troops or the conveyance of Government stores or of any other Government property, or for the passage of military or police-officers on duty or the passage or conveyance of any person or property in their custody ;

(*b*) no special sanitary cess shall be leviable in respect of any private latrines, premises or compounds unless and until the municipality has—

(i) made provision for the cleansing thereof by manual labour, or for conducting or receiving the sewage thereof into municipal sewers, and

(ii) issued either severally to the persons to be charged, or generally to the inhabitants of the borough or part of the borough to be charged with such cess, one month's notice of the intention of the municipality to perform such cleansing and to levy such cess ;

(*c*) the municipality in lieu of imposing separately any two or more of the taxes described in clauses (i), (viii), (x) and (xi), may

[1] The word "cases" was substituted for the original word "case" by Bom. Act XXIV of 1936.

[2-2] These words were inserted by Bom. Act 34 of 1935, sch. II.

impose a consolidated tax assessed as a rate on buildings or lands or both situate within the municipal borough.

Construction of taxing statutes.—A statute is not to be construed like a contract. The power to impose a tax is not contractual and needs no correlative right. An equitable construction is not permissible in a taxing statute where it is possible to adhere to the words of the statute (*Branson v. Manicipal Commissioner, Madras*, 2 Mad. 362).

The Machinery for the imposition of the tax may be independent of the obligation of the tax-payer (*The Vice-President of the Munic ipal Commissioner of Cuddalore v. Nelson*, 3 Mad. 129).

Where a statute requires a tax to be levied on a day, it was *held* that this provision was merely directory and the duty may be performed within a reasonable time thereafter (*Gearhart v. Dinon*, 1 Ps. ss. 224, *Dillon*, Vol. 4, p. 2451, quoted in Aiyangar's Municipal Corporations in British India, p. 275).

The subject is not to be taxed unless the language of the statute clearly imposes the obligation and in cases of reasonable doubts the construction most favourable to the subject is to be adopted (*Mylapore Hindu Permanent Fund v. Corporation of Madras*, 31 Mad. 408).

Rates may be imposed by a body of councillors duly constituted. Otherwise, they are not legally imposed; and a rate-payer is not bound to pay them (*Bepin Behary v. Chairman of Santipur Municipality*, 1 I.O. 388). A defect in the constitution of the Committee which imposed the tax is a mere informality and is protected by law (*Tather Alli v. Municipal Committee, Khamgaon*, 46 I. C. 682).

The provision investing the municipalities with powers to tax the subject must be construed with the utmost strictness (*Dwarka nath Dutt v. Addya Sundari Mitra*, 21 Cal. 528).

Municipal taxation.—The power of taxation is essential to municipal existence. A municipal corporation being virtually an instrumentality of the state for the better administration of the Government in matters of local concern, the administration cannot be effectively carried on without adequate funds being placed at its disposal and the ordinary means by which these funds are raised is taxation. Taxes are usually levied only to meet expenses which are about to be incurred. It must not therefore be levied to repay loans unless these have been borrowed and charged upon the taxes under statutory powers (*Aiyangar's Municipal Corporations in British India*, 2nd Ed. p. 267).

Definition of tax.—Taxes are defined as being the enforced personal contribution of persons and property levied by the authority of the state for the support of the Government and for all public needs. Taxes are burdens or charges imposed by the legislature, or under its authority, upon persons and property to raise money for public as distinct from private purposes or to accomplish some end or object public in its nature. A public use or purpose is of the essence of a tax (*Dillon's Corporations*, Vol 4, pp. 2312-14).

Tax distinguished from liceense fee—A tax must be distinguished from the fee raised from licenses and permits issued for regulating trades and occupations. The power to license and regulate particular branches of business or specified trades, occupations, and other matters is what is usually called in American text-books the police power; and the exercise of the police power

carries with it the power to collect a fee for the issue of licenses and permits (*Smith's Corporations*, Vol. 2, pp. 1507, etc.).

Tax distinguished from debts.—Taxes are not *debts* in the ordinary acceptance of the term. Debts are obligations for the payment of money founded upon contract, express or implied. Taxes are imposts levied for the suport of the Government, or for some special purpose authorised by it. The consent of the tax-payer is not necessary to their enforcement. They operate *in invitum* (*Meriweather, v. Garret*, 102 U. S. 472).

Municipality cannot delegate the taxing power.—The public powers conferred upon a municipality to raise revenues by taxation are incapable of delegation without legislative authority (*Dillon*, Vol. 4, p. 2403). The power conferred upon a municipality to levy and collect taxes or to determine upon the necessity and character of local improvement cannot be delegated, unless such delegation is permitteed by statute ; and this taxing power cannot also be varied by bye-laws made by the corporation itself (*Dillon*, Vol. 4 pp. 2404, etc.).

Taxation only within local limits.—A municipality can only tax persons or property within its own limits. The taxing power of a municipal corporation does not extend beyond its geographical limits and where the boundary was a low water mark in a river, it was *held* that the city had no power to tax property under the river beyond that mark (*Smilh's Corporations*, Vol. 2, pp. 1499, etc.). The power of taxation is entirely confined to the territorial limits of the municipality. The legislature may authorize municipal corporations to impose taxes upon persons residing outside but carrying on business within the corporate limits. Statutory authority to tax occupations within the city does not authorize a tax upon non-residents who come to the city under special employment to transact specific business (*Evers v. Mayfield*, 120 Ky., 73, 77).

For levy of the tax the element *viz.*, use within the municipal district is essential. Vehicles which for the most time are used outside the district cannot be said to be kept for use within the district. The fact that such vehicles are garaged in the municipal district will not bring their case within cl. (ii).

Exemptions from taxation.—The power to tax does not give power to exempt. Unless specially exempted by statute, the burden of taxation must fall equally upon all persons and property within the corporate limits ; and statutes exempting persons and property are construed with strictness ; and the exemption should be denied to exist, unless it is so clearly granted as to be free from fair doubt. Such statutes will be construed most strongly against those claiming the exemption (*Providence Bank v. Billings*, 4 Pet. (U S.) 514, 516, quoted in Aiyangar's Municipal Corporations, p. 282).

Jurisdiction of Civil Courts.—Generally, Civil Courts have jurisdiction to decide as to the validity of any tax or impost (*Joshi Kalidas v. The Dakor Town Municipality*, 7 Bom. 399). If any tax is levied in direct violation of the statute, as for instance, where tax provisions are not even in substance and effect complied with a suit lies to recover the money so legally levied, and Art. 62 of the Limitation Act will apply (*Rajputana-Malwa Ry. Co-operative Stores Ltd. v. The Ajmere Municipal Board*, 32 All 491). See also *Secretary of State v. Major Hughes*, 38 Bom. 298). Where a tax is illegally levied, it is not incumbent in every case upon a party complaining of the illegal levy to appeal as provided in the Act ; but he may sue at once in the ordinary Civil Courts (*Chunilal v. Surat*

City Municipality, 27 Bom. 403). The jurisdiction of the Civil Courts is not taken away in cases in which it is alleged and established that the assessment the propriety of which is in controversy, is open to the objection on the ground that it is *ultra vires* (*Navadip Chandra Pal v. Purnananda Saha*, 3 C. W. N. 73). A Civil Court has jurisdiction to entertain a suit for the refund of a municipal tax, if the assessment thereof is *ultra vires* and to enter into account and direct the refund of the amount realised in excess. It has no jurisdiction to go into the question of correctness or otherwise of a calculation of assessment if the assessment is not *ultra vires*. In such a case if there be any mistake in calculation, it can be set right only on appeal as provided by the law (*Municipal Committee, Malkapur v. Amrit Daman Dalal*, 65 I. C. 532).

Levy of a separate rate on owner of land under the houses.—The plaintiff owned two survey numbers, which he divided into small plots, and those plots to tenants numbering 350. Each of the tenants built his own house on the plot demised by him and paid ground-rent to the plaintiff not exceeding Rs. 3-8-0 a year. The Municipality of Sholapur, within whose limits the lands were situate, made rules for the levy of a general rate on buildings and lands, under which buildings or lands yielding a yearly rent not exceeding Rs. 10 were exempt from payment of the rate; but provided a graduated scale of rates on buildings or lands yielding rent of more than Rs. 10 a year. House-tax was levied by the Municipality from each one of the tenants. The ground rent paid by the tenants to the plaintiff aggregated to Rs. 800 a year, on which the Municipality levied a rate of Rs. 40. The plaintiff having sued to have a refund of Rs. 40 and to restrain the Municipality from levying double house-tax on his land :—*Held*, (1) that, unless it had been made clear that the municipality were levying from the owners of the various buildings on the plaintiff's land a rate calculated on that part of the hypothetical rental which represented merely the return on the cost of the building, it would be most probable that the Municipality were already taxing those particular properties as their full amount; (2) that though the Municipality could levy a rate either on the building or land on which the building stood or levy one rate for both building and land, yet it could not levy a rate which would include the rate on building and land and a second rate on the land itself; (3) that even if the Municipality levied a rate on the land, they would have to do so on each plot underneath each building and not on the whole Survey Numbers (*Sholapur Municipality v. Shankar*, 23 Bom. L. R. 1018).

Special Sanitary cess.—The Municipality constructed a main sewer along the road by the side of which the plaintiffs had private latrines which were previously cleansed by manual labour. Later on the plaintiffs connected them to the main sewer of the Municipality at their own expense. The municipality thereupon levied special sanitary cess for the connection from the plaintiffs, under the provisions of s. 59 (*b*) (vi). The plaintiffs having sued to recover the amount of the cess levied from them, it was *held*, dismissing the suit, that the Municipality were entitled to levy a special sanitary cess from the plaintiff (*Ahmedabad Municipality v. Gujrat Ginning and Manufacturing Co.*, 22 Bom. L R. 747).

Imposition should be clear and unambiguous—In order to impose a tax, rate or toll upon a subject the framers of the Act or bye-law under which such tax etc., is imposed must use clear and unambiguous words to effect their

purpose. When the words used are ambiguous, the intendment of the Courts will be in favour of the subject upon whom the tax is sought to be imposed. Thus where the framers of a bye-law imposed a tax of Re. 1 per maund upon "copper" imported for consumption, it was *held*, that copper wrought up into pots did no fall within the words of the bye-law. It seems that when a tax is imposed upont goods imported into a town for consumption, and such goods, after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time (*Dullabh Shivlal v. Hope*, 8 B. H. C. R. 213).

Rates on buildings or lands—See the definition in s. 3 (2).

See secs. 78 to 89 as to assessment of buildings, etc.

Property taxed under clause (I) could not also be taxed under cl. (II). Thus if a tax fixed as a percentage of the manual value, *i. e.*, rental of a house with land attached is in a force in any municipality, it would not be lawful to impose a separate tax on the land as distinct from the house (*Frenton*)

Leans for taxes.—Ordinarily a municipal corporation will have no lean or charge upon properties for taxes due to the corporation; but with respect to particular taxes, the legislature may declare a lien in favour of the municipal corporation (*Dillon*, Vol 4, pp. 2485, etc.).

(i) **Taxes on buildings and lands—Tax is a yearly tax.**—The tax on buildings and lands is a yearly and not a half-yearly tax; and it is made payable in two instalments for the sake of convenience. The amount due for the whole year has to be ascertained and entered in the assessment register. The circumstance that this tax is made payable in two equal half-yearly instalments does not make the amounts two distinct taxes or assessments absolutely independent of each other. In other words, as soon as the assessment for the year is fixed, a liability for the same at once accrues, though that liability may be discharged in two instalments (*Chairman, Municipal Council, Nellore v. D. Kottamma*, 30 Mad. 423).

(ii)—**Taxes on vehicles and animals.**—A vehicle which is kept outside, but plies for hire inside, a municipality, is not liable to pay any wheel tax; but the municipality is entitled to levy a toll whenever it enters its limits (*Surat Municipality v. Maneklal*, 22 Bom. L. R. 1104).

It is not necessary that the owner should have possession of the vehicle in order to make it taxable. Even a vehicle that is under repair and, therefore, unfit for immediate use, is a vehicle *kept* within the municipality and liable to be taxed (*Krishna Row v. Madras Municipal Corporation*, 40 Mad. 345).

Merely having possession of a carriage with the intention of using it if and when occasion requires, does not amount to *keeping* it. The owner begins to *keep* it, as soon as he uses it, but not before (*London County Council v. Fairbank*, 1911 W. N. 96). It is a question of fact in each case whether a vehicle coming from outside the municipality can be said to be *used* within the municipality (*Legal Remembrancer v. Shama Charan*, 23 Cal. 52).

Vehicles with springs.—A bicycle with pneumatic tyres having two metal springs under the saddle is liable to taxation as a vehicle with springs (*Wilson v. Madras Municipality*, 19 Mad. 83). A tricycle to which an auto-wheel is attached and by which it is propelled is a carriage liable to taxation (*Hollands v. Williamson*, 1. K. B. 716).

Taxing of immature animals.—It is not the intention of the legislature to tax immature animals such as calves. It is for the municipal executive to decide when such animals have attained sufficient maturity to warrant their taxation (*Vizagapatam Municipality v. Walker*, 5 Mad. 269).

Tax on new animal.—N. having taken out a license under the provisions of the Madras Town Improvements Act, 1871, for a bullock, the bullock died and N. brought another bullock, but did not take out a second license. N. was convicted for keeping this bullock, without a license. *Held*, that the conviction was right (*Municipal Commissioner of Maunargudi v. Nallapa*, 8 Mad. 327).

(iii)—Toll.—A toll is a franchise and is usually claimed either by Royal grant or by immemorial usage and prescription which presupposes a former grant or by statute (*Weymouth Corporation v. Nugent* 6. B. and S. 22).

Farming of tolls.—Unless specially provided, a municipal corporation cannot farm the tolls leviable by it, because it will be *ultra vires* and beyond the powers of the corporation to do so. When it is authorized by statute, it can farm or let out the tolls and the contractor is bound to comply with the provisions of the statute and is also made liable for non-compliance with its provisions. A farmer of tolls, however, is not entitled to increase them by virtue of his lease which demised to him at an annual rent the tolls which were, or could be demanded and taken (*Conway Bridge Commissioners v. Jone*, 102 L. T. 92).

Exemptions.—Carriages employed in the military services of the Crown and conveying officers or soldiers in the regular forces on duty are exempted from payment of tolls; the exemption does not extend to the private carriage of an officer used by him for his own convenience while on duty (*Craig v. Nicolas*, 2. Q. B. 444).

Unlawful collection of tolls.—Persons unlawfully collecting tolls are also made liable under the Penal Code. Where the servants of a farmer of tolls take unauthorized tolls, they alone are liable. Whatever a servant does in the course of his employment with which he is entrusted and as a part of it is the master's act. But if they take unauthorized tolls, they are acting outside the scope of their employment and they alone are liable. If the farmer was not present and took no part in the extortion, he is not liable to be prosecuted (*Emperor v. Beharilal*, 34 All. 146).

(iv)—Octroi taxes.—Octroi taxes can only be levied upon articles mentioned in the statute.

In the case of *Rahimu Bhanji* (22 Bom. 843) it was *held* that goods merely passing through the municipal district in the course of transit were "imported" within the meaning of the rule imposing an octroi duty on articles when imported within municipal limits and hence were liable to the duty. But the words "for consumption or use therein" in cl. (iv) make it now clear that octroi cannot be levied on goods merely passing through the municipal limits and hence this case is no more an authority.

It is beyond the power, *i. e., ultra vires*, of a committee to levy octroi upon goods which were already outside the octroi zone but were brought, after the extension of the octroi limits, within the zone; such goods cannot be said to have 'been brought' within the octroi limits for consumption within the meaning of the clause (*Municipal Committee, Lahore v. Kanhaya Lal*, P. R. 2 of 1910, Cr.).

Penalty.—Evasion of octroi duty is only an offence under the municipal rules. Where there is no rule or bye-law providing for the tax, evasion of such tax is not punishable under the ordinary Criminal Law (18 P. R. 1874, Cr.).

(v)—Sanitary cess (latrine (tax.)—This tax is levied in the municipalities under the provisions of the Act. When a shop-keper lives elsewhere and pays latrine tax for his house, he cannot be made to pay again for his shop unless the shop contains privy or cess pool (*Bechu Ram v. Chairman, Chapra Municipality* 15 C. W. N. 519). To determine whether any premises are used as a dwelling house, it has to be seen how long they are occupied in a year, whether natural functions are performed there by the residents, whether permanent or temporary, and what action the municipality has taken for the purposes of conservancy (*Chairman of the Navadip Municipality, v. Gour Chandra*, 38 I. C. 789). The owner of private latrines connecting them with the municipal sewer is liable to pay the sanitary cess (*Ahmedabad Municipality v. Gujarat Ginning and Manufacturing Company Ltd.*, 44 Bom. 527).

(vi)—Drainage and water taxes.—Drainage and water taxes are levied at so much per centum on the annual values of all buildings and lands. If a duty is specifically imposed by statute upon a municipal corporation and if that duty is not performed, the rate-payer has a remedy by action and may recover compensation (*Municipal Commissioners, Madras v. Branson*, 3 Mad. 201). All moneys received in respect of drainage and water taxes must be applied in the first instance to defraying the expenses of making and maintaining the municipal water works or works of drainage, paying interest on any loan contracted for such works, providing a sinking fund for the return of such loan and for meeting charges for any other purpose connected with water or with drainage (*Aiyangar's Municipal Corporations in British India*, 2nd Ed., p. 353).

(vii)—Lighting tax.—Lighting tax is levied in almost all municipalities and is raised for the purposes of lighting cities. Public illumination is one of the duties of a municipal corporation.

Water rate—Water connections.—The plaintiff took in 1898 a water connection from the main pipe laid by the defendant Municipality. Under the rules he was chargeable with one rupee a month for the water supplied to him and the condition was that his house was not to be inhabited by more than three families. The defendant municipality made a new set of rules in 1905, under which they called upon the plaintiff to take a separate water connection for each of the families living in his house, and they threatened to cut off the connection in case of non-compliance. The plaintiff brought this suit to restrain the municipality from so doing. *Held*, that under the rules so long as the plaintiff occupied a house not inhabited by more than three families, he was entitled to the water supply (*The Surat City Municipality v. Tayabji Daudbhai*, 32 Bom. 460).

Payment to be made to the municipality in lieu of a rate on buildings by the Government.

74. (1) [New] The Government shall pay to the municipality annually in lieu of a rate on buildings from which buildings vesting in His Majesty are exempted by proviso (*a*) to section 73, a sum ascertained in the manner provided in sub-sections (2) and (3).

(2) The rateable value of the buildings vesting in His Majesty and beneficially occupied, in respect of which but for the said exemption a rate on such buildings would be leviable from the Government shall be fixed by a person from time to time appointed in this behalf by the Government. The said value shall be fixed by the said person, with a general regard to the provisions hereinafter contained concerning the valuation of property assessable to property-taxes, at such amount as he shall deem to be fair and reasonable. The decision of the person so appointed shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number and extent of the buildings vesting in His Majesty in the said borough materially increases or decreases.

(3) The sum to be paid annually to the municipality by the Government shall be eight-tenths of the amount which would be payable by an ordinary owner of buildings in the said borough on account of the said rate on buildings on a rateable value of the same amount as that fixed under sub-section (2).

Procedure preliminary to imposing tax.

75. [s. 60] A municipality before imposing a tax shall observe the following preliminary procedure :—

(*a*) it shall, by resolulion passed at a general meeting, select for the purpose one or other of the taxes specified in section 73 and approve rules prepared for the purposes of clause (*j*) of section 58, prescribing the tax selected, and in such resolution and in such rules specify—

(*i*) the classes of persons or of property or of both, which the municipality proposes to make liable, and any exemptions which it proposes to make ;

(*ii*) the amount or rate at which the municipality proposes to assess each such class ;

(*iii*) in the case of a rate on buildings or lands or both, the basis, for each class, of the valuation on which such rate is to be imposed ;

(*iv*) all other matters which the Government may require to be specified therein.

(*b*) When such resolution has been passed, the municipality shall publish the rules so approved with a notice in the form of Schedule II prefixed thereto.

(*c*) Any inhabitant of the municipal borough objecting to the imposition of the said tax or to the amount or rate proposed or to the classes of persons or property to be made liable thereto or to any exemptions proposed may, within one month from the publication of the said notice, send his objection in writing to the municipality ; the municipality shall take all such objections into con-

sideration, or shall authorize a committe to consider the same and report thereon ; and unless it decides to abandon the proposed tax, shall submit such objections with its opinion thereon and any modifications proposed in accordance therewith, together with the notice and rules aforesaid to the Government.

Explanation.—In the case of lands the basis of valuation may be either capital or annual letting value.

Notice in writing.—The writing or application is exempt from any Court Fee—See s. 19, cl. 21 of the Court fees Act (VII of 1870).

Taxes when payable.—A tax can only be made payable from the date of its levy being sanctioned by Government under the section. It is generally payable at the expiration of the period for which it is declared payable, unless a rule has been framed specifying the date on which it is payable (*Ramchandra*, Cr. Rg. 31 of 1891).

Requisites for legal imposition of a tax.—The requirements of this section are not satisfied by the Chairman of the Managing Committee considering the objections of the inhabitants and reporting his opinion to the Governor in Council or his representative, the Commissioner of a Division. The provision for forwarding the opinion of the Municipality on the objections is an essential part of the machinery provided by this section for the legal imposition of a tax (*Municipality of Poona v. Mohanlal Lilachand*, 9 Bom. 51).

Enhancement of tax.—The procedure for enhancement of an existing tax must be the same as that prescribed for the imposition of a new tax (*Strachey v. Municipality of Cawnpore*, 21 All. 348).

Defect in procedure.—The procedure prescribed should be strictly adhered to. If, therefore, the special meeting of the Committee at which the objections of the assessee to a proposed tax are considered or the special meeting at which the tax is finally imposed were neither of them properly constituted, the imposition of the tax will not be valid (*Ibid*)

Notice of meeting for imposing taxes - *Held*, that the provisions of s. 11 (1) of Bom. Act VI of 1873, as to notice of meeting are not directory, but obligatory ; and notice to all the members of the Committee being a material part of the machinery provided by the Act for imposing a legal tax, was a condition precedent to the validity of that tax. The mere fact of the sanction of the Governor General in Council could not cure the inherent defect and illegality of such a resolution of the meeting of the Commissioners (*Joshi Kalidas v. Dakore Town Municipality*, 7 Bom. 399).

Presumption as to the regularity of the procedure.—A defendant who in answer to a claim for arrears of taxes, alleges that the taxes were illegal, because no notice had been given him, must prove the defence ; and, in the absence of such proof, the Court will presume that the municipality had used the regular proceedure, and that the common course of business has been followed in the particular case (*Municipality of Sholapur v. Sholapur Spinning and Weaving Company*, 20 Bom. 782.

Conditions for the legal imposition of a tax.—In 1891 the Municipality of Surat appointed a Committee to revise the taxation of the city, proposing to reduce some of the existing taxes and impose others with a view (*inter alia*) of ob-

taining a better water supply for the city. A scheme of taxation drafted by the Committee was subsequently adopted by the Municipality, and it included a new house and property tax. The Municipality then issued a notice with regard to this last-mentioned tax under the provisions of section 2 of Act 6 of 1873 setting forth the particulars of the proposed tax and requiring objections to be lodged within a fortnight from the date of the notice. A number of objections were received which were laid on the table for twenty-one days for perusal and consideration by the Municipal Commissioners. At the end of that time a special meeting of the Commissioners was held at which it was resolved that the objections were invalid, and the scheme and the rules with regard to the levying of tax were forwarded to Government and were sanctioned. The plaintiffs sued for an in injunction restraining the Municipality from levying the tax, contending that it was illegal, on the ground (1) that there was no municipality desirous of imposing the tax for any of the purposes allowed by the Act, inasmuch as the Commissioners who passed the resolution to impose the tax did not know for what purpose the tax was to be imposed ; (2) that the resolution imposing the tax was illegal, because the notice calling the meeting of the Commissioners which passed the resolution did not specify this tax as the object of the meeting ; (3) that the notice given under section 21 of Act 6 of 1873 was bad, as it did not state the purpose of the proposed tax ; (4) that the nature and the amount of the tax were not sufficiently stated in the notice ; (5) that the notice ought to have stated the mode in which the valuation of property for the purpose of the tax was to be made ; (6) that the objections of the rate-payers were not sufficiently considered ; (7) that it did not appear whether the tax was to be paid in advance or not ; and (8) that the assessment of the tax was made on a wrong basis. *Held*, that the purpose of the tax was sufficiently known to the Commissioners ; (2) that the resolution imposing the tax was not invalid, although the notice convening the meeting did not specify the object of the meeting ; (3) that the notice need not specify the purpose of the tax ; (4) that as to the nature and the amount of the tax the notice was sufficient, as it stated that the amount would depend on the valuation of the property ; (5) that the notice need not define the mode of valuation ; (6) that the objections were sufficiently considered ; (7) that the tax was to be paid partly in advance ; (8) that the assessment would not affect the validity of the tax, but would give a right of appeal to have the valuation set right. *Held*, therefore, that the tax was legally imposed (*The Surat City Municipality v. Ochhavram Jamnadas*, 21 Bom. 630).

Power to sanction, modify and impose conditions.

76. [61] The Government may refuse to sanction the rules submitted under section 75, or may return them to the municipality for further consideration ; or if no objection or no objection which is in its opinion sufficient, was made to the proposed tax within the period prescribed under section 75, may sanction the said rules without modification, or subject to such modifications not involving an increase in the amount to be imposed, or to such conditions as to the application within the municipal borough to any purpose or purposes of this Act specified in such conditions of the whole or any part of the proceeds of the tax, as it deems fit.

Publication of sanctioned rules with notice.

77. [s. 62] Rules sanctioned under section 76 with the modifications and conditions, if any, subject to which the sanction is given shall be published by the municipality in the municipal borough, together with a notice reciting the sanction and the date and serial number thereof; and the tax as prescribed by the rules so published shall, from a date which shall be specified in such notice and which shall not be less than one month from the date of publication of such notice, be imposed accordingly, and the proceeds thereof shall be applied by the municipality in accordance with all conditions, if any, subject to which sanction under section 76 was given :

Provided that—

(*a*) a tax leviable by the year shall not come into force except on one of the following days, namely, the first day of April, the first day of July, the first day of October or the first day of January in any year; and if it comes into force on any day other than the first day of April it shall be leviable by the quarter till the first day of April then next ensuing;

(*b*) on or before the day on which a notice is issued under this section, the municipality shall publish such further detailed rules as may be required, and as may have been approved by the Government under clause (*a*) of the proviso to section 58, prescribing the mode of levying, and recovering the tax therein specified and the dates on which it or the instalments, if any, thereof shall be payable;

(*c*) if the levy of a tax, or of a special portion of a tax, has been sanctioned for a fixed period only, the levy shall cease at the conclusion of that period, except so far as regards unpaid arrears which may have become due during that period.

Payment of tax for one year without protest.—The levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year (*Pitambardas v. Jambusar Town Municipality*, 17 Bom. 510).

Tax not due before sanction.—*Held*, that a tax can only be made payable from the date of its levy being sanctioned by Government. *Held*, also, that unless a rule has been framed under s. 32 (now s. 58) specifying the date on which it is payable, it is payable at the expiration of the period, for which it is declared payable (*Anandrao*, Cr. Rg. 39 of 1891).

"Payable in advance."—The words "payable in advance" in a rule relating to a house tax do not mean that the taxes are payable on the first day of the year, but would mean only that they would be payable in advance on demand at any time within that year (*Raja*, Cr. Reg. of 13th Aug. 1896.

Appeal.—The Act provides no appeal against this imposition, but the validity of the tax can be brought into question by suit in a Civil Court, and an injunction thus obtained against the levy of an illegal tax or the refund of it, if paid (*Cumming's B. D. M. Manual*, 4th ed., p. 258).

Municipalities empowered by Government to levy taxes at varying amount or rate.

*77A. (1) The Government may, by notification in the *Bombay Government Gazette*, empower any municipality to levy any tax imposed by such municipality under section 73 within such maximum and minimum limits either as to the amount or the rate as may be specified in such notification.

(2) Notwithstanding any resolution or rule under section 75 specifying the amount or rate at which such tax is leviable, any municipality empowered under sub-section (1) may, by a resolution passed at a general meeting, decide to increase or reduce the amount or rate at which such tax is leviable :

Provided that—

(*a*) such increase or reduction shall be within the maximum and minimum limits fixed in respect of such tax under sub-section (1), and

(*b*) such increase or reduction shall not exceed ten percentum of the amount or rate at which such tax was leviable during the preceding official year.

(3) When a municipality has by a resolution passed under sub-section (2) decided to increase or reduce the amount or rate at which any tax is leviable, the municipality shall publish in the municipal borough the resolution together with notice specifying a date, which shall not be less than one month from the date of publication of such notice, from which the amount or rate at which any tax is leviable shall be so increased or reduced. The tax at the amount or rate so increased or reduced shall be leviable from the date specified in such notice."

(2) *Assessment of and liability to rates on buildings or lands.*

Preparation of an assessment-list.

78. (1) When a rate on building or lands or both is imposed, the Chief Officer shall cause an assessment-list of all buildings or lands or lands and buildings in the municipal borough to be prepared containing—

(*a*) the name of the street or division in which the property is situate ;

(*b*) a description of the property sufficient for identification ;

(*c*) the names of the owner and occupier, if known ;

(*d*) the valuation based on capital or annual letting value, as the case may be, on which the property is assessed ; and

* Section 77A was inserted by Bill No. 21 of 1935.

(*e*) the amount of the tax assessed thereon.

(2) In assessing a tax on buildings or lands, where the valuation determined under clause (*d*) of sub-section (1) of this section is the annual letting value, a sum equal to ten per centum of the said valuation shall be deducted therefrom in lieu of all allowance for repairs or on any other account whatsoever.

Power to inspect and require returns.

(3) For the purpose of preparing such assessment-list the Chief Officer or any person acting under his authority may inspect any building or land in the municipal borough; and on the requisition of the Chief Officer the owner or occupier of any such building or land shall, within such reasonable period as shall be specified in the requisition, be bound to furnish a true return to the best of his knowledge or belief and subscribed with his signature of the name and place of abode of the owner or occupier or of both and the annual letting value and his estimate of the value of such building or land.

Annual letting value.—See definition s. 3 (1). Where it appears to be the intention of a municipality in drawing up certain rules that a cess should be levied not only on houses actually yielding rent, but also on houses capable of yielding rent, and the cess is cited in the rules as imposed on every house "yielding yearly rent," the expression must be treated as equivalent to the expression "capable of yielding a yearly rent" (*Mahadu*, Or. Rg. No. 23 of 1893.)

Buildings in one compound when separately assessable.—When the plaintiff owned a compound containing builings occupied, respectively by himself, and tenant paying rent, and relatives occupying rent free, *Held*, that the municipality was justified in assessing separately as houses the buildings occupied by the plaintiff and his rent-paying tenant, but not those held rent free. The municipality might, under their rules, put a higher rate on the plaintiff's house *in future*, when they included as a part of it the buildings occupied gratis, but could not do so restrospectively (*Rango v. Hughes*, P. J. 1881, p. 41.

Person primarily liable for a rate on buildings or land or both how to be designated if his name cannot be ascertained.

79. [New] When the name of the person primarily liable for the payment of a rate on buildings or lands or both in respect of any premises cannot be ascertained, it shall be sufficient to designate him in the assessment book, and in any notice which it may be necessary to serve upon the said person under this Act, "the holder" of such premises, without further description.

Occupier liable for a rate on buildings or lands or both until he gives information.

(2) If, in any such case, any person in occupation of the premises shall refuse to give such information as may be requisite for determining who is primarily liable as aforesaid, such person shall himself be liable, until such information is obtained, for all rates on buildings or lands or both leviable on the premises of which he is in occupation.

80. [s. 64] When the assessment-list has been completed, the Chief Officer shall give public notice thereof and of the place where the list or a copy thereof may be inspected; and every person claiming to be either the owner or occupier of property included in the list, and any agent of such person, shall be at liberty to inspect the list and to make extracts therefrom without charge.

Publication of notice of assessment-list.

81. [s. 65] (1) The Chief Officer shall, at the time of the publication of the assessment-list under section 80, give public notice of a date, not less than one month after such publication, before which objections to the valuation or assessment in such list shall be made; and in all cases in which any property is for the first time assessed or the assessment is increased, he shall also give notice thereof to the owner or occupier of the property, if known, and if the owner or occupier of the property is not known, he shall affix the notice in a conspicuous position on the property.

Public notice of time fixed for lodging objections.

(2) Objections to the valuation and assessment of any property in such list shall, if the owner or occupier of such property desires to make an objection, be made by such owner or occupier or any agent of such owner or occupier to the standing committee before the time fixed in the aforesaid public notice, by application in writing, stating the grounds on which the valuation or assessment is disputed; all applications so made shall be registered in a book to be kept by the standing committee for the purpose.

Objections how to be made.

(3) The standing committee, after allowing the applicant an opportunity of being heard in person or by agent, shall—

Hearing of objections.

(*a*) investigate and dispose of the objections,

(*b*) cause the result thereof to be noted in the book kept under sub-section (2), and

(*c*) cause any amendment necessary in accordance with such result to be made in the assessment list:

Provided that powers and duties of the standing committee under this sub-section may be transferred to any other committee appointed by the municipality or with the permission of the Commissioner, to any officer or pensioner of Government.

(4) When all objections made under this section have been disposed of and all amendments required by sub-section (3) have been made in the assessment list, the said list shall be authenticated

Authentication of list.

by the signatures of the chairman and at least one other member of the standing committee, or if the standing committee's powers and functions under sub-section (3) have been transferred to any other committee or to an officer or pensioner of the Government, by the signatures of not less than two members of such committee or of the officer or pensioner aforesaid ; the person or persons so authenticating the list shall certify that no valid objection has been made to the valuation and assessment contained in the list except in the cases in which amendments have been made therein.

Custody and inspection of list.

(5) The list so authenticated shall be deposited in the municipal office, and shall there be open for inspection during office hours to all owners and occupiers of property entered therein or to the agents of such persons, and a notice that it is so open shall be forthwith published.

Authenticated list how far conclusive.

(6) Subject to such alterations as may be made therein under the provisions of section 82 and to the result of any appeal or revision made under section 110, the entries in the assessment-list so authenticated and deposited and the entries, if any, inserted in the said list under the provisions of section 82 shall be accepted as conclusive evidence—

(*i*) for the purposes of all municipal taxes, of the valuation, or annual letting value on the basis prescribed in the rules regulating the rate of buildidgs, lands and both buildings and lands to which such entries respectively refer, and

(*ii*) for the purposes of the rate for which such assessment-list has been prepared, of the amount of the rate leviable on such buildings or lands or both buildings and lands in any official year in which such list is in force.

Assessment.—When an assessment made by an assessor, whether the assessor is or is not qualified to make an assessment, is confirmed by the Appeal Committee, it cannot be impeached (*Chairman of Chittagong Municipality v. Jogesh Chandra Rai*, 37 Cal. 44).

Public notice of time.—As to the service of public notice, see s. 192 (3) *post*. Under sub-section (4) no notice shall be invalid for defect of form.

Notice to owner or occupier.—The notice to the owner or occupier must state that the property has been proposed to be assessed and that this assessment will be revised within one month of the publication of the notice. In a case a municipal council purporting to act under a similar provision served upon the plaintiff a notice in the following terms :—"I have the honour to forward here with a list showing the amount of land and water taxes due for 1895-96 on devastan lands within the limits of this municipality and to request that you will be good enough to cause the amount to be remitted to this office, &c." *Held*, that the notice was bad. It was more a demand for a tax assumed to have been already properly assessed than a notice that the plaintiff will be assessed as from

some future date mentioned in it so as to give her an opportunity if so advised of appealing against the assessment (*Municipal Council of Tanjore v. Umamba Bai, Saheb*, 23 Mad. 523).

Power of Civil Court to interfere.—A Civil Court has no power to interfere in the matter of valuation of a house made by a municipality (*The Municipality of Wai v. Krishnaji*, 23 Bom. 446 and *Morarji v. Borsad Municipality*, 24 Bom. 607).

In the absence of proof of *mala fides*, perversity, or manifest error, Civil Courts ought not to interfere with the house valuation made by a municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation (*Kasandas Raghunathdas v. Ankleshwar Municipality*, 26 Bom. 294).

Official year.—This commences on the 1st of April. See s. 3 (13).

Absence of authentication does not render the tax illegal.—Absence of authentication on an assessment-list, as required under s. 81 (4) of this Act, does not by itself render the levy of the tax illegal (*Ambalal v. Ahmedabad Municipality*, 23 Bom. L. R. 48).

Amendment of assessment-list. Notice of new buildings.

82. (1) [s. 66] The standing committee may at any time alter the assessment-list by inserting or altering an entry in respect of any property, such entry having been omitted from or erroneously made in the assessment-list through fraud, accident or mistake, or in respect of any building constructed, altered, added to or reconstructed in whole or in part, where such construction, alteration, addition or reconstruction has been completed after the preparation of the assessment-list, after giving notice to any person interested in the alteration of the list of a date, not less than one month from the date of service of such notice, before which any objection to the alteration should be made.

Objection how dealt with.

(2) An objection made by any person interested in any such alteration, before the time fixed in such notice, and in the manner ptovided by sub-section (2) of section 81, shall be dealt with in all respects as if it were an application under the said section.

Effect of amendment.

(3) An entry or alteration made under this section shall, subject to the provisions of section 110, have the same effect as if it had been made in the case of a building constructed, altered, added to or reconstructed on the day on which such construction, alteration, addition or reconstruction was completed or on the day on which the new construction, alteration, addition or reconstruction was first occupied, whichever first occurs, or in other cases, on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed ; and the tax or the enhanced tax as the case may be shall be levied in such year in the

proportion which the remainder of the year after such day bears to the whole year.

Objections.—Objections must be made by written application and if not made, right to appeal is lost.—See s. 110 (*b*) (*i*).

Notice to be given to the standing committee of demolition or removal of a building.

83. (1) [New] When any building or any portion of a building which is liable to the payment of a rate on buildings or lands or both is demolished or removed, otherwise than by order of the standing committee, the person primarily liable for the payment of the said rate shall give notice thereof, in writing, to the Chief Officer.

(2) Until such notice is given the person aforesaid shall continue liable to pay every such rate as he would have been liable to pay in respect of such building, if the same, or any portion thereof, had not been demolished or removed.

(3) Provided that nothing in this section shall apply in respect of a building or portion of a building which has fallen down or been burnt down.

New assessment-list need not be prepared every year.

84. (1) [s. 67] It shall not be necessary to prepare a new assessment-list every year. Subject to the condition that every part of the assessment-list shall be completely revised not less than once in every four years, the Chief Officer may adopt the valuation and assessment contained in the list for any year, with such alterations as may be deemed necessary, for the year immediately following.

(2) But the provisions of sections 80, 81 and 82 shall be applicable every year as if a new assessment-list had been completed at the commencement of the official year.

Tax from whom primarily leviable.

85. [s. 68] A tax imposed in the form of a rate on buildings or land or both shall be leviable primarily from the actual occupier of the property upon which the tax is assessed if he is the owner of the property, or holds it on a building or other lease from the Secretary of State for India in Council or from the municipality, or on a building lease from any person. Otherwise the tax shall be primarily leviable as follows, namely :—

(*a*) if the property is let, from the lessor ;

(*b*) if the property is sublet, from the superior lessor ;

(*c*) if the property is unlet, from the person in whom the right to let the same vests ;

Recovery from occupiers.

Provided that where the tax is based on the annual letting value, on failure to recover any sum due on account of such tax from the person primarily liable, such portion of the sum may be recovered from the occupier of any part of

the property in respect of which it is due, as bears to the whole amount due the same ratio, which the rent annually payable by such occupier bears to the aggregate amount of rent so payable in respect of the whole of the said property, or to the aggregate amount of the letting value thereof, if any, stated in the authenticated assessment-list, whichever of those two amounts is the greater:

Remedy of occupier in such case.

Provided, further, that for any sum paid by or recovered from any occupier who is not primarily liable under this section, he shall be entitled to credit in account with the person primarily liable for the payment of that sum.

Owner.—The word "owner" is defined by this Act as including the person for the time being receiving the rent of any land or building whether on his own account or as agent or trustee for any other person or for any society or for any religious or charitable purposes, or who would so receive the rent if such land or building were let to a tenant. The person receiving the rent is *prima facie* liable to pay all the taxes due in respect of the property (*Metropolitan water Board v. Brooks*, 1 K. B. 289). Where an owner is himself the occupier, he must be dealt with as an occupier (*See Rex v. Propert*, 1 K B. 83). An agent cannot get rid of an existing liability by resigning the agency, though he may, by resigning, escape liability for rates made after his resignation (*Broadbent v. Shepherd*, 2 K. B. 274).

Occupier.—An occupier is a person who takes or holds or is in actual possession of a piece of property such as house or land. A person who is held responsible for the up-keep and cleanliness of a temple is not an occupier of the temple (*Piare Lal v. Emperor*, 15 All. L. J. 181). Bare ownership does not constitute rateable occupation. In order to constitute occupation, there must be a use and enjoyment which is or is capable of being beneficial. When four only out of five co-owners of a holding were residing on the premises, the other was not liable for the taxes payable by the occupier, merely because he was a co-owner (*Khaja Shamsuddin v. Chairman, Dacca Municipality*, 25 C. W. N. 282).

Remission of tax in case of vacancies when obligatory.

86. (1) [New] Where any building or land which is assessed to a rate based on the annual letting value and payable by the year, or in respect of which a special sanitary cess is payable by the year or by instalments, has remained vacant and unproductive of rent throughout the year or portion of the year for which the rate is leviable, or throughout the period in respect of which any such instalment is payable, the standing committee shall remit or refund not less than two-thirds of the amount of the rate, or of the cess or instalment of the cess, as the case may be:

Provided that no such remission or refund shall be granted unless notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the Chief

Officer, and that no remission or refund shall take effect for any period previous to the day of the delivery of such notice.

When discretional.

(2) Where any such building or land as aforesaid—

(a) has been vacant and unproductive of rent for any period of not less than sixty consecutive days, or

(b) consists of separate tenements one or more of which has or have been vacant and unproductive of rent for any such period as aforesaid, or

(c) is wholly or in great part demolished or destroyed by fire or otherwise deprived of value,

the standing committee may remit or refund such portion, if any, of the rate, cess or instalment as it may think equitable.

Burden of proof on claimant.

(3) The burden of proving the facts entitling any person to claim relief under this section shall be upon him.

Explanatory clause.

(4) For the purposes of this section—

[a] (a) a dewelling-house within the limits of a municipal borough notified by Government as a hill station municipal borough shall be deemed to be vacant notwithstanding the fact that it contains the furniture habitually used in it, if otherwise unoccupied; and

[a] (b) a building or land shall be deemed to be productive of rent if let to a tenant who has a continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

Vacancy and occupation.—The owner of a vacant house is in possession and may maintain trespass against any one who invades it, but so long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it and keeps it ready for habitation whenever he pleases to go to it he is an occupier though he may not reside in it a single day in the year (*R. v. Pankras*, 2 Q. B. D. 581).

Sixty consecutive days.—Where profession tax was levied half yearly and the condition for levy was that the person liable must have exercised the profession, art, trade, etc., for sixty days reckoned consecutively or from time to time in such half year, it was *held*, that day means a duration of 24 hours and the period of sixty days means to be sixty entire and unbroken periods of 24 hours each. It will depend on circumstances whether fractions of a day are to be omitted or to be counted as whole days and the cause and character and duration of absence from municipal limits will determine whether particular days are to be reckoned or omitted (*Municipal Council of Cuddalore v. Subramania Ayyar*, 29 Mad. 326).

[a—a] Clauses (a) and (b) of sub-section (4) were inserted by Bom. XII of 1931, s. 3 (ii).

Notice to be given to the Chief Officer of all transfers of title of persons primarily liable to payment of a rate on buildings or lands.

87. [New] (1) Whether the title of any person primarily liable for the payment of a rate on buildings or lands or both to or over such land or buildings or both is transferred, [1] "the person whose title is so transferred and [1] the person to whom the same is transferred shall, within three months after execution of the instrument of transfer, or after its registration if it be registered, or after the transfer is effected, if no instrument be executed, give notice of such transfer in writing to the Chief Officer.

(2) In the event of the death of any person primarily liable as aforesaid, the person to whom the title of the deceased shall be transferred as heir or otherwise, shall give notice of such transfer to the Chief Officer within one year from the death of the deceased.

(3) If the person liable to give the notice referred to in sub-section (1) or sub-section (2) fails to give such notice he shall be punished with fine which may extend to fifty rupees.

Form of notice.

88. [s. 150] (1) The notice to be given under the last preceding section shall be in the form of Schedule III or Schedule IV, as the case may be, and shall state clearly and correctly all the particulars required by the said form.

(2) On receipt of any such notice, the Chief Officer may, if he thinks it necessary, require the production of the instrument of transfer, if any, or a copy thereof, obtained under section 57 of the Indian Registration Act, 1908.

Liability for payment of a rate on buildings or lands or both to continue in the absence of any notice of transfer.

89. [New] (1) Every person primarily liable for the payment of a rate on buildings or lands or both who transfers his title to or over such building or land or both without giving notice of such transfer to the Chief Officer as aforesaid, shall, in addition to any other liability which he incurs through such neglect, continue liable for the payment of the said rate on the buildings or lands or both until he gives such notice, or until the transfer shall have been recorded by the standing committee.

(2) But nothing in this section shall be held to diminish the liability of the transferee for the said rate or to affect the prior claim of the municipality on the said buildings and lands conferred by section 112, for the recovery of the rate on the lands or buildings or both.

[1–1] These words were inserted by Bom. Act XXIV of 1936.

(3) *Power to charge fees.*

Fees may be charged for certain licenses

90. [s. 70] (1) When any licence is granted under this Act, or when permission is given thereunder for making any temporary erection or for putting up any projection, or for the temporary occupation of any public street or other land vested in the municipality, the authority granting or giving such license or permission may charge a fee for the same.

Levy of fees for unauthorized occupation or projection.

(2) The municipality may charge a higher fee by way of penalty for any erection, or projection, or for the use or occupation of any public street or other land vested in the municipality, by any person without its permission or license. Such fee shall be leviable irrespective of any other penalty or liability to which the person liable to pay the same may be subject under any other provision of this Act or any other law for the time being in force.

The rates of such higher fees shall be determined by rules.

Market and other fees,

(3) A Chief Officer may also charge such fees as may be fixed by by-laws under clause (*a*) of sub-section (1) of section 61, for the use of any such places mentioned in that clause as belong to the municipality and as may be fixed by by-laws under clause (*h*) of sub-section (1) of section 61 for stamping weights and measures.

Power to grant or refuse license is discretional.—The power to grant a license includes the power to refuse it. It is purely discretional and the only limit to its exercise is that it should not be arbitrary, vague and fanciful, but it must be legal and regular ; unless it is clear beyond doubt that the municipality is using its power with some indirect motive and for a collateral purpose, not for the purpose for which the Legislature has given the power, a Civil Court will not interfere (*Haji Ismail v. Municipal Commissioner of Bombay*, 28 Bom. 253).

It is the duty of the Commissioners to grant licenses to applicants unless clear grounds for refusal existed with reference to the object in the view of the law in prescribing the necessity for the issue of such licenses. The decision as to the propriety of granting or withholding the license must be made in each case with reference to the particular circumstances and it would be a direct violation of their duty for the Commissioners to resolve beforehand that no application in the matter would be entertained or considered except from a person or persons selected by them (*Somu Pillai v. The Municipal Council, Mayavaram*, 28 Mad. 520).

Penalty.—Section 193 *post* provides for punishment for failure to comply with the conditions subject to which any permission was given by the municipality.

(4) *Special provisions relating to certain taxes.*

Fixed charges and agreements for payment in lieu of taxes for water supplied.

91. [s. 71] (1) A municipality may, instead of imposing a water-rate, or where a water-rate has been imposed, in individual cases, instead of levying a rate imposed in respect of the supply of water belonging to the municipality to or for use in connection with any private lands or buildings,—

(*a*) fix at rates not exceeding such as shall be specified in the rules in force under section 58, charges for such supply according to the quantity used, as ascertained by measurement ; or

(*b*) arrange with any person on his application to supply on payment, periodical or otherwise, water belonging to the municipality, in such quantities or for such purposes, whether domestic, ornamental, or irrigational or for trade, manufacture or any other purpose, on such terms and subject to such conditions as it shall fix by agreement with such person :

Provided that—

(*a*) the meters, connection-pipes and all other works necessary for and incidental to such supply, and all repairs, extensions and alterations of such works shall be under the control of the municipality, and the expense thereof shall, so far as is not inconsistent with the rules or by-laws of the municipality, be defrayed by the persons liable for the charges or payments fixed in respect of such supply ; and

(*b*) such supply of water shall be and shall be deemed to have been granted, subject to all such conditions as to the limit or stoppage thereof and as to the prevention of waste or misuse, as are prescribed in the by-laws for the time being in force under section 61.

Power to fix a special rate in lieu of special sanitary cess.

(2) Where a municipality has made provision for the cleansing of any factory, hotel or club or any group of buildings or lands used for any one purpose and under one management, it may, instead of levying in respect thereof any special sanitary cess imposed under this chapter, fix a special rate and the dates and other conditions for periodical payments thereof ; such rate, dates and conditions shall be determined either,

(*i*) in accordance with the rules for the time being in force under section 58, or

(*ii*) by written agreement with the person who would have been otherwise liable for the cess : provided that in fixing the amount of such rate proper regard shall be had to the probable cost to the municipality of the service to be rendered,

Power to compound tax on vehicles or animals.

(3) Where a municipality has imposed a tax on vehicles or animals used for riding draught or burden and kept for such use within the municipal borough it may compound with the keeper of any livery-stable or of horses or vehicles kept for sale and hire for the payment of a lump sum for any period not exceeding one year at a time, in lieu of any amount which such keeper would otherwise have been liable to pay on account of the tax imposed as aforesaid.

Recovery of sums claimed under this section.

(4) Every sum claimed by a municipality as due under sub-section (1) as charges, payments or expenses, or as a special rate under sub-section (2) or as a lump sum payable under sub-section (3), shall for the purposes of chapter VIII be deemed to be, and shall be recoverable in the same manner as an amount claimed on account of a tax recoverable under the said chapter:

Provided that nothing in this section shall affect the right or power of a municipality to contract with any person to supply for use beyond the limits of the municipal borough, at such rates and on such conditions as the municipality may think fit, any quantity of water belonging to the municipality but not required for the purposes of this Act.

Taxes on pilgrims may be assigned in part to local boards.

92. [s. 72] Where a tax is imposed under this Act on pilgrims resorting periodically to a shrine within the limits of a municipal borough, the Commissioner may require the municipality of such borough to assign and pay to the district local board or to the taluka local board having authority in the taluka in which such municipal borough is situate, or partly to the said district local board and partly to the said taluka local board, such portion of the total collections on account of such tax as he shall deem fit; and the portion so assigned shall be expended by the said board or boards, within the areas respectively under their authority, on works conducive to the health, convenience and safety of the said pilgrims.

(5) Octroi and Tolls.

Octroi by-laws to be submitted with proposal for imposition of octroi.

93. [s. 75] A municipality, when submitting for sanction a proposal for the imposition of octroi, shall submit therewith for sanction a draft of by-laws for the purposes of clause (*a*) of sub-section (1) of section 61, after observing the requirements of sub-sections (2) and (3) of that section.

94. [s. 76] (1) A person bringing into or receiving from beyond the octroi limits of a municipal borough any animal or goods on which octroi is payable shall, when required by an officer authorized in this behalf by the Chief Officer and so far as may be necessary for ascertaining the amount of tax chargeable,—

Power to examine articles liable to octroi.

(*a*) permit that officer to inspect, examine, weigh, and otherwise deal with such animal or goods ; and

(*b*) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature, which he may possess relating to such animal or goods ;

Account books of merchants.—The provisions of cl. (*b*) of sub-section (1) of this section permit a municipal officer to claim inspection only of bills, invoices or documents of a like nature. He cannot claim inspection of private accounts of merchants (*Ahmedabad Municipality v. Sakarchand*, 17 Bom. L.R. 182).

(*c*) make a declaration in writing to that officer regarding the correctness and accuracy of the document shown to him.

(2) If any person bringing into or receiving from beyond the octroi limits of a municipal borough in which octroi is leviable, any conveyance or package, shall refuse on the demand of an officer authorized by the Chief Officer in this behalf, to permit the officer to inspect the contents of the conveyance or package for the purpose of ascertaining whether it contains anything in respect of which octroi is payable, the officer may cause the conveyance or package to be taken without unnecessary delay before a Magistrate or such officer of the municipality as the Government appoints in this behalf by name or office, who shall cause the inspection to be made in his presence.

Power to search where octroi is leviable.

Weighment entries in shipping bills.—A person who imports timber by sea into a municipal district is not bound by the entries in shipping bills and manifests as to its weight for the purposes of calculating the octroi duty, but is entitled if he disputes the said entries to demand a fresh weighment or measurement at the place of importation. But if he does not do so and fails to prove their incorrectness, he is bound by the entries (*Ramchandra*, Or. Rg. 15 of 1891).

95. [s. 77] (1) An officer demanding octroi by the authority of the municipality shall tender to every person introducing or receiving anything on which the tax is claimed, a bill specifying the animal or goods taxable, the amount claimed, and the rate at which the tax is calculated.

Presentation of bills for octroi.

96. [s. 77] (2) Where any animal or goods passing into a municipal borough are liable to the payment of octroi, any person who, with the intention of defrauding the municipality, causes or abets the introduction of or himself intro-

Penalty for evasion of octroi.

duces or attempts to introduce within the octroi limits of the said borough any such animal or goods upon which payment of the octroi due on such introduction has neither been made nor tendered, shall be punishable with fine which may extend to ten times the amount of such octroi or to fifty rupees, whichever may be greater.

What is evasion.—The accused, the consignee of goods sent by Railway, submitted the Railway receipt to a municipal octroi office and paid duty on the weight specified therein. It was subsequently found by the Railway authorities that the weighment was wrong and less than the real weight and the accused offered to pay the excess duty. *Held*, in a prosecution by the municipality for an offence under s. 45 of Act XIV of 1873 (evasion of octroi duty) that underpayment would be an evasion only if the accused knew the weighment in the Ry. receipt to be wrong; but that in the absence of proof of such knowledge no evation or abetment of evasion was committed (*Kirpa Ram*, 2 A. W.N. 31.)

Evasion of octroi.—The accused, a grocer at Bhiwandi, ordered out goods from Bombay. The goods were put into a hired motor lorry. To reach Bhiwandi, the lorry passed through the limits of Kalyan Municipality, but the lorry-driver, instead of paying octroi on the goods at Kalyan, rapidly drove fast the in-going Naka and similarly passed out at the other end of the limits. The Kalyan Munipality had, in virtue of the powers vested in it under s. 48 (1) (*j*) of the District Municipal Act (now s. 61 (1) (*n*) framed octroi by-laws, which provided for levy and refund of octroi on goods passing through its limits. The accused was, on these facts, charged with evasion of octroi, an offence punishable under s. 77, cl. 2 of the Bom. District Municipal Act (now s. 96). At the trial, evidence was led to show that in preceding years the accused had similarly evaded payment of octroi. *Held*, (1) that in view of s. 48 (1) (*j*) of the Bom. District Municipal Act (now s. 61 (*f*) (*n*) and the by-laws framed thereunder, the accused was liable to the payment of octroi within the meaning of sub-section (2) of s. 77 of the Bom. District Municipal Act (now s. 96); (2) that the word 'defraud' in s. 77 (2) having been used in a popular sense, *i. e.*, to deprive a person of some rights or property to which he was entitled, the accused had an intention to defraud municipality who was prevented from getting the deposit of octroi under the by-laws (*Harjivan Valji*, 28 Bom. L. R. 115).

Where the accused attempted to pass at the octroi goods described by him as linseed and iron bolts which were really turpentine and tobacco respectively, he was *held* guilty of attempt to cheat (P. L. R. (1900) 38 Cr.).

Intention to defraud.—This section and the bye-law made under it postulate that the municipality is entitled to the tax and any body who seeks to deprive it of that tax by wrongful means can be charged. But a *bona fide* allegation that the tax is not payable, though it may subsequently turn out to be unfounded, cannot justify a finding of an intention to defraud. An intention to defraud which generally has to be inferred from the conduct of the accused must, necessarily, involve something in the nature of cheating. To justify a conviction facts must be proved from which the Court can infer that there was an intention to defraud, that is to say, in same way to cheat the municipality out of their tax. "Defraud" always denotes some form of dishonesty (*Emperor v. Visram Valji*, 37 Bom. L. R. 102.)

97. [s. 78] A municipality imposing any toll under this Act shall cause to be kept at each place where such toll is to be collected, a table in the vernacular language of the district, showing the amounts leviable in all cases provided for in the rules, including the terms, if any, on which the liability to pay such tolls may be compounded by periodical payments; and it shall be the duty of every person authorized to demand payment of a toll, to show such table on the request of any person from whom such demand is made.

Tables of tolls to be shown on demand.

98. [s. 79] (1) In the case of non-payment on demand of any octroi or of any toll leviable by a municipality, any person appointed to collect such octroi or toll may seize any animal or goods on which octroi is chargeable, or any vehicle or animal on which the toll is chargeable or any part of the burden of such vehicle or animal which is of sufficient value to satisfy the demand, and may detain the same. He shall thereupon give the person in possession of the vehicle, animal or thing seized, a list of the property together with a written notice in the form of Schedule VII.

Power to seize vehicle or animal or goods on non-payment of octroi or toll.

(2) When any property seized is subject to speedy decay, or when the expense of keeping it together with the amount of the octroi or toll chargeable is likely to exceed its value, the person seizing such property may inform the person in whose possession it was that it will be sold at once; and shall sell it or cause it to be sold accordingly unless the amount of octroi or toll demanded be forthwith paid.

Power to sell property seized at once.

(3) If at any time before a sale has begun, the person from whose possession the property has been seized, tenders at the municipal office the amount of all expenses incurred and of the octroi or toll payable, the Chief Officer shall forthwith deliver to him the property seized.

Release of property on payment.

(4) If no such tender is made, the property seized may be sold, and the proceeds of such sale shall be applied in payment of such ocroi or toll and the expenses incidental to the seizure, detention and sale.

Sale.

(5) The surplus, if any, of the sale-proceeds shall be credited to the municipal fund, and may, on application made to the Chief Officer in writing within three years next after the sale, be paid to the person in whose possession the property

Surplus how dealt with.

was when seized, and if no such application is made, shall be the property of the municipality.

Power to keep account current with person, firm or public body in lieu of levying octroi on introduction of goods.

99. [s. 80] The standing committee, if it thinks fit, instead of requiring payment of octroi due from any person, mercantile firm or public body to be made at the time when the animals or goods in respect of which the octroi is leviable are introduced within the octroi limits of the municipal borough, may at any time direct that an account-current shall be kept on behalf of the municipality of the octroi so due from such person, firm or body. Such account shall be settled at intervals not exceeding one month, and such person, firm or public body shall give such information or details and make such deposit or furnish such security as the standing committee or any officer authorized by it in this behalf shall consider sufficient to cover the amount which may at any time be due from such person, firm or body in respect of such dues. Any amount so due at the expiry of any such interval shall, for the purposes of Chapter VIII, be deemed to be, and shall be, recoverable in the same manner as an amount claimed on account of any tax recoverable under the said chapter.

Suit to recover octroi duty left uncollected.—A municipality cannot sue in the Civil Court to recover the sum due by way of octroi duty, which was left uncollected owing to mistake. Where a current account is not kept under this section, the powers of recovery mentioned in chapter VIII apply and section 203 has no application (*Poona City Municipality v. Paranjpe and sons*, 35 Bom. L. R. 581).

Collection of octroi by one public body on behalf of others.

100. [s. 81] Where any agreement such as is referred to in clause (*b*) of sub-section (1) of section 47 has been entered into, such one of the bodies entering into the agreement as by the terms thereof shall be specified in this behalf, shall have the same power to establish such octroi limits and octroi stations as that body may deem necessary for the entire area in which the octroi is to be collected, and shall have the same power of collecting octroi on animals or goods or both brought within the limits so established, and the provisions of [1] the Act under which that body is constituted relating to octroi shall apply in the same way as if the limits so established were wholly comprised within the area subject to the control of [2] that body; and the collections made and the costs thereby incurred shall, subject to the provisions of section 44, be divided between the bodies entering into the agreement, in such proportions as shall have been determined in the agreement.

[1] The words "the Act under which that body is constituted" were substituted for the words "this Act" by Bom. XIV of 1934, s. 4 (2) (*i*).

[2] The words that "body" were substituted for the words "the body by which they are so established" by Bom. XIV of 1934, s. 4 (2) (*ii*).

101. [s. 81A] (1) It shall be lawful for a municipality to lease by public auction or private contract the levy of any toll that may be imposed under this Act:

Farming of tolls.

Provided that the lessee shall give security for the due fulfilment of the conditions of the lease.

(2) Where any toll has been leased under this section, any person employed by the lessee to collect such toll shall, subject to the conditions of the lease, execute the powers and perform the duties conferred and imposed by sub-sections (1) and (2) of section 98 on a person appointed to collect a toll, and any property seized shall be dealt with as if it had been seized under the provisions of that section:

Persons employed by lessee of toll to have power of seizure.

Provided that no property seized may be sold except under the orders of the Chief Officer.

Construction—The powers of a statutory corporation must be strictly construed and what is not permitted to such a body must be taken as forbidden. Therefore, the fact that a municipal committee is expressly granted the power to farm out tolls, does not imply that it can also farm out the collection of slaughtering fee (*The Municipal Council of Kumbhakonam v. Abbahsahib*, 11 Ind. Cas. 669).

Scope.—Section 81A of the Bombay District Municipal Act (which corresponds to this section) refers to tolls. It cannot be extended to other taxes (*Soundhatti Yellamma Municipality v. Shripad Sesbhat Joshi*, 57 Bom. 278).

(6) *Powers of Government in respect of municipal taxes.*

102. [s. 73] If it shall at any time appear to the Government on complaint made or otherwise that any tax leviable by a municipality is unfair in its incidence, or that the levy thereof or of any part thereof is obnoxious to the interest of the general public, it may require the municipality, within such period as the Government shall fix in this behalf, to take measures for removing any objection which appears to it to exist to the said tax; and if, within the period so fixed, such requirement shall not be carried into effect to the satisfaction of the Government, it may, by notification in the *Bombay Government Gazette*, suspend the levy of such tax, or of such part thereof, until such time as the objection thereto shall be removed.

Power of Government to suspend levy of objectionable taxes.

The Government may at any time by a like notification, rescind any such suspension.

103. [s. 74] Where it appears to the Government that the balance of the municipal fund of a municipality is insufficient for meeting any expenditure incurred under section 215 or for the performance of any duties for the perform-

Power of Government to require municipalities to impose taxes.

ance of which the Government has directed the Commissioner to fix a period under section 218 the Government may by notification require the municipality to impose, within the municipal borough, any tax specified in the notification which may be imposed under section 73 and which is not at the time imposed within the said borough or to enhance any existing tax in such manner or to such extent as the Government considers fit; and the municipality shall forthwith proceed to impose or enhance, in accordance with the requisition, such tax under the provisions of this chapter as if a resolution of the municipality had been passed for the purpose under section 75:

Provided that—

(*a*) the Government shall take into consideration any objection which the municipality or any inhabitant of the municipal borough may make against the imposition or enhancement of such tax;

(*b*) it shall not be lawful for the municipality to abandon or modify or to abolish such tax when imposed;

(*c*) the Government may at any time cancel or modify any requisition made by it under this section and the levy of the tax or the enhancement, except as to arrears theretofore accrued due, shall thereupon cease or be modified accordingly.

CHAPTER VIII.

RECOVERY OF MUNICIPAL CLAIMS.

Presentation of bill for taxes.

104. [s. 82] (1) When any amount,

(*a*) which by or under any provisions of this Act, is declared to be recoverable in the manner provided by this chapter, or

(*b*) which, not being leviable under sub-section (1) of section 98 or payable on demand on account of an octroi or a toll, is claimable as an amount or instalment on account of any other tax which now is imposed or hereafter may be imposed in any municipal borough,

shall have become due, the Chief Officer shall, with the least practicable delay, cause to be presented to any person liable for the payment thereof, a bill for the sum claimed as due.

(2) Every such bill shall specify the period for which, and the property, occupation or thing in respect of which, the sum is claimed, and shall also give notice of the liability incurred in default of payment and of the time within which an appeal may be preferred as hereinafter provided against such claim.

Contents of bill.

(3) If the sum for which any bill has been presented as aforesaid is not paid at the municipal office or to a person authorized by any rule in that behalf to receive such payments, within fifteen days from the presentation thereof, the Chief Officer may cause to be served upon the person to whom such bill has been presented, a notice of demand in the form of Schedule V, or to the like effect.

If bill not paid within fifteen days, notice of demand to issue.

Recovery of municipal claims.—Bill.—A bill may be served by any person having authority from the Commissioner, Executive Officer, President or Chairman (*Yewdall v. Craven*, 29 J. P. 197). The obligation to pay the taxes arises whether it is demanded or not. But proceedings for recovery cannot be taken, unless there has been a demand and a neglect to pay (*Halsbury's Laws*, Vol. 24, p. 66). A tax not imposed as provided for in the Act cannot be recovered by the summary procedure provided by the Act (*Yeshwantrao Pandh v. Secretary, Municipal Commissioner*, 24 Or. L. J. 516).

Contents of bill—To recover the arrears of house-tax, a municipality served upon the plaintiff a bill, which did not specify the time within which an appeal might be preferred, as required by sub-section (2). On failure to pay the arrears, the municipality issued a notice of demand, and followed it up by the issue of a distress warrant. When the warrant was executed, the plaintiff paid up the amount of the arrears. He next filed a suit to recover it back from the municipality. *Held*, awarding the claim, that the procedure followed by the municipality in recovering the amount of arrears was not a legal procedure inasmuch as the bill did not fulfil the statutory requirements, and the right of distress depended upon the observance of the statutory formalities, it being a right conferred only by the statute upon those conditions (*The Surat City Municipality v. Chhabildas Dharamchaud*, 16 Bom. L. R. 749).

Absconding to avoid service of notice of demand is punishable under s. 172 of the Indian Penal Code, with sanction.

Preventing the service on himself, or on any other person, of such notice is punishable under section 173 of the Indian Penal Code, with sanction.

105. [s. 83) (1) If the person on whom a notice of demand has been served under section 104, sub-section (3), does not, within fifteen days from the service of such notice, either—

In what cases warrant may issue.

(*a*) pay the sum demanded in the notice, or

(*b*) show cause to the satisfaction of the Chief Officer, why he should not pay the same, or

(*c*) prefer an appeal in accordance with the provisions of section 110 against the demand,

such sum with all cost of the recovery may be levied under a warrant signed by the Chief Officer in consultation with the President in the form of Schedule VI or to the like effect, by distress and sale of the movable property or the attachment and sale of the immove-

able property of the defaulter : provided that where any measures precautionary or otherwise, have been taken in respect of any such property for the recovery of any sum claimed by Government, any proceedings under this chapter in respect of such property shall abate.

To whom warrant should be addressed.

(2) Where the property is in the municipal borough, the warrant shall be addressed to an officer of the municipality. Where the property is in another municipal borough or district, the warrant shall be addressed to the Chief Officer in the municipal borough or to the vice-president in the municipal district, as the case may be ; [a] where the property is in a cantonment, the warrant shall be addressed to the Executive Officer of the Cantonment [a] and where the property is not in a municipal borough or district [a] or cantonment [a], to a Government officer not lower in rank than a Mahalkari : provided that such Chief Officer, vice-president, [a] Executive Officer [a] or Government officer may endorse such warrant to a subordinate officer. Where the property is in the City of Bombay, the warrant shall be addressed to the Registrar of the Court of Small Causes of Bombay :

Provided that the Registar may endorse such warrant to a subordinate officer.

Power of entry under special order.

(3) It shall be lawful for any officer to whom a warrant issued under sub-section (1) is addressed or endorsed, if the warrant contains a special order authorizing him in this behalf, to break open at any time between sunrise and sunset any outer or inner door or window of a building, in order to make any distress directed in the warrant, if he has reasonable grounds for believing that such building contains property which is liable to seizure under the warrant, and if after notifying his authority and purpose and duly demanding admittance he cannot otherwise obtain admittance :

Provided that such officer shall not enter or break open the door of any apartment appropriated for women, until he has given three hours notice of his intention and has given such women an opportunity to remove.

Warant how to be executed.

(4) It shall also be lawful for any such officer, if authorized by the warrant, to distrain, wherever it may be found, any movable property or attach any immovable property of the person named

[a—a] These words were inserted by Bom. IV of 1930, s. 4.

in the warrant issued under sub-section (1) as defaulter, subject to the following conditions, exceptions and exemptions, namely : —

(*a*) the following property shall not be distrained : —

(*i*) the necessary wearing apparel and bedding of the defaulter, his wife and children,

(*ii*) the tools of artizans,

(*iii*) when the defaulter is an agriculturist, his implements of husbandry, seed-grain, and such cattle as may be necessary to enable the defaulter to earn his livelihood ;

(*b*) the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant ; and if any property has been distrained which, in the opinion of the Chief Officer or of the person to whom the warrant was addressed, should not have been so distrained, it shall forthwith be returned to the defaulter ;

(*c*) the officer shall on distraining or attaching the property forthwith make an inventory thereof, and give to the person in possession thereof at the time of distraint or attachment a written notice in the form of Schedule VII.

(*d*) (*i*) When the property is immovable, the attachment shall be made by an order prohibiting the defaulter from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge ;

(*ii*) the order shall be proclaimed at some place on or adjacent to the property by beat of drum or other customary mode, and a copy of the order shall be fixed on a conspicuous part of the property and then upon a conspicuous part of the municipal office, and also, when the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

(*e*) Any transfer of or charge on the property attached or of any interest therein made without the written permission of the Chief Officer shall be void as against all claims of the municipality enforceable under the attachment.

Procedure to compel payment of tax--Distress.—Under s. 103 of Act IV of 1884 (Madras) a prosecution for dafault of payment of tax cannot be instituted unless it appears that the tax cannot be recovered by distress and sale of moveable property of the defaulter (*Queen-Empress v. O' Shaughnessy*, 9 Mad. 429).

Resistance to a distraining officer.—The fact that the articles are exempt from attachment does not justify the resistance by the defaulter to the distraint, and accordingly he would be guilty of offences under the Indian Penal Code, ss. 155 and 353 (*Poomalai Udayan*, 21 Mad. 296).

Warrant of distress.—Only a person named in the warrant of distress can execute it. No date need be fixed for the return of the warrant (*Government Advocate, Behar and Orissa v. Ganga Prasad*, 1 Pat. 423). If a distress is levied

under serveral warrants and one of the warrants is bad, the levy is not therefore illegal (*Governor of Bristol Poor v. Wail*, 1 A. & E. 264). If the goods of a person other than the person duly assessed and named in the warrant have been seized, the corporation may be liable for illegal distress (*L. & N. W. Ry. Co. v. Giles*, 33 J. P. 776).

It is only against the moveable property that a distress warrant could be executed. The doors of a house cannot be distrained as moveable property (*Queen-Empress v. Shaikh Ibrahim*, 13 Mad. 518). Property proved to belong to the defaulter which may be found within the municipal limits could be distrafned (*Fanindra Nath v. Empress*, 36 Cal. 67). The exact sum, and no more, should be distrained for (*Hurrel v. Wink*, 8 Taunt, 368).

Tender.—If a defaulter tenders the taxes due, with costs up to the date of tender, the tender if valid must be accepted and distress proceedings stopped (*Halsbury's Laws*, Vol. XI, *Distress*, pp. 153, etc). If only a part is tendered, a distress warrant may be issued for the whole. The acceptance of a bill of exchange is not a payment (*Aiyangar's Municipal Corporations in British India*, p. 383).

Sale of goods distrained in special cases.

106. (1) [New] When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody together with the amount to be levied is likely to exceed its value, the Chief Officer shall at once give notice to the person in whose possession the property was, when distrained, to the effect that it will be sold at once; and shall sell it accordingly unless the amount named in the warrant be forthwith paid.

Sale of property distrained or attached; application of proceeds of sale.

(2) If not sold at once under sub-section (1), the property distrained or attached or in the case of immovable property a sufficient portion thereof may, unless the warrant is suspended by the Chief Officer or the sum due by the defaulter together with all costs incidental to the notice, warrant, and distress or attachment and detention of the property, is paid, be, on the expiry of the time specified in the notice served by the officer executing the warrant, sold by public auction under the orders of the Chief Officer, and the proceeds or such part thereof as shall be requisite, shall be applied firstly in discharge of any sum due to Government in respect of such property and secondly in discharge of the sum due and of all such incidental costs as aforesaid. Where the sum due together with costs is paid by the defaulter as aforesaid, the attachment if any of immovable property shall be deemed to have been removed. Sales of immovable property under this sub-section shall be held in the manner laid down in the rules framed in that behalf.

Surplus, if any, how dealt with.

(3) The surplus, if any, shall be forthwith credited to the municipal fund, notice of such credit being given at the same time to the person in whose possession the property was at the time of

distraint or attachment; if such person shall claim the surplus by written application to the Chief Officer within three years from the date of the notice given under this sub-section, the Chief Officer shall refund the surplus to such person. Any sum not claimed within [a] [three years] from the date of such notice shall be the property of the municipality.

Sale outside the district.

107. [s. 84A] Where the warrant is addressed outside the municipal borough, the Chief Officer may by endorsement direct the officer or Registrar of the Court of Small Causes of Bombay to whom the warrant is addressed, to sell the property distrained or attached; in such case it shall be lawful for such officer or Registrar to sell the property and to do all things incidental to the sale in accordance with the provisions of section 106, and to exercise the powers and perform the duties of the Chief Officer under section 106, sub-sections (1) and (2), in respect of such sale, except the power of suspending the warrant. Such officer or Registrar shall, after deducting all costs of recovery incurred by him, remit the amount recovered under the warrant to the Chief Officer by whom it was issued who shall dispose of the same in accordance with the provisions of section 106.

Fees and costs chargeable.

108. [s. 85] Fees for every notice issued under sub-section (3) of section 104, [b] every warrant issued under sub-section (1) of section 105 or distress or attachment made under sub-section (4) of the said section [b] and the maintenance of any live stock seized under the said sub-section shall be chargeable at the rates respectively specified in such behalf in the rules of the municipality and shall be included in the costs of recovery to be levied under section 105.

Summary proceedings may be taken against persons about to leave the borough.

109. (1) [New] If the Chief Officer shall at any time have reason to believe that any person from whom any sum recoverable under the provisions of this chapter is due or is about to become due, is about forthwith to remove from the municipal borough, the Chief Officer may direct the immediate payment by such person of the sum so due or about to become due by him and cause a bill for the same to be presented to him.

(2) If, on presentation of such bill, the said person do not forthwith pay the sum due or about to become due by him, the

[a] These words were substituted for the words "one year" by Bom. Act IV of 1930, s. 4.

[b—l] These words, figures and brackets were substituted for the words, figures and brackets "every distress or attachment made under sub-section (4) of section 105" by Bom XII of 1931, s. 3 (iii).

amount shall be leviable by distress and sale of the moveable property or the atachment and sale of the immoveable property of the defaulter in the manner hereinbefore prescribed, except that it shall not be necessary to serve upon the defaulter any notice of demand and the Chief Officer's warrant for distress and sale may be issued and executed without any delay.

Appeals to Magistrates.

110. (1) [s. 86] Appeals against any notice of demand issued under sub-section (3) of section 104 may be made to any Magistrate or Bench of Magistrates by whom under the directions of the District Magistrates such class of cases is to be tried.

(2) No such appeal shall be heard and determined unless—

(*a*) the appeal is brought within fifteen days next after service of the notice of demand complained of; and

(*b*) an application in writing, stating the grounds on which the claim of the municipality is disputed, has been made to the standing committee as follows:—

(*i*) in the case of a rate on buildings or lands or both within the time fixed in the notice given under section 81 or 82 of the assessment or alteration thereof, according to which the bill is prepared,

(*ii*) in the case of any other claim for which a bill has been presented under sub-section (1) of section 104 within fifteen days next after the presentation of such bill; and

(*c*) the amount claimed from the appellant has been deposited by him in the municipal office.

"Appeal may be made."—These words show that the appeal is permissive, not obligatory, and the party may resort to a civil suit to obtain a refund if paid or for an injunction against the municipality to restrain it from levying the tax. But in such a case it is not open to the party to go into questions which would be allowable before the magistrate, as the Civil Court would be bound by the provisions of s. 81 (6).

See the next section (s. 111), which gives the right of an aggrieved party to apply to the Sessions Judge on reversion against the magistrate's order. See 30 Bom. L. R. 1084 cited under that section wherein it was *held* that there was no right of appeal to the High Court.

This section allows an appeal to a Magistrate or Bench of Magistrates against any notice of demand; and s. 111 (1) provides that the decision of the magistrate or Bench of magistrates upon any appeal shall, at the instance of either party, be subject to revision, etc. But the existence of these provisions do not bar a civil suit in a Civil Court. The provisions are only permissive and not mandatory. It is not, therefore, incumbent on a party against whom a decision has been given by a magistrate to apply in revision against such a decision. A suit in the Civil Court for the purpose is also maintainable (*Kanhardas Junkidas v. Keshav Govind*, 37 Bom. L. R. 235).

Civil suit for injunction may be brought in lieu of appeal.—Where a municipality imposes a tax, a person contending that it is illegally levied can at once file a suit therefor against the municipality in a Civil Court. It is not necessary that he should have first appealed to a magistrate under this section as a preliminary to the filing of the civil suit (*Chunilal v. Surat City Municipality*, 27 Bom. 420).

Appeal exempt from payment of Court fees.—An appeal against a municipal tax is exempted from payment of Court fees (Act VII of 1870, s. 19).

This Act does not prescribe any form of procedure in appeals. The magistrate on admitting the appeal, should give notice to the municipality and fix a day for hearing.

Entries in the assessment list and taxes and decisions to be final.

111. [New] (1) Every entry in the assessment list made under the provisions of this Act against which no objection is made as hereinbefore provided, and the amount of every sum claimed from any person under this Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and the decision of the Magistrate or Bench of Magistrates upon any appeal shall, at the instance of either party, be subject to revision by the Court to which appeals against his or their decisions ordinarily lie.

(2) Effect shall be given by the Chief Officer to every decision of the said Magistrate or Bench of Magistrates on any appeal or any decision in revision on such appeal against any such entry or tax.

Order passed by Sessions Judge in revision is final—The Ahmedabad City Municipality assessed V. for drainage tax. V. appealed against the levy to the 1st Class Magistrate, Ahmedabad, under section 110 *supra* and got a refund of the tax paid. The municipality applied in revision to the Sessions Judge who confirmed the order. The municipality then applied to the High Court under its Criminal revisional jurisdiction. *Held*, according to the ruling in *In re Dulsukhram*, (9 Bom. L. R. 1347) a Magistrate hearing an appeal under section 86 of the Bombay District Municipal Act (corresponding to section 110 of this Act) was merely an appellate authority having jurisdiction given by the Act to deal with the question of civil liability, and was, therefore, not an inferior criminal court, to which alone the revisional jurisdiction of the High Court applied under section 435 of the Criminal Procedure Code, 1898. "We think, this is a matter relating to a civil liability and the intention of the legislature was, under the old section 86, to give only one remedy by way of an appeal to the Magistrate or Bench of Magistrates. By section 111, sub-section (1), which is badly drafted, a further remedy is given by way of revision against the order of the Magistrate or Beach of Magistrates on appeal against the notice of demand to the Court to which appeal against his or their decisions ordinarily lie. We think that in the absence of any specific provision a further revisional application would not lie at the instance of any of the parties. This conclusion would seem to follow from the terms of sub-section (2) of section 111. We think, therefore, that there is no right conferred (under this section) by the statute on any of the aggrieved parties to make a further application for revision against the order passed by the Sessions

Court in revision of the order passed by the Magistrate on appeal, against a notice of demand, under section 110 (*Ahmedabad City Municipality v. Vadilal Vakhatchand*, 30 Bom. L. R. 1084).

Liability of land, buildings, etc., for rates.

112. [s. 57] All sums due on account of any tax imposed in the form of a rate on lands or buildings or both shall, subject to prior payment of land-revenue, if any, due to His Majesty thereupon, be a first charge upon the building or land, in respect of which such tax is leviable and upon the movable property, if any, found within or upon such building or land, and belonging to any person liable for such tax:

Provided that no arrears of any such tax shall be recovered from any occupier who is not the owner, if such arrears have been due for more than one year or for a period during which such occupier was not in occupation.

Consolidated rate, arrears of, if a charge on premises in the hands of a purchaser.—The operation of section 228 of the Calcutta Municipal Act (II of 1899) corresponding to this section, which make the consolidated rate, as it accrues due from time to time, a first charge on the property (subject to the arrears of land revenue) is not controlled by section 223 of the Act which provides only for the personal liability of the purchaser of the premises to the extent of the arrears for the year immediately prior to his purchase. The charge against section 228 cannot be enforced against a *bona fide* purchaser for value without notice. It is for the purchaser to plead and prove that he is a *bona fide* purchaser for value without notice. The plea that one is a *bona fide* purchaser without notice is a single defence, the *onus* of proving which is on him (*Akhoy Kumar Banerjee v. Corporation of Calcutta*, 42 Cal. 625).

Receipts to be given for all payments.

113. [s. 89] For all sums paid on account of any tax under this Act, a receipt stating the amount, and the tax on account of which it has been paid, shall be tendered by the person receiving such payments.

Receipt liable to stamp duty.—A receipt by a municipality acknowledging payment of house-tax exceeding twenty rupees requires a receipt stamp under the Stamp Act (*In re, Karachi Municipality*, 12 Bom. 103).

CHAPTER IX.

MUNICIPAL POWERS AND OFFENCES.

(1) *Powers in respect of streets.*

Power regarding public streets, etc.

114. (1) [s. 90 (1) (2)] It shall be lawful for a municipality to lay out and make new public streets; to construct tunnels and other works subsidiary to public streets; to widen, open, enlarge or otherwise improve, and to turn, divert, discontinue or stop up any public street; and, subject to

the provisions of sub-section (2) of section 48 to lease or sell any such land, theretofore used or acquired by the municipality for the purposes of such streets, as may not be required for any public street or for any other purposes of this Act.

*[1] "Provided that no public street shall be permanently discontinued, stopped up or used for any of the purposes of this Act without the previous sanction of the Commissioner." [1]

Acquisition of adjacent land to form street.

(2) In laying out, making, turning, diverting, widening, opening, enlarging, or otherwise improving any public street, in addition to the land required for the carriage-way and foot-ways and drains thereof, the municipality may purchase the land required for the construction of houses and buildings to form the said street; and, subject to the provisions contained in sub-section (2) of section 48, may sell and dispose of such additional land in perpetuity or on lease for a term of years, with such stipulations as to the class and description of houses or buildings to be erected thereon as it may think fit.

Power to require repair, etc., of private streets.

115. (1) [s. 90 (3)] Where the standing committee considers that in any street not being a public street, or in any part of such street, within the municipal borough, it is necessary for the public health, convenience or safety that any work should be done for the levelling, paving, metalling, flagging, channelling, draining, lighting or cleaning thereof, the standing commitree may by written notice require the respective owners of the lands or buildings fronting, adjoining or abutting upon such street or part thereof, to carry out such work in a manner and within a time to be specified in such notice.

And to declare such streets public.

(2) After such work has been carried out by such owners or, as provided in section 194 by the municipality at the expense of such owners, the street or part thereof in which such work has been done may, and on the joint requisition of a majority of the said owners shall, be declared by a public notice, put up therein by the standing committee, to be a public street.

Notice by Municipality to level, channel and drain Dehla land.—A notice issued by a District Municipality under sub-section (1) of this section, calling upon the inhabitants of a delha to level the delha road and to channel and light it is too vague and indefinite to be legally enforced (*Dayabhai v. Ahmedabad Municipality*, 25 Bom. L. R. 1218).

* [1—1] This proviso was added by Bom. XIX of 1935.

(3) [New] If the notice under sub-section (1) is not complied with and such work is executed by the municipality as provided in section 194, the expenses thereby incurred shall be apportioned by the standing committee between such owners in such manner as it may think fit, regard being had, if it deems it necessary, to the amount and value of any work already done by the owners or occupiers of any such lands or buildings.

Apportionment of expenses in default.

116. [s. 90 (5)] The standing committee may, at any time, by notice fixed up in any street or part of a street not maintainable by the municipality, give intimation of its intention to declare the same a public street, and unless within one month next after such notice has been so put up, the owner or the majority of the several owners of such street or such part of a street lodges or lodge objections thereto at the municipal office, the municipality may by notice in writing put up in such street, or such part, declare the same to be a public street.

Power to declare any street a public street subject to objections by the owners.

117. (1) [s. 91] Every person intending to lay out or make any new street, shall give notice in writing thereof to the Chief Officer and shall furnish plans and sections showing the intended level, means of drainage, direction and width of such street, and such other particulars as may be required by the by-laws in force in this behalf; and save as hereinafter provided, the level, means of drainage, direction and width of every such street shall be fixed or approved by the standing committee.

New private streets.

(2) Before passing orders under sub-section (1), the standing committee may either issue a provisional order directing that for a period therein specified, which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with, or demand for further particulars.

Power of municipality to pass interim orders.

(3) If—

Right to proceed in certain cases.

(*a*) within one month from the receipt of the notice given under sub-section (1) the standing committee has neither—

(*i*) passed orders and served notice thereof either fixing or disapproving the proposals submitted under sub-section (1) with regard to level, means of drainage, direction and width of the street, nor

(*ii*) under sub-section (2), issued any provisional order or demand for further particulars, or if

(*b*) the standing committee, having issued such demand for and having received in accordance with the demand such further

particulars, has issued no further orders within one month from the receipt of such particulars,

then the street may be laid out and made, in such manner as may have been specified in the notice under sub-section (1) and as is not inconsistent with any provision of this Act or of any by-law for the time being in force thereunder.

Penalty.

(4) Whoever lays out or makes any such street, either without giving the notice required by sub-section (1) or, except in accordance with the provisions of sub-section (3), without awaiting or otherwise than in accordance with the instructions issued by the standing committee, or in any manner contrary to the provisions of this Act or of any by-law in force thereunder, shall be punished with fine which may extend to two hundred and fifty rupees; and the standing committee may cause any street so laid out or made to be altered, and any building constructed in such street to be altered or removed, and the expense thereby incurred shall be paid to it by the offender, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

The regular line of a public street.

118. (1) [s. 91A] The Chief Officer shall, subject to the approval of the municipality, prescribe a line on each side of every public street within the municipal borough and may from time to time prescribe a fresh line in substitution for any line so prescribed, or for any part thereof:

Provided that—

(*a*) at least one month previous to prescribing such line or such fresh line, as the case may be, the Chief Officer shall give public notice of the proposal and shall put up special notice thereof in the street or part of the street for which such line or such fresh line is proposed to be prescribed;

(*b*) the Chief Officer shall comply with any orders passed by the municipality after considering any written objection or suggestion in regard to such proposal, delivered at the office of the municipality within such time as may be specified in such public or special notice.

(2) The line for the time being so prescribed shall be called "the regular line of the public street."

(3) (*a*) Except under the provisions of section 143 no person shall construct or reconstruct any portion of any building within the regular line of the public street without the permission of the Chief Officer under section 123.

(*b*) Where the Chief Officer refuses permission to construct or reconstruct any building in any area within the regular line of the

public street, such area shall with the approval of the municipality be added to the street and shall thenceforth be deemed part of the public street and shall be vested in the municipality.

(c) Compensation, the amount of which shall in case of dispute be ascertained and determined in the manner provided in section 198, shall be paid by the municipality to the owner of any land added to a street under clause (b) of sub-section (3) for the value of the said land, and to the owner of any building for any loss, damage or expense incurred by such owner in consequence of any action taken or order passed by the Chief Officer under the said sub-section :

Provided that no such compensation shall be payable in cases to which section 149 applies.

(4) Whoever contravenes the provisions of sub-section (3) shall be punished with fine which may extend to one thousand rupees and, in the case of a continuing contravention with an additional fine which may extend to rupees ten for every day during which such contravention continues after the conviction for the first such contravention, and the chief officer may—

(a) direct that the building be stopped, and

(b) with the previous sanction of the standing committee, by writteen notice, require such building or portion thereof to be altered or demolished in accordance with the provisions of such notice.

(2) *Powers to regulate buildings, etc.*

Setting back projecting buildings.

119. [s. 92] (1) If any part of a building projects beyond the regular line of a public street as prescribed under section 118 or beyond the front of building on either side thereof, the municipality may,—

(a) if the projecting part thereof is a verandah, step or some other structure external to the main building, then at any time, or

(b) if the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down,

require by written notice either that the part of some portion of the part, projecting beyond the said regular line or beyond the said front of the adjoining building on either side thereof, shall be removed; or that such building when being rebuilt shall be set back to or towards the said regular line or the front of such building. The portion of land added to the street by such setting back or removal shall thenceforth be deemed part of the public street and be vested in the municipality.

(2) If any land not vested in the municipality, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building other than a platform, verndah, step or other structure external to a main building, the municipality after giving the owner of the land not less than fifteen clear days' written notice of his intention, or if the land is vested in His Majesty, then with the permission in writing of the Collector, may take possession of the said land with its enclosing wall, hedge or fence, if any, and, if necessary, clear the same; and the land so acquired shall thenceforward be deemed a part of the public street, and be vested in the municipality.

Acquisition of land which is within the regular line of a street and open or occupied only by platforms, etc.

(3) Compensation, the amount of which shall in case of dispute be ascertained and determined in the manner provided in section 198 shall be paid by the municipality to the owner of any land added to a street under sub-section (1) or acquired under sub-section (2), for the value of the said land, and to the owner of any building for any loss, damage or expense incurred by such owner in consequence of any action taken by the municipality under either of the said sub-sections: provided that no such compensation shall be payable in cases to which section 149 applies.

Compensation payable by the municipality.

"Building"—"On either side".—The word "building" includes an ota as well as the steps of a house, though they be erected on condition that they be removed on demand; and the words "on either side" mean on the one side or the other and not both (*The Dhulia Municipality v. Kisandas*, P. J. 1896, p. 781).

Erecting a new building.—The plaintiff who owned a house at Rander, applied to the Rander Municipality on the 25th April 1911 for permission to rebuild it. On the 5th June 1911, the Municipality granted her permission on condition, among others, that she should in rebuilding her house keep an open space of 5 feet 8 inches in front of her house so as to widen an existing road from 8 feet 4 inches to 14 feet. It appeared that the Municipality had not determined any regular line either for the existing street or for the future as contemplated in sec. 119 of this Act, but the condition in question was prescribed presumably under this section. The plaintiff disregarded the condition and built upon the space in question. The Municipality having threatened her to pull down the building, the plaintiff filed a suit to restrain the Municipality from doing so. The lower courts refused to grant the injunction prayed for. The plaintiff appealed:—*Held* (1) that the power of the Municipality under this section to prescribe the location of the building was given in relation "to any street existing or projected as they think proper", whereas the Municipality had prescribed the location of the building in relation, not to the existing street but to a street which might come into existence in the future but was not yet projected. (2) That if the condition of the permit were complied with the plaintiff would have to give up or

keep vacant and unproductive a considerable portion of her land, and the Municipality would have the opportunity of paying compensation for it at any time they might feel disposed to do so, which would be contrary to the provisions of section 119 which contemplated that when a set-back was determined upon compensation should be paid to the owner. (3) That the plaintiff was, therefore, entitled to the injunction sought by her (*Fai Fatma v. The Rander Municipality*, 38 Bom. Bom. 597).

Ota comes within the definition of building.—The plaintiff sued the defendant municipality for damages caused by the removal of an ota. The municipality contended that it was a projection into the public street. *Held*, that as the ota was a solid part of a house and as the land underneath it should be presumed to belong to the plaintiff, it fell within the definition of a "building" and not within that of "street"; that the municipality could under this section give notice of a set-back when the house was being taken down, &c (*Hasanalli v. Bandora Municipality, P. J.* 1894, p. 427.)

Alterations in regular line of a street.—A line can only be one prescribed as the regular line of a street, and it is not competent to the Municipal Commissioner to alter from time to time the line once prescribed (*Essa Jacob v. Municipal Commissioner of Bombay*, 25 Bom. 107). Under this section there is no question of an owner applying for permission to build, but certain powers are given to a Municipality, if any of the conditions mentioned therein exist, to require the owner by written notice to remove his building to the regular line of the street or the front of the adjoining building on either side (*Emperor v. Thakordas*, 27 Bom. L. R. 1027).

(4) When the amount of compensation has been so ascertained and determined, or when a ruinous or dangerous building falling under sub-section (1) has been taken down under the provisions of section 149 the municipality may, after tendering the amount of compensation, if any, as may be payable, take possession of the land so added to the street, and, if necessary, may clear the same.

Setting forward to regular line of street.

120. (1) [s. 93] The standing committee may, upon such terms as it thinks fit, allow any building to be set forward for improving the line of any public street in which such building is situated.

(2) If the land which will be included in the permises of any person permitted under sub-section (1) to set forward a building belongs to the municipality, the permission of the standing committee to set forward the building shall be a sufficient conveyance to the said owner of the said land; and the price to be paid to the municipality by the said owner for such land and the other terms and conditions of the conveyance shall be set forth in the said permission.

Roofs and external walls of buildings not to be made of inflammable materials.

121. (1) [s. 94] The external roofs and walls of buildings constructed or renewed after the coming into force of this Act, shall not be made of grass, wood, cloth, canvas, leaves, mats or other inflammable material except with the written consent of the Chief Officer which may

be given either specially in individual cases, or generally in respect of any area specified therein.

Power to require removal of roof and wall if inflammable.

(2) The Chief Officer may at any time by written notice require the owner of any building which has an external roof or wall made of any such material as aforesaid, to remove such roof or wall within such reasonable time as shall be specified in the notice whether such roof or wall was or was not made before the time at which this Act came into force, and whether it was made with or without the consent of the Chief Officer.

(3) An appeal shall lie to the standing committee against any order of the Chief Officer refusing the consent under sub-section (1) or against any notice given by the Chief Officer under sub-section (2) if made within fifteen days of the receipt of such refusal or notice, as the case may be.

Penalty.

(4) Whoever without such consent as is required by sub-section (1) makes, or causes to be made, or in disobedience to the requirements of a notice given under sub-section (2) suffers to remain, any roof or wall of such material as aforesaid, shall be punished with fine which may extend to twenty-five rupees, and with further fine which may extend to ten rupees for every day on which the offence is continued after the date of the first conviction.

Continuing offence.—*Held,* (under the corresponding section of the Bombay City Act) that the section requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge if proved, the Magistrate is to impose a daily fine of an amount which is left to his discretion (*Limbaji Tulsiram,* 22 Bom. 766).

Bamboo mats are inflammable material.—Bamboo mats used in the erection of a pendal are inflammable material (*Hussan Saheb v. Chairman of Bellari Municipality,* 1 Weir 733).

Renewed includes repairing.—The word "renewed" in s. 179 of the Mad. District Municipal Act (4 of 1884) includes also "repairing." (*Subbanna,* 19 Mad. 241).

Level of buildings.

122. [s. 95] No building shall hereafter be constructed upon a lower level than will allow of the drainage thereof being led into some public sewer or drain either then existing or projected by the municipality, or into some stream or river or into the sea or some cesspool or other suitable place which may be approved of by the Chief Officer,

Notice of new buildings.

123. (1) [s. 96] Before beginning to construct any building, or to alter externally or add to any existing building, or to construct or reconstruct any projecting portion of a building in respect of which the standing committee is empowered by section 119 to enforce a removal or setback, or to construct or reconstruct which the Chief Officer is empowered by section 118 to give permission, the person intending so to construct, alter, add or reconstruct shall give to the Chief Officer notice thereof in writing and shall furnish to him at the same time, if required by a by-law or by special order to do so, a plan showing the levels, at which the foundation and lowest floor of such building are proposed to be laid, by reference to some level known to the Chief Officer, and all information required by the by-laws or demanded by the Chief Officer regarding the limits, design, ventilation and materials of the proposed building, and the intended situation and construction of the drains, sewers, privies, water-closets, and cesspools, if any, to be used in connection therewith, and the location of the building with reference to any existing or projected streets, and the purpose for which the building will be used.

Power of Chief Officer to pass orders.

(2) Save as otherwise provided in this Act or the rules and by-laws thereunder, the Chief Officer may either give permission to construct, alter, add or reconstruct according to the plan and information furnished or may impose in writing conditions, in accordance with this Act and the rules and by-laws made thereunder, as to level, drainage, sanitation, materials or to the dimensions and cubical contents of rooms, doors, windows and appertures for ventilation or to the number of storeys to be erected, or with reference to the location of the building in relation to any street existing or projected, or the purpose for which the building is to be used, or may direct that the work shall not be proceeded with unless and until all questions connected with the respective location of the building and any such street have been decided to his satisfaction.

(3) The municipality may, before any work has been commenced in pursuance of any permission granted by the Chief Officer under sub-section (2), revoke such permission and may give fresh permission in lieu thereof on such conditions, in accordance with this Act and the rules and by-laws made thereunder, with reference to the matters mentioned in the said sub-section, as it thinks proper, and may direct that the work shall not be proceeded with unless and until all questions connected with the respective location of the building and any such street have been decided to its satisfaction.

Or to suspend the work or require further particulars.

(4) Before issuing any orders under sub-section (2), the Chief Officer may, within one month from the receipt of such notice, either issue—

(*a*) a provisional order directing that for a period, which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with, or

(*b*) may demand further particulars.

Right to proceed in certain cases.

(5) A work proposed in a notice given under sub-section (1) may be proceeded with in the manner specified in such notice, provided such manner is not inconsistent with any provision of this Act or of any by-law for the time being in force thereunder in the following cases, namely:—

(*a*) in case the Chief Officer within one month from the receipt of the notice given under sub-section (1) has neither—

(*i*) passed orders under sub-section (2) and served notice thereof in respect of the intended work ; nor

(*ii*) issued under sub-section (4) any provisional order or any demand for further particulars ;

(*b*) in case the Chief Officer having issued such demand for and having received such further particulars, has isued no further orders within one month from the receipt of such particulars.

Commencement of work.

(6) No person who becomes entitled under sub-section (2) or (5) to proceed with any intended work of which notice is required by sub-section (1) shall commence such work after the expiry of the period of one year from the date on which he first became entitled so to proceed therewith, unless he shall have again become so entitled by a fresh compliance with the provisions of sub-sections (1) to (5). And no person to whom permission to erect or alter or add to any building has been granted by the municipality under section 96 of the Bombay District Municipal Act, 1901, shall be entitled to commence such work after the expiry of one year from the date on which this Act comes into force.

(7) Whoever begins any construction, alteration, addition or reconstruction without giving the notice required by sub-section (1) or without furnishing any plan, information or particulars required by or under this section, or, except as provided in sub-section (5), without awaiting or in any manner contrary to such legal orders of the Chief Officer as may be issued under this section, or contrary to the provisions of sub-section (5) or (6) or in any other respect contrary to the provisions of this Act or of any by-law in force thereunder, shall be punished with fine which may extend to one

thousand rupees; and in the case of a continuing contravention of any of the aforesaid provisions, he shall be liable to an additional fine which may extend to ten rupees for each day during which such contravention continues after conviction for the first such contravention; and the Chief Officer may—

(*a*) direct that the construction, alteration, addition or reconstruction be stopped, and

(*b*) upon a conviction being obtained under sub-clause (7) by written notice, require such construction, alteration, addition or reconstruction to be altered or demolished in accordance with the provisions of such notice.

(8) The Chief Officer may at any time inspect any work of which notice is required by sub-section (1) without giving notice of his intention to do so; and at any time during the execution of any such work as aforesaid, may, by written notice, specify any matter in respect of which the execution of such work is in contravention of any provision of this Act or of any by-law made under this Act at the time in force or of any order passed under this section; and require the person executing such work to cause anything done contrary to any such provision or by-law or order to be amended or to do anything which by any such provision or by-law or order he is required to do but which has been omitted.

Explanation.—The expression "to construct a building" throughout this chapter includes—

(*a*) any material alteration, enlargement or reconstruction of any building, or of any wall, verandah, fixed platform, plinth, doorstep or the like, whether constituting part of a building or not,

(*b*) the conversion into a place for human habitation of any building not originally constructed for human habitation,

(*c*) the conversion into more than one place for human habitation of a building originally constructed as one such place,

(*d*) the conversion of two or more places of human habitation into a greater number of such places,

(*e*) such alterations of the internal arrangenments of a building as affect its drainage, ventilation or other sanitary arrangements, or its security or stability, and

(*f*) the addition of any rooms, buildings or other structures to any building,

and a building so altered, enlarged, reconstructed, converted or added to, is throughout this chapter included under the expression "a new building".

Constrnction.—The question whether under this section the municipality has jurisdiction or right to call for information regarding ownership must be decided on circumstances of each case. Where, however, a person so produces the

title-deeds and furnishes the information asked for, he is bound to wait for one month from that date for the orders of the municipality before he can proceed with the intended construction (*Pranshankar*, 6 Bom. L. R. 581).

Discretion of Municipality.—The section gives the municipality a discretion to issue such orders as it thinks proper with reference to a proposed building. Civil Courts cannot interfere with that discretion, unless it is exercised in a capricious, wanton and oppressive manner (*Nagar valad Narsi v. Municipality of Dhandhuka*, 12 Bom. 490.)

The plaintiff was the owner of two houses on each side of the passage of a *khidki*, or open square, containing three or four other houses. He proposed to connect the two houses by building a storey across the passage at such a height as not to interfere with the passage of those who were entitled to go *to and fro*. He applied to the local municipality for permission to build in the manner he proposed. The municipality forbade the work, on the ground that it was likely to interfere with the access of light and air to the neighbouring houses. The plaintiff thereupon sued the municipality to establish his right to build the proposed structure. It was contended for the plaintiff that the municipality ought not to have refused permission in the interests of the neighbouring house-holders, who were able to protect their own rights in case of injury. *Held*, that the suit would not lie, as the order of the municipality refusing permission was not an unreasonable one under the circumstances of the case. *Held*, further, that the authority of the municipality was not in any way affected by the circumstance that the proposed erection might be an encroachment on private rights, subjecting the plaintiff to an action by the persons injured (*Ibid.*)

A District Municipality can, under the provisions of s. 96 of Bom. Act III of 1901 (corresponding to this action) order the removal of balconies put up by a person to his house abutting on a private street and constructed in defiance of the orders issued by the municipality. Per *Chandavarkar* J.—Reading the whole of this section by itself and having regard to its general forms, it is clear that the Legislature has given to every municipality the powers to regulate the construction of buildings, whether they abut on a public or a private street. The power may be exercised as the municipality think proper, *i. e.*, it should be exercised, not capriciously or arbitrarily but reasonably, provided the order is not inconsistent with the provision of the Act (*Trilochan v. Ahmedabad Municipality*, 27 Bom. 221).

Building.—*Prima facie* every building which is capable of being used or adopted to be used as a human habitation is a house (*Ency. of L. G. Law*, Vol. 2, p. 35 etc.)

Where a dwelling house has been connected into three separate flats, each is a new building (*Alexander v. Fracey*, 79 J. P. 458).

Rebuilding of wall—The rebuilding of a wall after demolition of an old wall amounts to an erection of a building within the meaning of s. 96 of the Bombay District Municipal Act, 1901 (corresponding to this section) though the new wall be an exact replica of the old wall, and the permission of the municipality would be necessary before rebuilding the wall (*Bandra City Municipality v. Dr. De A. D. Monte*, 76 I. C. 478). No sanction is necessary for mere repair of a screening wall (*Nanna Mal v. Municipal Board, Hathras*, 11 A. L. J. 486). A boundary or compound wall is not a building (*Corporation of Calcutta v. Benoy Krishna*, 12 C.

L. J. 476). See *contra* 45 Bom. 1151. Pump is not a building (*Jaganath v. Emp.*, 9 Cr. L. R. 331).

"Any building'"—The words "any building" in s. 96 of the Bombay District Municipal Act, 1901 (corresponding to this section) are wide enough to cover a building in a private *Mohla* and permission of the Municipality is necessary to build any building within the Mehla. A High Court is prohibited under s. 439 (5) of the Criminal Procedure Code from entertaining proceedings in a case of acquittal by way of revision at the instance of the local Government as the latter can appeal from the acquittal under s. 417 of the said Code (*Emp. v. Janu Fakir*, 15 S. L. R. 171).

Reconstruction of old buildings—Omission to give notice.—Notice or permission is required in the case of all buildings whether on a public road or in a private *mohla*. Sec. 96 (now s. 123) does not empower the Municipality to deprive the owner of the legitimate use of their lands or to refuse permission to build at all, but confers a power of regulating the building with a view to secure their safety and sanitation (*Khusaldas Moolchand*, 11 S. L. R. 90).

Addition of ota to existing building.—Where a person builds an *ota* to his house without premission under this section he is liable to have the *ota* removed at the instance of the Municipality independently of the question whether the *ota* is built on his land or on a land forming part of the public street (*Viramgaum Municipaliiy v. Bhaichand Dnmodar*, 44 Bom. 198).

Rebuilding of house.—If the work of rebuilding is begun within six months allowed by the permission under s. 96 (now s. 123), the owner commits no offence. Although the Municipality has power to say that a work to which it gave permission under this section should be given within a certain time, it is doubtful whether it has power to say that a work must be finished within a given time (*Godhra Municipality v. Harilal* 21 Bom. L. R. 255).

Order prohibiting doors to project into street, legality of.—A Municipality is under this section competent to order the owner of a house to construct the doors of his house in such a way as not to project into the street (*Municipality of Karachi v. Mahomed Ali*, 9 S. L. R. 26).

Projection of eaves.—A District Municipality cannot under ss. 96 and 113 of the Bom. District Municipal Act, 1901 (corresponding to this section and s. 143 *post* respectively) require that eaves should be so constructed as to overhang a private street above a certain height (*Emperor v. Gafur*, 31 Bom L. R. 541).

Wire fencing is no offence.—The erection of a compound-wall at a distance from the building is erecting a building within the meaning of this section (*Emperor v. Ramrao*, 23 Bom. L R. 831).

Projections overhanging public street.—*Per Macleod C.J.*—There can be no doubt that the owner of a building who wishes to alter it externally or add to it by erecting a balcony can give notice to the Municipality of his intention under this section and the Municipality could pass orders under the powers given by the section, and if those orders were disobeyed, they could take action under the section. But projections over a public street are external alterations of a particular nature which cannot be built without special authorization under s. 143). Whereas if the Municipality are silent after due notice has been given to them

under this section the person who has given notice can proceed to build or alter according to the plans furnished to the Municipality. It is this difference between the two sections which has not been sufficiently noticed. If a person builds a projection over a public street without taking permission under s. 143 or in contravention of the provisions given under the section, he can be fined and the fine can be continued until he has complied with the orders of the Municipality. But the Municipality have no powers to order him to remove the projection (*Ahmedabad Municipality v. Manilal Chhaganlal*, 23 Bom. L. R. 193).

Departure from plans submitted.—It is only those departures from the plans submitted that involve also disobedience to a legal order or the infringement of a by-law or of some provision of the Act that justify an action on the part of the Municipality. No order as to the manner in which the doors and windows are to be opened can be legally issued under this section. Sections 143 and 152 do not apply where an obstruction is merely apprehended (*Mahomed Ali Essaji v. Karachi Municipality*, 7 S. L. R. 31).

Restrictions to the Power of Municipality to regulate buildings.—The powers of Municipalities as under this section are very wide and are subject to two restrictions, *viz.* (1) the orders should be reasonable, and (2) that orders should not be inconsistent with the Act (*Municipality of Karachi v. Mahomed Ali Essaji*, 9 S. L. R. 33).

"Not inconsistent with this Act."—These words appear to mean "not inconsistent with the aim, scope and object of this Act" as shown by its provision (*Per Batty J.—Tribhowan v. Ahmedabad Municipality*, 27 Bom. 221).

Permission—Revocation—Injunction.—The first order made by the Municipality granting permission to build the privy is a final order under this section and the subsequent order which purports to be provisional in its character, is, therefore, not legal. Consequently, a plaintiff is entitled to an injunction claimed, if he has commenced a work within a year under cl. (1) of this section (*Vital v. The Alibag Municipality*, 42 Bom. 629).

A Municipality in granting permission to a person to erect his building can legally impose a condition that he should leave a gully of a certain dimension (*Municipality of Thana v. Fazal Karim*, 3 Bom. 142).

Permission given, cannot be revoked. If, under section 247 of the Calcutta Municipal Consolidation Act, the Municipal Corporation of Calcutta gives sanction to build, it is absolute, and cannot be revoked. Such revocation was not done nor did it purport to have been done under the Act; and a suit for damages based upon the revocation is not governed by the special limitation of three months provided by section 427 of the Act (*Tullaram v. The Corporation of Calcutta*, 30 Cal. 317).

The accused obtained from the Rander Municipaiity permission to build, which was given subject to the condition that the house should be built after leaving open the land within the alignment of the road in front. In spite of the condition, the accused built up his house within the alignment. On a prosecution of the accused under section 90 of the Bombay District Municipal Act (s. 123 of this Act) it was *held* that the accused had offended against this section, for he was bound to ask for permission to reconstruct his building within the regular line of the street and the municipality were entitled to issue such orders as they thought proper not inconsistent with the Act and to impose in writing such conditions

with reference to the location of the building in relation to any street existing or projected as they thought proper (*Emperor v. Thakordas*, 27 Bom. L. R. 1023).

Nothing in this Act authorizes the municipality to refuse permission to rebuild a house on the ground that they propose to acquire it, or to refuse permission *in toto*. All that the municipality can do is to ask for certain information and impose conditions and their utmost power is to direct that the work shall not be proceeded with until certain questions have been decided to their satisfaction (*Chhaganlal v. Municipality of Thana*, 56 Bom. 135).

Prohibitory order as to building.—No prohibition, notice or order issued by a Municipal Board under section 87 of the U. P. Act, 1900, is liable to be called in question otherwise than by means of an appeal under section 152 of that Act (*Shadi*, 26 All. 386).

"Any provisional order".—The words "any provisional order" in sub-section 5 (*a*) (*ii*) refer only to a subsisting provisional order (*Ahmedabad Municipality v, Ramji Kuber*, 36 Bom. 61).

Implied permission to proceed with building.—Where application for permission to build has been made to a Board, and the period mentioned in s. 87 (3) of the U. P. Act, 1900, has expired, the applicant is in the same position as if the erection of the building specified in his application had been formally sanctioned by the board. A sanction, express or implied, to the erection of a specified building, necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work (*Gokul*, 29 All. 737).

Where a person applied for permission to build and on no notice being taken sent a written reminder and after fifteen days of its receipt makes the construction complained of, it was *held* that the Board must be taken to have sanctioned the construction and that there could be no prosecution (*Ramnath v. Municipal Board of Muttra*, 12 A. L. J. 740).

Liability for erecting huts without permission.—The accused was charged with an offence punishable under this section, for erecting huts on his land without permission of the municipality. The trying Magistrate being of opinion that the accused had committed no offence under this section, altered the charge and convicted him under s. 125 read with s. 193 *post*. The accused having applied to the High Court, it was *held*, setting aside the conviction, that the Magistrate was not competent to alter the charge in the manner he did (*Emperor v. Matubhai*, 46 Bom. 657).

General Body of the Municipality can recall permission.—The plaintiff who wished to make additions to his existing building obtained permission to build under this section, from the P. D. Committee of the defendant municipality. On an application by the plaintiff's neighbour, the permission was later recalled by the General Body of the municipality. The plaintiff having sued for a declaration that he was entitled to build in accordance with the permission once granted, it was *held* by Macleod C. J. and Fawcett J., that the General Body of the municipality had power to cancel or revoke permission to build granted by its P. W. Committee either of its own motion or on the application of a person injuriously affected thereby (*Mulji v. Dakor Municipality*, 46 Bom. 663).

Period cannot be fixed for building—The accused was convicted under sections 33 and 74 of the Municipal Act (Bom. Act. VI of 1873). He

had obtained permission to make certain alterations and was therein allowed to effect them within a year. There was no by-law providing a period within which works were to be carried out. *Held*, that the conviction was wrong, so far as it proceeded upon the period of one year having been exceeded and that it was unnecessary to decide whether such a by-law would be *ultra vires* (*Thakurdas Vijbhukandas*, Cr. Rg. 52 of 1893).

Rebuilding a wall that had fallen down —Material reconstruction.—One of the walls of the house of the accused having fallen down, he applied on the 19th April, 1910, to the Municipality for leave to reconstruct it. Without having received the leave or without waiting for it for one month from the date of its application, he rebuilt the wall on the 11th May 1910. On the 13th idem the municipality issued an order to the accused prohibiting him from making the reconstruction. The accused was upon these facts prosecuted under this section, but was acquitted by the Magistrate. The Government having appealed :—*Held*, reversing the order of acquittal, that the accused had erected a building within the meaning of this section, inasmuch as in rebuilding the whole wall which had fallen down, there was a material reconstruction or an erection of a building as defined in the explanation to this section (*Kalekhan Sardarkhan*, 12 Bom. L. R. 1060).

Erecting of building.—The accused was charged with the offence of erecting a building without the permission of the municipality under this section, in that he built up one of the small walls of his house on its old foundation without having previously obtained the permission of the municipality. *Held*, distinguishing the above case (12 Bom. L. R. 1060), that the accused committed no offence under this section, for it could not be said as a matter of law that the material reconstruction of a small wall must continue "the erection of a building." Where a term is interpreted in a statute as including, etc., the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all the circumstances, but merely as declaring what things may be comprehended within the term where the circumstances required that they should (*Bras H. De Souza*, 35 Bom. 412).

A building with a ground-floour to which, after it has been in existence for some years, the owner wants to add one or more storeys, would fall within re-erection (*Emperor v. Nanabhoy*, 9 Bom. L. R. 932). The word 're-construct' or 're-erect' has some other element than that of addition, alteration or repair. If the repair is of an ordinary or casual character, it is not a reconstruction of any portion of the building. If on the other hand the repairs are of a more or less substantial character, affecting the stability of the building, they are reconstruction, whether the repairs are done inside or outside the house (*Emperor v. Muhammad Yusuf*, 39 All. 386). The construction of portions of a house which has been entirely destroyed is a 're-construction' within the meaning of s. 240 of the Bengal Municipal Act and does not merely amount to repairs (33 I. C. 305).

The erection of a katta, which is permanent in character and serves as a broad extended door-step or raised platform of communication with the public road, is an addition to the existing building (*Devendruppa*, Cr. Rg. 47 of 1889).

Building in excess of permission may be demolished.—Where an owner having obtained permission to build on one portion of his land builds on

another portion without having obtained fresh permission, if such part of his building as is outside the limits for which permission has been granted is built without notice, the municipality can in their discretion order it to be demolished (*Bhawanishankar v. Surat City Municipality*, 21 Bom. 187).

Authority to order removal of building.—The fact that the place on which the walls in question were erected, was a public way in 1881, does not establish that the place is a street in 1906, as defined in Act I of 1900. Where the walls were erected with the express permission of the Municipal Board in 1881 and were used by the owner exclusive for 25 years, on a finding that the walls did not overhang or project into a street, *held*, that the Municipal Board were not justified in ordering a removal of the walls under s. 88 of the U. P. Act (I of 1900) (*Alopi Din v. The Municipal Board*, A. W.N. 1907, 2). See also *Ram Dayal*, 33 All. 147).

Material alteration.—The addition of a masonry edging to an already existing *Katcha Chabootra*, which causes no change in its shape or situation, is not material alteration of the Chabootra, and no previous sanction of the Municipal Board is necessary for such alteration (*Radha Ballabh*, 12 A. L. J. 227).

"Conversion of a building".—Accused built a house, the principal room of which was described as a shop ; he, however, used the whole of it as a dwelling house. He was convicted under Explanation (*c*) for not giving notice. *Held*, setting aside the conviction, that the word "conversion" implied some change in the building itself and did not cover the case where the building remained absolutely unchanged and the only thing changed was the use of occupation to which the building was put (*Emperor v. Adamji and Bros.*, 17 Bom. L. R. 212).

Prosecution overriding decision of Civil Court in favour of the accused.—In accordance with a decree of the Civil Court passed in favour of B against a Municipal Board, B erected certain buildings. The Board objected and the Civil Court ordered demolition of some of the buildings and allowed others to remain. During the pendency of the proceedings in the Civil Court, the Board instituted proceedings against B in the Criminal Court. *Held*, that it was not open to the Board to prosecute B in respect of the buildings, pending the decision of the Civil Court, and to continue the prosecution after its decision. The provisions of the Municipal Act were not intended to enable municipal authorities to override the decision of a Civil Court where that Court had jurisdiction (*Baldeo Prasad v. King-Emperor*, 32 All. 620).

Magistrate not authorized to review order under this section.—In dealing with a case of non-compliance with a legal order made by a municipality, a magistrate has no right to review the order from the standpoint of its propriety, and to consider what kind of structure would be sufficient for the purpose in view (*Moru*, Cr. Rg. 63 of 1886).

Order of demolition.—The acceptance by the municipality of rates in respect of premises which have been ordered to be demolished under s. 449 of the Calcutta Municipal Act (III of 1899), does not amount to an acquiescence by the municipality to disobedience of the order for domolition (*Lachmi Narayan Mahto v. Corporation of Calcutta*, 37 Cal 833.

Where it is found that a building has been erected without sanction or in contravention thereof, it is not necessary for the Board to direct the demolition

of the building before it can prosecute the person who has erected it (*Emperor v. Hashim Ali*, 39 All. 482).

Authority is not given by section 442 of the Calcutta Municipal Act, 1899, to a magistrate to direct the demolition of the whole or a part of the building which has been in existence for years before the sanction was given. The magistrate is only empowered to direct the demolition of buildings erected in contravention of the plan submitted and sanctioned by the Corporation (*Joseph Isac Hyam v. Calcutta Corporation*, 33 Cal. 546).

Court cannot interfere with municipality's discretion.—The discretion of taking action or otherwise is in the municipality, which alone can determine whether or not the removal of a building erected contrary to the provisions of this section is or is not a measure likely to promote the public convenience. If the municipality adopt the proper procedure, no Court can review its decision on the ground that in the opinion of the Court the removal of the building is not likely to promote public convenience. The legislature has confided to the municipality, and the municipality alone, the duty of deciding what measures within its legal powers are for the public convenience, and its discretion is not subject to control by the Courts (*Patel Panachand Girdhar v. Ahmedabad Municipality*, 22 Bom. 230).

Construction of walls commenced before receipt of license.—The word "building" in cl. (5) of s. 110 of the Madras District Municipalities Act (IV of 1884) includes "mere walls" built for the purpose of erecting a house, and the construction of such walls without the license of the Municipality renders the person constructing them liable to the penalty prescribed in s. 263 of that Act even though the house, to support which the walls were designed, had not been built (*The Public Prosecutor v. Kalla Perumal*, 1910 Mad. W. N. 740).

Permission not to be refused because part of land required for street.—It is clear, on a perusal of s. 180 of the Madras District Municipal Act (IV of 1884), which corresponds to this section, that no power is thereby conferred on the Municipal Council of depriving owners of the legitimate use of their land. The object of the section is no other than to ensure the safety and sanitation of buildings to be newly erected. What the Council has to consider under the section is the plan of the proposed building and the grounds on which the same can be disproved are such as are stated in cl. (4). A person intending to build on his land made the necessary application for a license, which the municipality granted as regards a portion only of the applicant's land, as they required the rest for widening a lane. The building was erected on the whole land, and the builder was convicted of building contrary to the terms of the license. *Held*, that as the order of the municipality was not legal, no penalty could be enforced on the builder and no notice could be given to requiring him to pull down the building (*Viramal*, 16 Mad. 230).

Plan.—The plaintiffs built a wall on their land without furnishing plan showing the design of the proposed building with its measurement. Thereupon the municipality gave a notice to the plaintiff requiring them to pull it down as it had been built without their permission. The plaintiffs having failed to comply with this notice, the wall was demolished and its materials were carried away by the municipal servants. Thereupon the plaintiffs sued the municipality to recover damages for the wrongful demolition of the wall. *Held*, that the plaintiffs had

contravened the provisions of cl. (1) of this section inasmuch as they had built the wall without giving any notice (if they did give notice) without affording the information required by the municipality. The municipality were, therefore, justified in ordering the walls to be demolished (*Dawe Harishankar v. The Town Municipatity of Umreth*, 19 Bom. 27).

Appeal against the order of disallowing repairs.—The plaintiff applied to Municipal Board for permission to repair a certain gallery. The Board refused to grant permission asked for. The plaintiff, thereupon, brought a Civil suit claiming a perpetual injunction, restraining the Board from interfering with the repairs he wanted to make and for damages. *Held*, that the only way in which an order of a Municipal Board refusing to grant permission for repairing a house can be questioned is by way of appeal, but he is not entitled to maintain a suit questioning the right of the Board to refuse permission (*Abdul Saman v. Municipal Board, Meerut*, 36 All. 329).

Power of Municipality to pass orders.—The plaintiff, who owned a a house-site 13 feet in width applied to the defendant Municipality for permission to build on the site. The Municipality referred the matter to the Collector who advised in view of previous orders passed on the subject, that the plaintiff should be asked to leave open a strip of five feet on either side, and as he could not build on the remaining three feet of the site, he should be asked to keep the land open. The order was in due course communicated to the plaintiff. The plaintiff having sued for a declaration that the order was *ultra vires* and void, it was *held* that the order passed by the Municipality was outside their powers under this section, for though they were only entitled to direct that the proposed building should be set back to a certain distance from the street, yet they were not entitled to order that on each side of the building open spaces should be left with the object of preventing the applicant from building at all (*Ahmed Sullemam Jiva v. Rander Town Municipality*, 27 Bom. L. R. 422).

Whether suit lies against decision of Chairman and General Committee rejecting application—The decision of the Chairman and the General Committee of the Calcutta Corporation rejecting an application for approval of site and permission to build is not capable of being reviewed by a Civil Court, so long as the Chairman and the General Committee acted honestly and their decision was not in excess of their authority under the Calcutta Municipal Act; nor does a suit lie by a person, whose plans have been rejected, for a declaration that the plans comply with the provisions of the Act and should therefore be approved. His only remedy, if the plans have been rejected *mala fide*, is an application under s. 45 of the Specific Relief Act for an order to compel the Chairman and the General Committee to hear the matter provided by law. It may be noted, however, that s. 45 of the Specific Relief Act is not applicable to places outside the Presidency towns (*Prosad Chunder De v. Corporation of Calcutta*, 40 Cal. 836).

Suit for declaration of title.—The plaintiff sued a Municipal Council under the Municipal Act, for a declaration of title to a certain structure situated in the limits of the municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff. *Held*, that the Municipal Council had no

discretion under s. 169 of the above Act to prevent the plaintiff from dealing with the structure, provided he did not interfere with the convenience of the public or with any sanitary regulations (*Krishnayya v. Bellary Municipal Council*, 15 Mad. 292.)

Completion certificates; permission to occupy or use.

124. (1) [New] Every person erecting a building or executing a work as described in sub-section (1) of section 123 shall, within one month after the completion of the erection of such building or the execution of such work, deliver or send or cause to be delivered or sent to the Chief Officer at his office, notice in writing of such completion, and shall give to the Chief Officer all necessary facilities for the inspection of such building or of such work :

Provided that—

(*a*) such inspection shall be commenced within seven days from the date of receipt of the notice of completion ; and

(*b*) the Chief Officer may, not later than one month from the date of receipt of the notice of completion by written intimation addressed to the person from whom the notice of completion was received, and delivered at his address as stated in such notice or, in the absence of such address, affixed to a conspicuous part of the building to which such notice relates,

(*i*) give permission for the occupation of such building or for the use of the building or part thereof affected by such work, or

(*ii*) refuse such permission in case such building has been erected or such work executed so as to contravene any provision of this Act or of any by-law made under this Act at the time in force or of any order passed under section 123 intimating to the person who gave the notice under sub-section (1) of section 123 the reasons for such refusal and requiring such person, or, if the person responsible for giving notice under sub-section (1) of section 123 is not at the time of such notice the owner of such building or work, then such owner to cause anything which is contrary to any provision of this Act or of any by-law made under this Act at the time in force or of any order passed under section 123 to be amended or to do anything which by any such provision or by-law or order he is required to do but which has been omitted.

(2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any such work, until

(*a*) the permission referred to in proviso (*b*) to sub-section (1) has been received, or

(*b*) the Chief Officer has failed for one month after the receipt of the notice of completion to intimate as aforesaid his refusal of the said permission.

(3) Whoever contravenes the provisions of this section or fails to comply with any order or requisition made thereunder shall be punished with fine which may extend to one hundred rupees and, in the case of a continuing contravention or non-compliance, with an additional fine which may extend to ten rupees for every day during which such contravention or non-compliance continues after the conviction for the first such contravention or non-compliance.

Regulation of huts.

125. [s. 97] It shall not be lawful for any person to erect any hut or shed or range or block of huts or sheds, or to add any hut or shed to any range or block of huts or sheds already existing when this Act comes into operation, without giving previous notice to the Chief Officer; the Chief Officer may require such huts or sheds to be built so that they stand in regular lines, with a free passage or way in front of and between every two lines, of such width as the Chief Officer may think proper for ventilation and to facilitate scavenging, and at such a level as will admit of sufficient drainage; and may require such huts to be provided with such number of privies and such means of drainage as he may deem necessary. If any hut or shed or range or block be built without such notice being given to the Chief Officer or otherwise than as required by the Chief Officer, the Chief Officer may give written notice to the owner or builder thereof, or to the owner or occupier of the land on which the same is erected or is being erected, requiring him within such reasonable time as shall be specified in the notice to take down and remove the same, or to make such alterationss therein or additions thereto as having regard to sanitary considerations the Chief Officer may think fit.

Improvement of huts.

126. (1) [s. 98] Where the standing committee is of opinion that any hut or shed whether used as a dwelling or as a stable or for any other purpose, and whether existing at the time when this Act comes into operation or subsequently erected, is by reason—

(a) of insufficient ventilation or of the manner in which such hut or shed is crowded together with other huts or sheds, or

(b) of the want of a plinth or of a sufficient plinth or of sufficient drainage, or

(c) of the impracticability of scavenging,

attended with risk of disease to the inhabitants of the neighbourhood, it shall cause a notice to be affixed to some conspicuous part of such hut or shed, requiring the owner or occupier thereof, or the owner of the land on which such hut or shed is built, within such reasonable time as may be fixed by the standing committee in this behalf, to take down and remove such hut or shed, or to carry out such alterations or works as the standing committee may deem necessary for the avoidance of such risk.

(2) Where any such owner or occupier refuses or neglects to take down and remove such hut or shed or to carry out such alterations or works within the time appointed, the Chief Officer may cause such hut or shed to be taken down, or such alterations or works to be carried out, in accordance with the requirements of the standing committee.

(3) Where such hut or shed is taken down by the Chief Officer, the said officer shall cause the materials of the hut or shed to be sold, if such sale can be effected; and the proceeds, after deducting all expenses, shall be paid to the owner of the hut or shed, or if the owner is unknown or the title disputed, shall be held in deposit by the municipality until the person interested therein shall obtain an order of a competent Court for the payment of the same:

Provided always that where a hut or shed, existing at the time when the land on which it is situate first became part of a municipal district or borough, is taken down and removed under this section, compensation shall further be paid to the owner or owners thereof and the amount thereof, in case of dispute, shall be ascertained and determined in the manner provided in section 198.

Notice to occupant.—A notice to quit huts at once was not a legal notice under s. 35 of Act VI of 1873. A suit for damages arising out of the legal pulling down of such huts by the municipality on the occupant's failing to quit on such notice is not barred by s. 81 and is clearly maintainable under s. 97 of that Act (*Jayaram v. G. W. Scott, P. J.* 1888, p. 87).

Notice to owner when property under the management of receiver.—Where a notice under section 408 of Act III, B. C. of 1899, was served upon the owner, with respect to a property under the management of a Receiver appointed by the High Court:—*Held*, that it was incumbent on the owner to request the Receiver to comply with the notice and, on his failure to comcomply, to apply to the High Court making the Receiver a party to his application. The owner must satisfy the Magistrate that he used all due deligence to carry out the requisition of the notice under section 408; but he would not escape liability by pleading his inability to carry out the requisition on account of the property being under the management of a Receiver (*Corporation of Calcutta v. Haji Kassim Ariff Bhom*, 38 Cal. 714).

(3) *Powers connected with drainage, etc.*

Municipal control over drains, etc.

127. [s. 99] (1) All sewers, drains, privies, water-closets, house-gullies and cesspools within the municipal borough shall be under the survey and control of the municipality.

(2) All covered sewers, drains and cespools, whether public or private, shall be provided by the municipality or other persons to whom they severally belong, with proper traps or other means of ventilation; and the Chief Officer may by written notice call upon

the owner of any such covered sewers, drains or cesspools to make provision accordingly.

Note.—The municipality issued a notice requiring alterations to a privy. *Held*, that the plaintiffs were entitled to go into evidence as to the possibility of alteration required, and that the statement of the Judge that "on inspection by the Court it is necessary to take any evidence as to the possibility of alteration," would lead the parties to suppose that he would pay no regard to it if given, and was improper (*Abdulbhai v. The Municipality of Ahmedabad*, P. J. 1888, p 247).

Powers for making and repairing drains.

128 (1) [s. 100] It shall be lawful for a municipality for any drainage purposes to carry any drain, sewer, conduit, tunnel, culvert, pipe or water-course through, across or under any street or any place laid out as or intended for a street, or under any cellar or vault which may be under any street, and, after giving reasonable notice in writing to the owner or occupier, into, through or under any land whatsoever within the municipal borough.

(2) A municipality, or any person acting under its authority, may construct a new drain in the place of an existing drain in any land wherein any drain vested in the municipality has been already constructed, or repair or alter any drain vested in the municipality.

(3) In the exercise of any power under this section no unnecessary damage shall be done, and compensation, which shall in case of dispute be ascertained and determined in the manner provided in section 198 shall be paid by the municipality to any person who sustains damage by the exercise of such power.

Power of carring drains through or under streets.—A local authority may carry any drain through, across, or under a street (which street includes a private road) or other place or any building, celler or vault. A local authority has power to carry a drain above a street (*See Aiyangar's Municipal Corporations in British India*, p. 456). See also s. 16 of the Public Health Act, 1875.

The expression "through, across or under" manifestly does not mean to take it into and there to leave it. It must not be read as 'into, through or across,' *i.e.*, you may take it in, and you must take it out either by 'through or under" (*Dattatraya v. Municipal Commissioner of Bombay*, 9 Bom. L. R. 1321).

Drainage—Municipality liable for injury caused by drain—Where a municipality excavated a trench for a pipe drain in a public lane and the rain water collected in the trench and by percolation or saturation caused a land slip and collapse of plaintiff's houses and thus made damage to them, *held*, that whether there was percolation or saturation the drain was the chief cause of the damage to the plaintiff's houses and, therefore, the municipality was liable to make good the damage (*Vithaldas v. Municipal Commissioner of Bombay*, 4 Bom. L. R. 914).

Power to require sufficient drainage of houses

129. (1) [s. 101 (1)] If any building or land be at any time undrained, or not drained to the satisfaction of the Chief Officer, the Chief Officer, subject to the control of the standing committee, may by written notice call upon the owner to construct or lay from such building or land a drain or pipe of such size and materials, at such level, and with such fall as he may think necessary for the drainage of such building or land into—

(*a*) some drain or sewer, if there be a suitable drain or sewer within fifty feet of any part of such building or land, or

(*b*) a covered cesspool to be provided by such owner and approved by the Chief Officer.

New buildings not to be erected without drains.

130. [s. 101 (2) (3)] (1) It shall not be lawful to construct or reconstruct any building, or to occupy any building newly constructed or reconstructed, unless and until—

(*a*) a drain be constructed of such size, materials and description, at such level and with such fall, as shall appear to the Chief Officer to be necessary for the effectual drainage of such building;

(*b*) there have been provided for and set up in such buildings and in the land appurtenant thereto, all such appliances and fittings as may appear to the Chief Officer to be necessary for the purposes of gathering and receivig the drainage from, and conveying the same off, the said building and the said land, and of effectually flushing the drain of the said building and every fixture, connected therewith.

(2) The drain to be constructed as aforesaid shall empty into a municipal drain, or into some place set apart by the municipality for the discharge of drainage, situate at a distance not exceeding fifty feet from such building; but if there is no such drain or place within that distance, then such drain shall empty into a cesspool provided by the owner or such building and approved by the Chief Officer.

Powers of owners and occupiers of buildings or lands to drain into municipal drains.

131. (1) [s. 102] The owner or occupier of any building or land within the municipal borough shall be entitled to cause his drains to empty into a municipal drain: provided that he first obtains the written permission of the Chief Officer, and that he complies with such conditions as the Chief Officer may prescribe as to the mode in which and the superintendence under which the communications are to be made between drains not vested in the municipality and drains which are so vested.

(2) An appeal shall lie to the standing committee against any order of the Chief Officer under sub-section (1) if made within fifteen days of the receipt of such order.

House drains.—It is the duty of the owner or occupier of every house within the municipal corporation to provide a drain sufficient for the effectual drainage thereof, and it is also the duty of the municipal corporation to see that the houses are provided with proper drains and that all the drains are constructed and kept so as not to be a nuisance or injurious to health. The owner or occupier has an absolute right to cause his house drain to empty into a municipal drain provided he complies with the statutory requirements prescribed therefor. *See section 21 of the Public Health Act, 1875.* See also *Aiyangar's Municipal Corporations*, p. 463.

Right to carry drain through land or into drain belonging to other persons.

132. (1) [s. 103] If the owner or occupier of any building or land desires to connect the same with any municipal drain, by means of a drain to be constructed through land, or to be connected with a drain, belonging to or occupied by or in the use of some other person, he may make a written application in that behalf to the Chief Officer.

(2) Subject to the control of the standing commitee the Chief Officer thereupon, after giving to such other person a reasonable opportunity of stating any objection to such application, may, if no objection is raised or if any objection which is raised is in his opinion insufficient, by an order in writing authorize the applicant to carry his drain into, through, or under the said land, or into the said drain, as the case may be, in such manner and on such conditions as to the payment of rent or compensation, and as to the respective responsibilities of the parties for maintaining, repairing, flushing, cleaning and emptying the said drains as may appear to him to be adequate and equitable.

(3) Every such order shall be a competent authority to the person in whose favour it is made, or to any agent or other person employed by him for this purpose, after giving or tendering to the owner, occupier or user of the said land or drain the compensation or rent, if any, specified in the said order, and otherwise fulfilling as far as possible the conditions of the said order, and after giving to the said owner, occupier or user reasonable notice in writing, to enter upon the land specified in the said order with assistants and, workmen at any time between sunrise and sunset and, subject to all provisions of this Act, to do all such work as may be necessary—

(*a*) for the construction or connection of the drain, as may be authorized by the said order;

(*b*) for renewing, repairing or altering the same as may be necessary from time to time; or

(*c*) for discharging any responsibility attaching to him under the terms of the order as to maintaining, repairing, flushing, cleaning or emptying the said drain or any part thereof.

(4) [s. 104] In executing any work under this section as little damage as possible shall be done, and the owner or occupier of the buildings or lands for the benefit of which the work is done, shall—

(a) cause the work to be executed with the least practicable delay ;

(b) fill in, reinstate and make good at his own cost and with the least practicable delay the ground or any portion of any building or other construction opened, broken up or removed for the purpose of executing the said work ; and

(c) pay compensation to any person who sustains damage by the execution of the said work.

Rights of owner of land through which drain is carried in regard to subsequent building thereon.

133. [s. 105] If the owner of any land into, through or under which a drain has been carried under section 132 whilst such land was unbuilt upon, shall at any subsequent time desire to construct a building thereon, the Chief Officer subject to the control of the standing committee shall, if he sanctions the construction of such building, by written notice require the owner or occupier of the building or land for the benefit of which such drain was constructed, to close, remove or divert the same, and to fill in, reinstate and make good the land in such manner as he may deem to be necessary, in order to admit of the construction or safe enjoyment of the proposed building.

Provision of privies, etc.

134. (1) [s. 106] Where the Chief Officer is of opinion that any privy or cesspool, or additional privies or cesspools, should be provided in or on any building or land, or, in any municipal borough in which with the approval of the sanitary board a water closet system has been introduced, that water-closets should be substituted for the existing privies in or on any building or land, or that additional water closets should be provided therein or thereon, the Chief Officer, subject to the control of the standing committee, may by written notice call upon the owner of such building or land to provide such privies, cesspools or water closets at such sites as he may deem proper.

(2) The Chief Officer subject to the control of the standing committee may by written notice require any person or persons employing workmen or labourers exceeding twenty in number, or owning or managing any market, school or theatre or other place of public resort, to provide such latrines and urinals at such sites as he may direct, and to cause the same to be kept in proper order, and to be daily cleaned.

(3) The Chief Officer subject to the control of the standing committee may by written notice require the owner or occupier of any

land upon which there is a privy or urinal, to have such privy or urinal shut out, by a sufficient roof and a wall or fence, from the view of persons passing by or resident in the neighbourhood, or to alter as he may direct any privy door or trap door which opens on to any street, and which he deems to be a nuisance.

Private latrines, urinals,&c.—Every person employing workmen and labourers and owners or persons in charge of public places such as markets, cartstands, etc., are also bound to provide sufficient latrines and urinals and to keep the same in a clean condition. Right to use another's land as latrine cannot be acquired by prescription (*Hiralal v. Lokenath*, 19 C. W. N. 864). The municipality may call on the owners, or occupiers of buildings to provide latrines or alter, repair or put the existing latrines in good order in such manner as it thinks fit (*Ahmedabad Municipality v. Gafarbhai*, P. J. 1878, p. 12); but it could not virtually deprive the owner of the privy of the use of it (*Nahanmia v Ahmedabad Municipality*, P. J.1881, p. 60). See also *Abdullabhai v. Municipality of Ahmedabad*, P. J. 1883, p. 247.

Commission of nuisance under order of Committee.—The orders of the municipality do not justify the commission of a nuisance. Under the corresponding section of the Municipal Act of 1873 it was *held* that the terms of the section are not imperative in requiring a municipality to call upon the owners of a house to build a privy but are permissive, leaving it to the discretion of the municipality to determine when the power conferred on them shall be exercised. Accordingly where a plaintiff complained that the defendants had erected a privy so close to his house as to be a nuisance and the Appellate Court found it to be a nuisance but rejected the plaintiff's claim on the ground that the defendants had erected the same under orders of the municipality, *Held*, reversing the decree of the Lower Appellate Court, that the municipality had no authority to order defendants to erect the privy regardless of the plaintiff's right and that defendants, therefore, could not plead that they acted under order of the municipality (*Suyed Jaffer Saheb v. Sayad Kadir Rahiman*, 12 Bom. 684).

Notice must conform to the terms of the section.—The notices cannot call upon owners to do anything not required by the section. A notice requiring the urinal to be constructed in a particular place in the premises was *held* to be *ultra vires*. (*Khimji Jairam*, 24 Bom. 75.). In another case a notice calling upon the owner to make an open drain in the gully on the west of his premises adjoining the west wall of his building was *held* to be *ultra vires* (*Nadirsha H. E. Sukhia*, 29 Bom. 35).

A notice to be valid must be reasonable and possible to comply with. It is not reasonable to require a house-owner to remove the latrines to site outside and quite separate from the main building when no site is available, nor to require him to close the latrines without the provision of any others (*Partial Maistrys*, 6 Bur L. T. 188). If the notice contains two directions, one of which is good and the other bad, it must be treated as bad in its entirety. To hold otherwise would impose on the accused the obligation of picking out from the notice the requirement which was within the power of the municipality to call upon him to carry out. There is nothing, of course, to prevent the municipality from issuing a fresh notice (*In re The Mad. Ry. Co.*, 1 Weir 749).

Owner—Liability of fazendar.—*Per Jardine J.*—*A fazendar* who owns the lands on which a house is built, is not the person liable as the owner of the premises, to provide the privy accommodation, the beneficial owner of the house built on the fazendar's land being the owner within the meaning of the statutable provison (*Shapurji Dinsha*, 20 Bom 617).

Employing.—The words used in the corresponding section 249 of the Bombay City Municipal Act are "are employed" and they refer to employment of any kind or for any length of time (*Municipality of Bombay v. Ahmadbhai Habibbhai*, 23 Bom. 528).

"Public place of resort"—Theatre.—A theatre is a place of public resort within the meaning of s. 249 of the Bom. City Municipal Act (III of 1888) (*Dwarkadas*, 30 Bom. 392).

Madras Harbour is a place of public resort within the terms of the Madras Police Act. A public place is one where the public go, no matter whether they have a right to go there or not (*Criminal Prosecutor v. Govindarajulu*, 39 Mad. 586).

Award of compensation by District Court—The District Court deciding the amount of compensation under s. 106, cl. (3), acts as a Civil Court and its proceedings are open to revision under s. 115 of of the Civil Procedure Code. The word "procedure" in s. 106, cl. (6), is used in a popular and not in a strictly legal sense and a District Court in awarding compensation under that section can award 15 p. c. of the market value in addition to such value (*Hyderabad Municipality v. Moorijmal Mushtak Ram*, 11 S. L. R. 93).

Power to require owners to keep drains, etc, in proper order; or to demolish or close a privy or cesspool.

135. (1) [s. 107] All sewers, drains, privies, water-closets, urinals, house-gullies and cesspools within a municipal borough shall, unless constructed at the cost of the municipality, be altered, repaired, and kept in proper order at the cost and charge of the owners of the lands or buildings to which they belong, or for the use of which they have been constructed or continued; and the Chief Officer subject to the control of the standing committee may by written notice require any such owner to alter, repair, and put the same in good order in such manner as he may think fit.

(2) Subject to the control of the standing committee the Chief Officer may by written notice require the owner to demolish or close any privy or cesspool, whether constructed before or after the coming into operation of this Act, which in the opinion of the Chief Officer is a nuisance, or is so constructed as to be inaccessible for the purpose of scavenging or incapable of being properly cleaned or kept in good order.

Owner liable.—One H was required by a municipality under s. 69 of Bom. Act VI of 1873, to whitewash the privy of the house owned by him. The notice was received by accused, a nephew of H, on whom it was served, as it was said that he looked after everything connected with the house, and the receipt was also signed by him. The notice not having been complied with, accused was convicted under s. 74 of the Act. *Held*, that the conviction of the accused was wrong, as the Act concerned itself with the owner of a house. The fact that the

accusd received the notice for the owner could not make him liable (*Nathulhoi Lalchand*, Cr. Rg. 28 of 1898).

Disobedience of order to remove cesspool.—A District Municipality issued a written notice under section 107 (2) of the Bom. District Municipal Act 1901 (corresponding to sub-section (2) of this section) to the accused stating that the cesspool of his house was a nuisance and that, therefore, within seven days from the receipt of the notice the pipe and the drain of the cesspool should be removed, and that if no steps were taken as directed within the time fixed, steps would be taken according to law. The accused disobeyed this notice, for which he was prosecuted under s. 155 (s. 193 of this Act). *Held*, that as there was no power given under sub-section (2), to the municipality to lawfully direct an owner or occupier to demolish or close a cesspool himself, there was no disobedience of any lawful direction on the part of the accused under s. 193 of this Act (*Laduram*, 11 Bom L. R. 1349).

Power to close existing private drains.

136. [s. 108] When any building or land within a municipal borough has a drain communicating with any cesspool or sewers, the Chief Officer, if he considers that such drain, though it may be sufficient for the drainage of such building or land and though it may be otherwise unobjectionable, is not adapted to the general sewerage of the locality, may, subject to the control of the standing committee, close such drain and such cesspool or sewer, whether they are or are not on land vested in the municipality, on providing a drain or drains equally effectual for the drainage of such building or land, and the Chief Officer may, subject as aforesaid, do any work necessary for the purpose.

Power in respect of sewers, etc., unauthorizedly constructed, rebuilt or unstopped.

137. [s. 109] The standing committee may by written notice require that any sewer, drain, privy, water-closet, urinal, house-gully or cesspool on any land within a municipal borough, constructed, rebuilt or unstopped—

(*a*) after such land became part of a municipal district or borough, and

(*b*) either without the consent or contrary to the orders, directions or general regulations or by-laws, of the municipality, or contrary to the provisions of any enactment in force at the time when it was so constructed, rebuilt or unstopped,

shall be demolished, amended or altered, as it may deem fit, by the person by whom it was so constructed, rebuilt or unstopped; and every person so constructing, rebuilding or unstopping any such sewer, drain, privy, water-closet, urinal, house-gully or cesspool, whether he does or does not receive such notice or does or does not comply therewith, shall, in addition to any penalty to which he may be liable on account of such non-compliance, be punished with fine which may extend to twenty-five rupees.

Construction of privy.—The accused gave a notice to the municipality under s. 33 of Bom. Act VI of 1873 of his intention to build a house, and submit-

ted a plan of the proposed building. The municipality stated in reply that the site for the privy shown in the plan was, therefore, returned with a view to an amended one being submitted. The accused built a privy on the proposed site after one month had expired. *Held*, that the action of the accused in building the privy came within the words of the penal section 39 (2) of the Act, as there was a construction of a privy, which was, as regards its site, contrary to the direction of the municipality (*Harkisandas Narottamdas*, Cr. Rg. 65 of 1895).

Under the Bengal Act the municipality has no power to remove a drain in a building not being a branch drain or a drain leading to a public sewer, and such an order is *ultra vires*. Further although plaintiff consented to the order, the concent given could not estop him from challenging the order as '*ultra vires*', inasmuch as the municipality had no power to make the order and nothing was shown that the municipality had acted on the consent to its prejudice (*Gopa Misser v. Chairman, Gya Municipality*, 20 C. L. J. 138).

Encroachments on municipal drains.

138. (1) [s. 110] Whoever, without the written consent of the Chief Officer first obtained, makes or causes to be made any drain into or out from any of the sewers or drains vested in a municipality, shall be punished with fine which may extend to twenty-five rupees, and the Chief Officer may by written notice require such person to demolish, alter, remake, or otherwise deal with such drain as he may think fit.

(2) No building shall be newly constructed or reconstructed over any sewer, drain, culvert or gutter vested in a municipality, without the written consent of the Chief Officer; and the Chief Officer may by written notice require any person who has so constructed or reconstructed any building without such written consent, to pull down or otherwise deal with the same as he may think fit.

Drain—The word 'drain' is used only in connection with buildings or land with buildings thereon (*Coulter v. Ambler*, 13 M. & W. 403). It is also limited to those drains which communicate with a cesspool or other like receptacle or with a sewer. A drain need not be underground, but it is essential that its course, whether below or above ground, should be defined so that it is capable of being directed, remedied, and effectually dealt with (*Corysdale v. Sunbury-on-Thames*, 2 Ch. 515). A drain need not necessarily carry off sewage. Those which carry off surface water are within the meaning of the word 'drain' (*Ferrand v. Hallas Land Building Co.*, 2 Q. B. at p. 144). A sewer need not necessarily drain buildings. The carrying off of sewage is not an essential characteristic of a sewer, and a pipe may be nonetheless a sewer though used for surface or rain water. A sewer without a drain at all will be a sewer. A sewer generally includes manholes and adjuncts (*Swanstone v. Twickenham Local Board*, 11 Ch. D. 838). A manhole falls within the term drain (*Dattatraya v. Municipal Commissioner of Bombay*, 9 Bom. L.R. 1321). A natural water-course is not a sewer, nor does the fact that it is used for the discharge of drainage or sewage make it one (*R. v. Godmanchester Local Board*, 1 Q. B. 328 Ex. Ch).

The word 'drain' means a passage from a single house only, while a 'sewer' has a much more extended signification embracing works on the largest scale. (*Sutton v. Norwich Corporation*, 27 L. J. Ch. 741). The common meaning of the word "cesspool" is a pit into which a drain discharges its contents. The word "drain" means not merely a water channel but a channel used for the flow of offensive matter. Before a channel can be called a drain within the terms of the Act, it must be shown that offensive matter is carried by it, and before a pit at the end of such a channel can be called a "cesepool" it must be shown that offensive matter is discharged into it (*Kashi Pathi Mukorjee v. Chairman of the Puri Municipality*, 40 I. C. 552). See also *Aiyangar*, pp. 442, 443.

Construction of drainage works.—A municipal corporation is not bound to construct sewers and that in the absence of a mandatory statute the corporation is not liable in damages for wholly failing to provide sewerage or drainage. But there may be conditions under which it may become the duty of the municipality to provide drainage with respect to particular parcels of land. But where there is an absolute obligation imposed on the local authority, the Court will enforce it by a *mandamus*; and the method in which the duty is to be carried out is in the discretion of the local authority (*R v. St. Luke's Chelsia Vestry*, 1 B. & S. 903). It is not bound to construct in all parts of the city at the same time (Amer. Ency. Vol. 28, pp. 949-50). But it should be remembered that authority to construct and maintain a system of sewers and drains gives no right to the municipal corporation to create a nuisance. It is the duty of the municipal corporation not to create a nuisance, and when a sewer is constructed, it must be kept in a proper state of repair so as not to cause a nuisance (Amer. Ency., Vol. 28, p. 1312). See also *Aiyangar's Municipal Corporations in British India*, pp. 447-448.

Inspection of drains, etc.

139. (1) [s. 111] A Chief Officer after due notice to the occupier may inspect any sewer, drain, privy, water-closet, urinal, house-gully or cesspool; and for that purpose, at any time between sunrise and sunset, may enter upon any lands or buildings with assistants and workmen, and cause the ground to be opened where he or they may think fit, doing as little damage as may be.

Expense of inspection when to be borne by the municipality.

(2) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the municipality, unless the sewer, drain, privy, water-closet, urinal, house-gully or cesspool is found to be in bad order or condition, or was constructed in contravention of the provisions of any enactment or of any by-laws or orders thereunder in force at the time or issued in respect of such construction; in which case such expense shall be paid by the owner of such sewer, drain, privy, water-closet, house-gully or cesspool, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

140. (1) [s. 112 (1) & (2)] The standing committee may, if it thinks fit, cause any work, the execution of which may be ordered by or on behalf of the municipality under any of the provisions of this sub-chapter, to be executed by municipal or other agency under its own orders, without first of all giving the person by whom the same would otherwise have to be executed the option of doing the same.

Standing committee may execute certain works under this sub-chapter without allowing option to person concerned of executing the same.

(2) The expenses of any work so done shall be paid by the person aforesaid, unless the municipality shall, by a general or special order or resolution, sanction as it is hereby empowered to sanction the execution of such work at the charge of the municipal fund.

Expenses in such cases by whom to be paid.

141. [s. 112 (3)] Any pipes, fittings, receptacles, or other appliances for or connected with the drainage of any private building or land shall, if supplied, constructed or erected at the expense of the municipality, be deemed to be municipal propety, unless the municipality shall have transferred its interest therein to the owner of such building or land.

Pipes, etc, constructed by municipality to be municipal property.

(4) *Powers in respect of water supply.*

142. [New] For the purpose of obtaining a supply or an additional supply of water or of distributing the same, the municipality shall have the same powers and be subject to the same restrictions for carrying, renewing, repairing and altering water mains, pipes and ducts within or without the municipal borough as it has and is subject to under the provisions hereinbefore contained for carrying, renewing and repairing drains within the municipal borough.

Power of carring water mains.

(5) *Powers regarding external structures, etc.*

143. (1) [New] The Chief Officer, subject to any by-laws made under the provisions of this Act, may give written permission to the owners or occupiers of buildings in public streets, to put up open verandahs, balconies or rooms, to project from any upper storey of such buildings, to an extent not exceeding four feet beyond the line of the plinth or basement wall of the building ; and may prescribe the extent to which and the conditions under which roofs, eaves, weather boards, shop-boards, and the like may be allowed to project over such streets.

Permission necessary for certain projections.

(2) (*a*) Notwithstanding any proceedings which may be taken under clause (*b*) of this sub-section, the Chief Officer may, by

written notice, require the owner or occupier of any such building to remove or alter any such projection which has been constructed either without, or contrary in any manner to, the permission or orders given or issued by or on behalf of the municipality.

(*b*) Any such owner or occupier putting up any projection as aforesaid without such permission or in contravention of such permission or orders, shall be punished with fine which may extend to twenty-five rupees; and if any such owner or occupier fails to remove any projection in respect of which he has been convicted under this section, he shall be punished with further fine which may extend to five rupees for each day on which such failure or neglect continues.

Removal of projections.

(3) The Chief Officer may, by written notice, require the owner or occupier of any building to remove or alter any projection, encroachment or obstruction which, whether made before or after the site of such building became part of a municipal district or borough, shall have been made against or in front of such building, and which—

(*a*) overhangs or juts into or in any way projects or encroaches upon any public street, so as to be an obstruction to safe and convenient passage along such street, or

(*b*) projects and encroaches into, upon or over any uncovered aqueduct, drain or sewer in any such street, so as to obstruct or interfere with such aqueduct, drain or sewer or the proper working thereof:

Provided always that the Chief Officer shall, if such projection, encroachment, or obstruction shall have been made in any place before the date on which such place became part of a municipal district or borough or after such date with the written permission of the municipality, pay reasonable compensation to every person who suffers damage by such removal or alteration; and if any dispute shall arise touching the amount of such compensation, the same shall be ascertained and determined in the manner provided in section 198.

Encroachment existing for upwards of twelve years no defence—.In the plantiff's otta there was a stone which was *in situ* for twelve years and which projected into a public street on which the otta abutted. The defendant municipality having removed the stone from its position, the plaintiff sued for an injunction to restrain the defendant from obstructing him in reinstating the stone. The Lower Court granted the injunction on the ground that the defendant municipality had no right to interfere with the stone as there was adverse possession for the statutory period of the portion of the street occupied by the stone. On appeal, *Held*, confirming decree, that the municipality had not justified their action by reference to the statutory powers either under s. 143 or s. 152 of this Act, for it was not shown that either that the stone which they had removed

was an obstruction to the safe and convenient passage along the street or that the stone was set up by the plaintiff after the place became a municipal district. *Held*, further, that in either case it did not matter that the encroachment was in existence for twelve years or more, if the statutory conditions regulating the exercise of the power be shown be exist (*The Dakor Municipality v. Anupram Haribhai*, 38 Bom. 15, 15 Bom. L. R. 833).

Right of Municipal Council to remove obstruction, encroachment, &c.—Under s. 168 of Mad. Dist. Municipal Act (IV of 1884) the right of the Municipal Council does not depend on its title or right to possession of it. The Council may cause any projection, encroachment or obstruction made against or in front of any land in any public street to be removed or altered as they think fit (*Basaweswaraswami v. The Bellary Municipal Council*, 36 Mad. 6).

Pendal in front of building in public street is projection.—*Held*, that a pendal erected in front of a building in a public street is projection within the meaning of s. 108 (1) of the Mad. Municipal Act, and that the Municipal Council has power to cause it to be removed (*Mothe Atchaya Guru v. The Municipal Council of Ellore*, 18 M. L. J. 707). Following this ruling it was *held* in the case of *Latchmi Narayan Iyer v. The Municipal Council of Trichinopoly* (7 M. L. T. 154) that there can be no easement which overrides the provisions of s. 108 of the Mad. Municipal Act.

Power to remove obstructions.—Under this Act a municipality has power to have all obstructions in a public street removed, whether the obstructions were placed there lawfully or not. The only distinction which the Act draws is between obstructions erected or placed before the Act came into operation and those which have been erected or placed since it came into operation. As to the former, cl. (3) of this section provides that notice should be given and if legally placed on the street, compensation should be awarded for their removal. As to the latter, the municipality can remove them under s. 122 even without giving notice. The public have a right over the whole of a street if it is a public street. It is not the practice of the Court to interfere with corporate bodies "unless they are manifestly abusing their power." (*Ahmedabad Municipality v. Manilal Udenalh*, 19 Bom. 212).

When it is proved that the public street vests in the municipality, the right to remove the obstruction was indisputable. The actual purchaser of the land is the person liable to be called on by notice to remove the trespass (*Panachand v. The Ahmedabad Municipality*, 22 Bom. 250).

Shop-Boards projecting over public street.—Under s. 113 it is open to municipality to prescribe rules for projections on public streets and a bye-law to that effect is not *ultra vires* (*Nagindas Chhabildas*, 42 Bom. 454).

Troughs and pipes for rain water.

144. [New] The Chief Officer may by written notice require the owner of a building in any street to put up and keep in good condition proper troughs and pipes for catching and carrying the water from the roof and other parts of such building, and for discharging the same, in such manner as he may think fit, so that it shall not fall upon the persons passing along the street.

Fixing of lamps, brackets, etc., to houses.

145. [s. 115] The Chief Officer may erect or fix to the outside of any building, brackets for lamps to be lighted with oil or gas, or subject to the provisions of the Indian electricity Act, 1910, for lamps to be lighted with electricity or otherwise or subject to the provisions of the Indian Telegraph Act, 1885, for telegraph wires or telephone wires or wires for the conduct of electricity for locomotive purposes; or such pipes as he may deem necessary for the proper ventilation of sewers and waterworks: such brackets and pipes shall be erected so as not to occasion any inconvenience or nuisance to the occupants of the said building or of any others in the neighbourhood, or to the public.

Naming streets and numbering houses; penalty for defacing, etc.

146. [s. 116] (1) The municipality may from time to time cause to be put up or painted on a conspicuous part of any building at or near each end or corner of or entrance to a street, the name by which such street is to be known, and may from time to time fix a number in a conspicuous place on the outer side of any building, or at the entrance of the enclosure thereof fronting the street.

(2) Any person who destroys, pulls down or defaces any such name or number, or puts any name or number different from that put up by the municipality, and any owner or occupier of any building who shall not at his own expense keep such number in good order after it has been put up thereon, shall be punished with fine which may extend to twenty-five rupees.

Naming Streets, &c.—A local authority may veto a name given to a street by a private person (*Daw v. Metropolitan Board of Works*, 15 C. B. (N. S.) (61). The authority cannot change the name of an old street (*Anderson v. Dublin Corporation*, 15 L. R. Ir. 410). A local authority may give a name in the case of new streets (Aiyangar, p. 555). If the name board is illegally attached to a house, the owner cannot pull it down but must enforce the remedy, if any, by an action (*Collins v. Hornsey*, 2 K. B. 180).

Penalty for defacing buildings, etc.

147. [s. 117] Any person—

(*a*) who, without the consent of the owner or occupier, and in the case of municipal property without the permission in writing of the Chief Officer affixes any posting bill, placard or other paper or means of advertisement against or upon any building, wall, board, fence, pale, post, lamp-post or the like, or

(*b*) who, without such consent as aforesaid, writes upon, soils, defaces or marks any such building, wall, board, fence, pale, post, lamp-post or the like, with chalk or paint or in any other way whatsoever,

shall be punished with fine which may extend to twenty rupees.

148. [New] The Chief Officer may by written notice require the owner or occupier of any land so to trim or prune the hedges thereof bordering any public street that the said hedges may not exceed the height of four feet from the level of the street, and width of four feet; and to cut down, lop, or trim all trees or shrubs which in any way overhang, endanger or obstruct, or which such officer deems likely to overhang, endanger, or obstruct any public street or to cause damage thereto, or which so overhang any public tank, well or other provision for water supply as to pollute, or be likely to pollute the water thereof.

Removal and trimming of hedges, trees, etc.

(6) *Powers for promotion of public health, safety and convenience.*

149. [s. 119] (1) Where any building or anything affixed thereon is deemed by the Chief Officer to be in a ruinous state or likely to fall or in any other way dangerous to any inhabitant of such building or of any neighbouring building or to any occupier thereof or to passengers, the Chief Officer shall immediately, if it appears to him to be necessary, cause a proper hoard or fence to be put up for the protection of passengers:

Ruinous or dangerous buildings; precautionary measures.

Provided that if the danger be not of hourly imminence, the Chief Officer may, instead of causing a hoard or fence to be put up, issue in the first instance notice in writing to the owner or occupier to put up a proper hoard or fence, and in the event of the owner or occupier failing to put up within two days from the service of such notice a hoard or fence which the Chief Officer considers sufficient in the circumstances of the case, the Chief Officer shall at once cause such hoard or fence to be put up.

(2) The Chief Officer shall also cause notice in writing to be given to the owner or occupier, requiring such owner or occupier forthwith to take down, secure, or repair such building, or thing affixed thereon, as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such building or thing within three days after the service of such notice, and complete such work with due diligence, the Chief Officer shall cause all or so much of such building or thing as he shall think necessary to be taken down, repaired or secured.

Repairs to be made by owner or occupier; default by such.

(3) All expenses incurred by the Chief Officer under this section shall be paid by the owner or occupier of such building and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

Scope.—The object of this section is to enable the Chief Officer to deal with a dangerous structure. Hence the paramount object of this section being to enable the Chief Officer to protect the occupiers of a house and the public against

the peril of the house falling down, the option is to rest with the Chief Officer of determining whether the house ought to be taken down, secured or repaired and not with the owner (*Emperor v. Bastiao*, 36 Bom. L. R. 430).

Dangerous buildings.—Sec. 45 of Act VI of 1873 only authorizes the municipality to pull down a house if the owner does not begin to repair and secure it within three days from notice. It cannot interfere within that period on the ground that immediate and adequate measures were necessary to secure the house (*Mancharsha v. The Municipality of Bandora*, P. J. 1889, p. 269).

Powers and duties with regard to dangerous, stagnant or insanitary sources of water-supply.

150. [S. 120] (1) A Chief Officer may at any time by written notice require that the owner of or any person who has the control over any well, stream, channel, tank or other source of water-supply, shall, whether such source is private property or not, within a reasonable time to be specified in the notice, or in any case falling under clause (*d*) within twenty-four hours of such notice—

(*a*) keep and maintain any such source of water-supply, other than a stream, in good repair, or

(*b*) cleanse any such source of water-supply from silt, refuse and decaying vegetation, or

(*c*) in such manner as the Chief Officer may prescribe, protect any such source of water-supply from pollution by surface drainage, or

(*d*) repair, protect or enclose in such manner as the Chief Officer approves, any such source of water-supply other than a stream in its natural flow, if for want of sufficient repair, protection or enclosure, such source of water-supply is in the opinion of the Chief Officer dangerous to the health or safety of the public or of any persons having occasion to use or to pass or approach the same, or

(*e*) desist from using and from permitting others to use for drinking purposes any such source of water-supply, other than a stream in its natural flow, which is proved to the satisfaction of the Chief Officer to be unfit for drinking, or

(*f*) if notwithstanding any such notice under clause (*e*) such use continues and cannot in the opinion of the Chief Officer be otherwise prevented, close either temporarily or permanently or fill up or enclose or fence in such manner as the Chief Officer considers sufficient to prevent such use, such source of water-supply as aforesaid, or

(*g*) drain off or otherwise remove from any source of water-supply, or from any land or premises or receptacle or reservoir attached or adjacent thereto, any stagnant water which the Chief Officer considers is injurious to health or offensive to the neighbourhood.

(2) If the owner or person having control as aforesaid, fails or neglects to comply with any such requisition within the time specified by or under the provisions of sub-section (1), the Chief Officer may, and if in his opinion immediate action is necessary to protect the health or safety of any person, shall at once proceed to execute the work required by such notice; and all the expenses incurred therein by the Chief Officer shall be paid by the owner of, or person having control over, such water-supply, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII:

Remedy on non-compliance with directions issued.

Provided that in the case of any well or private stream or of any private channel, tank or other source of water-supply, the water of which is used by the public or by any section of the public as of right, the expenses incurred by the Chief Officer or necessarily incurred by such owner or person having such control, may, if the standing committee so direct, be paid from the municipal fund.

151. [121] (1) Whoever displaces, takes up, or makes any alteration in the pavement, gutter, flags or other materials of any public street, or the fences, walls, or posts thereof, or any municipal lamp, lamp-post, bracket, water post, hydrant, or other such municipal property therein, without the written consent of the Chief Officer or other lawful authority, shall be punished with fine which may extend to one hundred rupees.

Displacing pavements, etc.

(2) Any person who, having displaced, taken up or made alteration in any such pavement, gutter, flags, or other materials or in such fences, walls, posts, municipal lamps, lamp-posts, brackets, water posts, hydrants, or other municipal property, shall fail to replace or restore the same to the satisfaction of the Chief Officer after notice to do so, shall be punished with fine which may extend to fifty rupees, and shall pay any expense which may be incurred in replacing or restoring the same; and such expense shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

Penalty for failure to replace after notice.

152. (1) [s. 122] Whoever in any *area after it has become a municipal district, or borough,

(a) shall have built or set up, or shall build or set up, any wall or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing, or other encroachment or obstruction, or

Obstructions and encroachments upon public streets and open spaces.

* The word "area" was substituted for the original word "place" by Bom. XIX of 1935.

(b) shall deposit or cause to be placed or deposited any box, bale, package or merchandise, or any other thing,

in any public [1] place or [1] street or in or over or upon any open drain, gutter, sewer, or aqueduct in such [1] place or [1] street shall be punished with fine which may extend to twenty-five rupees, and with further fine which may extend to five rupees for every day on which such projection, encroachment, obstruction or deposit continues after the date of first conviction for such offence.

(2) The Chief Officer shall have power to remove any such obstruction or encroachment, and shall have the like power to remove any unauthorized obstruction or encroachment of the like nature in any open space not being private property, whether such space is vested in the municipality or not: provided that if the space be vested in His Majesty, the permission of the Collector shall have first been obtained; the expense of such removal shall be paid by the person who has caused the said obstruction or encroachment, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

(3) Whoever, not being duly authorized in that behalf, removes earth, sand or other material from, or makes any encroachment in or upon any open space which is not private property, shall be punished with fine which may extend to fifty rupees, and, in the case of encroachment, with further fine which may extend to ten rupees for every day on which the encroachment continues after the date of first conviction for such offence.

(4) Nothing contained in this section shall prevent the Chief Officer from allowing any temporary occupation of or erections in any public street on occasions of festivals and ceremonies, or the piling of fuel in by-streets and spaces for not more than ten days and in such manner as not to inconvenience the public or any individual [2] or from allowing the occupation of, or temporary erection of structures on any such streets or spaces for any other purpose in accordance with bye-laws made under the Act. [2—2]

(5) Nothing contained in this section shall apply to any projection duly authorized under sub-section (1) of section 143.

Obstructions upon public street—*Projecting structures.*—The erection of a shop board projecting to a distance of 3 feet and 5 inches into the street is punishable. This Act is intended to check many offences petty in their nature, but which may cause grievous injury to the neighbourhood as by facilitating fires or serious annoyance as when a householder blocks up a street. The sentences passed for breaches of the provisions of the Act ought not only to be punitive, but also deterrent and the fine should bear some portion of the amount awardable by the law (*Jamnadas*, Cr. Rg. 45 of 1894).

Building divided into two portions—*Distinct offences*—A shop-keeper affixed to his shop a board which projected into the public street. The shop was

[1—1]—The words "place or" well inserted by Bom. XIX of 1935.

[2—2]—These words were added by Bom. XIX of 1935.

divided into two portions; one of them was occupied by the shop-keeper himself and the other was let by him to a tenent. The shop keeper was tried separately regarding the two projections and convicted and sentenced separately. *Held*, that the Magistrate was wrong in trying the two cases as two distinct offences; it was one offence, because it related to one board (*Atmaram Manar*, 4 Bom. L. R. 212).

Building landhi or shed on public road—Though the offence of building a *lanhi* on a public road without permission is covered by the more general words of cl. (3) of the section, yet as the more specific and particular words of the 1st clause do so also, the clause containing the more specific and particular words should, as a principle of a construction, be held to govern the case, and the accused should be convicted under cl. (1) of this section (*Hasomal valad Shamdas*, 1 S. L. R. 88, Cr).

An open space of waste land belonging to a Municipality, though a street within the meaning of s. 3 of Bom. Act VI of 1873, is not a public street within the meaning of s. 48 (*R. v. Ruman*, Sind S. Cr. Rep. 6 of 1884).

Where the petitioner was convicted under s. 217, Bengal Act, of encroaching on a public road, upon a finding that the road in question which was given a name by the Municipality, was made over the petitioner's land to a trenching ground and so used for some time and was subsequently given up with the closing of the trenching ground, it was *held*, that this alone was not sufficient for the conclusion that the road was a public one (*Nando Lal Neyogy v. Bejoy Chandra Chatterjee, Secretary, Yakin Municipality*, 22 C. W. N. 599).

Carriage with horses attached.—As a carriage with horses attached is not one of the things contemplated in this section, a person cannot be convicted under this section for causing obstruction to passers-by having allowed his carriage to stand half an hour on a public street (*Ladha*, Cr. Rg. 11 of 1887).

Obstruction to or encroachment on public street.—The accused owned a shop, between which and the public road in front was a small strip of land. This strip was used by him for upwards of forty years for the purpose of depositing his bales and other goods. The municipality claimed the strip as part of the public road and prosecuted the accused for encroachment on it under s. 122 of the District Municipalities Act, but the accused was acquitted. The Municipal officers next went to the place in question and tried to remove the goods stocked on the land, but were obstructed by the accused. On these facts the accused was prosecuted for an offence punishable under s. 186, Penal Code. *Held*, that the accused was not guilty of the offence, inasmuch as the existence of a *bona fide* dispute between himself and the Municipality as to the ownership of the land prevented his obstruction from being wrongful (Rat. Un. Cr. C. 366, F.) (*Shivdas Omkar*, 15 Bom. L. R. 315).

Projection into public street.—The accused, who occupied a shop abutting on a public street projected a shop board in front of his shop into the public street without the permission of the Municipality. He was prosecuted for making the projection without permission and without paying fees prescribed in that behalf (by-law No. 10 of the Surat Municipality). It was contended that the by-law was *ultra vires* of the Municipality. *Held*, (1) that the accused, in erecting the shop board without paying the prescribed fee, had contravened by-law 10; (2) that by-law 10 was not *ultra vires* of the Surat Municipality (*Nagindas Chhabildas*, 20 Bom. L. R. 388).

Verandah standing on part of public street.—When a vernadah is standing on part of a public street for more than 30 years, the Municipality cannot issue notice under s. 152 for its removal as the owner of verandah gets title to the site under it by virtue of s 28 and art. 146A of the Limitation Act (*Tayabali Abdullabhai v. Dohad Municipality*, 22 Bom. L. R. 951).

Existence of obstruction for over 30 years—Adverse possession.—The plaintiff built a house in 1886, the front steps of which encroached upon a public street. After the encroachment had been there for 30 years, the defendant Municipality, acting under s. 152, called upon the plaintiff to remove the obstruction. *Held*, that as the encroachment existed for a period exceeding 30 years, the site encroached upon no longer formed part of the street but belonged to the party who had been in adverse possession; and that, therefore, the Municipality could not take action under s. 152 (*Abaji v. Municipality of Jalgaon*, 23 Bom. L. R. 1028).

Notice.—This section gives no power to a Municipality to issue a notice to a person alleged to have erected an encroachment to remove it. Although the municipality may send such a notice, it is not a notice under this section. Such a notice may be sent as a matter of courtesy, preliminary to a municipality taking action under the powers given them by this section to remove an encroachment themselves. It is not intended, assuming a municipality serves a notice upon a person to remove an encroachment, that if he does not do so, he may be convicted under s. 193 *post* (*Emperor v Atmaram*, 24 Bom. L. R. 384).

Hoards to be set up during repairs, etc.

153 [s. 123] (1) A person intending to construct or take down any building, or to alter or repair any building externally shall, if the position or circumstancess of the work is or are likely to cause or may cause obstruction, danger or inconvenience in any street, before beginning such work—

(*a*) first obtain a license in writing from the Chief Officer so to do, and

(*b*) cause sufficient hoards or fences to be put up in order to separate the area where the work is to be carried on from the street, and shall maintain such hoard or fence standing and in good condition to the satisfaction of the Chief Officer during such time as the Chief Officer considers necessary for the public safety or convenience, and shall cause the same to be sufficiently lighted during the night, and shall remove the same when directed by the Chief Officer.

(2) Whoever contravenes any of the provisions of this section shall be punished with fine which may extend to fifty rupees, and with further fine which may extend to ten rupees for every day or night, as the case may be, on which such contravention continues, after the date of such conviction for such offence.

Fencing and lighting during repairs, etc.

154. (s. 124] (1) The Chief Officer shall, during the construction or repair of any of the streets, sewers, drains or other premises vested in the municipality, take proper precaution for guarding against accident, by shoring up and protect-

ing the adjoining buildings, and shall cause such bars, chains or posts as he shall think fit, to be fixed across or in any street to prevent the passage of carraiges, carts or other vehicles, or of cattle or horses, while such construction or repair is being carried on and shall cause any such construction or repair work in a street to be sufficiently lighted and guarded during the night.

(2) Whoever takes down, alters or removes any of the said bars, chains or posts, or removes or extinguishes any such light without the authority or consent of the Chief Officer, shall be punished with fine which may extend to fifty rupees.

Timber not to be deposited or hole made in street without permission.

155. [s. 125] (1) No person shall, without the written permission of the Chief Officer or otherwise than in accordance with the conditions of such permission, make a hole in any street, or deposit on any street any timber, stone, brick, earth or other material that has been or is intended to be used for building; such permission shall be terminable at the discretion of the Chief Officer; and when such permission is granted to any person, he shall, at his own expense, cause such materials or such hole to be sufficiently fenced and enclosed to the satisfaction of the Chief Officer until the materials are removed, or the hole is filled up or otherwise made secure, and shall cause such materials or hole to be sufficiently lighted during the night.

(2) Whoever contravenes any of the provisions of sub-section (1) shall be punished with fine which may extend to twenty-five rupees, and with further fine which may extend to ten rupees for every day or night, as the case may be, on which such contravention continues, after the date of the first conviction for such offence.

Master's liability for act of servant.—Where a person had a permit for the deposit of building materials within a certain area, but the contractor employed by him stored things outside those limits, and he was convicted under this section, *Held*, that he could not be held responsible for the criminal act of his contractor (*Tyyabji Mulla Mahomed Bhoy*, 1 S. L. R. 15 Or).

Dangerous quarrying.

156. (1) [s. 126] If in the opinion of the Chief Officer the working of any quarry or the removal of stone, earth or other material from the soil in any place, is dangerous to persons residing in or having a right of access to the neighbourhood thereof, or creates or is likely to create a nuisance, the Chief Officer may, by written notice, require the owner of the said quarry or place or the person responsible for such working or removal not to continue or permit the working of such quarry or the removing of such material, or to take such order with such quarry or place as the Chief Officer shall direct for the purpose of preventing the danger or of abating the nuisance arising or likely to arise therefrom:

Provided that if such quarry or place is vested in His Majesty, or if such working thereof or removal therefrom as aforesaid is being carried on by or on behalf of Government, or any person acting with the permission or under the authority of Government or of any officer of Government acting as such, the Chief Officer shall not take such action unless and until the Collector has consented to his so doing :

Provided further that the Chief Officer shall immediately cause a proper hoard or fence to be put up for the protection of passengers near such quarry or place, if it appears to him to be necessary in order to prevent imminent danger.

(2) Any expense incurred by the Chief Officer in taking action under this section shall be paid by such owner or the person responsible for such working or removal, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

Provision as to dogs.

157. [New] (1) The Chief Officer may by public notice require that every dog while in the streets and not being led by some person shall be muzzled in such a way as to allow the dog freely to breathe and to drink, while effectually preventing it from biting.

(2) Subject to the provisions of sub-section (3) the Chief Officer may take possession of any dog found wandering unmuzzled in any public place and may either detain such dog until its owner has claimed it, has provided a proper muzzle for it, and has paid all the expenses of its detention, or cause it to be destroyed.

(3) When a dog which has been detained under the last preceding sub-section is wearing a collar with the owner's name and address thereon, such dog shall not be destroyed until a letter stating the fact that it has been so detained has been sent to the said address, and the dog has remained unclaimed for three clear days : provided that any dog which is found to be rabid may be destroyed at any time.

(4) Any unclaimed dog and any dog, the owner of which refuses to pay all the expenses of its detention, may be sold or destroyed, after having been detained for the said period of three clear days.

(5) All expenses incurred by the Chief Officer under this section may be recovered from the owner of any dog which has been taken possession of or detained in the manner provided by chapter VIII.

(7) *Powers for the prevention of nuisances.*

Depositing dust, etc.; committing nuisances.

158. (1) [s. 127] Whoever deposits or causes or suffers any member of his family or household to deposit any dust, dirt, dung, ashes, refuse or filth of any kind or any animal matter or any broken glass or earthen ware or other rubbish or any other thing that is or may be a nuisance, in any street or in any arch under a street or in any drain beside a street or on any open space or on any quay, jetty or landing-place or on any part of the seashore on the bank of a tidal river, whether above or below high-water mark, or on the bank of any river, water-course or nullah, except at such places, in such manner and at such hours as shall be fixed by the Chief Officer, and whoever commits or suffers any member of his family or household to commit nuisance in any such place as aforesaid, shall be punished with fine which may extend to twenty-five rupees.

(2) Whoever throws or puts or causes or suffers any member of this family or household to throw or put any of the matters described in sub-section (1) except night-soil, or, except with the permission of the Chief Officer, any night-soil into any sewer, drain, culvert, tunnel, gutter or water-course, and whoever commits nuisance or suffers any member of his family or house-hould to commit nuisance in any such sewer, drain, culvert, tunnel, gutter or water-course, or in such close proximity thereto as to pollute the same, shall be punished with fine which may extend to twenty-five rupess.

Cattle not members of family or household.—Cattle are not members of a family or household within the meaning of cl. (1) of this section, and a person cannot, therefore, be convicted of an offence under cl. (2) for having tied his bullocks near the drain in front of his house so as to allow their dung, &c. to drop there (*Hari Khusal*, Cr. Rg. 78 of 1888).

"Any street or open space."—The words "any open space" in this section would refer to other than private property and hence depositing dust on the background of one's own house is not punishable under section 53, since it is deposited in any street, etc. (*Sham*, Cr. Rg. 37 of 1889), nor within the meaning of open space. But to obey the call of nature elsewhere than in a street is now an offence, as the words "or on any open space" are now introduced in this section. *Digamber Khandu* (Cr. Rg. 24 of 1890), which was a decision under the old Act, 1873, is therefore, no more an authority.

Discharging sewage, etc.

159. [s. 128] Whoever causes or allows the water of any sink or sewer or any other liquid or other matter which is or which is likely to become offensive, from any building or land under his control, to run, drain, or be thrown or put upon any street or open space, or to soak through any external wall, or causes or allows any offensive matter from any sewer or privy to run, drain or be thrown into a surface drain in any street, without the permission in writing of the Chief Officer or who fails to comply with any condition prescribed in such permission, shall be punished with fine which may extend to twenty-five rupees.

Allowing sewage water to run into street is offence though no municipal side drains supplied.—An occupier of a building who allows sewage water to run into a street within the limits of a municipality commits an offence under s. 222 of the Mad. District Municipalities Act (which corresponds to this section) although the municipality may have supplied no side drains in the street in question (*Sevudappayar*, 15 Mad. 91).

The providing of drains by the municipality is not a condition precedent to the obligation, imposed by s. 222 of the Mad. District Municipal Act, 1884, upon the owner or occupant of a house, of not letting dirty water into the street. But the practicable hardship in enforcing the obligation in particular cases, where no drains are provided may be taken into account by the Magistrate in graduating the penalty. The above case (15 Mad. 91) is followed (*Nagan Chetty*, 30 Mad. 221).

Contributory negligence.—In a suit for damages for injury to the plaintiff's wall it was found that plaintiff's damage was contributed to by plaintiff's letting his domestic refuse water into the drain, and was not caused solely by any acts or omissions of the defendants. *Held*, that the plaintiff was not entitled to any relief (*Karur Municipal Council v. K. Srinivasa Aiyangar*, 14 Mad. L. J. 466).

Non-removal of filth, etc.

160. [129] Whoever, being the owner or occupier of any building or land, keeps or allows to be kept for more than twenty-four hours, or otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil, filth or any noxious or offensive matter, in or upon such building or land, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to remove the filth from and to cleanse and purify such receptacle or keeps or allows to be kept in or upon such building or land any animal in such a way as to cause a nuisance, shall be punished with fine which may extend to twenty-five rupees and with further fine which may extend to five rupees for every day on which such offence is continued, after the date of the first conviction for such offence.

Owner or occupier.—The owner of ground was held to be answerable under s. 67 of Bengal Act III of 1864, whether his ground was made dirty by himself or another (*Anonymous*, 3 W. R. Cr. 33). He is liable if his land is made filty

by nuisances committed by other persons. But if he has sublet his lands to others, the actual occupiers of the land are liable (*Parbutty Chandur Sircar*, 3 W. R. Cr. 57). The occupier who suffers the land to be in a filthy state is the person liable for the penalty, because the words "owner or occupier" are only words qualifying the main proposition, which is "whoever suffers any house, building, or land in or near any public highway to be in filthy state". Therefore, when land has been leased by the owner to some one else who is an occupier, the Commissioner ought to proceed against the occupier (*Brojo Lal Mitter*, 8 W. R. Cr. 45).

Removal of night soil.

161. (1) [s. 130] The Chief Officer may from time to time fix the hours within which only it shall be lawful to remove any night-soil or other such offensive matter.

(2) whoever,—

(*a*) When the Chief Officer has fixed such hours and given public notice thereof by beat of drum, removes or causes to be removed along any street any such offensive matter at any time except within the hours so fixed, or

(*b*) at any time, whether such hours have been fixed by the Chief Officer, or not,

(*i*) uses for any such purpose any cart, carriage, receptacle or vessel, not having a covering sufficient for preventing the escape of the contents thereof and of the stench therefrom, or

(*ii*) wilfully or negligently slops or spills any such offensive matter in the removal thereof, or

(*iii*) does not carefully sweep and clean every place in which any such offensive matter has been slopped or spilled, or

(*iv*) places or sets down in any public place any vessel containing such offensive matter, or

(*v*) drives or takes or causes to be driven or taken any cart, carriage, receptacle, or vessel used for any such purpose as aforesaid, through any street or by any route, other than such as shall from time to time be appointed for that purpose by the Chief Officer by public notice,

shall be punished with fine which may extend to twenty-five rupees.

Filthy buildings, etc.

162. [s. 131] (1) Whoever, being the owner or occupier of any building or land, whether tenantable or otherwise, suffers the same to be in a filthy and unwholesome state, or in the opinion of the Chief Officer a nuisance to persons residing in the neighbourhood, or overgrown with prickly-pear or rank and noisome vegetation, and who shall not, within a reasonable time after notice in writing by the Chief Officer to cleanse, clear or otherwise put such building or land in a proper state have complied with the requisition contained in such notice, shall be punished with fine which

may extend to twenty-five rupees, and with further fine which may extend to five rupees for every day on which the failure to comply with the said notice is continued after the date of the first conviction for such offence.

Deserted and offensive buildings.

(2) Where any building, by reason of dilapidation, neglect, abandonment, disuse or disputed ownership, or of its remaining untenanted and thereby—

(*a*) becoming a resort of idle and disorderly persons, or of persons who have no ostensible means of subsistence, or who cannot give a satisfactory account of themselves, or

(*b*) coming into use for any insanitary or immoral purpose, or

(*c*) affording a shelter to snakes, rats or other dangerous or offensive animals,

is open to the objection that it is a nuisance, or so unwholesome or unsightly as to be a source of discomfort, inconvenience or annoyyance to the neighbourhood or to persons passing by such building, the standing committee, if it considers such objection cannot under any other provision of this Act be otherwise removed, may, if there is any person known or resident within the municipal borough who claims to be the owner of such building, by written notice directed to such person. require such person, or in any other case by written notice fixed on the door or any other conspicuous part of the buildig, require all persons claiming to be interested in such building, within a period which shall be specified in the notice and shall not be less than seven days from the date of such notice, to cause such building to be taken down and the materials thereof to be removed in the event of non-compliance with such requirement, the standing committee, on the expiration of the period specified as aforesaid, may forthwith cause the building to be taken down and the materials to be removed, and may sell such materials and apply the proceeds to defray any expenses incurred by it in so doing ; all such expenses not thereby defrayed shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

Owner or occupier.—Where the owner of a certain land lived in another district, and was not proved to have suffered the land to be in a filthy state, and the Municipal Commissioner fined his mukhtar under s. 67, Act III of 1864, B C., which empowered him to fine either the owner or occupier, *Held*, that the discretion which that section gave had not been properly exercised (*Dwarkanath Haxra*, 16 W. R. Cr. 60).

Joint penalty imposed on several accused, if illegal—A joint conviction and a joint penalty were passed against the owner of a house, and a person occupying it with him, under s. 444, cl. (2), read with s. 574 of the Calcutta Municipal Act, III of 1864, for disobeying an order prohibting them from

using a house found to be unfit for human habitation. *Held*, that the act of disobedience in each of the accused was a separate offence, and there was no provision of law justifying the passing of a joint penalty (*Bhairab Chandra Kolay v. Corporation of Calcutta*, 37 Cal. 895).

Rank and noisome vegetation—*Aloo-plantation.*—This section renders the owner liable for non-compliance with a notice issued under it, not when the municipality considers vegetation to be rank or noisome, but only when the vegetation is actually so. To support a conviction under this section for non-compliance with a notice, the prosecution must establish affirmatively the objectionable character of the vegetation (*Anandrao Khanderao Raste*, 9 Bom. L. R. 247).

Further fine.—An order imposing prospectively a daily fine in the event of failure to comply with the notice under this section is illegal (*Govindram*, Sind Sadar Court, Cr. Rg. 5 of 1902).

Written notice.—Disobedience to comply with the written notice is punishable under s. 193 *post*.

Otherwise put the same in a proper state."—*Scope of the section.*—Under the corresponding provision of the City of Bombay Municipal Act, the Municipal Commissioner for the City of Bombay issued a notice requiring the owner of a range of a building, to put it in a proper state by providing ridge ventilation within seven days which the owner did not comply with. *Held*, that s 220 of the Act did not empower the Municipal Commissioner to direct structural alterations, that the notice requiring ridge ventilation to be provided was illegal and the owner, by refusing to comply with it, committed no offence (*Sadanand Shri Krishnajee*, 8 Bom. 151).

Certified copies liable to stamp duty.—*Held*, that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a true copy by the Secretary to the Board, came within Art. 22, Sch. II of the Stamp Act, 1899, and so required a stamp of 8 Annas (*Reference under Stamp Act*, s. 46, 19 All. 293).

Buildings or rooms in buildings unfit for human habitation

163. [New] (1) If, for any reason, it shall appear to the standing committee that any building or any room in a building intended for or used as a dwelling is unfit for human habitation, the standing committee shall give to the owner or occupier of such building notice in writing, stating such reason, and signifying its intention to prohibit the further use of the building or room, as the case may be, as a dwelling, and shall in such notice call upon the owner or occupier aforesaid to state in writing any objection thereto within thirty days after the receipt of such notice; and if no objection is raised by such owner or occupier within such period as aforesaid, or if any objection which is raised by such owner or occupier within such period appears to the standing committee invalid or insufficient, the standing committee may by an order in writing prohibit the further use of such building or room as a dwelling.

(2) When any such prohibition as aforesaid has been made, the Chief Officer shall cause notice of such prohibition to be affixed

to, and the letters "U.H.H." to be painted on, the door or some conspicuous part of such building or room as the case may be; and no owner or occupier of such building or room shall use or suffer the same to be used for human habitation until the standing committee certifies in writing that the building or room, as the case may be, has been rendered fit for human habitation.

Power to enter and inspect, etc., buildings.

164. [s. 132] It shall be lawful for the president, vice-president, chairman of the standing committee, Chief Officer or any councillor or officer authorised by the municipality in this behalf, at any time between sunrise and sunset after due notice to enter into and inspect all buildings and lands, and by written notice to direct for sanitary reasons all or any part thereof to be forthwith internally and externally limewashed or otherwise cleansed.

Bathing places.

165. [s. 133] (1) The standing committee may set apart sufficient public places, or any part of the seashore, not being private property, for the purpose of being used as bathing places, and may also provide or set apart a sufficient number of convenient tanks or runs of water for the inhabitants to bathe in; and may also set apart tanks or reservoirs or runs of water for washing animals or clothes, or for any purpose connected with the health, cleanliness and comfort of the inhabitants, and may prohibit the use, for any purpose mentioned in this section, of any or all other public places within the municipal borough.

(2) Copies of all orders passed and notices issued by the standing committee and for the time being in force under this section, shall be kept at the municipal office and shall be open for inspection by the public at all reasonable times.

Regulation of washing of clothes by washermen.

[a]165A. [New] (1) The standing committee may, by public notice, prohibit the washing of clothes by washermen in the exercise of their calling, except at such places as it shall appoint for this purpose; and when any such prohibition has been made, no person who is, by calling, a washerman shall wash clothes at any place not appointed for this purpose by the standing committee, except for such person himself or for the owner or occupier of such place.

Washing place to be provided by the standing committee for washermen.

(2) The standing committee shall provide suitable places for the exercise by washermen of their calling and may require payment of such fees for the use of any such place as shall from time to time be determined by it with the approval of the municipality.

[a] This section was inserted by Bom. XII of 1931, s. 3 (iv).

(3) The standing committee shall, before issuing any public notice under sub-section (1), publish in such manner as shall in its opinion be sufficient, for the information of persons likely to be affected thereby, a list of washing places proposed to be provided under sub-section (2), together with a notice specifying a date on or after which the list will be taken into consideration; and shall, before finally fixing the said places, receive and consider any objection or suggestion in respect thereto which may be made in writing by any person before the date so specified.

Fouling water.

166. [s. 134] Whoever, in disobedience of any order of the municipality under section 165, or of any by-law, bathes in any stream, pool, tank, reservoir, well, cistern, conduit or aqueduct belonging to the municipality, or washes or causes to be washed therein any animal or anything whatever, or throws, puts or casts or causes to enter therein any animal or anything, or causes or suffers to run, drain or be brought there into anything that is or may become a nuisance, or does anything whatsoever whereby any water therein shall be in any degree fouled or corrupted and whoever without permission of the Chief Officer steeps in any tank, stream, or ditch within or on the boundary of, the Municipal borough any animal, vegetable or mineral matter likely to render the water of such tank, stream or ditch offensive or a nuisance shall be punished with fine which may extend to fifty rupees.

Liability for wife's act.—A person cannot be convicted under this section on account of his wife's having washed some dirty clothes in a river, without finding (1) that the river in question was a stream, etc., belonging to the municipality; or (2) that the accused caused the clothes to be washed by his wife in such stream, and where it appeared that he had simply told his wife to wash the clothes without saying where they were to be washed (*Fateh Mahomed*, Cr. Rg. 59 of 1885).

Abatement of nuisance from wells, etc.

167. [s. 135] (1) If, in the opinion of the Chief Officer—

(*a*) any pool, ditch, quarry, hole, excavation, tank, well, pond, drain, water-course, or any collection of water, or

(*b*) any cistern or other receptacle for water whether within or outside a building, or

(*c*) any land on which water accumulates and which is situate within a distance of one hundred yards from any building used as a dwelling house, is or is likely to become a breeding place of mosquitoes or in any other respect a nuisance, the Chief Officer may, by notice in writing, require the owner thereof to fill up, cover over or drain off the same in such manner and with such materials as the Chief Officer shall prescribe, or to take such order

with the same for removing or abating the nusiance as the Chief Officer shall prescribe.

(2) (*a*) No new well, tank, pond, cistern or fountain shall be dug or constructed without the previous permission in writing of the Chief Officer.

(*b*) If any such work is begun or completed without such permission, the Chief Officer may either—

(*i*) by written notice require the owner or other person who has done such work to fill up or demolish such work in such manner as the Chief Officer shall prescribe ; or

(*ii*) grant written permission to retain such work ; but such permission shall not exempt such owner from proceedings for contravening the provisions of clause (*a*) of this sub-section.

Note —To support a conviction for non-compliance with a notice issued under this section, it must be shown that there was some pool, ditch, tank, hole, water-channel, receptacle or foul water, etc., of the kind mentioned in the section, the filling, cleansing, drawing or removal of which the municipality has directed by notice, or with regard to which, the municipality has directed by such measures to be taken, as it considers necessary to abate or remove the nuisance (*Anandrao Khanderao Raste*, 9 Bom. L. R. 247).

Using offensive manure, etc.

168. [s. 136] Whoever, except with the written permission of the Chief Officer, and in accordance with the conditions of such permission, stores or uses night-soil or other manure or substance emitting an offensive smell, shall be punished with fine which may extend to twenty-five rupees.

Tethering cattle, etc.

169. [s. 137] Whoever tethers cattle or other animals, or causes or suffers them to be tethered by any member of his family or house-hold, in any public street or place so as to obstruct or endanger the public traffic therein, or to cause a nuisance, or who causes or suffers such animals to stray about without a keeper shall be punished with fine which may extend to twenty-five rupees.

Feeding animals on filth.

170. [s. 137A] Whoever feeds any animal which is kept for dairy purposes or is intended for human food on excrementitious matter, stable-refuse, filth or other offensive matter, or permits such animal to feed or to be fed on such matter, shall be punished with fine which may extend to fifty rupees.

Consumption of smoke.

171. (1) [s. 138] It shall be lawful for the municipality to direct by public notice that every furnace employed, or to be employed, in any works or buildings used for the purpose of any trade or manufacture whatsoever within the limits of the municipal borough whether a steam engine be or be not used or employed therein, shall

in all cases be constructed, supplemented or altered so as to consume or burn, or reduce as far as may be practicable, the smoke arising from such furnace.

(2) If any person shall after such direction use, or permit to be used, any such furnance not so constructed, supplemented or altered, or shall so negligently use, or permit to be used, any such furnance that the smoke arising therefrom shall not be effectually consumed or burnt as far as may be practicable, such person being the owner or occupier of the said works or buildings or an agent or other person employed by such owner or occupier for managing the same, shall be punished with fine which may extend to fifty rupees and upon any subsequent conviction to five hundred rupees:

Provided that nothing in this section shall be held to apply to locomotive engines used for the purpose of traffic upon any railway or for the repair of roads.

(8) *Regulation of markets, sale of food, etc.*

Licensing markets and slaughter-houses.

172. (1) [New] It shall be lawful for the municipality to direct that no place other than a municipal market or slaughter-house, shall be used for any of the purposes specified in sub-clauses (*i*) and (*ii*) of clause (*b*) of sub-section (1) of section 61 except under and in accordance with the conditions of a license from the standing committee, which may at its descretion from time to time grant, suspend, withhold or withdraw such licenses either generally or in individual cases.

(2) Whoever uses or permits the use of any place contrary to such direction, or without the license required as aforesaid, or in contravention of any of the conditions or during the suspension or after the withdrawal of such license, shall be punished with fine which may extend to twenty-five rupees.

(3) Upon a conviction being obtained in respect of any place under sub-section (2) of this section, the magistrate shall, on the application of the standing committee but not otherwise, order such place to be closed, and thereupon appoint persons or take other steps to prevent such place being so used ; and every person who so uses or permits the use of a place after it has been so ordered to be closed, shall be punished with a fine which may extend to five rupees for each day during which he continues so to use, or permits such use of, the place after it has been so ordered to be closed.

(4) Nothing in this section or in sub-clause (*ii*) of clause (*b*) of sub-section (1) of section 61 shall apply to any liquor as defined in the Bombay Abkari Act, 1878.

"To direct."—The accused sold a small quantity of fish on the roadside on her way to the makert and was convicted under Bom. Act II of 1884, of using

for sale place other than that licensed by the municipality. *Held*, that as it did not appear that any direction was issued by the municipality to the effect that no place should be used as a market except the one licensed by them, the conviction was illegal (*Santu*, Cr. Rg. 24 of 1892).

Slaughter-house—The word "slaughter-house" means a place used for the purpose of beasts for the market (Proceedings of the Madras High Court, 6 M. H. C. R. 18 App). It includes premises used at the time not for actual slaughtering, but for incidental purposes conected therewith (*Hides v. Little John*, 60 J. P. 101). If cattle are only occasionally slaughtered at a place and not for sale, the place will not be a slaughter-house (*Elias v, Nightingale* 22 J. P. 131). See also *Nicklinson v. Newman*, 33 J. P. 644. A person who kills a goat in his own house for his own consumption cannot be said to use the place as a slaughter-house (*Queen-Empress v. Bhiwa*, Ratanlal's Un Rep. Cr. Cases 399). See, however, *Government Pleader v. Sheikh Sahib* (1 Weir 792) where the slaughtering of a sheep by a person in his own premises for the purpose of private consumption was *held* punishable.

Slaughter-houses are estatablished for the slaughter of animals for sale. There is no penalty for slaughtering an animal not intended for sale at a place other than the slaughter-house (L. B. B. (1893-1900) 383).

No person is liable to any penalty under s. 1, Act VII of 1865, except a person who, without a license, uses a place or building as a slaughter-house either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house, or a butcher resorting accidentally or occasionally to a slaughter-house for the purpose of killing, and killing an ox or sheep there, does not use the place as a slaughter-house within the meaning of the section (*The Municipal Commissioner of Calcutta v. Zamir Shaikh*, 16 W. R. Cr. 4).

Part of street used as market.—The accused, who were timber merchants, were authorized by the Municipality of Poona to use a strip of a street for the purpose of exposing logs of timber for sale. They were charged with the offence of causing obstruction in a public street under s. 61, cl. (*f*) of the Bombay District Police Act, 1890, and convicted by the Magistrate. The Sessions Judge, being of opinion that the conviction was illegal, referred the case to the High Court. *Held*, confirming the conviction, (1) that the municipality had no statutory authority to divert a portion of the public street for the purpose of exposing the timber for sale; (2) that, under s. 63 of this Act, public streets were vested in the municipality for the purpose of being maintained as public street; (3) that s 63 of this Act did not empower the municipality to discontinue or stop up a part of a street so as to provide a market; (4) that the municipality could not allow a permanent obstruction upon any public street vested in it; and (5) that ss. 172 and 173 did not empower the municipality to license the holding of a market in a public street (*Vishwanath Nana Karpe*, 28 Bom. L. R. 1033; 52 Bom. 403).

Opening, closing, and letting of markets and slaughter-houses.

173. (1) [s. 140] The municipality may from time to time open or close any public market or slaughter-house. It may also either take stallage or other rents or fees for the use by any person of any such market or slaughter-house, or from

time to time sell by public auction or otherwise the privilege of occupying any stall or space in or of otherwise using any such market or slaughter-house.

(2) Any person who, without the permission of or a license from the municipality, shall sell or expose for sale any article in the said markets or use the said slaughter-houses, shall be punished with fine which may extend to twenty-five rupees.

Sub-section (2).—A person who sold meat not in a public market but at his own house without permission or license from the municipality was convicted under s. 67 of Bom. Act. VI of 1873. *Held*, that as the accused sold the meat at his own house and not in a public market, the section did not apply (*Lakshman*, Cr. Rg. 57 of 1888).

Farming of market and slaughter house rents.

174. [New] It shall be lawful for the municipality to lease by public auction or private contract the collecting of any rent or fees which may be imposed under section 173:

Provided that the lessee shall give security for the due fulfilment of the conditions of the lease.

Slaughter-houses, etc., beyond municipal limits

175. [s. 141] It shall be lawful for a municipality with the sanction of the Commissioner or, if authorized by him, of the Collector to establish slaugher-houses or places for the disposal of carcasses of animals beyond the limits of the municipal borough, and all provisions of this Act and of by-laws in force thereunder relating to such slaughter-houses or places within the municipal borough, shall have full force in slaughter-houses or places established under this section, as if they were within the municipal borough.

Search for and inspection of unwholesome articles.

176. (1) [s. 142] The president, vice-president, chairman of the standing committee, Chief Officer or any councillor or officers authorized by the municipality in this behalf—

(*a*) may at all reasonable times enter into any place for the purpose of inspecting and may inspect any animals, carcasses, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter or other articles intended for human food or drink or for medicine, whether exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or of preparation for sale, or may enter into and inspect any place used as a slaughter-house, and may examine anything which may be therein; and

(*b*) in case any such animals, carcasses or other articles before mentioned appear to be diseased or unsound or unwholesome or unfit for human food or drink or medicine may seize the same.

Any article which is of a perishable nature may under the orders of the president, vice-president, chairman of the standing committee or Chief Officer if in his opinion it is diseased, unsound, unwholesome or unfit for human food, drink or medicine, forthwith be destroyed.

Every animal and every article which is not of a perishable nature, if seized as aforesaid, shall be taken before a Magistrate.

If it appear to the Magistrate upon sufficient evidence that any such animal or article is diseased or unsound or unwholesome or unfit for human food, drink or medicine, the owner or person in whose possession it was found, not being merely bailee or carrier thereof, shall, if in such case the provisions of section 273 of the Indian Penal Code do not apply, be punished with fine which may extend to one hundred rupees, and the Magistrate shall cause such animal or article to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for human food or drink or medicine.

Adulterated articles for food or drink.

(2) In every municipal borough in which by virtue of a notification under sub-section (4) of section 1 of the Bombay Prevention of Adulteration Act, 1899, * the provisions of that Act are in force, and in respect of any food or drink to which the provisions of any section coming into force under sub-section (4) of section 1 of that Act are for the time being applicable in such borough by a notification, under sub-section (5) of section 1 of that Act, the following provisions shall be in force, namely :—

If any article to which this sub-section is applicable as aforesaid is intended for food or drink, the president, vice-president, chairman of the standing committee, Chief Officer or any councillor or officers authorized by the municipality in this behalf in case such article appears not to be what it is represented to be, may seize the same, and if it appears to a Magistrate upon sufficient evidence that such article is not what it is represented to be, such Magistrate may order the same to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for food or drink ; and the owner thereof or the person in whose possession the same was found, not being merely carrier or bailee thereof, shall, if in such case the provisions of section 273 of the Indian Penal Code do not apply, be punished with fine which may extend to one hundred rupees.

Explanation.—If such article having been exposed or stored in or brought to any place for sale as ghee contains any substance not exclusively derived from milk, it shall be deemed to be for the purposes of this sub-section, an article which is not what it is represented to be.

* See now Bom. Act V. of 1925.

Protection to persons acting in good faith.

Where any article to which this sub-section is applicable, appears to the Magistrate not to be what it is represented to be, solely by reason of the fact that there has beeen added to it some substance not injurious to health, no offence shall be deemed to have been committed by the owner of the article or the person in whose possession the same is found, if such owner or person proves to the satisfaction of the Magistrate—

(*a*) that such substance has been added to the article because the same is required for the production or preparation thereof, as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the article or conceal the inferior quality thereof, or

(*b*) that in the process of production, preparation or conveyance of such article, the extraneous substance has unavoidably become intermixed therewith, or

(*c*) that, by a label distinctly and legibly written or printed on or with the said article or by other means of public description, he has given sufficient notice that such substance has been so added, or

(*d*) that—

(*i*) the said article was purchased by him with a written warranty that it was of a certain nature, substance and quality,

(*ii*) he had no reason to believe that it was not of such nature, substance and quality as aforesaid, and

(*iii*) it was not exposed, hawked about, or brought for sale by him otherwise than as an article of the nature, substance and quality specified in the written warranty, and was in the same state in which he purchased it:

Provided that this sub-section shall not apply to any borough to which the Bombay Prevention of Adulteration Act of 1925 has been extended.

Application for summons to be refused if not applied for within reasonable time.

(3) In all prosecutions under this section the Magistrate shall refuse to issue a summons for the attendance of any person accused of an offence against its provisions unless the summons is applied for within a reasonable time from the alleged date of the offence of which such person is accused.

"Intended for human food", &c. *Articles not intended for human food.*—To justify an order under s. 505 of the Calcutta Municipal Act, the article must come within section 502 and should be either exposed or hawked about for sale and intended for human food. So rice brought for being sold as food for pigs

cannot be destroyed, as it was not attempted to be sold for the poorer classes (*Chandra Coomor Biswas v. Calcutta Corporation*, 30 Cal. 421).

Prosecution by the Secretary having no authority under this Section.—Where the Secretary of a Municipality, who was not authorised for that purpose under cl. (2) of this section, prosecuted certain persons for selling as ghi an article which was not *ghi*, and it was objected that the prosecution was illegal, on the ground that the Secretary had no authority to institute the prosecution, it was *held* that the objection raised is not an averment of irregularity to which the explanation to s. 507, Criminal Procedure Code, applies, but one of injurisdiction, and that, as the Municipal Secretary was acting unauthorizedly, the Magistrate had no jurisdiction to convict the applicants (*Tikam valad Kundunmal*, 3 S. L. R. 13).

Magistrate not authorized to delegate his power to Health Officer.—Under s. 142 of the Bombay District Municipal Act (corresponding to this section) it is for the Magistrate to decide whether certain gram in dispute should be destroyed or should be disposed of in a manner so as to prevent its being used for human consumption and he cannot delegate his function under this section to the Health Officer (*Harchandmal Dayaldas v. Emperor*, 25 S. L. R. 87).

Section 273 of the Penal Code.—Selling, or exposing foo sale, any food or drink, knowing the same to be noxious, is punishable under s. 273 of the Penal Code with a rigorous imprisonment for 6 months and fine of Rs. 1,000.

Adulterated articles.—*Sale of mustard oil adulterated with til oil.*—Where, on a prosecution by the Food-Inspector, the accused was convicted under s. 495 of the Calcutta Municipal Act (Ben. Act III of 1899), for having sold mustard oil adulterated with til oil, *Held*, that the accused was rightly convicted, inasmuch as it was not necessary for the purpose of manufacturing mustard oil to use any hard seed (such as til oil) to assist in expressing the oil, as what was commercially known as mustard oil was the pure oil and not oil adulterated with til or other oil, as such adulteration was to the prejudice of the purchaser (*Motilal Pal v. The Corporation of Calcutta*, 30 Cal. 643).

Sale of adulterated food by servant—Liability of master.—Sec. 495 of the Calcutta Municipal Act, like the corresponding section of the English Statute, is positive in its prohibition of the sale of adulterated articles, and when a servant sells such articles, it is the master, firm or the beneficial owner who is liable to punishment, and this would be so even when the servant adulterates the articles himself, and sells without the knowledge or connivance of the master, firm or owner. (17 Cox C. C. 509 (2 B. D.); 61 (M. C.) 110 (1892) followed (*Sew Karan v. Corporation of Calcutta*, 39 Cal. 682).

Persons acting in good faith.—Where a person is accused of selling adulterated articles of food on the evidence of a Chemical Analyst, and alleges in defence that it is a mixture recognized in the market, he ought to be allowed to prove his allegation. So when an oil seller was prosecuted by a food inspector for selling mustard oil mixed with other kinds of oil, and he succeeded in proving that what is known as mustard oil in the market was ordinarily prepared in the same manner as the specimen analyzed, the case was held to be protected under the 1st proviso to s. 364 of the Calcutta Municipal Consolidation Act (Ben. Act I of 1888) (*Baishtab Charandas v. Upendra Nath Mitra*, 3 C. W. N. 66).

Power of inspection of weights and measures, etc.

177. [a]The President, vice-president, Chief Officer or any councillor authorised by the municipality in this behalf may at all reasonable times enter into any place, [b](other than a place prescribed by rules made under the Bombay Weights and Measures Act, 1932)[b] where weights or measures or weighing or measuring instruments are used or kept for purposes of trade and inspect such weights or measures or weighing or measuring instruments.[a]

(9) *Regulation of dairies and cattle sheds.*

Licensing of dairies.

178. [New] (1) No person shall, for the purposes of trade, use or permit to be used any place for stabling milch cattle or for storing or selling milk or for making, storing or selling butter except under and in accordance with the terms of a license from the standing committee.

(2) The standing committee may grant such license subject to such conditions as it may deem fit and may at any time withdraw such license on giving one month's notice to the licensee :

Provided that where the licensee has contravened any of the conditions of the license, the license may be withdrawn without any such notice.

(3) Whoever so uses or permits to be used any place for any of the aforesaid purposes without, or in contravention of any of the conditions of, or after the withdrawal of, or during the suspension of, such license, shall be punished with fine which may extend to fifty rupees and in the case of a continuing offence with additional fine which may extend to ten rupees for each day during which such offence is continued after the date of the conviction for the first such offence.

(4) Upon a conviction being obtained in respect of any place under sub-section (3) the Magistrate shall, on the application of the municipality but not otherwise, order such place to be closed, and thereupon, appoint persons or take other steps to prevent such place being so used.

(10) *Prevention of dangerous diseases.*

Powers to prevent disease which may at any time be conferred.

179. [s. 144] (1) The Government may at any time confer by notification on any municipality designated therein, all or any of the powers specified in sub-section (2), and such municipality shall, subject to all such limitations, restric-

[a—a] This section was substituted for the original section by Bom. XV of 1932, Sch. II, Part I.

[b—b] These words were inserted by the Bom. Amending Act, IX of 1935.

tions and conditions, if any, as the Government in the same or in any subsequent notification may prescribe in such behalf, exercise within the municipal borough every power so conferred on it, for such period as may be specified in this behalf, in any such notification, or if no period is so specified, then, until the power is withdrawn.

(2) The powers, all or any of which may be conferred under the preceding sub-section, are:—

(*a*) power by orders, which may be either of special or general application, to direct that every medical practitioner, who knows or may have reason to believe that any person whom he has visited in his professional capacity in any dwelling not being a hospital, or that every manager of any factory or educational institution, or every head of a household, who knows or has reason to believe that any person who resides in any dwelling under his management or control, is suffering from any illness which may reasonably be supposed to be a dangerous disease, shall give information of the same with the least practicable delay to such person as may be designated by the municipality in that behalf;

(*b*) power to direct or authorize the inspection, without notice, or with such notice as to the person directed or authorised to inspect appears reasonable of any place in which any dangerous disease is reported or suspected to exist and the taking of measures to prevent the spread of the disease beyond such place;

(*c*) power to prohibit the removal of water for the purpose of drinking from any well, tank or other place which may appear to the municipality, on the advice of a medical officer, likely to endanger or cause the spread of any dangerous disease;

(*d*) power to direct or cause the removal, on a certificate signed by any duly qualified medical practitioner authorised by the municipality in this behalf, of any person who is without proper lodging or accommodation, or who is lodged in a room or set of apartments occupied by more than one family, or in a place where his presence may be a danger to the neighbourhood, and who is suffering from a dangerous disease, to any hospital or place at which persons suffering from the said disease are received for medical treatment; and to prohibit the person so removed from leaving such hospital or place without the permission of the municipality;

(*e*) power to require by written notice the owner or occupier of any building or part of a building, or a person owning or in charge of any article therein, to cleanse or disinfect such building or part thereof or article, either at his own expense, or in case of poverty, or for other cause which the municipality in the circumstances of the case considers reasonable, at the expense of the municipality;

(*f*) power to provide the means and to prescribe places, for disinfecting or washing, bedding or other articles which have been exposed to infection from any dangerous disease, and to direct the destruction thereof;

(*g*) power—

(*i*) to provide and maintan suitable conveyance for the free carriage of persons suffering from any dangerous disease, and

(*ii*) when such provision is made, to prohibit the conveyance of such person in all or any public conveyances, and

(*iii*) to direct that any conveyances that may at any time be used for conveying any such persons shall be immediately disinfected;

(*h*) power to prohibit—

(*i*) any person suffering from any dangerous disease from wilfully exposing himself, without proper precautions against spreading the said disease, in any street or in any school or factory, or in any inn, dharmashala, theatre, market or other place of public resort, or

(*ii*) any person in charge of any person so suffering from so exposing such sufferers;

(*i*) power to prohibit any person from removing to another place, or transferring to another person, except for the purpose of disinfection, any article which the person prohibited knows or has reason to believe has been exposed to infection of any kind whatsoever from any dangerous disease;

(*j*) power to prohibit the letting of or the providing of accommodation in any hotel, inn, dharmshala or serai, in which a person has, or in which there is reason to believe that a person has been suffering from a dangerous disease, unless and until the person desiring so to let or provide accommodation shall have had the building, or part thereof, and any article therein likely to retain infection, disinfected to the satisfaction of the municipality, or of such officer as the municipality may appoint in this behalf;

(*k*) power, with the previous permission in each case of a Magistrate exercising not less than second class powers, to destroy any insanitary huts or sheds in which there is reason to believe that persons have been suffering from a dangerous disease.

(3) The municipality may, in its discretion, give compensation to any person who sustains substantial loss by the destruction of any property under this section, but, except as allowed by the municipality, no claim for compensation shall lie for any loss or damage caused by any exercise of the powers specified therein.

(4) Any person who in a municipal borough disobeys any order which is for the time being in force therein, and which has been passed by the municipality in exercise of any power confer-

red on such municipality under this section, or obstructs any officer of the municipality or other person acting under the authority of the municipality in carrying out executively any such order, shall be punished with fine which may extend to fifty rupees.

Dangerous diseases.—'Dangerous disease' is defined in India as including cholera, plague, small-pox, diptheria, enteric fever and typhoid fever and any other epidemic, endemic or infectious disease which the Local Government may declare by notification to be a dangerous disease. Local authorities are bound to construct and maintain hospitals with all proper appurtenances for the treatment of infectious diseases within their local limits, and are also bound to contribute towards the maintenance of any public hospital where patients suffering from infectious diseases are received for treatment. Local authorities must exercise their statutory powers to provide hospitals so as not to cause a nuisance (*Metropolitan Asy'um District v. Hill*, 6 App. Cas. 193). A municipal corporation providing a hospital must carry it on with reasonable skill and care and must make provision that patients therein shall have competent medical advice and assistance (*Evans v. Liverpool Corporation*, 1 K. B. 160). All sick inhabitants must be received into the hospital, whether paupers are not (*R. v. Rawtenstall Corporation*, 10 T. L. R. 643). If any patient should die in the hospital, the hospital authority is also liable for his decent burial or cremation (*R. v. Stewart*, 12 Ad. & El. 773). See also *Aiyangar's Municipal Corporations in British India*, pp. 672-673).

With reference to dangerous diseases, if any medical practitioner attending on or called in to visit a patient becomes aware that the patient is suffering from an infectious disease in any private or public dweling-house not being a hospital within the city, he must give information of the same to the officers of the municipal corporation with the least practicable delay. They must give notice within a reasonable time (*Thomas v. Nokes*, L. R. 6 Eq. 521). Where more than one medical practitioner attend on a patient, the obligation to send information seems imposed on each one of them (*Halsbury*, Vol. 23, p. 448). Municipal authorities are empowered at any time by day or night without notice, or after giving such notice as may appear to them reasonable, to inspect any place in which any dangerous disease is reported or suspected to exist and may take such measures as may be deemed necessary. They must themselves take active steps and special measures for the health of the town such as sulphur fumigation, daily flushing of sewers, insistance on good house sanitation, isolation of infected districts, etc., and should not content themselves by imposing limitations on the private rights of the citizens in their relations of daily life. Where, for instance, a municipality being threatened with an outbreak of cholera, issued an order, in the form of a proclamation, prohibiting the holding of caste-feasts when over thirty persons were to assemble, it was *held* that the municipality could not place an interdict on people meeting together to eat and drink in their own houses and that the Court ought not to strain an Act in favour of an interference with private rights which is not justified by the primary sense of the language used (*Queen-Empress v. Harilal*, 14 Bom. 180). The local authorities are also bound to provide and maintain suitable conveyances for the free carriage of persons suffering from any dangerous disease (*Aiyangar's Municipal Corporations in British India*, pp. 673-674).

Duties of municipality on threatened or actual outbreak of dangerous disease.

180. (1) [s. 145] In the event of the municipal borough or any part thereof being at any time threatened or visited with an outbreak of any dangerous disease, the municipality shall take all such measures as the *Commissioner may deem necessary for the purpose of preventing, meeting, mitigating or supressing such outbreak.

(2) In such event as aforesaid the *Commissioner may by special notification declaring that such municipal borough is threatened or visited with an outbreak of a dangerous disease, confer on the municipality all or any of the additional powers specified in the following sub-section, and such municipality shall, subject to such limitations, restrictions and conditions, if any, as the *Commissioner in the same or in any subsequent notification may prescribe, exercise every such power so conferred on it until the same is withdrawn by means of a like notification.

(3) The powers, all or any of which may be conferred under the preceding sub-section, are—

(*a*) power to order, subject to the conditions—

(*i*) that the permission of a Magistrate exercising not less than second class powers shall be in each case first obtained, and

(*ii*) that accommodation for all persons to whom the order refers is available, or shall be provided, elsewhere,

the evacuation of an infected building used as a dwelling or of any part thereof, or of any building so used adjacent to such building, by the person or persons residing, whether habitually or temporarily, therein;

(*b*) power to direct the examination by a medical officer of persons and if necessary, the disinfection of the clothing, bedding, or other articles suspected of being infected, belonging to persons either arriving from places outside the municipal borough, or residing in any building adjacent to any infected building, and to direct that any such person shall give his address and present himself daily for medical examination at such times and places as may be prescribed, for a period not exceeding ten days;

(*c*) power to prohibit either generally, or by special order in any individual case, assemblages consisting of any number of persons exceeding fifty, in any place whether public or private, or in any circumstances, or for any purpose, if in the opinion, recorded in writing, of the Civil Surgeon of the district or other medical officer appointed by the Government in this behalf, such assemblages in such place or in such circumstances or for such purpose, would be likely to become a means of spreading the disease or of rendering it more virulent.

* The word "Commissioner" was substituted for the word "Government" by B. 10, XIX of 1935.

(4) The municipality may in its discretion give compensation to any person who sustains substantial loss by the destruction of any property under this section; but except as allowed by the municipality, no claim for compensation shall lie for any loss or damage caused by any exercise of the powers specified therein.

(5) If in any municipal borough in which a notification under sub-section (2) is for the time being in force, any person—

(*a*) knowingly disobeys any order which for the time being is in force in such borough and which has been passed by the municipality in exercise of any power conferred on it under section 179 or under this section, or

(*b*) obstructs any officer of the municipality or other person acting under the authority of the municipality in carrying out executively any such order,

such person shall be punished with fine which may extend to one thousand rupees.

Withdrawal and modification of powers and orders.

181. [s. 146] *[1] The Government, in the case of any power conferred under section 179, and the Commissioner, in the case of any power conferred under section 180, may at any time—

(*a*) withdraw any such power; [1]

(*b*) cancel or modify any limitation, restriction or condition prescribed in respect of any such power; or

(*c*) cancel any order passed by a municipality in exercise of any such power.

(2) Every order passed by a municipality in exercise of any such power as aforesaid shall, on the withdrawal of such power, cease to be in force in the municipal borough.

Duties of municipality in respect of diseases among cattle, sheep or goats.

182. [s. 147] If in any municipal borough any infectious disease amongst cattle, sheep or goats breaks out or if the introduction of any such disease appears to be likely, the municipality shall take all such measures as it may deem necessary for the purpose of preventing, meeting, mitigating or suppressing the disease or the outbreak or introduction thereof.

Proceedings to abate the overcrowding of the interiors of buildings.

183. (1) [s. 148] Whenever the standing committee considers the interior of a building is so overcrowded as to be or to be likely to become dangerous or prejudicial to the health of the inhabitants of that or of any neighbouring building, the standing committee may cause proceedings to be taken before a Magistrate of the first class for the purpose of obtaining an order to prevent such overcrowding.

*[1-1] These words were substituted by Bom. XIX of 1935.

(2) Such Magistrate may, on the production of a certificate by a medical officer stating his opinion that the overcrowding complained of is likely to cause disease or risk of disease, and after such further inquiry, if any, as may appear to such Magistrate necessary, require the owner of the building within a reasonable time, not being more than six weeks or less than ten days, to abate the number of lodgers, tenants or other inmates of the said building to such extent as he shall deem necessary to prescribe; or may pass such other order as he shall deem just and proper.

(3) If the owner of the said building shall have sublet the same, the landlord of the lodgers, tenants or other actual inmates of the same shall for the purposes of this section be deemed to be the owner of the building.

(4) It shall be incumbent on any owner, to whom a requisition is issued under sub-section (2), forthwith to give to so many of the lodgers, tenants or other actual inmates of the said building as may be necessary to fulfil the conditions prescribed in such requisition, written notice to vacate the said building within the period specified in such requisition, and any such lodgers, tenants or inmates receiving such notice shall be bound to comply therewith.

(5) Any owner who after the date specified in any requisition issued under sub-section (2) permits the overcrowding of any building in contravention of such requisition, and any person who omits to vacate any such building in accordance with notice given to him under sub-section (4), shall be punished with fine which may extend to ten rupees for each day subsequent to the date specified in such requisition during which such overcrowding, or such omission to vacate, continues.

Special powers which may be conferred by the Government in respect of overcrowded area.

184. [E. 149] (1) If the Government is of opinion that risk of disease has arisen or is likely to arise either to any occupier in, or to any inhabitant in the neighbourhood of, any area by reason of any of the following defects, namely—

(*a*) the manner in which either buildings or blocks of buildings, already existing or projected therein, are, or are likely to become, crowded together, or

(*b*) the impracticability of cleansing any such buildings or blocks of buildings, already existing or projected, or

(*c*) the want of drainage or scavenging, or the difficulty of arranging therein for the drainage or scavenging of any such buildings or blocks or area as aforesaid, or

(*d*) the narrowness, closeness, bad arrangement or bad condition of the streets or buildings or groups of buildings,

it may by notification confer on the municipality to which such area is subject, all or any of the powers specified in sub-section (2) and may, if it deems necessary, at any time make rules prescribing any limitations, restrictions, modifications, conditions or regulations, subject to which the municipality shall exercise within that area all powers so conferred, unless and until those powers are withdrawn by a subsequent notification of the Government.

(2) The powers all or any of which may be conferred on a municipality under sub-section (1) are as follows:—

(*a*) power when any building or block already existing or in course of erection, by reason of any defect specified in sub-section (1), has given or is in the opinion of the municipality likely to give rise to such risk as aforesaid, to require by a written notice, to be fixed upon some conspicuous part of such building or block and addressed, as the municipality deems fit, either to the owners thereof or to the owners of the land on which such building or block is erected or is in course of erection that the persons so addressed shall, within such reasonable time as shall be specified in the notice, either pull down or remove such building or block, or execute such works or take such action in connection therewith as the municipality deems necessary to prevent all such risk of disease;

(*b*) power by municipal or other agency to pull down or remove such building or block, or to execute such works or take such action as aforesaid, if the persons addressed in the said notice neglect so to do within the time specified therein;

(*c*) power, subject to a right of appeal to the Commissioner whose decision shall be conclusive, to prohibit, by written notice addressed to the owners and occupiers of any site or space hereinafter described and by general notice published in the manner provided in sub-section (3) of section 192, the erection of any building or of any building exceeding such dimensions as may be specified in such notice:—

(*i*) on the site of any building which has, in whole or in part, under the provisions of this section, been pulled down, or

(*ii*) on any space not occupied by buildings, whether such space is private property or not and whether it is enclosed or not, if the municipality considers that in order to prevent such risk as aforesaid, such site or space should not be built upon in whole or in part; and either to acquire such site or space or to prescribe such conditions as may be deemed necessary as to the use which the owner or occupier may make or permit to be made thereof:

Provided that in every case compensation, the amount of which shall in case of dispute be ascertained and determined in

the manner provided in section 198, shall be paid to any person whose rights are affected by such prohibition.

(3) When, in pursuance of any notice under sub-section (2), any building has been pulled down, the municipality shall, unless such building has been erected contrary to any provision of this Act or of any by-law in force thereunder, pay to such owner or occupier as may have sustained damage thereby, reasonable compensation, the amount of which shall in case of dispute be ascertained or determined in the manner provided in section 198.

(4) The Government may prescribe by rule a fine not exceeding five hundred rupees, for every breach, and a further fine not exceeding twenty rupees a day for every continuing breach, of any order made or conditions imposed by the municipality in exercise of any powers conferred upon it under this section.

Non-compliance with written notice.—A party failing to comply with a notice issued by a municipality, under s. 187 (1) of the Madras District Municipal Act, 1884 (corresponding to this section), requiring the removal of a building, renders himself to the penalty prescribed in s. 187 (2). The penalty prescribed under the general provisions of s. 264-A is not applicable to such a case (*Esoof Sait Sahib*, 17 M. L. J. 560).

Closing of places for disposal of the dead.

185. (1) [s. 150] Where the municipality is of opinion that any place used for the disposal of the dead is in such a state as to be, or to be likely to become, injurious to health, it may submit its opinion with the reasons therefor to the Commssioner and the Commissioner thereupon, after such further inquiry, if any, as he shall deem fit to cause to be made, may by notification direct that such place shall cease to be so used from such date as may be specified in that behalf in the said notification.

(2) A copy of the said notification together with a translation thereof in the vernacular of the district shall be published in the local newspapers, if any, and shall be posted up at the municipal office and in one or more conspicuous spots on or near the place to which the same relates.

(3) Any person who buries or otherwise disposes of any corpse in any such place, after the date specified in the said notification for closure of the same, shall be punished with fine which may extend to one hundred rupees.

Closing burning ground.—Section 79 of the Bengal Municipal Act (3 of 1864) does not authorize Municipal Commissioners to close a burning ground which has been used for very many years, merely because they think that the burning of dead bodies is offensive. It allows them to interfere only when it shall appear to them upon the evidence of competent persons that any burning ghat or ground is in such a state as to be dangerous to the health of persons living in

the neighbourhood thereof (*Brindaban Chunder Roy v. Municipal Commissioners of Serampore*, 19 W. R. 309).

Date of closing.—*Requisites of a Certificate.*—The municipal authorities issuing a certificate under the provisions of s. 381 of the Calcutta Municipal Act (Bengal Act II of 1888) of prohibiting the use of a burial ground, must definitely specify the point of time from which the period fixed by them under that section is to run (*Lutfur Rahman Nuskure v. Municipal Ward Inspector, Calcutta Municipal Corporation*, 25 Cal. 492).

(11) *Nuisances from certain trades and occupations.*

Regulation of certain trades.

186. (1) [s. 151] If it be shown to the satisfaction of the standing committee that any building or place used or intended by any person to be used—

(*a*) for boiling or storing offal, blood, bones or rags,

(*b*) for salting, curing, or storing fish,

(*c*) for storing hides, horns or skins,

(*d*) for tanning,

(*e*) for the manufacture of leather or leather goods,

(*f*) for dyeing,

(*g*) for melting tallow or sulphur,

(*h*) for washing or drying wool or hair,

(*i*) as a brick, pottery or lime kiln,

(*j*) for soap-making,

(*k*) for oil-boiling or oil-extracting,

(*l*) as a manufactory of sago,

(*m*) as a distillery,

(*n*) for storing hay, straw, fodder, wood, coal or other combustible material,

(*o*) as a manufactory of snuff,

(*q*) for the manufacture or sale of sweetmeats,

(*g*) as a fctory, workshop or place of business in which animals are employed or intended to be employed for doing work, or in which steam, water or any mechanical power is used or intended to be used,

(*r*) as a manufactory or place of business of any other kind, from which offensive or unwholesome smells arise, or which may involve risk of fire,

[1] (*s*) as a hair dressing saloon, or a barber's shop or a hamamkhana, [1]

is or is likely to become by reason of such use and of its situation a nuisance to the neighbourhood or is so situated as to be

[1-1] Clause (*s*) was inserted by Bom. XIX of 1935.

likely to be dangerous to life, health or property, the standing committee may by written notice require the owner or occupier—

(*i*) at once to discontinue the use of, or at once to desist from carrying out or allowing to be carried out the intention so to use, such building or place, or

(*ii*) to use it in such manner or after such structural alterations as the standing committee in such notice prescribes, so that it may not become, or may be no longer, a nuisance or dangerous.

Explanation 1.—For the purpose sf clauses (*q*) and (*r*) nuisance shall include any contamination of the atmosphere whereby a deposit of soot is caused or any mechanical noise.

Explanation 2.—Nothing in clauses (*q*) and (*r*) shall be deemed to affect any provision of the Indian Boilers Act, 1923, or shall authorize any order relating to the fixing or fencing of any engine, mill gearing, hoist or other machinery in any factory to which the provisions of the Indian Factories Act, 1911, * are applicable.

Liability to penalty after notice.

(2) Whoever after notice has been given under sub-section (1), uses any building or place or permits it to be used in such a manner as to be a nuisance to the neighbourhood or dangerous to life, health, or property, shall be punished with fine which may extend to two hundred rupees, and with further fine which may extend to forty rupees for every day on which such use or permission of use is continued after the date of the first conviction.

(3) Upon a conviction being obtained under this section the Magistrate shall, on the application of the standing committee but not otherwise, order such place to be closed and thereupon appoint persons or take other steps to prevent such place being used for any purpose mentioned in sub-section (1).

Penalty for unlicensed places in district in which by-laws under section 61 (1) (*b*) (*iii*) are in force.

(4) Whoever uses without a license or during the suspension or after the withdrawal of a license, any place for any purpose mentioned in sub-section (1) in any municipal borough in which by-laws are for the time being in force prescribing the conditions on or subject to which, the circumstances in which, and the areas or localities in respect of which, licenses for such use may be granted, refused, suspended or withdrawn, shall be punished with fine which may extend to fifty rupees and with further fine which may extend to ten rupees for every day on which such use is continued after the date of first conviction.

Ingredients of offence.—For a conviction under this section it should be proved (1) that a notice has been given to accused under sub-sections (1) and (2), that he uses the place in question or permits it to be used in the manner specified.

* See now the Factories Act (XXV of 1934).

The mere fact that notice in due form was given regarding the user of the notice on a particular date cannot be conclusive evidence that there has been user of the place in such a manner as to be a nuisance after the date (*Luindaram v. Karachi Municipality*, 8 S. L. R. 238).

Storing hay, &c. or other combustible material.—*Storing wood for baking houses.*—Sec. 394 of the City of Bombay Municipal Act (Bom. Act 3 of 1888) aims at punishing people who, without a license or contrary to its terms, use premises in a way likely to endanger life, health or property, or to create what the Act defines as a nuisance. When a baker having a bake house in his dwelling stores so much firewood in excess of his domestic requirements as may lead to such danger or nuisance, he may be punished, as the intention of the law about licenses is to bring trades, factories and bake houses under the eye of the Commissioner in order that he may protect the public (*Municipal Commissioner of Bombay v. Proprietor of Prince Albert Victor Bakery*, Cr. Rg. 51 1895).

Manufactory from which offensive or unwholesome smells arise.—*Objection to smell arising from user.*—Cl. (*r*) of sub-section (1) of this section refers to a manufactory which is such that offensive or unwholesome smells arise from it as the natural result of working the factory in the ordinary way. The mere fact that an objectionable smell arises inside the factory by negligent user is not sufficient to bring a factory within this clause. There must be an offensive or unwholesome smell issuing from the premises so as to create a possibility of its causing a nuisance to the neighbour. A flour mill worked by a camel is not such a manufactory as is contemplated by cl. (*r*).

This section only authorizes a municipality to issue a notice, if it is satisfied that the smell which issues from the factory, in the orninary course of ordinarily careful user, is so offensive as to cause annoyance to the neighbourhood; if the annoyance is caused to the neighbourhood only when and because there is improper user, then the smell must be actually dangerous to life, health or property, before the municipality can prohibit the further use of the premises as such factory. A notice not authorized by, but issued by an officer of a municipality, is not subject to the consequence specified in sub-sections (2) and (3) of this section (*Pahlajrai Chapumal v. Karachi Municipality*, 5 S. L. R. 11).

Sub-section (1).—*Mere disobedience to issue of notice under the section, not an offence*—Mere disobedience or failure to comply with the terms of a notice given under sub-section (1) regarding the user of a place on a particular date cannot be conclusive evidence that there has been user of the place in such a manner as to be a nuisance after that date and is not punishable as an offence under sub-section (2). All the essential ingredients of the offence must be proved as in any other criminal trial and the magistrate must be satisfied that the accused has been guilty of causing nuisance after receipt of notice duly given under sub-section (2). Where a Magistrate, being of opinion that the duty of the Court was merely to inflict punishment for an offence of which the municipality have already found the accused guilty, refused to try the question whether or not he is guilty, *Held*, that the High Court had power to interfere in revision with an interlocutory order (*Luindram v. The Karachi Municipality*, 8 S. L. R. 238).

Nuisance-Lime Kiln.—A district municipality has powers under this section to require the owner of a lime kiln within the limits of the municipality to desist from carrying out or allowing to be carried out the intention to use it as

a lime kiln, if it is of opinion that it is or is likely to become a nuisance to the neighbourhood. The Civil Court will not interfere with the exercise of that power unless it can be shown that the municipality has exercised it in an improper manner. It only for the purpose of seeing whether the municipality has exercised its power in the proper way that the Court will consider the evidence to see what steps the municipality took before it issued notice. It is not for the Court to deal with the questions whether what is complained of by the municipality has been or is likely to be a nuisance, and to consider whether as a matter of fact that particular use of land within the municipal limits is a nuisance or is likely to become a nuisance to the neighbourhood (*Nurmahomed v. Surat Municipality*, 44 Bom. 788).

Continuing offence—*Order against future continuance of offence.*—*Held*, that under s. 74 (2) of the Municipal Act (Bom. VI of 1873) an order could not be made in respect of a possible future continuance of the offence for which the accused person had been punished under clause (1) of that section. In respect of any such offence, a fresh prosecution would be necessary (*Bawaji*, Cr. Rg. 55 of 1888).

Sub-section (3).—Penalty for unlicensed places.—*Liability to take out two separate licenses for lime business and storing lime.*—The purposes, for which the licenses under ss. 198 and 466 of the Calcutta Municipal Act (III of 1899) are necessary, are widely different, and there is no necessary connection between the two licenses. The taking out of the license under s. 198 of the Act is itself no excuse for not taking out another license under s. 466. The scheduled rules that apply to the one have no application to the other. Where a person carried on the business of lime-trader and used certain premises for storing lime, *Held*, he was bound to take out a trade license under s. 198 of the Act as well as a license under s, 466 for storing lime, and his omission to take out a license under the latter section is punishable under s. 466 (1) and s. 574 of the Act (*Bipin Behari Ghose v. Corporation of Calcutta*, 34 Cal. 913).

Separate licenses for two factories worked by the same engine.—The accused obtained the Municipal Commissioner's permission under s. 300 (1) of the City of Bombay Municipal Act, 1888, to establish a handloom factory worked by an oil engine, but by means of this oil engine he also established a flour mill without any permission. The accused was, therefore, charged with the offence under s. 300 (1) of the Act. *Held*, that the accused was guilty of technical offence under s. 300 (1) of the Act; for although the accused had leave to establish the handloom factory, he had no leave to establish the flour mill factory, which has not the less another and separate factory because it happened to be worked by the same power which it was proposed to employ in the permitted factory (*Mulji Damodardas*, 34 Bom. 344).

License no protection when trade is a nuisance.—A previous sanction by a local authority to the establisment of a trade does no entitle the proprietors to continue the business after it has become a public nuisance to the neighbourhood (*Municipal Commissioners of the Suburbs of Calcutta v. Mahomed Ali*, 16 W. R. Cr. 6). Working a country oil mill near a dwelling house may amount to a nuisance (*Sadashiv v. Rangappa*, 7 L. W. 505.)

Storing.—Keeping, without a license, wood for sale amounts to storing within the meaning of cl. (*n*) (*Emperor v. Nanubhai Haji Ahmed*, 28 Bom. L. R. 1070)!

Prohibition of use of steam-whistles, etc.

187. [s. 151] (1) No person shall use or employ in any factory or any other place any whistle or trumpet operated by steam or mechanical means for the purpose of summoning or dismissing workmen or persons employed except under and in accordance with the conditions of a license from the standing committee.

(2) The standing committee may grant such license subject to such conditions as it may deem fit and may at any time withdraw such license on giving one month's notice to the licensee:

Provided that where the licensee has contravened any of the conditions of the license, the license may be withdrawn without any such notice.

(3) Whoever uses or employs any such whistle or trumpet as aforesaid without or in contravention of any of the conditions of or after the withdrawal of such license, shall be punished with fine which may extend to fifty rupees.

Loitering or importuning for purposes of prostitution.

188. [s. 152] Whoever in any street or public place within the limits of a municipal borough loiters for the purposes of prostitution, or importunes any person to the commission of sexual immorality, shall be punished with fine which may extend to fifty rupees:

Provided that no Court shall take cognizance of an offence under this section except on the complaint of the person importuned, or of a Police officer not below the rank of an officer in charge of a police station and specially authorized in this behalf by the District Magistrate or by the municipality.

Brothels.

189. [s. 183] In any municipal borough—

(*a*) any part of which is within three miles of a cantonment, or

(*b*) to which on the application of the municipality the Government may by notification have declared this section to apply,

any Magistrate of the first class, on receiving information that a house within the limits of such borough is used as a brothel, may summon the owner or occupier of such house and on being satisfied that the house is so used, may order the owner or occupier to discontinue such use of it; and, if such owner or occupier shall fail to comply with such order within five days, may impose upon him a fine not exceeding twenty-five rupees for every day thereafter that the house shall be so used:

Provided that action under this section shall be taken only—

(*a*) with the sanction or by the order of the District Magistrate, or

(*b*) on the complaint of three or more inhabitants of the municipal borough residing in the vicinity of the house to which the complaint refers.

Brothel.—The term "brothel" means a house, room, or place which the occupier or person in charge thereof habitually allows to be used by any other person for the purpose of prostitution.

A place could not be held in law to be a brothel unless at least two women used the premises for the purpose of prostitution (*Caldwell v. Leech*, 77 J.P.254). Consequently, a woman who receives men at her house or lodgings or for the purpose of meeting her only, cannot be convicted of keeping a brothel (*Singleton v. Ellion*, 1 Q. B. 607).

Discretion of District Magistrate.—The discretion of the Magistrate for the time being in charge of a District, which he is entitled to exercise under s. 204 of the Punjab Municipal Act, 1891, is not necessarily fettered by the manner in which his predecessors have in the past exercised that discretion. A petition presented to the District Magistrate and acted upon by him is a complaint within the meaning of s. 204, though it may not be addressed to him (*Mussammat Mala*, 28 P. L. R. 1910).

(*12*) *Regulation of pilgrim's lodging houses.*

Pilgrims' lodging houses.

190. [New] (1) No person shall, in any municipal borough which the Government shall have declared by notification to be a pilgrim centre for the purposes of this section and of clause (*d*) of sub-section (1) of section 61, use or permit to be used any place or building for the purpose of lodging pilgrims except under and in accordance with the conditions of a license from the standing committee.

(2) The standing committee may grant such license subject to such conditions as it may deem fit and may at any time withdraw such license on giving one month's notice to the licensee:

Provided that where the licensee has contravened any of the conditions of the license, the license may be withdrawn without any further notice.

(3) Whoever lodges or permits to be lodged any pilgrim in any place or building without or in contravention of any of the conditions of or after the withdrawal of or during the suspension of such license, shall be punished with a fine not exceeding five rupees for each such pilgrim for each day or part of a day during which such pilgrim has been so lodged.

(*13*) *Powers in case of fire.*

Police and municipal officers to aid fire-brigade.

191. [New] It shall be the duty of all police officers and of all municipal officers and servants to aid a fire-brigade in the execution of its duties. Such officers and servants may close any street in or near which a fire is burning and

remove any persons who interfere by their presence with the operations of the fire-brigade.

(14) Service of notices, penalties on non-compliance therewith, and execution of works on default.

Service of notices, etc., addressed to individuals.

192. [s.154] (1) The service of every notice and the presentation of every bill under this Act on any person or to any person to whom it is by name addressed, shall, in all cases not otherwise specially provided for in this Act, be effected by a municipal officer or servant or other person authorized by the Chief Officer in this behalf—

(*a*) by giving or tendering the notice or bill to the person to whom it is addressed; or

(*b*) if such person is not found, by leaving the notice or bill at his last known place of abode, if within the municipal borough, or by giving or tendering the notice or bill to some adult male member or servant of his family; or

(*c*) if such person does not reside within the municipal borough, and his address elsewhere is known to the President or other person directing the issue of the notice or bill, then by forwarding the notice or bill by registered post under cover bearing the said address; or

(*d*) if none of the means aforesaid be available, then by causing the bill or notice to be affixed on some conspicuous part of the building or land, if any, to which the bill or notice relates.

Service of notices on owners or occupiers of buildings and lands.

(2) When any notice under this Act is required or permitted by or under this Act to be served upon an owner or occupier of any building or land, it shall not be necessary to name the owner or occuper therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either—

(*a*) by giving or tendering the notice to the owner or occupier or if there be more owners or occupiers than one, to any one of them; or

(*b*) if no such owner or occupier be found, then by giving or tendering the notice to some male adult member or servant of the family of any such owner or occupier as aforesaid; or

(*c*) if none of the means aforesaid be available, then by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

Public and general notices how to be published.

(3) Every notice which this Act requires or empowers a municipality or any municipal authority or officer to give or to serve either as a public notice or generally or by provisions which do not expressly require notice to be given to

individuals therein specified, shall be deemed to have been sufficiently given or served if a copy thereof is put up in such conspicuous part of the municipal office during such period and in such other public buildings and places, or is published in such local papers or in such other manner, as the municipality in bye-laws in this behalf prescribes.

Defective form not to invalidate notice.

(4) No notice or bill shall be invalid for defect of form.

Execution of acts required to be done by any notice.

(5) (*a*) Where any notice under this chapter requires any act to be done for which no time is fixed by this Act, the notice shall fix a reasonable time for doing the same.

(*b*) In the event of non-compliance with the terms of the notice it shall be lawful for the Chief Officer to take such action or such steps as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the municipality shall be paid by the person or persons upon whom the notice was served, and shall be recoverable in the manner provided in section 199.

Service of notices—The requirements of the law must be strictly followed to make the service effectual. The 'owner' or 'occupier' need not be named. If the address is on the outside, its omission in the body of the document is immaterial (*Limforth v. Butler*, 1 Q. B. 116). A notice affixed on the premises is good, although the name and residence of the owner may be known (*Woodford U. D. C. v. Henwood*, 64 J. P. 148). When a document is sent by post, it is deemed to have been served at the time the letter containing it would be delivered in the ordinary course of post and it is sufficient to prove that it was properly addressed and posted and that the postage was prepaid (*Walthamstow U. D. C. v. Henwood*, 1 Ch. 41). The law of service of notice does not require the report of service of notice to be attested by any unofficial person (*Bigaram v. Secretary, Municipal Committee Nagpur*, 49 I. C. 928).

Sub-section (4)—Under what circumstances a notice may be invalid—*Notice not signed by the President or Secretary.*—A notice issued from the office of a Municipal Committee which purported to be under s. 89 of the Punjab Municipal Act of 1884, but was not signed by the President or Secretary as prescribed by s. 162 of that Act, but by a member only, was *held* to be materially defective and invalid (*Shambhu Nath*, P. R. No. 8 of 1886, Cr.)

Notice issued by the President on his own individual authority—A person cannot be made liable to be convicted for a breach of the Municipal bye-law, on a notice issued by the President of the Municipal Committee on his own individual authority, and not by the Committee as required by law. There is no provision in the Municipal Act, or in the bye-laws framed under the Act, which would justify the Committee in delegating its powers, conferred upon them as Committee, to any person (*Lala Gobind Ram*, 32 P. R. 1831, Cr.)

Notice not lawfully issued.—Sec. 152 of the U. P. Municipalities Act, 1900, is no bar to the accused setting up the defence that the notice was not law-

fully issued by the Board, and the Magistrate inquiring into it was bound to call upon the prosecution to produce evidence to show that it was a notice lawfully issued by the Board or by the authority of any person to whom the powers exercisable by the Board as a whole had been lawfully delegated (*Hazari Lal*, 36 All. 227).

Punishment for disobedience of orders and notices not punishable under any other section.

193. [s. 155] Whoever disobeys or fails to comply with any lawful direction given by any written notice issued by or on behalf of a municipality under any power conferred by this chapter, or fails to comply with the conditions subject to which any permission was given to him by or on behalf of a municipality under any power so conferred, shall, if the disobedience or failure is not an offence punishable under any other section, be punished with fine which may extend to fifty rupees, and with further fine which may extend to five rupees for every day on which the said disobedience or failure continues after the date of the first conviction:

Provided that when the notice fixes a time within which a certain act is to be done, and no time is specified in this Act, it shall rest with the Magistrate to determine whether the time so fixed was reasonable time within the meaning of this Act.

Prosecution for disobedience of notice.—No one can be convicted of disobedience of a written notice of a Municipal Board for demolition of certain constructions, unless the Court is satisfied that what he had disobeyed is a notice lawfully issued by the Board under the powers conferred upon it by the U. P. Municipalities Act (I of 1900), s. 147 (*Piari Lal*, 36 All. 185).

Where the defence was that the notice served on a person was not a proper notice, it was the duty of the Magistrate to decide that point, and his having refused to do so, the conviction was reversed (*Hazari Lal v. King-Emperor*, 12 A. L. J. 312).

Where a person applies to the Board for permission to build, and on notice not being taken of that application, he sends a written reminder to the Board and after 15 days of that receipt by the Board of that reminder makes the construction complained of, *held*, that the Board should be taken to have sanctioned the construction and there can be no prosecution of the applicant (*Ram Nath v. Municipal Board of Muttra*, 12 A. L. J. 740).

Refusal to pay no offence—Where a municipal peon demanded certain fees from a person selling in the streets and due under the by-laws, and accused came up and advised the person not to pay, it was *held* that he was not guilty of "obstruction" within the meaning of the Act. It is not an offence to refuse to pay municipal dues. If non-payment were an offence then accused might be guilty of abetment, but not otherwise (*Baldeo Panday v. Emperor*, 19 A. L. J. 914).

Imposition of daily fine where no previous conviction.—Where there is no previous conviction under this section, a magistrate cannot impose a continuing daily fine (*Dharala Mangal Jama*, 28 Bom. L. R. 1040).

"After the date of the first conviction".—These words in this section show that there should have been a conviction for a previous breach and then subsequent conviction for continuing the breach after the date of the first convicviction. A court cannot ordinarily sentence a person to pay a fine for a prospective offence, but can only impose a daily fine for failure or disobedience which is proved to have continued for a certain period after the date of the first conviction, or after the date of such notice or requisition as may be required by the enactment (*Ibid*).

General penalty.

*"193A. Whoever does or omits to do an act in contravention of any provisions of this Act or the bye-laws made thereunder or the conditions of a license or permission granted by a municipality under the said provisions or bye-laws shall, if such act or omission is not an offence under the said provisions or bye-laws, be punished with fine which may extend to fifty rupees and with further fine which may extend to five rupees for every day on which such act or omission continues after the date of the first conviction."

Municipality in default of owner or occupier may execute works and recover expenses.

194. [s. 156] (1) Where under the provisions of this Act any work is required to be executed by the owner or occupier of any building or land and default is made in the execution of such work, the municipality, whether any penalty is or is not provided for such default, may cause such work to be executed; and the expenses thereby incurred shall, unless otherwise expressly provided in this Act, be paid to it by the person by whom such work ought to have been executed, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII either in one sum or by instalments as to the municipality may seem fit:

Provided that—

Agreement for construction of drainage and water connections.

(*a*) where any drainage scheme or water works scheme has been commenced by any municipality, it shall be lawful for the municipality, without prejudice to its powers under section 129 or any other provision of this Act, to make a special agreement with the owner of any building or land as to the manner in which the drainage or water-connection thereof shall be carried out, and the pecuniary or other assistance, if any, which the municipality shall render: and any payment agreed upon by the owner shall be recovered in accordance with the terms of such agreement or in default, in the manner described in sub-sections (2) and (3);

*This section was inserted by Bom. XIX of 1935, s. 14.

(*b*) where an order or requisition had been passed under sub-section (1) of section 115, sub-section (1) of section 117, sub-section (2) or (8) of section 123 or under section 127, 129, 134 or 135 or where permission has been given under section 131, or where an arrangement has been made under proviso (*a*) of this sub-section, the municipality may, without prejudice to any other powers under this Act, if it think fit, declare any expenses incurred by the municipality in the execution of such order or in the carrying out of such requisition, permission or arrangement to be improvement expenses. Improvement expenses shall be a charge upon the premises or land, and shall be levied in such instalments as the municipality may decide, including interest at the rate of seven and a half per cent. per annum, and shall be recoverable in the manner described in sub-sections (2) and (3).

Improvement expenses.

(2) If the defaulter be the owner of the building or land, the municipality may, by way of additional remedy, whether a suit or proceeding has been brought or taken against such owner or not, require, subject to the provisions of sub-section (3), the payment of all or any part of the expenses payable by the owner for the time being from the person who then, or any time thereafter, occupies the building or land under such owner; and in default of payment thereof by such occupier on demand, the same may be levied from such occupier, and every amount so leviable shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII; every such occupier shall be entitled to deduct from the rent payable by him to his landlord so much as has been so paid by or recovered from such occupier in respect of any such expenses.

Power to levy charges on occupier who may deduct the same from his rent.

(3) No occupier of any building or land shall be liable to pay more money in respect of any expenses charged by this Act on the owner thereof, than the amount of rent which is due from such occupier for the building or land in respect of which such expenses are payable, at the time of the demand made upon him or which at any time after such demand and notice not to pay rent to the landlord, has accrued and become payable by such occupier, unless he neglect or refuse, upon application made to him for that purpose by the municipality, truly to disclose the amount of his rent, and the name and the address of the person to whom such rent is payable; but the burden of proof that the sum demanded of any such occupier is greater than the rent which was due by him at the time of such demand, or which has since accrued, shall be upon such occupier:

Occupiers not to be liable for more than the amount of rent due.

Provided that nothing herein contained shall be taken to affect any special contract made between any such occupier and the owner respecting the payment of any such expenses as aforesaid.

Occupier in default of owner, may execute works and deduct expenses from his rent.

195. [s. 157] Where default is made by the owner of any building or land in the execution of any work required to be executed by him, the occupier of such building or land may, with the approval of the municipality, cause such work to be executed, and the expense thereof shall be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

Proceedings if any occupier opposes the execution of the Act.

196. [s. 158] If the occupier of any building or land prevent the owner thereof from carrying into effect in respect of such building or land, any of the provisions of this Act, after notice of his intention so to carry them into effect has been given by the owner to such occupier, any Magistrate upon proof thereof, and upon application of the owner, may make an order in writing requiring such occupier to permit the owner to execute all such works, with respect to such building or land, as may be necessary for carrying into effect the provisions of this Act, and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order; and if, after the expiration of eight days from the date of the order, such occupier continue to refuse to permit such owner to execute any such work, such occupier shall for every day during which he so continues to refuse be punished with fine which may extend to fifty rupees and every such owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

Owner's liability, if discharged, when property leased in actual occupation of lessee's tenant.—The petitioner was sentenced under s. 575, read with s. 408 of the Calcutta Municipal Act, for repeated failure to comply with a notice served upon him requiring him to make improvements upon certain property which he owned in Calcutta. The petitioner had, before the service of the notice, leased the property which was consequently in the possession of the lessee and his tenants. The petitioner had instituted a proceeding against the lessee under s. 622 of the Act and had obtained an order from the Chief Judge of the Small Cause Court requiring the lessee to give him reasonable facilities to carry out the improvements required of him, but his contractors had been obstructed by the tenants of the lessee. *Held*, the word "occupier" in s. 623 of the Act did not mean only the person in actual occupation; that the lessee was an occupier within the definition of the word in sub-sec. 30 of s. 3 of the Act; that the

case under s. 622 was consequently rightly brought against the lessee and that, so long as the lessee refused to provide reasonable facilities, the petitioner was discharged from liability under s. 622, sub-sec. (3) (*Benoli Lal Ghosh v. The Corporation of Calcutta*, 41 Cal. 164).

(15) *Miscellaneous.*

Entry for purposes of the Act.

197. [s. 159] It shall be lawful for the president, vice-president, Chief Officer or any officer authorised by the Chief Officer for such purpose, to enter, for any purpose of this Act, between sunrise and sunset, with such assistants as he may deem necessary, into and upon any building or land:

Provided that, except when herein otherwise provided, no building or land which may be occupied at the time shall be entered unless with the consent of the occupier thereof, without twenty-four hours' written notice thereof having been given to the said occupier:

Provided also that in the case of buildings used as human dwellings, due regard shall be paid to the social and religious customs of the occupiers.

Powers of entry and inspection—For inspecting, surveying or executing any work authorized by the Municipal Act or bye-law, rule or order made thereunder, powers are given to the officers of the local authority to enter into or on any building or land under this section. Where a notice is bad in law, entry on the land to give effect to the terms of the notice is trespass for which the corporation is liable in damages to the owner of the land (*Corporation of Calcutta v. Judu Lall Mullick*, 21 Cal. 528). A notice of entry has to be given before the officer of a corporation enters the premises of a private owner; the notice is a condition precedent to the right of the municipality to enter. Once the notice is given, the right arises; and the power of the municipality to enter carries with it by necessary implication an obligation on the part of occupant of the land to whom the notice is given, to give every reasonable facility to the municipality to enter and not to obstruct. There is nothing in this section which authorizes a municipality issuing notice under this section to give any direction to the person to whom the notice is given, to do anything that they may require. The notice has to be simply an intimation to an occupier of the land that the municipality enter for the purposes mentioned in this section at a specified hour on a specified day. If the occupant does anything to prevent the entrance he cannot be said to disobey the notice; but his act will amount to wrongful restraint or wilful obstruction punishable under the Penal Code (*Purshottam*, 6 Bom. L. R. 538).

Arbitration in cases of compensation, etc.

198. (1) [s. 160] If an agreement is not arrived at with respect to any compensation or damages which are by this Act directed to be paid, the amount and if necessary the apportionment of the same shall be ascertained and determined by a panchayat of five persons, of whom two shall be appointed by the municipality, two by the party to or from whom

such compensation or damages may be payable or recoverable, and one, who shall be sir-panch, shall be selected by the members already appointed as above.

(2) If either party or both parties fail to appoint members, or if the members fail to select a sir-panch within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, such members as may be necessary to constitute the panchayat shall be appointed, at the instance of either party, by the District Judge.

(3) In the event of the panchayat not giving a decision within one month from the date of the selection of the sir-panch or of the appointment by the District Court of such members as may be necessary to constitute the panchayat, the matter shall, on application by either party, be determined by the District Court which shall, in cases in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court :

Provided that—

(*a*) no application to the Collector for a reference shall be necessary, and

(*b*) the Court shall have full power to give and apportion the costs of all proceedings in any manner it thinks fit.

(4) In any case where the compensation is claimed in respect of land and the panchayat has given a decision, either party, if dissatisfied with the decision, may within a month of the date thereof apply to the District Court, and the matter shall be determined by the District Court in accordance with the provisions of sub-section (3).

(5) In any case where the compensation is claimed in respect of any land or building the municipality may, after the award has been made by the panchayat or the District Court, as the case may de, take possession of the land or building, after paying the amount of the compensation determined by the panchayat or the District Court to the party to whom such compensation may be payable. If such party refuses to accept such compensation, or if there is no person competent to alienate the land or building, or if there is any dispute as to the title to the compensation or as to the apportionment of it, the municipality shall deposit the amount of the compensation in the District Court.

Persons disqualified for appointment on Panchayat.—Certain land belonging to the applicant, a minor, was taken by the Municipality of Hubli under the Land Acquisition Act, 1870. The Mamlatdar of Hubli, who was an *ex-officio* member of the Municipal Committee, took part in the negotiations for the purchase of the land. He also gave evidence as to its value in the inquiry before the

Collector. As the price offered by the Collector was not accepted by the applicant, the matter was referred to the District Judge under s. 15 of the Act, for the purpose of determining the amount of compensation. On this reference the Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken to his acting as an assessor. The District Judge eventually upheld the Collector's award. On an application under s. 622 of the C. P. Code, 1882, *held*, that the award was bad. The Mamlatdar had, under the circumstances, a substantial interest in the matter, sufficient to disqualify him from acting as an assessor. *Kashinath v. The Collector of Poona* (8 Bom. 558) followed (*Swamirao v. The Collector of Dharwar*, 17 Bom. 299).

The Municipality of Poona wishing to take up the applicant's land, the Collector of Poona determined the amount of compensation, and rendered it to the applicant, who declined to accept it. The Collector, thereupon, referred the matter to the District Judge. Two assessors were appointed to aid him, one by the applicant and another by the Collector. The nominee of the Collector was the Mamlatdar of Poona, a rate-payer and an *ex-officio* member of the municipality who, whilst a member of the Managing Committee, had unsuccessfully negotiated with the applicant for the purchase of the ground. The District Judge made an award upholding the Collector's valuation. *Held*, that the award was bad, and must be set aside as the Collector's nominee had under the circumstances a real bias, and was not a qualified assessor within the meaning of s. 19 of the Land Acquisition Act, X of 1870 (*Kashinath v. The Collector of Poona*, 8 Bom. 553). See also *The Collector of Poona v. Ramshet*, P. J., 1876, p. 139.

This section restricts decision of Panchayats to the matters for which they are properly suited, namely disputes regarding damages and compensation.

Cl. (3)—Element to be considered in determining market value.—Where the Karachi Municipality acquired a portion of land at a time when the market value of land leaped up in Karachi in consequence of the announcement of the transfer of the capital to Delhi, though, since the Bank failures, a re-action began and prices again became normal. *Held*, that although the rise in value at the time of purchase was purely speculative, having no reference to the market value, such rise in value must be considered in estimating the then market value of the plot acquired. No compensaion for the severance of a portion of the plot can be allowed where the remaining portion has acquired a fancy value by the mere process of reducing the area and the street itself by such acquisition became greatly improved (*The Karachi Municipality v. Khatanmal Hirachand*, 8 S. L. R. 126).

Price can be fixed by the Court in cases of difference.—The Poona City Municipality having determined to acquire a portion of the plaintiff's house for the purpose of widening a street the plaintiff expressed his willingness to allow the municipality to acquire the same; but they could not agree as to the price. The question was referred to arbitration as required by this section, but the proceedings before the arbitrators were not successful. The plaintiff then applied to the District Judge under sub-section (3) of this section, requesting him to ascertain and determine the compensation payable. The District Judge made his award. The municipality appealed from the award, contending that they no longer required the plaintiff's premises and that there never was a completed con-

tract with the plaintiff. *Held*, (1) that there was a contract of sale at a fair valuation, where the Court not only can provide, but, under a special statute is compelled to provide, the means of ascertaining the price and of such a contract specific performance would be awardable ; (2) that, therefore, there was a contract between the parties from which the municipality could not recede. As a general rule where the agreement is that the price of the estate shall be fixed by arbitrators and they do not fix it, there is no contract, as the price is of essence of the contract of sale, and the Court cannot make a contract where there is none. But the applicability or otherwise of this doctrine depends upon whether the fixing of the price is of the essence of the contract of sale. Where there is a definite and a completed contract to give and take the estate upon terms to be settled thereafter and the valuation cannot be made *medo et forma*, the Court will substitute itself for the arbitrators (*The Poona City Municipality v. Ramchandra G. Karve*, 10 Bom. L. R. 617).

No appeal lies from the decision of a District Court under cl. (3) of this section (*Chunilal v. Ahmedabad Municipality*, 36 Bom. 47).

Order of District Court fixing amount, execution of.—An order made by the District Court under sub-section (3) can be executed as a decree. It is not necessary to make an application to the Court to pass a decree in accordance with the award (*Broach Municipality v. Gulam Rasul*, 25 Bom. L. R. 305).

Revisional jurisdiction of High Court—An application under the revisional jurisdiction of the High Court does not lie from the decision of a District Court, under clause (3) of this section (*The Municipality of Belgaum v. Rudrappa*, 40 Bom. 509).

Power to act.—Where a party is precluded from exercising power under s. 92 of the Act, this section is inapplicable (*Hemumal Harparmal v. Committee of Management, Hyderabad*, 14 S. L. R. 22).

Acquisition of land.—There is no section in this Act, which empowers a municipality to acquire any portion of land by agreement with its owner. They have no power whatever to call upon an owner to surrender to them a strip of land. If they required to obtain possession of any land, they must show that it was required for public purpose before they could spend municipal funds in the acquisition (*Valli Aba Kutchi v. The Nasik Municipality*, 28 Bom. L. R. 535).

Costs or expenses how determined and recovered.

199. [s.160A] If a dispute arises with respect to any costs or expenses which are by this Act directed to be paid, the amount, and if necessary the apportionment of the same shall, save where it is otherwise expressly provided in this Act, be ascertained and determined by the standing committee and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

Note.—If a dispute arises in regard to the costs or expenses fixed by the municipality, it will be open to the party who deems aggrieved to appeal to a Magistrate under s. 110, as in the case of other notices of demand.

CHAPTER X.

PROSECUTIONS, SUITS AND POWERS OF POLICE.

Municipality may prosecute.

200. [s. 161] (1) The standing committee and, subject to the provisions of sub-section (3), the Chief Officer may direct any prosecution for any public nuisance whatever and may order proceedings to be taken for the recovery of any penalties and for the punishment of any persons offending against the provisions of this Act or of any rule or by-law thereunder and may order the expenses of such prosecutions or other proceedings to be paid out of the municipal fund:

Provided that no prosecution for an offence under this Act or by-laws framed thereunder shall be instituted except within six months next after the commission of such offence.

Jurisdiction of Magistrate; recovery of compensation and expenses.

(2) Any prosecution under this Act or under any rule or bye-law thereunder may, save as therein otherwise provided, be instituted before any Magistrate; and every fine or penalty imposed under or by virtue of this Act or any rule or by-law thereunder, and any compensation, expenses, charges or damages for the recovery of which no special provision is otherwise made in this Act, may be recovered on application to any Magistrate, by the distress and sale of any moveable property within the limits of his jurisdiction belonging to the person from whom the money is claimable.

(3) The Chief Officer shall not, except with the previous approval of the standing committee, direct a prosecution or order proceedings to be taken for the punishment of any person offending against the provisions of the following sections or sub-sections, namely:—

section 55; sub-section (4) of section 118; section 171; and sub-section (4) of section 117; sub-section (4) of section 184.

Magistrate's order liable to revision by High Court.—The Magistrate referred in s. 161 (2) of the Bombay District Municipal Act of 1901 (section 200 of this Act) is an inferior Criminal Court, and his orders are liable to revision by the High Court (*In-re, Dinhai Jijibhoy Khambata*, 43 Bom. 864),

Prosecution launched without sanction of Municipality.—This section merely empowers the municipality to expend municipal funds on prosecutions for Municipal offences, but neither this section nor any other section directly or indirectly takes away the power of the members of the public, having knowledge of the commission of an offence, to set the law in motion by a complaint. Although it may be desirable that a municipality should not delegate to its secretary, a general power to prosecute people, a conviction based on such a prosecution is not thereby rendered illegal (*Imperator v. Hasomal vd. Shamdas*, 1 S. L. R. 88).

Private person may complain.—Sec. 82 of the Bom. Municipal Act, VI of 1873, corresponding to this section, does not prevent a private person from making a complaint to the Magistrate in such a case, for instance, as where an offensive liquid was allowed to flow from the premises of the accused in the street (*Bai Reva*, Cr. Rg. Nos. 354 and 536 of 1892).

Magistrate or police may prosecute.—Sec. 82 of the Bombay District Municipal Act (VI of 1873) corresponding to this section, deprives neither a Magistrate of the power conferred by s. 491, Cr. P. C., of taking cognizance of an offence created by the Act upon complaint or upon a police report, or upon information, etc., nor a police officer of the power conferred by s. 28 of the Police Act (Bom. Act VII of 1887) (*Mulchand*, Cr. Rg. 44 of 1887).

Public nuisance.—Indian Penal Code, s. 268, defines 'public nuisance' thus:—"A person is guilty of a public nuisance who does any act or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the Public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right." "A common nuisance is not excused on the ground that it causes some convenience or advantage."

A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village, may sue in a Civil Court for its removal instead of complaining before a Magistrate (*Jiva Ranchhod v. Jhoda Ghella*, 1 Bom. H. C. R. 1).

Nuisance.—The following notes, summarized from Russel on Crimes, Chap. XXVIII, will be found useful:—

"Nuisance, or annoyance signifies anything that works hurt, inconvenience, or damage. Nuisances are of two kinds: public or common nuisances, which affect the public, and are an annoyance to all persons; and private nuisances, which may be defined as anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. Private nuisances can only be remedied by civil proceedings; but public, or common nuisances, as they annoy the whole community in general, and not merely some particular person, are properly punishable by indictment, and are not the subject of action; for it would be unreasonable to multiply suits by giving every man a separate right for what damnifies him in common only with the rest of his fellow-subjects. Public nuisances may be considered as offences against the public order, and economical regimen of the state, being either the doing of a thing to the annoyance of all persons, or the neglecting to do a thing which the common good requires. But the annoyance or neglect must be of a real and substantial nature.

Offensive trades and manufactures carried on in such an inconvenient place that the business cannot be carried on without greatly incommoding the neighbourhood *e. g.*, a brew-house, glass-house, or swineyard, may be a public nuisance. It must be shown that the trade is such as to render the enjoyment of life and property uncomfortable. If there be smells offensive to the senses, that is enough as the neighbourhood has a right to fresh and pure air (See *Ann.* (Weir) 149).

It is not sufficient that the trade affects only a few inhabitants of a particular place; the annoyance, if any, is only a private nuisance.

That there are other nuisances will not be a defence, nor that the person charged has a license, if the trade is a nuisance to the neighbourhood, And no length of time can legalise a public nuisance to the neighbourhood,

Erecting gun-powder mills or keeping gun-powder magazines near a town, keeping large quantities of materials for making fire works near street, keeping disorderly houses, *e. g.*, disorderly inns, bawdy houses, gaming houses, and committing acts of indecency in public places have been held to be public nuisances.

A master is not criminally responsible for the wrongful acts of his servant, unless he can be shown to have expressly authorized it (*Suffer Ally Khan v. Golam Hyder Khan*, 6 W. R. Cr. 60), or that there was some act or illegal omission on his part (*Shamsundar*, 1 N. W. P. 310; *Chundi Charan Mukerjee*, 9 Cal. 849).

Bye-laws must be duly framed and sanctioned.—Where the accused was convicted under s. 84, Bom. Act VI of 1873, for non-payment of house-tax, and ordered to pay Rs. 10 for house-tax, and a fine of Rs. 2-8-0 and one anna as process fee, but it appeared that there was no rule on the subject framed by the municipality, *Held*, ordering the return of the penalty and the tax levied, that, as admittedly the municipality had not framed a rule for the sanction of Government as required by the Act, and as nothing has been submitted to Government, except some general proposal sent up by the Collector, the conviction was illegal (*Lakshman*, Cr. Rg. 21 of 1894.)

Limitation for starting prosecution.—Where a notice under s. 408 of the Calcutta Municipal Act (Bon. III of 1899) was served upon the petitioner, on the 3rd March, 1916, requiring him to make certain improvements in a *bustee* within three months, and on her non-compliance with the notice within the time, a reminder was sent by the Corporation on the 21st June, 1906, and then on 2nd July, 1906, a notice under s. 419 of the Act was sent by the petitioner to the Chairman, and on the expiry of six months from the date of the notice, prosecution was started against the petititioner on the 23rd January, 1907, with result that she was convicted under ss. 408 and 574 of the Act and sentenced to pay a fine of Rs. 25, *held*, that the conviction and sentence were bad in law and must be set aside,as the prosecution, having been started more than three months after the expiry of the notice under s. 408 of the Act, was barred by limitation ; that the notice under s. 419 having been served after the offence of the petitioner under ss. 408 and 574 had been committed, could not have the effect of enlarging the time by six months. A notice under s. 419 of the Act, in order to be effectual, must be served before the offence is committed (*Kumud Kumari Dasi v. Corporation of Calcutta*, 34 Cal. 909).

False complaint by a Municipal Servant.—The accused was charged, under the sanction of a District Municipality, and on a complaint made by a Municipal peon, with the offence of easing herself within the municipal limits in a prohibited place. The Magistrate, who tried the case, acquitted the accused and ordered the complainant to pay to the accused Re. 1 only as compensation. The District Magistrate on the authority of *Keshav Laxman* (1 Bom. 176) referred the case to the High Court for reversal of the order of compensation. *Held*, that the case differed from the one cited, as there the complaint was preferred by a Judge acing judicially. An executive body cannot authorize a servant to prefer a wrongful complaint and so screen the complainant from a legal penalty (*Bhima*, Cr. Rg. 41 of 1886).

Any Magistrate—'Magistrate' means any person exercising magistertial powers under the Code of Criminal Procedure (*See* Bom. General Clauses Act, 1904, s. 3 (28)).

The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily :—

(*b*) "offences against Municipal Acts, which are punishable only with fine or with imprisonment for a term not exceeding one month ;

(*c*) abetment of these offences ;

(*d*) an attempt to commit these offences when such attempt is an offence." *See Cri. Pro. Code, s. 261*).

Incompetency of Magistrate to try Municipal cases—Sec. 556 of the Criminal Procedure Code (Act V of 1898) provides that "No Judge or Magistrate shall, except with the permission of the court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed a place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an enquiry in connection with the case."

An appeal against a conviction under s. 217, cl. 5, of the Bengal Municipal Act (Ben. Act 3 of 1884) was preferred to the District Magistrate, who was also chairman of the Municipality. On an application to the High Court for a transfer to the Court of some other Magistrate, it was *held* that apart from the question whether there was a disqualification under s. 555 of the Criminal Procedure Code, 1882 (now s. 556) the case was one which, it was expedient, should be transferred to another Court. *Per Banerji*, J.—Sec. 555 of the Cr. P. C. renders a Magistrate incompetent to try a municipal case if he is the chairman of the Municipality. The words "try any case" in that section are comprehensive enough to include the hearing of an appeal (*Nistarini Debi v. Ghose*, 23 Cal. 44).

The mere fact that a Magistrate is the Vice-President of a District Municipality and Chairman of the Managing Committee does not disqualify him from trying a charge of an offence brought by the Municipality under Bom. Act VI of 1873 ; but if he has taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning it at a meeting of the Managing Committee or otherwise, he will be disqualified by reason of the existence of a personal interest, over and above what may be supposed to be felt by every Municipal Commissioner in the affairs of the Municipality (*Pherozsha Pestonji*, 18 Bom. 442).

Notwithstanding anything contained in s. 555 of the Cr. P. C., 1882 (now s. 556), a conviction for an offence against any municipal law or regulation, had before a Bench of Magistrates, which includes a salaried officer of the Municipality, is bad (*Nobin Krishna Mookerjee v. The Chairman of the Suburban Municipality* 10 Cal. 194).

Although s. 84 of the Bom. District Municipal Act (VI of 1873) enables a Magistrate who is a member of the Municipality to deal with a prosecution instituted by the municipality, that section is only permissive and does not directly authorize him to try a civil case in which the municipality is interested as plaintiff or defendant, and does not militate against the general principle that a Magistrate or Judge should not himself try a case when the circumstances show that he may have a bias in favour of either party (*Vinayak Chintaman Tikekar v. The Municipality of Barsi*, P. J. 1897. p. 107).

Municipality may not try.—The Managing Committee have no power to try and convict persons for alleged breaches of rules made in pursuance of the Act. The power to inflict fines for such offences is vested in the Magistrate (*Mauji Dayal and Kalidas Keval*, 5 Bom. H. C. R. Cr. 10).

Following the above ruling it was *held* in the case of *Yenku Bapuji* (8 Bom. H. C. R. Cr. 39) that Municipal Commissioners appointed under Act XXVI of 1850 have not, by that Act, conferred upon them, nor are they entitled to assume, judicial power with reference to breaches of Rules or By-laws made by them under that Act. The authority to try offenders against such rules or by-laws is vested in the Magistrate of the Country, and Subordinate as well as other Magistrates have jurisdiction to try such offender. Rules made under the above Act, which purport to give the Managing Committee of such Municipal Commissioners power to try offenders against such Rules, or to levy fines upon them, are *ultra vires* and illegal.

Jurisdiction of Magistrate as to taxes.—Proceedings before a Magistrate under s. 84 of Bom. Act 6 of 1873, are criminal prosecutions. Such prosecutions must be conducted according to the Rules applicable to summary trials prescribed in Chap. XXII of the Cr. P. Code. The Magistrate is bound, therefore, before sentencing a defaulter to pay a rate, to satisfy himself as to the extent of his legal liability (*Municipality of Ahmedabad v. Jumna Punja*, 17 Bom. 731).

In a prosecution under s. 84 of Bom. Act VI of 1873 for recovery of a tax, the Magistrate has jurisdiction to determine whether the amount claimed is correct and to inquire into all the conditions on which the rate of tax fixed is based. It is nowhere laid down that the statement of amount by the municipality should be accepted as final (*Nathu*, Cr. Rg. 35 of 1891).

By the rules framed under the Act, the municipality is empowered to levy house-tax on a certain scale according to the annual letting value of the house. The "letting value" is defined to mean the annual rent for which the house might be reasonably expected to let from year to year, if the tenants were liable for all repairs, and rule 3 provides that an estimate of the annual letting-value of each house shall be made by the Managing Committee and published not later than the 15th March in each year, and that applications for the reduction of the estimate by persons made liable may be presented to, and shall be disposed of by, the Managing Committee. *Held*, that the Magistrate should accept as conclusive the amount found by the Managing Committee to be the letting value of the house and to hold the legal liability of the accused to pay the tax based on this amount to be proved. He has no power to review the decision of the Managing Committee and reverse it on fresh evidence taken before himself (*The Municipality of Wai v. Krishnajee*, 23 Bom. 416). The above two decisions (17 Bom. 731 and Cr. Rg. 35 of 1891) were distinguished.

Sums due on a contract not recoverable under this section.—The sums that may be due under a contract to collect a tax due to a municipality do not come within any of the matters provided for by s. 84 of the Municipal Act, 1873 (*Jogu Santaram*, 22 Bom. 769). See also 26 Mad. 475, in which this case was followed.

"Application to such Magistrate".—This application is exempt from stamp duty (See Court Fees Act (VII of 1870), s. 19 cl. (18)).

"Any moveable property."—*Doors of house.*—The doors of a house are not attachable as moveable property under the Madras District Municipal Act (IV of 1884), s. 103 (*Ibrahim*, 13 Mad. 513). A Municipal Council under the Act has, under s. 10, a power to distrain after due notice, besides that given by s. 103, but the property distrained must be that of the defaulter, and the doors of a house cannot be removed in execution of a warrant of distress (*Purushottam v. Municipal Council of Bellari*, 14 Mad. 467).

The doors and window shutters of a pucca building cannot be separately attached in execution of a decree, forming as they do part of immoveable property and having no separate existence (*Peru Bepari v. Ronus Maifarash*, 11 Cal. 164).

Procedure.—Offences under this Act, "being offences against laws punishable with fine only," are bailable, and summons shall ordinarily issue in the first instance (*Vide* Cr. Procedure Code, 2nd Schedule).

Distress lawful though defective in form.

201. [s. 162] No distress levied or attachment made by virtue of this Act shall be deemed unlawful nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in any summons, conviction or warrant of distress or attachment or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

Distraint.—Distraint of moveable property to satisfy taxes is one of the most ancient methods of collection known to the law. The right of distress for rates and taxes is purely statutory; and the provisions of the statute must be strictly complied with. The omission to present bills and to serve notices of demand amounts, however, to a mere irregularity; and if any damages are recoverable at all, it would only be the special damages actually sustained (*Bepin Chandra Biswas v. The Corporation of Calcutta*, 31 Cal. 453). The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect the demand (*Gopee Kishan v. Ryland*, 9 W. R. 562). In an action for damages for wrongful distraint, the *onus* is on the plaintiff to prove his averments (*Gonsky v. Durill*, 2 K.B. 71). A rate-collector who in accordance with the terms of his warrant carries out in a legal manner a seizure in respect of a rate which is bad is liable to an action for damages. In such a case the local authority is also liable to an action for damages in respect of the act of the rate-Collector (*O'Neil v. Drohan and the Waterfords County Council*, 2 I. R. 495, C. A.). Defaulter is the person

on whom notice has been served (*Purushothama v. The Municipal Council of Bellary*, 14 Mad. 467), and the municipal corporation has power to distrain his property wherever found within the limits of the municipality, but the property distrained must be that of the defaulter (*Fanindra Nath Chatterjee v. Emperor*, 36 Cal. 67), and no previous notice of the distraining officer's intention to enter the house for the purpose of making the distrees is required. Unless expressly authorized by statute, the person distraining for rates has no right to break open a dwelling house (*Bell v. Oakly*, 2 M. & S. 259); and can only stay on the premises a reasonable time before he removes the goods (*Peppercorn v. Hofman*, 9 M. & W. 618). Only a person named in the warrant of distrees could execute it (*Baker v. Wicks*, 1 K. B. 743). No date need be fixed for the return of the warrant (*Government Advocate, Bihar and Orissa v. Ganga Prasad*, 1 Pat. 423). If a distrees is levied under several warrants, and one of the warrants is bad, the levy is not, therefore, illegal (*Governors of Bristol Poor v. Wait*, 1 A. & E. 264). If the goods of a person other than the person duly assessed and named in the warrant have been seized, the corporation may be liable for illegal distrees (L. & N. W. Ry. Co. v. Giles, 33 J. P. 776). It is only against the moveable property that a distress warrant could be executed. The doors of a house cannot be distrained as moveable property (*Queen-Empress v. Sheikh Ibrahim*, 13 Mad. 518). Property proved to belong to the defaulter which may be found within the municipal limits could be distrained (*Fanindra Nath v. Empress*, 36 Cal. 67). It seems that the persons distraining may take any article they choose to select (*Hatchins v. Chambers*, 1 Burr. 579). Money may be distrained as well as goods (*East India Co v. Skinner*, *Bott's P. L.* 249). Goods fraudulently sold will not be protected from distress (*Haine v. Day*, 4 A. & E. 892). The exact sum, and not more, should be distrained for (*Hurreli v. Wink*, 8 Taunt. 369). See also Aiyangar's Municipal Corporations in British India, 2nd Ed. pp. 381-83).

Damage to municipal property how made good.

202. [s. 163] If through any act, neglect or default, on account whereof any person shall have incurred any penalty imposed by or under this Act, any damage to the property of a municipality shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty, and the amount of damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is convicted; and on non-payment of such damage on demand the same shall be levied by distrees, and such Magistrate shall issue his warrant accordingly.

Alternative procedure by suit.

203. [s. 164] In lieu of any process of recovery allowed by or under this Act or in case of failure to realise by such process the whole or any part of any amount recoverable under the provisions of chapter VIII, or of any compensation, expenses, charges or damages payable under this Act, it shall be lawful for a municipality to sue in any Court of compentent jurisdiction the person liable to pay the same.

Applicability.—A municipality cannot sue in the Civil Court to recover the sum due by way of octori duty, which was left uncollected owing to mistake. Where a correct account is not kept under s. 99, the powers of recovery mentioned in Chapter VIII apply and this section has no application (*Poona City Municipality v. Paranjpe and Sons*, 35 Bom. L. R. 581).

Power to sue, compromise and pay compensation.

204. [s. 165] (1) A municipality may sue in any Court of competent jurisdiction any person who may have in any way caused or may appear likely to cause any injury to any property, rights or privileges of the municipality.

(2) A municipality may compound or compromise in respect of any suit instituted by or against it, or, in respect of any claim or demand arising out of any contract entered into by it under this Act, for such sum of money or other compensation as it shall deem sufficient:

Provided that, if any sanction in the making of any contract is required by this Act, the like previous sanction shall be obtained for compounding or compromising any claim or demand arising out of such contract.

(3) A municipality may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers vested in it, its committees, officers and servants under this Act.

(4) The Municipal fund shall be liable to pay the expenses of any civil proceeding prosecuted or defended on its behalf.

Assistance for the recovery of rent on land.

205. [s. 166] For the purpose of the recovery of any amount due on account of rent from any person to a municipality in respect of any land vested in or otherwise held by such municipality, the municipality shall be deemed to be a superior holder and every such person an inferior holder of such land, within the meaning of sections 86 and 87 of the Bombay Land Revenue Code, 1879; and the municipality as superior holder shall be entitled, for the recovery of every such amount, to all the assistance to which under the said sections a superior holder is entitled for the recovery of rent or land-revenue payable to him by an inferior holder.

Limitation of suits, etc.

206. [s. 167] No person shall commence any suit against any municipality or against any officer or servant of a municipality or any person acting under the orders of a municipality for anything done or purporting to have been done in pursuance of this Act, without giving to such municipality, officer, servant or person two months' previous notice in

writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of ;

and in the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.

Notitce of the intended suit necessary.—Section 167 of the Bombay District Municipal Act (which corresponds to this section) does not require that the notice should be one month's notice (under this section two months' notice) commencing on the date of the act complained of, but one month's notice (under this section two months' notice) in writing of the intended suit (*Naraindas Tulsidas v. Karachi Municipality*, A. I. R. 1933 Sind 258).

Generally notice is necessary only in respect of suits where damage or compensation is claimed for some wrongful act done by the corporation and its officers or servants in the exercise of or honestly supposed exercise of their powers under this Act. Notice is necessary in a suit for damages for wrongful dismissal of a servant (*Municipality of Ratnagiri v. Vasudeo*, 30 Bom. 600), for damages for malicious prosecution (*Jugal Kishore v. Jugal Kishore*, 33 All. 540), for damages for issuing a warrant wrongfully (*Sasankasekhar v. Sudhangsu Mohan*, 48 Cal. 45). Notice has been *held* to be necessary for a suit to recover back money paid on an assessment (*Ranchhod v. Municipality of Dakor*, 8 Bom. 421), or as charges for the repair of a road (*Midland Ry. Co. v. Local Board of Withington*), or for refund of octroi duty levied (*Makhanlal v. Municipal Board, Agra*, 42 All. 207).

A suit for injuction against a borough municipality can be brought only after a notice of suit to the municipality under this section (*Municipal Borough of Dhulia v. Mahomed Isak Abdul Karim*, 37 Bom. L. R. 1027).

A breach of contract is not to be regarded as a thing done under this Act (Cr. Rev. Case 179 of 1923), and a suit could be brought to recover the balance due under a contract without any notice (*Ranchhordas Moorarji v. Municipal Commissianer for the City of Bombay* 25 Bom. 387). For a simple action for the price of land taken by a municipality no notice is necessary (*Maneklal Motilal v. Municipal Commissioner for the City of Bombay*, 19 Bom. 407). A notice is necessary only when the suit is for an act already done under the powers conferred by statute. But when the suit is not for an act already done, but to prevent an act from being irremediably, irrevocably done, no notice is necessary (*Trustees for the Improvement of Calcutta v. Chandra Kanta*, 44 Cal. 219). Where, for instance, a municipality threatened to demolish a building alleged to have been erected in breach of the Building Regulations, a suit to obtain a declaration that the building had been erected in accordance with, and not in contravention of, orders, issued by the municipality and further, to obtain an injunction restraining the municipality from pulling it down, lies without any previous notice to the municipality (*Municipality of Parola v. Lakshmandas*, 25 Bom. 142).

If the notice sets out with reasonable particularity what is required to be set out, it is sufficient (*Dhondiba Krishnaji v. The Municipal Commissioner of the City of Bombay*, 17 Bom. 307). The notice might be contained in two letters (*Eates v. Municipal Commissioners of Madras*, 14 Mad. 286). The notice is not invalid, if

it is proceeded only from some of the plaintiffs (*Secretary of State v. Perumal Pillai*, 24 Mad. 279). The notice should not only state all the particulars required by law, but should also positively state that an action will be brought (*Devalji Rau v. President, Municipal Commission, Madras*, 18 Mad. 503). A notice objecting to, and asking for a reconsideration of, the order complained of is not sufficient (*Abhoynath v. Chairman of the Krishnaghar Municipality*, 7 W. R. 92).

A suit by the Secretary of State against the municipality for damages for injury caused to a police sowar's horse which puts its foot into a manhole belonging to the municipality which had been left open in breach of a statutory duty cannot be instituted without giving notice as contemplated by 167 of the District Municipal Act (corresponding to this section) and the suit must be brought within six months from the date of the injury caused to the horse (*Secretary of State v. Municipality of Karachi*, A. I. R. 1931 Sind 55).

The municipality entered into a contract for the purchase of dustbins. The defendants who constituted the Managing Committee (whose duty it was, under rule 68 framed under section 46 of the Bombay District Municipal Act (corresponding to s. 58 of this Act), to see that all works in their department were duly executed in accordance with the sanctioned plans and estimates before issuing completion certificates) issued the completion certificates without satisfying themselves that the dustbins were of the contract quality. In a suit by the municipality against the defendants for the recovery of monies paid out in consequence, it was *held* that the suit was not one for misapplication of funds of the municipality, but for damages for negligence, that it fell within the purview of section 167 of the District Municipal Act (corresponding to this section), and as the notice required under that section had not been given, the suit failed (*Govind Dhondshet a. Chiplun Municipality*, 56 Bom. 448).

Where a suit was filed by a rate-payer for a declaration and injunction in respect of certain resolutions passed by the Municipal Council, it was *held* that the suit was not maintainable in the absence of notice under this section (*Daily Gazette Press Ld. v. Karachi Municiality*, 26 S. L. R. 78).

When a notice sent to a municipality in compliance with the statute did not specify the amount claimed as compensation or damages and upon the municipality stating to the sender of the notice that the same was defective, the sender asked the municipality to inform him of the nature of the defect, but the municipality took no notice of his request, the suit should not the dismissed for want of proper notice (*Municipal Council, Kurnool v. Subbanna Chetty*, 13 M L J. 426).

Notice when not necessary—Suits for injunction are specially excepted by statute (*Patel Panachand v. Ahmedabad Municipality*, 22 Bom. 230; *Harilal Ranchhodlal v. Himat Manekchand*, 22 Brm. 636). So also a suit for declaration of right to erect a market in one's land and for perpetual injunction restraining the municipality from interference (*Mahamahopadhyaya Rangachariar v. Municipality of Kumbakonam*, 29 Mad. 539).

A mortgagee (defendant No. 1) refused to give up part of the mortgaged land when the mortgage was paid off in 1881. He remained in possession, and in 1888 he sold this land to the municipality of Mahad (defendant No. 2). The mortgagor subsequently sued the municipality and his vendor to recover possession. The municipality contended that the suit was barred by limitation under s. 48 of the

Municipal Act, 1884. *Held*, that the suit was not barred by s. 48. That section did not apply to actions of ejectment brought against a municipality. Such an action brought to try the title to land is not an action for anything doner or purporting to be done in pursuance of the Act (*Kashinath Keshav Joshi v. Gangabai*, 22 Bom. 283).

The plaintiff was the Inamdar of the village of Dakor. He filed an ejectment suit against the municipality of Dakor, alleging that the municipality had illegally and wrongfully encroached upon a portion of the Gomti lake at Dakor by laying the foundations of a building which they intended to erect for the purpose of a *Drarmashala*. The municipality pleaded (*inter alia*) that the suit was bad for want of notice of action under s. 48 of the Municipal Act, 1884. *Held* (by a majority of Full Bench) that the provisions of section 48 do not apply to actions for the possession of land brought against a municipality. Per PARSONS J.—The provisions of s. 48 apply only to actions for the possession of land whereof the plaintiff has been dispossessed by the municipality acting or purporting to act under some section of the Municipal Act, which empowers them to take possession of, or trust any one from that land. Per RANADE J.—Section 48 does not generally apply to suits for the possession of land, except in those cases where the claim arises on account of some action or omission of the municipality when it acts in pursuance of its statutory powers, and encroaches upon private rights. *Nagusha v. Municipality of Sholapur*, 18 Bom. 19 overruled (*Manohar Ganesh Tambekar v. Dakor Municipality*, 22 Bom. 289).

Notice necessary for suit for damages but not for possession and injunction.—In a suit brought against a municipality to recover possession of a piece of land taken by it, for damages for pulling down a wall on the land, and for an injuction, *Held*, that as regards damages, the suit came under this section, but as regards possession and injunction notice of action was not necessary under this section (*Sidmallappa Nurandappa v. Gokak Municipality*, 22 Bom. 605).

Sec. 48 of the Municipal Act, 1884, does not apply to a suit for the specific performance of a contract or for damages for breach thereof (*Municipality of Faizpur v Manak Dulab Shet*, 22 Bom. 637).

Notice, when necessary.—A suit to recover damages from a district municipality for wrongful dismissal from service is a suit "for anything done or purporting to have been done in pursuance of this Act, and is barred under this section if instituted more than six months after the date of the dismissal (*The Municipality of Ratnagiri v. Wasudeo Balkrishna Lotlikar*, 39 Bom. 600).

An objection by the municipality that a suit against them is barred for want of proper notice is one which cannot be raised for the first time in revision (*Municipal Council, Kurnool v. Subbanna Chetty*, 13 Mad. L. J. 429), or on appeal (*Municipal Committee of Moradabad v. Chatri Singh*, 1 All. 269), but may be taken in the course of the argument though not taken in the written statement (*Bishambar Lal v. Chairman, Municipal Board, Chapra*, 5 I. C. 81).

The levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year (*Pitambardas v. Jambusar Town Municipality*, 17 Bom. 510).

This section governs a suit to recover the amount deducted by a District Municipality for the non-performance of a contract from the deposit made by the contractor for the due performance of his contract entered into with the Municipality (*Baban v. City Municipality, Poona*, 23 Bom. L. R. 881).

This section does not apply to an action brought on a contract (*Municipality of Tatta v. Asanmal Chandoomal*, 8 S. L. R. 299).

Procedure prescribed in s 210 *post* **not followed—Effect.**—There is nothing to prevent a suit being filed under this section even though the assessee may not have followed in its entirety the procedure for appealing to the magistrate laid down in s. 210 *post* (*Hari Govind v. The City Municipality of Belgaun*, 31 Bom. L. R. 1249).

Waiver of notice.—The right to get notice can be waived, and if waived, the plea of notice cannot be raised later (*Mukerjee v. Municipal Board, Benares*, 22 A. L. J. 26).

"For anything done or purporting to be done"—The expression "anything done or purporting to be done" in this section applies only where some thing has been done and not where there is mere apprehension that some thing will be done; therefore, a suit against a Municipality to restrain an apprehended injury is not bad merely because no notice as required by this section was given, as in such a case no notice is necessary (*Virji v. Karachi Municipality*, 14 S.L.R. 46).

Suits against Municipality—A suit against a municipality on a breach of contract or one based on the withdrawal of sanction under s. 96 of the Madras Act does not come under the category of "anything done or purporting to be done" (30 Mad. 317).

Limitation.—This section is subject to s. 15 (2) of the Indian Limitation Act and the plaintiff is entitled to exclude the period of one month of notice from the period of limitation for his suit (*Chhaganlal v. Municipality of Thana*, 56 Bom. 135).

Powers of Police-officers.

207. [s. 168] (1) Any Police-officer may arrest any person committing in his view any offence against any of the provisions of this Act or of any by-law thereunder, if the name and address of such person is unknown to him, and if he declines to give his name and address or if the Police-officer has reason to doubt the accuracy of such name and address if given; and such person may be detained at the station-house until his name and address has been correctly ascertained:

Provided that no person arrested shall be detained without the order of a Magistrate longer than shall be necessary for bringing him before a Magistrate, or than twenty-four hours at the utmost.

(2) It shall also be the duty of all Police officers to give immediate information to the municipality of the commission of any offence against the provisions of this Act or of any by-law thereunder and to assist all municipal officers and servants in the exercise of their lawful authority.

208. [New] Accounts of the receipts and expenditure of every municipality shall be kept in accordance with the Municipal Account Code subject to such modifidations as the Government may in each case direct.

Accounts to be kept.

CHAPTER XI.

MUNICIPAL ACCOUNTS.

209. [s. 169] (1) A municipality shall have prepared and laid before it, at its periodical general meetings, complete accounts of the receipts and expenditure of the muuicipality since the 1st day of April last preceding, and at a general meeeing which shall be held on such day between the 10th January and the 1st of March as may be fixed in this behalf by the rules of the municipality, a complete account of the actual and expected receipts and expenditure for the financial year ending on the 31st March next following, together with a budget estimate of the income and expenditure of the municipality for the financial year to commence on the 1st April next following.

Presenéation of accounts, Budget Estimates.

(2) The municipality shall thereupon decide upon the appropriation and the ways and means contained in the budget of the year to commence on the 1st April next following. The budget so sanctioned may be varied or altered from time to time, as circumstances may render desirable, at a special general meeting called for the purpose:

Provided that the standing committee or any other committee appointed under the Act may, within the budget so sanctioned, sanction re-appropriations not exceeding Rs. 500 from one sub-head to another or from one minor head to another minor head under the same major head and controlled by the same committee. A statement of such re-appropriations shall be submitted to the municipality at every quarterly general meeting.

(3) The municipality shall at the general meeting in April, or after audit of the past year's accounts, if such audit has not before that general meeeting taken place, pass the accounts of the past years.

Accounts.—The exercise of its powers and the performance of its duties by a local body necessitate the maintenance of proper accounts by the executive. These accounts not only enable the local body to regulate the administration but are helpful to the Local Government in the exercise of proper control over it. Municipal Corporations are accordingly required by a statute to keep correct and proper accounts of receipts and expenditure of the Municipai Fund.

Budget.—The 'Budget' is the name applied to an account of the ways and means by which the income and expenditure for a definite period are to be balanced. It is an instrument devised to give to the

direct representatives of the people control over administrative officers. Provision is made for the preparation and submission of supplemental budget and for altering the budget; and no payment of any sum (certain specified items being excepted) out of the municipal fund can be made or authorized, unless the said payment is covered by an allotment under a grant in the budget and a sufficient balance of such grant is still available (*Aiyangar's Municipal Corporations in British India*, p. 224).

"Special general meeting called for the purpose".—The plaintiffs, rate-payers of the Municipality of Surat, prayed that a certain resolution passed by the Surat Municipality on the 15th of March 1883, be declared illegal and void. The First Class Subordinate Judge of Surat dismissed the suit on the ground that the resolution of the 15th March 1883 was a valid one. The High Court on appeal remarked.—"Passing to the question as to the legality of the resolution of 15th March 1883, it is clear that its object was to sanction an expenditure not provided for by the current budget of the year, in other words, to 'vary or alter' the current budget appropriations which by section 88, Bombay Act VI of 1873, clause 2, is to be done at a "special general meeting" called for the purpose. It was argued that by section 12, the vice-president has the power, whenever he may think fit, of circulating propositions amongst the Commissioners instead of convening a general meeting. That section, however, following immediately upon section 11 clearly applies to the special general meeting as contemplated by section 11, and which the vice-president may call when he thinks fit, and cannot, we think, be intended to apply to a special general meeting which the Act expressly requires to be called for a particular purpose, as is the case by s. 88 when the budget is sought to be varied. It may be reasonably inferred that the legislature intended that as the budget for the general year is passed at a general meeting, it should not be departed from without the same opportunity being afforded of open and full discussion. We are of opinion, therefore, that the resolution of 15th March 1883 could not of itself have the effect of giving legal sanction to the expenditure mentioned in it." (*Ratanlal v. Surat City Municipality*, P. J. 1887, p. 137).

Audit of accounts.

210. [s. 170][a] (1) Independently of the audit provided for under the provisions of the Bombay Local Fund Audit Act, 1930, the municipal accounts may be audited at such intervals and by such agency as may be prescribed in the rules of the municipality.

(2) The auditor shall, for the purposes of his office, have access to all the accounts and other records of the municipality.

Audit.—Inspeparable from the maintenance of proper accounts is the necessity for their audit. Audit is the handmaid of administration. Its utility consists not only in helping the administration by bringing to light irregularities on the part of the executive in administering the finances of the institution, but also in securing completeness and accuracy of the accounts in the presentation in a simple

(a)—This sub-section was substituted for the original sub-section (1) by Bom. XXV of 1930, s. 16 (3).

form of the financial results of the administration. A properly conducted independent audit offers a great protection to the ratepayer.

The audit of the accounts of the local body consists mainly of a check of its revenue and expenditure and the examination of the records in regard to the assessment of taxes and other dues and their realization, attention being directed to the following broad principles, which govern the system of Government audit generally :—

(1) Whether the general financial position of the local body is sound and whether its assets are sufficient to meet its liabilities.

(2) Whether the assessment of taxes and other dues are proper and consistent with the provisions of the Act.

(3) Whether proper means are employed to watch the necessity or making supplemental assessments.

(4) Whether the taxes and other dues are collected promptly and whether such collections are remitted promptly to the local treasury or Presidency Bank with which Municipal Councils and Corporations are required to bank.

(5) Whether proper precautions are taken to prevent embezzlements, serious loss of revenue and wasteful expenditure.

(6) Whether there has been any special negligence in the observance of rules in carrying out any special orders of Government and in removing irregularities brought to notice by the auditors, and

(7) Whether the expenditure incurred is legitimate and is supported by proper vouchers ; and whether in cases in which separate capital and revenue accounts are kept, the allocation of receipts and payments between Revenue and Capital is proper and whether money raised by loans is spent on objects of permanent benefit to the locality.

The revenues of a Local Body may be divided into the following four main classes for purposes of check :—

(*a*) Revenue having a fixed demand, that is, taxes, fees, etc., the demand for which is fixed beforehand in accordance with the provisions of the Act and for which bills are issued, such as house-tax, private scavenging fees, warrant fees, taxes on vehicles, animals, etc.

(*b*) Revenues leased out.

(*c*) Revenues collected departmentally.

(*d*) Fluctuating items of revenue.

The audit of receipts chiefly comprises the following processes :—

(1) That the taxes and dues have been assessed properly and in conformity with the provisions of the Act.

(2) Check of collections.

(3) Verification and examination of the outstanding items of revenue.

(4) Verification and examination of remissions.

(5) Verification of the demand, collection and balance.

(6) Examination of the demand and collection of revenue managed departmentally, of revenues leased out and of fluctuating items of revenue, *i.e.*, for which no previous assessment can be made.

(7) Verification of the cash balance shown in the cash book with that acknowledged by the Treasury or Bank with which it banks.

In regard to expenditure, it is seen that every payment is supported by a voucher in proper form, that the expenditure incurred is necessary, is permissible under the Act, is not greater than the occasion demands, is not opposed to any orders of Government, special or general, and has been provided for either in the budget estimates of the year or by a subsequent allotment of funds, that the Municipal Councils have not exceeded their powers in sanctioning allotments and transfers, that payment has, as a fact, been made on a voucher in proper form and to the proper person and that it has been so acknowledged and recorded as to render a second claim against the municipality on the same account impossible; that the vouchers have been correctly prepared in accordance with the rules and have been duly passed for payment by the Chairman of the Municipality or other person duly authorized by the Corporation, Council or Committee in that behalf and that, in any case, they have been passed by the Council or Corporation at some stage before or after payment. A detailed check is also applied to the receipts and payments in respect of deposits, advances, provident funds, investments, loans, sinking funds, water and drainage tax fund and other miscellaneous special and stock accounts. Finally, a statement showing the annual receipts and charges is prepared and its correctness certified to (*Aiyangar's Municipal Corporations in British India, 2nd ed., pp. 224-228*).

Duties of an auditor.—The duty of an auditor in auditing the accounts of a corporation is not confined to ascertaining whether there are vouchers for each item of the accounts submitted to him, but extends to investigating whether the payments represented by the vouchers are authorized, or are without authority, or are otherwise illegal or improper. An auditor cannot at a later audit reopen the question of the legality of any payment passed at a previous audit. That the accounts have been audited is no bar to an action for a declaration that certain payments are illegal. The audit is not finally binding and conclusive on the corporation (*Ibid.*, p. 228).

Transmission of accounts to Government.

211. [s. 171] A municipality shall as soon as the accounts of the past year have been finally passed by it transmit to the Government or any officer duly authorized by it in this behalf, a copy thereof, or an account in such form as the Government may prescribe, and shall furnish such details and vouchers relating to the same as the Government or such officer may from time to time direct.

Transmission of accounts to Government.—The accounts should be sent with the Administration Report and should be submitted to the Accountant General not later than the 15th September in each year (*Vide* G. R. 4143 of 25th May 1914 G. D. quoted in *Cumming's Bom. District Municipal Manual*, p. 487).

Publication of accounts.

212. [s. 172] The quarterly and annual accounts, receipts and expenditure, and the budget when sanctioned, shall be open to public inspection, and shall be published in such manner as the municipality may prescribe in this behalf.

CHAPTER XII.

CONTROL.

Power of inspection and supervision.

213. (1) [s. 173] The Commissioner, Collector or any officer of Government authorized by the Government by a general or special order shall have power—

(*a*) to enter on and inspect, or cause to be entered on and inspected any immoveable property occupied by any municipality or any institution under its control or management or any work in progress under it or under its direction ;

(*b*) to call for or inspect any extract from any municipality's or any committee's proceedings and any book or document in the possession of or under the control of a municipality.

(2) The Collector shall have power—

(*a*) to call for any return, statement, account or report which he may think fit to require such municipality to furnish ;

(*b*) to require a municipality to take into its consideration any objection which appears to him to exist to the doing of anything which is about to be done or is being done by or on behalf of such municipality or any information which he is able to furnish and which appears to him to necessitate the doing of a certain thing by the municipality, and to make a written reply to him within a reasonable time, stating its reasons for not desisting from doing, or for not doing, such thing.

Collector's powers of suspending execution of orders, etc., of municipalities.

214. (1) [s. 174] If, in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature, suspend the execution or prohibit the doing thereof.

Collector's order to be reported to Commissioner, who may confirm or modify it.

(2) When the Collector makes any order under this section, he shall forthwith forward to the Commissioner and to the municipality affected thereby a copy of the order, with a statement of the reasons for making it ; and it shall be in the discretion of the Commissioner to rescind the order, or to direct that it continue in force with or without modification permanently or for such period as he thinks fit.

(3) The Commissioner shall forthwith submit to the Government a report of every case occurring under this section, and the Government may revise or modify any order made therein, and make in respect thereof any other order which the Commissioner could have made :

Every case under this section to be reported to Government for their final orders.

Provided that no order of the Collector or the Commissioner passed under this section shall be confirmed, revised or modified by Government without giving the municipality reasonable opportunity of showing cause against the said order.

Advice of Collector not an order under this section.—The plaintiff, who owned a house-site thirteen feet in width, applied to the defendant municipality for permission to build on the site. The municipality referred the matter to the Collector who advised, in view of previous orders passed on the subject, that the plaintiff should be asked to leave open a stripe of 5 feet on either side, and as he could not build on the remaining three feet of the site, he should be asked to keep the land open. The order was in due course communicated to the plaintiff. The plaintiff having sued for a declaration that the order was *ultra vires* and void, it was *held* that the advice given by the Collector was not an order under this section (*Ahmed Suleman Jiva v. Randir Town Municipality*, 27 Bom. L. R. 429).

Jurisdiction of Civil Courts.—A Municipal Board granted permission to B for building a temple. The District Magistrate acting under s. 183 of the Municipalities Act (Local) Act No. I of 1900 made an order cancelling the permission given by the Municipal Board and the Local Government confirmed this order of the District Magistrate. B brought a suit for a declaration that he had a right to build the temple. *Held*, that the suit was not maintainable ; *held* further, that the Civil Court had no power to disturb the order of the District Magistrate who acted within his jurisdiction and whose order had been confirmed by the Local Government (*Bulakidas v. The Secretary of State for India in Council*, 31 All. 371).

215. (1) [s. 175] In cases of emergency the Collector may provide for the execution of any work, or the doing of any act, which may be executed or done by or on behalf of a municipality and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public ; and may direct that the reasonable expense of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or do it, shall be forthwith paid by the municipality.

Extraordinary powers of Collector in case of emergency.

(2) If the expense and remuneration are not so paid, the Collector may make an order directing any person, who for the time being has custody of any moneys on behalf of the municipality, as its officer, treasurer, banker or otherwise, to pay such expense and remuneration from such moneys as he may have in his hands or

may from time to time receive, and such person shall be bound to obey such order.

(3) The provisions of sub-sections (2) and (3) of section 214 shall apply, so far far as may be, to any order made under this section.

Power of Commissioner to prevent extravagance in the employment of establishment.

216. [s. 176] If in the opinion of the Commissioner the number of persons who are employed by a municipality as officers or servants, or whom a municipality proposes to employ or the remuneration assigned by the municipality to those persons or to any particular person is excessive, the municipality shall, on the requirement of the Commissioner, reduce the number of the said persons or the remuneration of the said person or persons :

Provided that the municipality may appeal against any such requirement to the Government whose decision shall be conclusive.

Government inquiry into municipal matters.

217. (1) [New] The Government may order an inquiry to be held by any officer appointed by it in this behalf into any matters concerning the municipal administration of any municipal borough or any matters with respect to which its sanction, approval or consent is required under this Act.

(2) The officer holding such inquiry shall for the purposes thereof have the powers which are vested in a Court under the Code of Civil Procedure in respect of the following matters :—

(*a*) discovery and inspection,

(*b*) enforcing the attendance of witnesses, and requiring the deposit of their expenses,

(*c*) compelling the production of documents,

(*d*) examining witnesses on oath,

(*e*) granting adjournments,

(*f*) reception of evidence taken on affidavit, and

(*g*) issuing commissions for the examination of witneses;

and may summon and examine *suo motu* any person whose evidence appears to him to be material ; and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of such officer's jurisdiction shall be the limits of the Bombay Presidency.

(3) The reasonable expenses incurred by any person in attending to give evidence may be allowed by the officer holding the inquiry to such person and shall be deemed to be part of the costs,

(4) Costs shall be in the discretion of the Government and the Government shall have full power to determine by and to whom and to what extent such costs are to be paid, and to allow interest on costs at a rate not exceeding 6 per cent. per annum; and such costs and interest shall be leviable as an arrear of land revenue.

Power of Government to provide for performance of duties on default by municipality.

218. (1) [s. 178] When the Government is informed, on complaint made or otherwise, that default has been made in the performance of any duty imposed on a municipality by or under this Act or by or under any enactment for the time being in force, the Government, if satisfied after due inquiry that the alleged default has been made, may direct the Commissioner to fix a period for the performance of that duty.

(2) If that duty is not performed within the period so fixed, the Commissioner may appoint some person to perform it, and may direct that the expense of performing it, with a reasonable remuneration to the person appointed to perform it, shall be forthwith paid by the municipality.

[a] (3) If the expense and remuneration are not so paid, the Commissioner may make an order directing the bank in which any moneys of the municipality are deposited or the person in charge of the local Government Treasury or of any other place of security in which the moneys of the municipality are deposited to pay such expense and remuneration from such moneys as may be standing to the credit of the municipality in such bank or may be in the hands of such person or as may from time to time be received from or on behalf of the municipality by way of deposit by such bank or person; and such bank or person shall be bound to obey such other. Every payment made pursuant to such order shall be a sufficient discharge to such bank or person from all liability to the municipality in respect of any sum or sums so paid by it or him out of the moneys of the municipality so deposited with such bank or person.

Power of Government to dissolve or supersede municipality in case of incompetency, default or abuse of power.

219. (1) [s. 179] If, in the opinion of the Government, a municipality is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this Act, or otherwise by law, exceeds or abuses its powers, the Government may, after giving the municipality an opportunity to render an explanation, by an order published, with the reasons therefor, in the *Bombay Government Gazette*, declare the

[a] This sub-section was substituted for the original sub-section (3) by Bom. XXIII of 1931, s. 4 (ii).

municipality to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and may dissolve such municipality or supersede it for a period to be specified in the order.

Consequences of dissolution or supersession.

(2) When the municipality is so dissolved or superseded, the following consequences shall ensue:—

(*a*) all councillors of the municipality shall, in the case of supersesssion as from the date of the order of supersession and, in the case of dissolution as from the date specified in the order of dissolution vacate their offices as such councillors;

(*b*) all powers and duties of the municipality shall, during the period of dissolution or supersession, be exercised and performed by such person or persons as the Commissioner from time to time appoints in this behalf;

(*c*) all property vested in the municipality shall, during the period of dissolution or supersession, vest in His Majesty.

(*d*) The person or persons appointed under clause (*b*) may delegate his or their powers and duties to an individual or to a committee or sub-committee.

(*e*) When more than one person are appointed under clause (*b*) they may sue or be sued by any one of them who has been duly authorized to sue and be sued on behalf of the rest by a resolution duly passed by them in this behalf.

Re-establishment of municipality after dissolution.

(3) On the issue of an order of dissolution under sub-section (1) elections of councillors shall be held under the provisions of this Act or of the rules made thereunder on or before a date to be specified by the Government in the order, and the municipality shall be re-established by the election or appointment of councillors under the aforesaid provisions on such date as may be specified by the Government in the aforesaid order.

Power after inquiry to continue period of supersession.

(4) If, after inquiry made, the Government so directs the period of supersession with all the consequences aforesaid shall, from time to time, be continued by an order published as aforesaid until such date as may be fixed by the Government for the re-establishment of the mnnicipality.

(5) After the municipality is superseded it shall be re-established by the election or appointment of councillors under the provisions of this Act or the rules made thereunder applicable thereto,

(*a*) if no direction has been made under sub-section (4) on the expiration of the period specified in the order of supersession under sub-section (1) and

(*b*) if a direction has been made under sub-section (4) on such date as is fixed under that sub-section for the re-establishment of the municipality.

Supersession of a municipal body.—The "supersession" of a municipal Council under sec. 4 (1) (*b*) of Madras Act IV of 1884 is only a suspension of such body for a limited period and such supersession is different from and has not the effect of a dissolution under s. 4-B (1) (*a*). The "reconstitution" of such a Council under s. 4-B (3) (*b*) is the revival of the old corporation and not the creation of a fresh one, and all the rights and liabilities of the superseded Council will devolve on the Council so reconstituted as its rightful successor (*Mahamahopadhyaya Rangachariar v. Municipal Council of Kumbhakonam*, 29 Mad. 539).

Officer on supersession same right as Municipality to appeal—Where a municipality was superseded and the Assistant Collector was appointed under s. 43 of the Municipal Act, 1884, *Held*, that he had the same right to appeal from decrees against the municipality as it had before it was superseded. Where the Vice-President agaist whom there was no decree and who had no authority to represent the municipality appealed, *Held*, that the more regular course would have been for the Assistant Collector after being appointed as a substitute for the municipality either to have presented a separate appeal or to have applied to be made a party appellant. *Held*, also, that this defect of procedure was a mere irregularity under s. 578 of the Code of Civil Procedure (*Patwari v. Dhandhuka Town Municipality*, P. J. 1894, p. 444).

Powers of Government and of the Commissioners over Collectors, etc.

220. [New] In all matters connected with this Act, the Government, Commissioners and Collectors shall, respectively, have and exercise the same authority and control over Commissioners, Collectors and their subordinates as in matters of general and revenue administration.

All rules made by Government or Commissioner to be laid on the table of the Bombay Legislative Council.

221. [New] All rules made by the Government or the Commissioner under this Act shall be laid on the table of the Bombay Legislative Council for one month previous to the session thereof, and shall be liable to be rescinded or modified by a resolution of the said Council tabled as its next session.

SCHEDULE I [a]

(See section 4)

MUNICIPAL BOROUGHS.

Northern Division.

1. Ahmedabed.
2. Nadiad.
3. Broach.
4. Surat.
5. Thana.
6. [b]

Bombay Suburban.

7. Bandra.
[a] Kurla.

Central Division.

8. Ahmednagar.
9. Jalgaon.
10. Bhusaval.
11. Amalner.
12. Dhulia.
13. Nasik.
14. Poona City.
15. Poona Suburban.
16. Lonavla.
17. Satara City.
18. Sholapur.
19. Pandhapur.
Chalisgaon.[c]

Southern Division.

20. Belgaum.
21. Bijapur.
22. Dharwar.
23. Hubli.
24. Gadag-Bettigeri.
25. Ratnagiri.

Sind.

26. Hyderabad.
27. Sukkur.
28. Shikarpur.
29. Larkana.

SCHEDULE II.

(See clause (b) of section 75.)

Notice is hereby given to the inhabitants of the municipal borough of that the municipality desire to impose the tax, rate, toll, octroi or cess (*as the case may be*) defined in the rules appended (in lieu of the tax known as the which is published at page of the sanctioned rules[d]).

Any inhabitant of the municipal brough objecting to the proposed tax may, within one month from the date of this notice, send his objection in writing to the municipality.

RULES.

(The rules approved by the municipality under clause (a) of section 75 are to be appended here.)

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[a] Kurla Municipality was included in this Schedule by Government Notification in the General Department No. 5107, dated the 19th April 1929, published in the *Bombay Government Gazette*, 1929, Part I-A, p. 65.

[b] Godhra Municipal borough was repealed by Government Notification in the General Department No. 371, dated 29th September 1927.

[c] Chaliegaon was notified as a Municipal borough by Government Notification, General Department, No. 9029, dated 29th September 1932.

[d] To be inserted if the tax is to be substituted for any existing tax.

SCHEDULE III

(See Section 88)

FORM OF NOTICE OR TRANSFER TO BE GIVEN WHEN THE TRANSFER HAS BEEN EFFECTED BY INSTRUMENT

To

THE CHIEF OFFICER,

Municipality.

I, *A. B.*, hereby give notice as required by section 88 of the Bombay [1] "Municipal Boroughs" [1] Act, 1925, of the following transfer of property :—

Date of Notice.	Date of instrument.	Name of vendor or Assignor.	Name of Purchaser or Assignee.	Amount of consideration.	DECRIPTION OF THE PROPERTY						If any instrument has been registered, the date of registration	Remarks.
					Of what it consists.	Situation.	Number in Assessment Book.	Chief Officer's No.	Diamensions of land.	Boundaries.		

Dated

(Signed)

SCHEDULE IV.

(See Section 88)

FORM OF NOTICE OF TRANSFER TO BE GIVEN WHEN THE TRANSFER HAS TAKEN PLACE OTERWISE THAN BY INSTUMENT.

To

THE CHIEF OFFICER,

Municipality.

I, *A. B.*, hereby give notice as required by section 88 of the Bombay [1] "Municipal Boroughs" Act, 1925, of the following transfer of property :—

Date of Notice.	Name in which the property is at present entered in the Chief Officer's record	To whom it is to be transferred	DESCRIPTION OF THE PROPERTY.						Remarks
			Of what it consists.	Situation.	Number in Assessment Book.	Chief Officer's No.	Dimensions of land	Boundaries.	

Dated

(Signed)

[1-1] The words "Municipal Boroughs" were substituted for the original words "City Municipalities" by Bom. Act XXIV of 1936.

SCHEDULE V

(*See sub-section 3 of section 104*)

FORM OF NOTICE OF DEMAND.

To

A. B., residing at

Take notice that the municipality of

demand from the sum of

due from on account of

(*Here describe the property or other thing in respect of which the tax is leviable*

leviable under rule No. for the period

of commencing on the day of 19 ,

and ending on the day of 19 ,

and that if, within fifteen days from the service of this notice, the said sum is not paid into the municipal office at , and suffiient cause for non-payment is not shown to the satisfaction of the Chief Officer, a warrant of distress or attachment will be issued for the recovery of the same with costs.

Dated this day of 19 .

(Signed)

Chief Officer,

SCHEDULE VI

(*See sub-section (1) of section 105*)

FORM OF WARRANT.

(*Here insert the name of the officer charged with the execution of the warrant*)

Whereas A. B. of has not paid, and has not shown satisfactory cause for the non-payment, of, the sum of due for the tax* mentioned in the margin for the period commencing on the day of 19 , and ending with the day of 19 , and leviable under rule No. ;

And whereas fifteen days have elapsed since the service on him of notice of demand for the same;

This is to command you to $\frac{\text{distrain}}{\text{attach}}$ subject to the provisions of section 105 of the Bombay Municipal Boroughs Act, [. .] $\frac{\text{the goods and chattels}}{\text{any property}}$ of the said A. B. to the amount of..... , being the amount due from him, as follows :—

	Rs. a. p.
On account of the said tax ...	
For service of notice ...	
[*a*] For issue of warrant [*a*]:	

---

* Here describe the tax.

[*a*—*a*] These words are inserted by Bom. XII of 1931, s 3 (*v*).

and forthwith to certify to me together with this warrant all particulars of the $\frac{\text{goods distrained}}{\text{property attached}}$ by you thereunder.

Dated this day of 19

(Signed)

Chief Officer.

SCHEDULE VII.

(See clause (c) of sub-section (4) of section 105 and sub-section (1) of section 98.)

FORM OF INVENTORY AND NOTICE.

To.

A. B., residing at

Take notice that I have this day $\frac{\text{distrained}}{\text{attached}}$ the $\frac{\text{goods and chattels}}{\text{property}}$ specified in the inventory beneath this, for the value of due for the tax* mentioned in the margin for the period commencing with the day of 19 and ending with the day of 19 together with Rs. due as for service of notice of demand [b] "and Rs. due as for issue for warrant" [b] and that unless within five days from the day of the date of this notice you pay into the municipal office at the said amount together with the costs of recovery, the said $\frac{\text{goods and chattels}}{\text{property}}$ will be sold.

Dated this day of 19 .

Signature of officer $\frac{\text{executing the warrant}}{\text{collecting octroi}}$.

Inventory.

(Here state particulars of $\frac{\textit{goods and chattels}}{\textit{property}}$ seized.

---

*Here describe the tax.

[b—b] These words were inserted by Bom. XIX of 1935.

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THE MUNICIPAL SERVANTS ACT

Bom. Act No. V of 1890.

[*15th January 1891.*

WHEREAS it is expedient to make better provision in the City of Bombay and elsewhere for the enforcement of regulations regarding certain classes of municipal servants whose functions intimately concern the public health or safety, and regarding the duties, withdrawal from duty, and leave of such servants ; It is enacted as follows :—

Short title, Commencement and extent.

1. (1) This Act may be cited as the Bombay Municipal Servants Act.

(2) It shall come into force in the City of Bombay at once.

(3) The Governor in Council may, by notification, extend all or any of its provisions, on and after a day not less than two months after the date of such notification, to any municipal district in the Bombay Presidency.

He may also cancel or vary such notification consistently with the provisions of this Act.

Interpretation.

2. (1) Unless there be something repugnant in the subject or context, all words used in this Act shall have respectively the meanings assigned to them in the City of Bombay Municipal Act, 1888.

Act to be read with Municipal Acts in force.

(2) This Act shall, in so far as it affects the City of Bombay, be read with the City of Bombay Municipal Act, 1888, and in so far as it affects any other part of the presidency of Bombay, shall be read with the Bombay District Municipal [*a*] Act, 1901 [*a*].

Conditions as to resignation, withdrawal and absence from specified duties

3. (1) Any municipal officer, servant or other person employed by, or on behalf of, the Corporation or a Municipality to perform any of the duties specified in the schedule, who—

(*a*) without the written permission, in the City of Bombay of the Commissioner or a person by him deputed in that behalf, and elsewhere of the officer authorized by the Municipality to give such permission, resigns his office without at least two months' notice given in writing to the Commissioner or person by him deputed, or to such officer, or withdraws or absents himself from the duties thereof, except in case of illness or accident disqualifying him for the discharge of such duties or other reason accepted as sufficient by such Commissioner or person by him deputed, or such officer; or

Neglect or breach of duty.

(*b*) is guilty of any wilful breach or neglect of any provision of law or of any rule or order which as such municipal officer, servant or other person employed by, or on behalf of, the Corporation or a Municipality, it is his duty to observe or obey; or

(*c*) who abets an offence under clause (*a*) or clause (*b*);

shall be liable to forfeit his pay accruing due under a current term of service, and arrears of pay due for a term of not more than one month,

[*a–a*] The reference to Bombay Acts VI of 1874 and II of 1885 is altered in accordance with Bom. Act III of 1901, s. 2 (1), proviso (*c*).

and in addition to such forfeiture and any other penalty which may be imposed on him under any enactment or rule for the time being in force, shall be liable, on conviction by a Magistrate, to imprisonment which may extend to three months or to fine, or to both imprisonment and fine :

Provisos.

Provided that if any such officer, servant or other person produces a certificate signed by the medical officer appointed in the City of Bombay by the Commissioner, and elsewhere by the Municipality in this behalf, of a present incapacity to perform his duties which will probably endure for a month or more, the necessary permission to resign shall forthwith be granted :

Provided further that no fee shall be taken from a person on account of such certificate as aforesaid or of examination in connection therewith.

(2) The provisions of clauses (*a*) and (*b*) of sub-section (1) shall not apply to persons at the date of the passing of this Act in the employment of the Corporation or of a Municipality until the lapse of two months from such date.

Power to dispense with two months' notice or with services after tender of resignation.

4. (1) The Commissioner or officer authorized by the Municipality under section 3 (*a*), may,

(*a*) at his discretion, accept any resignation to take effect at a time less than two months from the date thereof, or

(*b*) at any time after any municipal officer, servant or other person employed as aforesaid, has tendered his resignation, dispense with the services of such officer, servant or person.

(2) Any such officer, servant or other person whose services are dispensed with under sub-section (1), clause (*b*), shall, subject to any agreement in writing previously made between him and the Corporation or Municipality or its representative, be entitled, in addition to any wages which he may have earned at the date of tendering his resignation, to fifteen days' wages or to wages for such period longer than fifteen days, as his services may, after such tender of resignation, have been retained by the officer authorized in that behalf.

Power of Governor in Council to add to schedule.

5. (1) It shall be lawful for the Governor in Council on the request of the Corporation or of a Municipality from time to time, by notification, to declare that from a date to be fixed therein, which shall not be less than two months from the date thereof, any specified class of duties which concern the public health or safety, shall be deemed to be included in the schedule to this Act, and from the date fixed on that behalf in such notification the provisions of section 3 shall apply to all persons employed by, or on behalf of, the Corporation or a Municipality to perform any duty of the class so specified in such notification.

(2) The Governor in Council may withdraw such notification and may from time to time cancel or vary the same consistently with the preceding clause and with the other provisions of this Act, and may also limit the operation of any notification to any Municipality or place wherein this Act is in operation.

Copies of Act to be supplied at nominal price to employes.

6. Every person employed by, or on behalf of, the Corporation or a Municipality to perform any of the duties set forth in the schedule, shall, on entering the service, and every person now so employed shall forthwith, receive gratis, and shall at any time thereafter, on payment of one anna, be entitled to receive in the City of Bombay from the Municipal Commissioner for the City of Bombay, and elsewhere from the President of a Municipality, a copy of this Act and of the notifications issued thereunder, applicable to such person or to the class to which he belongs, in the English, Marathi, Gujarathi, Canarese, or Sindhi language.

SCHEDULE.

(*Vide section 3*).

Duties which render the provisions of sections 3 applicable to the persons employed by, or on behalf of, the Corporation or a Municipality to perform them.

Class I.—Duties connected with the public health :

(*a*) scavenging or cleansing streets or premises,

(*b*) cleansing or flushing drains,

(*c*) removing or disposing of excrementitious or polluted matter from houses, latrines, privies, urinals, or cesspools,

(*d*) removing carcasses,

(*e*) preventing nuisances generally.

Class II.—Duties connected with the public safety :

Duties of—

(*a*) members of a fire-brigade,

(*b*) persons, however designated, employed on, or in connection with, the maintenance or service of any municipal water-works, drain, pumping station or fire hydrant, including—

(1) inspectors, (2) sub-inspectors, (3) foremen, (4) mechanics, (5) drivers, (6) watchmen, (7) labourers, (8) workmen ;

(*c*) lamp-lighters.

THE BOMBAY

Non-Agriculturists' Loans Act, 1928

Bombay Act No. III of 1928.

[*30th March 1928.*

(*As amended by Bom. Act No. XI of 1928*)

An Act to provide for the grant of loans by Government to non-agriculturists for the relief of distress or other calamities and for the recovery of such loans.

WHEREAS it is expedient to provide for the grant of loans by Government to non-agriculturists for the relief of distress caused by floods or other calamities and for the recovery of such loans in manner hereinafter appearing:

And whereas the previous sanction of the Governor-General required by sub-section (3) of section 80A and the previous sanction of the Governor required by section 80C of the Government of India Act have been obtained for the passing of this Act; It is hereby enacted as follows:—

Short title.

1. This Act may be called "the Bombay Non-Agriculturists' Loans Act, 1928.

Extent.

2. Section 1 and this section extend to the whole of the Bombay Presidency. The rest of the Act may be extended by the Local Government by notification in the *Bombay Government Gazette* to any part of the Presidency from such date as may be specified in such notification.

Purpose for which loans may be granted.

3. Subject to such rules as may be made under section 6, loans may be granted under this Act for rebuilding or repairing houses or for the relief of distress to any person to whom a loan under the Agriculturists' Loans Act, 1884, cannot be granted.

Loans already granted to be deemed to have been granted under this Act.

4. All loans granted after the 1st day of August 1927 to such persons as are referred to in section 3 for the purpose mentioned therein shall be deemed to be loans granted under this Act.

Recovery of loans.

5. [a] All loans granted or deemed to have been granted under this Act, together with all interest (if any) chargeable thereon, and costs (if any)

[a] The figure and brackets "(1)" were repealed by Bom. Act XI of 1928, s. 3 and Second Schedule.

incurred in making or recovering the same shall be recoverable at the discretion of the Collector in any one or more of the following modes, namely:—

(*a*) from the borrower—as if they were arrears of land revenue due by him;

(*b*) from his surety (if any)—as if they were arrears of land revenue due by him;

(*c*) out of the assests left by a deceased borrower or surety or out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land revenue by the sale of a defaulter's moveable or immoveable property other than the land on which that revenue is due;

(*d*) if the loan is for the benefit of a house, out of such house,—as if it were arrears of land revenue due in respect of the land on which the house stands.

Power to make rules.

6. (1) The Local Government may, from time to time, by notification in the *Bombay Government Gazette*, make rules to carry out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made for the following matters, namely:—

(*a*) the manner of making applications for loans;

(*b*) the officers by whom loans may be granted;

(*c*) the nature of the security, if any, to be taken for the due application and repayment of the money, the rate of interest at which snd the conditions under which the loans may be granted and the manner and term of granting loans; and

(*d*) the instalments by which and the mode in which loans shall be repaid.

THE
Bombay Nurses, Midwives and Health Visitors Registration Act, 1935.

Bombay Act No. VII of 1935.

[*30th April 1935.*

An Act to provide for the registration and better training of nurses, midwives and health visitors in the Presidency of Bombay.

WHEREAS it is expedient to provide for the registration and better training of nurses, midwives and health visitors in the Presidency of Bombay; And whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Bombay Nurses, Midwives and Health Visitors Registration Act, 1935.

(2) It shall extend to the whole of the Presidency of Bombay, excluding Sind.

(3) It shall come into force on such date as the Local Government may, by notification in the *Bombay Government Gazette*, appoint.

Definitions.

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

(*a*) "affiliated institution" means an institution for the nursing of the sick, maternity or child welfare, which may be affiliated to the Council in accordance with the by-laws :

(*b*) "by-law" means a by-law made by the Council under section 23 ;

(*c*) "Council" means the Bombay Nurses, Midwives and Health Visitors Council, constituted under section 3 ;

(*d*) "institution" includes any association which maintains or controls a nursing establishment ;

(*e*) "nurse" includes a male nurse ;

(*f*) "prescribed" means prescribed by rules ;

(*g*) "register" means a register maintained under section 11 and the expressions "registered" and "registration" shall be construed accordingly ;

(*h*) "registered medical practioner" means a person registered under the Bombay Medical Act, 1912 ;

(*i*) "rule" means a rule made by the Local Government under section 22.

Establishment, incorporation and constitution of the Council.

3. (1) The Local Government may, by notification in the *Bombay Government Gazette*, establish a Council to be called "the Bombay Nurses, Midwives and Health Visitors Council" for the purpose of carrying out the provisions of this Act. Such Council shall be a body corporate, and have perpetual succession and a common seal and may, by the said name, sue and be sued.

(2) The Council shall consist of the following twenty-one members, namely :—

(*a*) as *ex-officio* members,

(*i*) the Surgeon-General with the Government of Bombay ;

(*ii*) the Director of Public Health for the Government of Bombay ;

(*iii*) the Lady Superintendent, Cama and Albless Hospitals, Bombay ;

(*iv*) the Lady Superintendent, St. George's Hospital Nursing Association, Bombay.

(*v*) the Lady Superintendent, Sir David Sassoon and Jacob Sassoon Hospitals, Poona ;

(*vi*) the Sister Superior, Jamsetji Jeejeebhoy Hospital, Bombay ;

(*vii*) the Lady Superintendent, King Edward Memorial Hospital, Bombay ;

(*viii*) the Lady Superintendent, Nowrosji Wadia Maternity Hospital, Bombay, and the Lady Superintendent, Jerbai Wadia Children's Hospital, Bombay, in rotation ;

(*b*) as elected members,

(*i*) five persons to be elected by the affiliated institutions in the City of Bombay ;

(*ii*) one person to be elected by the affiliated institutions in the Northern Divison ;

(*iii*) one person to be elected by the affiliated institutions in the Central Division ;

(*iv*) one person to be elected by the affiliated institutions in the Southern Division ;

(*v*) two registered medical practioners, one of whom shall be a woman, to be elected by the Bombay Medical Council ;

(*c*) as nominated members,

one registered nurse, one registered midwife and one registered health visitor to be nominated by the Local Government :

Provided that, in the case of the first constitution of the Council under this Act, the Local Government shall appoint—

(*i*) the eight persons eligible for election under clause (*b*) (*i*), (*ii*), (*iii*) and (*iv*), to be members and such persons shall be deemed to have been elected members under each of the said clauses, respectively, and

(*ii*) one nurse, one midwife and one health visitor, having such qualifications as the Local Government may deem proper to be members and such nurse, midwife and health visitor shall be deemed to have been nominated under clause (*c*).

(3) The Surgeon-General with the Government of Bombay shall *ex-officio* be the President, and the Vice-President of the Council shall be elected from among the members of the Council and shall hold office for one year or until the election of his successor.

Appointment of members in default of election.

4. If any of the institutions referred to in clause (*b*) of sub-section (2) of section 3 does not, by such date as may be prescribed, elect a person to be a member of the Council, the Local Government shall, by order in writing, appoint to the vacancy a person qualified for election thereto; and the person so appointed shall be deemed to be a member of the Council as if he had been duly elected by the said institution.

Period of office of members.

5. The members of the Council, other than the *ex-officio* members specified in sub-clauses (*i*) to (*vii*) of clause (*a*) of sub-section (2) of section 3, shall hold office for a period of five years or for such less period as the Local Government may prescribe in this behalf :

Provided that an outgoing member shall continue in office until the election or nomination of his successor as the case may be.

Vacancies.

6. When a vacancy occurs in the office of a member of the Council through death, resignation, removal or disability of such member or otherwise, previous to the expiry of the period of his office, the vacancy shall be filled in the manner prescribed. Any person elected or nominated to fill a casual vacancy shall, notwithstanding anything contained in section 5, hold office only so long as the member in whose place he is elected or nominated would have held office if the vacancy had not occurred.

Vacancy not to affect proceedings.

7. If a vacancy in the office of a member of the Council has occurred, the continuing members thereof shall act as if no vacancy had occurred, and no act or proceeding of the Council shall be deemed invalid merely by reason of a vacancy in the Council or of a defect in the election or nomination of a person acting as a member of the Council.

Disqualifications.

8. No person shall be a member of the Council—

(a) who has been sentenced by a criminal court for an offence punishable with imprisonment for a term exceeding three months or to transportation, such sententence not having been subsequently reversed, quashed or remitted, unless he has by order, which the Local Government is hereby empowered to make in this behalf, been relieved from the disqualification arising on account of such sentence, or

(b) who is an undischarged insolvent, or

(c) who has been adjudicated by a competent court to be of unsound mind, or

(d) whose name has been removed from the register.

Disabilities from continuing as member.

9. (1) If any member, during the period for which he has been elected or nominated—

(a) absents himself without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council ; or

(b) is absent out of India for a period exceeding eight consecutive months ; or

(c) becomes subject to any of the disqualifications specified in section 8 ; or

(d) having been elected by the Bombay Medical Council, ceases to be a registered medical practioner,

the President or the Council shall forthwith report the fact to the Local Government, who shall thereupon, by order in writing, declare his seat to be vacant.

(2) If any question arises whether a vacancy has occurred under sub-section (1), the orders of the Local Government shall be final for the decision of such question.

Leave of absence to members.

10. The Council may permit any member to absent himself from the meetings of the Council for any period not exceeding six months.

Maintenance of register.

11. The Council shall maintain a register of—

(i) nurses,

(ii) midwives and

(iii) health visitors,

in such forms, containing such particulars, and divided into such parts as may be prescribed.

Persons entitled to registration.

12. Persons who have undergone such courses of training, have passed such examinations and who fulfil such other conditions as may be prescribed, shall, on payment of the prescribed fee and on making an application in the prescribed form, be entitled to registration:

Provided that nurses and midwives who are at the commencement of this Act enrolled on the registers maintained by the Bombay Presidency Nursing Association shall be entitled to have their names transferred, according to their qualifications, to the appropriate registers maintained under section 11.

Refusal of registration, and removal and re-entry of names.

13. (1) Subject to such conditions as may be prescribed, the Council may, after giving an opportunity to the person concerned to be heard in his defence and to appear, and after holding an enquiry in the prescribed manner, refuse to enter in the register the name of any person, or may order the removal of the name of such person from the register.

(2) The order passed under sub-section (1) shall be in writing, and shall be served on the person concerned in the prescribed manner.

(3) The Council may direct that the name of any person against whom an order under sub-section (1) has been passed shall be entered or re-entered in the register, as the case may be.

Appeal from order under section 13.

14. (1) Any person, aggrieved by any order of the Council under section 13, may, within three months from the date on which such order is served, appeal against such order to the Local Government.

(2) The order of the Local Government on any such appeal shall be final.

Institutions for training nurses, midwives or health visitors to be recognised by Council.

15. (1) The institutions which are approved and recognised by the Council after inspection by its representative shall be competent to train nurses, midwives or health visitors, and to send them for examination for the qualifying certificates of the Council.

(2) The Council may withdraw recognition from any such institution after its inspection by a representative of the Council. The order of such withdrawal shall be in writing and shall be served in the prescribed manner.

Appeal against refusal to recognise institutions under section 15.

16. Any person aggrived by the refusal of the Council to approve and recognise any institution as competent to train nurses, midwives or health visitors may appeal, within three months from the date of such refusal, to the Local

Government against such order of refusal. The decision of the Local Government on any such appeal shall be final.

Removal of names from register on notice of death.

17. Every Registrar of Births and Deaths, who receives notice of the death of any person whose name he knows to be or has reason to believe is entered in any register, shall forthwith transmit by post to the Council a certificate of registration of such death signed by him and stating the time and place of death ; and thereupon the name of such person shall be removed from the register.

Penalty for dishonest use of certificats

18. Any person who—

(*a*) dishonestly makes use of any certificate of registration issued under the provisions of this Act to him or to any other person ,

(*b*) procures or attempts to procure registration under the provisions of this Act by making or producing, or causing to be made or produced any false or fraudulent declaration, certificate or representation, whether in writing or otherwise, or

(*c*) wilfully makes or causes to be made any false representation in any matter relating to the register or certificates issued under the provisions of this Act,

shall be punishable with fine not exceeding Rs. 250.

Penalty for unlawful assumption of title of registered nurse, midwife or health visitor.

19. Any person who, not being a registered nurse, midwife or health visitor, takes or uses the name or title of registered nurse, midwife or health visitor, or uses any name, title, description, prescribed uniform, object or sign board, with the intention that it may be believed, or with the knowledge that it is likely to be believed that such person is a registered nurse, midwife or health visitor, shall be punishable with fine not exceeding Rs. 100.

Court competent to try offences under the Act.

20. No court other than a Presidency Magistrate or a Magistrate of the First Class shall take cognizance of or try any offence under this Act.

Funds of the Bombay Presidency Nursing Association to be vested in the Council.

21. The funds of the Bombay Presidency Nursing Association are hereby transferred to the Council, and shall hereafter vest in the Council for the purposes of this Act.

Power of Government to make rules.

22. (1) The Local Government may, after previous publication, make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, they may make rules—

(*a*) prescribing the period of less than five years for which a member of the Council may hold office under section 5 ;

(*b*) prescribing the manner in which elections and nominations of members of the Council and the election of the Vice-President shall be made and casual vacancies shall be filled under section 6 ;

(*c*) prescribing the form in which a register shall be kept, the particulars to be entered in such register, and the parts in which such register shall be divided under section 11 ;

(*d*) prescribing the courses of training and examinations entitling a person to registration, the fee payable on application for registration, the form in which such applications shall be made, and the conditions subject to which names shall be entered in the register under section 12 ;

(*e*) prescribing the causes for which, the conditions under which and the manner in which the names of nurses, midwives and health visitors may be removed or re-entered in the register under section 13, and the manner in which the order of removal or refusal shall be served on such persons ;

(*f*) the manner in which an order of withdrawal of recognition of an institution shall be served under section 15 ;

(*g*) prescribing the fees payable in respect of an appeal under section 14 or 16 ; and

(*h*) any matter which is to be or may be prescribed.

(3) All rules made by the Local Government under this section shall be laid on the table of the Bombay Legislative Council for one month previous to the session thereof, and shall be liable to be rescinded or modified by a resolution of the said Council tabled at its next session ; such rule shall, after notification in the *Bombay Government Gazte*, be deemed to have been modified or rescinded accordingly :

Provided that when, in the opinion of the Local Government, such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the Local Government may, by notification in the *Bombay Government Gazettee*, declare that the modification or rescission shall have no effect, and thereupon the rule shall remain in force as if it had not been modified or rescinded.

Power of the Council to make by-laws.

23. (1) The Council may make by-laws, not inconsistent with this Act or the rules,

(*a*) for regulating the compilation, maintenance and publication of the register and the conditions of admission to the register;

(*b*) for regulating the conduct of any examinations which may be prescribed as a condition of admission to the register and any matters ancillary to or connected with such examinations, including the courses of training which the candidates appearing for the examinations shall undergo;

(*c*) for the approval of any institution for the purpose of such training and the granting of diplomas to candidates passing the examinations;

(*d*) for regulating the conditions under which institutions for nursing the sick, maternity or child welfare may be affiliated to the Council;

(*e*) for appointing a Registrar and such other servants as may be necessary;

(*f*) for regulating the pay, pension, conduct and other conditions of service of persons appointed under clause (*e*);

(*g*) for establishing a provident fund for the benefit of the employees of the Council and of affiliated institutions and regulating its administration;

(*h*) for regulating and supervising the practice of their profession by registered nurses, midwives and health visitors;

(*i*) for regulating the publication of the names of registered nurses, midwives and health visitors and their residences;

(*j*) for regulating the conditions under which such nurses, midwives and health visitors registered in other provinces or other countries may be admitted to the register, on such other provinces and countries granting reciprocal registration to persons registered on the register of the Council;

(*k*) for regulating the summoning of meetings of the Council and its proceedings;

(*l*) for determining the manner in which all fees levied under this Act and all moneys received by the Council shall be accounted for, audited and applied for the purposes of this Act, and for regulating the expenditure of the Council generally;

(*m*) for prescribing the travelling and other expenses payable to the members of the Council or of committees; and

(*n*) generally for the provision of any matters in respect of which the Council considers provision should be made for the purposes of this Act.

(2) No by-law made by the Council shall come into force until it has been confirmed by the Local Government, with or without modification or amendment.

(3) All by-laws made under this section shall be published in the *Bombay Government Gazette*.

Protection of persons acting in good faith, under the Act, rules or by-laws.

24. No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act, rules or by-laws.

Control.

25. (1) If at any time it shall appear to the Local Government that the Council has failed to exercise, or has exceeded or abused any of the powers conferred upon it by or under this Act, or has failed to perform any of the duties imposed upon it by or under this Act, the Local Government may, if it considers such failure, excess or abuse to be of a serious character, notify the particulars thereof to the Council, and if the Council fails to remedy such default, excess or abuse, within such time as the Local Government may fix in this behalf, the Local Government may dissolve the Council and cause all or any of the powers and duties of the Council to be exercised and performed by such person and for such period as it may think fit and thereupon the funds and property of the Council shall vest in the Local Government for the purposes of this Act until a new Councill shall have been constituted under section 3.

(2) When the Local Government has dissolved the Council under sub-section (1), it shall take steps as soon as may be convenient to constitute a new Council under section 3 and thereupon the property and funds referred to in sub-section (1) shall revest in the Council so constituted.

THE BOMBAY OPIUM SMOKING ACT, 1936.

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SCHEDULE

THE BOMBAY OPIUM SMOKING ACT, 1936.

Prefatory Note.—The following is the Statement of Objects and Reasons annexed to the Bill :—

"The object of the Bill is to discourage the opium smoking habit by the suppression of opium smoking places (dens) which are the main sources of illicit manufacture, possession and sale of prepared opium.

Prior te the passing of the Dangerous Drugs Act, 1930, prepared opium came under the purview of the Opium Act, 1878. Under rule 4 (2) of the Bombay Opium Rules, 1919, framed under sections 5 and 13 of the Opium Act the possession of prepared opium by an individual was limited to ¼th of a tola while the collective possession of such opium in assembly was restricted to one-half of a tola with the result that opium smoking places where the total stock of prepared opium exceeded one-half of a tola could be dealt with under the provisions of the Bombay Opium Rules and it was then possible to discourage to some extent at least the operations of opium smoking places often known as dens. Now the sale of prepared opium has been totally prohibited under section 4 (1) (*c*) of the Dangerous Drugs Act, 1930, and the manufacture and possession thereof by individuals are regulated by the rules framed by the local Government under section 4 (2) of the said Act; but there is no provision in the Dangerous Drugs Act under which opium smoking places could be regulated or suppressed inasmuch as there is no restriction whatsoever on the aggregate stock of prepared opium possessed by an assembly each member of which holds a quantity equal to or less than ¼th of a tola. The Government of Bombay had proposed to the Government of India certain amendments in the Dangerous Drugs Act so as to enable local Governments to frame rules for regulating opium smoking within their respective provinces; but Government of India have expressed their inability to do so and suggested that local Governments should under the rule-making power under section 4 (2) of the Dangerous Drugs Act, suppress opium smoking by reducing the limit of possession of prepared opium to nil. The habit of opium smoking is deep-rooted among Chinamen, Fakirs and others and a sudden total prohibition of opium smoking is not desirable. Individual opium smoking in a restricted and limited degree should therefore be allowed for some time to come. The present Bill, therefore, while allowing smoking of opium individually, prohibits the smoking of or arrangement for smoking opium in the assembly of persons consisting of two or more persons. It is based on similar Bills in other provinces in India."

(*Vide B. G. G. 1936, Part V., pp. 179-180*).

THE
Bombay Opium Smoking Act, 1936

BOMBAY ACT No. XX OF 1936.

[*7th December 1936.*

An Act to provide for the control of the practice of opium smoking and to prevent the assembling of persons for the purpose of such smoking in the Presidency of Bombay.

WHEREAS it is expedient to control the practice of opium smoking and to prevent the assembling of persons for such smoking in the Presidency of Bombay in the manner hereinafter appearing; And whereas the previous sanction of the Governor General required under sub-section (3) of section 80A of the Government of India Act and the previous sanction of the Governor required under section 80C of the said Act have been obtained to the passing of this Act; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Bombay Opium Smoking Act, 1936.

(2) It extends to the whole of the Presidency of Bombay.

(3) This section shall come into force at once. The local Government may, by notification in the *Bombay Government Gazette*, direct that the remaining provisions of this Act shall come into force on such date as may be appointed in the notification.

Definitions.

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

(1) "Collector" includes an officer appointed under section 3 to exercise the powers and perform the duties of a Collector under this Act;

(2) "Commissioner" means the Commissioner of excise;

(3) "Duly empowered" means duly empowered by the local Government by a general or special order;

(4) "Instrument of smoking" means any article used for the purpose of smoking opium;

(5) "Opium" has the same meaning as is assigned to it in the Opium Act, 1878, and includes *chandul*, *madat*, opium dross or scrapings from the opium pipe and every other preparation or admixture of opium which may be used for smoking;

(6) "Place" includes a house, building, shop, hut, tent, boat or vessel and any part thereof; and

(7) "Prepared opium" means any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked.

CHAPTER II.

PROHIBITION AND CONTROL.

Appointment of special Collectors.

3. The local Government may, by notification in the *Bombay Government Gazette*, appoint any person other than the Collector of Land Revenue, to exercise in any district or area, all or any of the powers conferred, and perform all or any of the duties imposed, by this Act on a Collector, subject to such control, if any, in addition to that of the Commissioner and of the local Government, as the local Government may from time to time direct.

Opium smoking assembly.

4. An assembly of two or more persons is designated an opium smoking assembly, when the common object of the persons composing that assembly is to smoke opium or to prepare opium for smoking purposes.

Explanation 1.—An assembly which was not an opium smoking assembly when it was assembled may subsequently become such assembly.

Explanation 2.—A man and his wife shall not be deemed to be an opium smoking assembly within the meaning of this section, even if their common object be to smoke opium or to prepare opium for smoking purposes.

Note.—This section provides that an assembly of two or more persons shall be deemed to be an opium smoking assembly. It is made clear that a husband and wife shall not be deemed to be such assembly.

Member of opium smoking assembly.

5. Whoever, being aware of facts which render an assembly an opium smoking assembly, intentionally joins that assembly, or continues therein, is said to be a member of that assembly.

Note.—This section provides that if a person joins an opium smoking assembly, he is to be deemed to be a member of such assembly.

Presumption raised by presence of opium and any instrument of smoking.

6. The presence of any opium or prepared opium, and of any instrument of smoking or of any apparatus used in the preparation of opium in any place where two or more persons are assembled shall be held sufficient to raise a presumption that each member of such assembly is present at such place for the purpose of smoking opium or of preparing opium for smoking purposes.

Note.—In this section it is provided that the presence of opium or prepared opium together with the instruments of smoking or apparatus for preparing opium in a place where two or more persons are assembled shall give rise to a presumption that the persons present there are members of an opium smoking assembly *(Notes on Clauses).*

CHAPTER III.

OFFENCES AND PENALTIES.

Penalty for being member of opium smoking assembly.

7. Whoever is a member of an opium smoking assembly shall, on conviction, be punishable with imprisonment of either description for a term which may extend to one month, or with fine which may extend to Rs. 100, or with both.

Penalty for opening, keeping or having charge of place of assembly.

8. Whoever opens, keeps or uses any place, or permits any place to be opened, kept or used for the purpose of an opium smoking assembly, or has the care or management of, or in any way assists in conducting the business of, any place used or kept for the purposes aforesaid, shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to Rs. 1,000, or with both.

Penalty when owner fails to give notice of use of place for such assembly.

9. Whoever, being the owner of any place and knowing or having reason to believe that such place, whether in his actual occupation or otherwise, is being or is about to be used for the purpose of an opium smoking assembly, fails, either himself or through his agent or servant, to give the earliest possible notice of such knowledge or belief to the Collector or the officer in charge of the nearest police station, or to an officer empowered under this Act to investigate offences punishable under this Act, shall, on conviction, be punishable with fine which may extend to Rs. 500.

Penalty for subsequent offences.

10. Whoever, having been convicted of an offence under section 7, section 8 or section 9, is again convicted of an offence under any of the said sections, shall, on conviction, be liable for any such subsequent offence to an enhanced punishment not exceeding double the punishment which might be imposed on a first conviction for such offence.

Security for abstaining from offences.

11. (1) Whenever any person is convicted of an offence punishable under this Chapter, and the court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under

this Chapter, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

(2) The bond shall be in the form contained in the Schedule annexed to this Act and the provisions of the Code of Criminal Procedure, 1898, shall, in so far as they are applicable, apply to all matters connected with such bond, as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate court or by the High Court when exercising its power of revision.

Note — This section enables a Court to take security from persons convicted under ss. 7 to 9 for abstaining from the commission of similar offences in future.

CHAPTER IV

PROCEDURE.

Power to issue warrants.

12. The Commissioner, Collector or any officer of the Excise Department duly empowered or a Magistrate authorised under section 24 to take congnizance of offences under this Act may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence under this Act, or for the search, whether by day or by night, of any place in which he has reason to belive that an offence under this Act has been, or is being or is likely to be committed, or in which opium, an instrument of smoking or an apparatus used in the preparation of opium is kept or concealed.

Power of entry, search and arrest by certain officers.

13. The Commissioner, Collector or any officer duly empowered, who has reason to believe that an offence under Chapter III has been, or is being or is likely to be, committed in any place, may—

(a) enter such place by day or by night with any persons whose assistance he may consider necessary,

(b) search any such place in which he has reason to believe that any opium, or instrument of smoking, or any apparatus used in the preparation of opium is kept or concealed,

(c) detain and search, and, if he thinks proper, arrest any person found in such place or whom he has reason to believe to have committed an offence punishable under Chapter III, and

(d) seize all opium and instruments of smoking and any apparatus used in the preparation of opium which may be found in such place or on or about such person.

Arrest of persons obstructing officers in execution of duties under the Act.

14. The Commissioner, Collector or any officer duly empowered may arrest, without an order from a magistrate and without warrant, any person who obstructs him in the execution of his duty under this Act, or who has escaped or attempts to escape from custody in which he has been or is lawfully detained under this Act.

Mode of making searches and arrests.

15. (1) The provisions of the Code of Criminal Procedure, 1898, shall apply, so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests and searches made under this Act.

(2) All such warrants shall be executed by a police officer, or an officer of the Excise Department duly empowered in this behalf or if the officer issuing the warrant deems fit by any other person :

Provided that no search shall, in the absence of local search witnesses, be deemed to be illegal or defective or irregular, if such absence is explained to the satisfaction of the court.

Disposal of persons arrested and of articles seized.

16. (1) Every person arrested and article seized under a warrant issued under section 12 shall be forwarded without delay to the authority by whom the warrant was issued, and every person arrested and article seized under section 13 or section 14 shall be forwarded without delay to—

(a) the nearest officer of the Excise Department empowered under section 18, or

(b) (i) in the City of Bombay to the nearest officer in charge of a section within the meaning ot the City of Bombay Police Act, 1902, and

(ii) elsewhere, to the officer in charge of the nearest police station within the meaning of the Code of Criminal Procedure, 1898.

(2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal, according to law, of such person or article.

Refusal to give name and residence.

17. (1) When any person who, in the presence of any officer of such rank as the local Government may, by general or special order specify in this behalf, has committed or has been accused of committing an offence under this Act, refuses on demand of such

officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained.

(2) When the correct name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a magistrate, if so required :

Provided that if such person is not resident in British India, the bond shall be secured by a surety or sureties residing in British India.

(3) Should the correct name and residence of such person not be ascertained within 24 hours from the time of arrest, and should he fail to execute the bond, or, if he is so required, to furnish sufficient sureties, he shall be forthwith forwarded to the nearest magistrate having jurisdiction.

Certain officers empowered to investigate ofiences under the Act.

18. (1) The Commissioner, Collector and any officer of the Excise Department duly empowered in this behalf shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence :

Provided that—

(a) if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused to a magistrate or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear if and when so required, before a magistrate and shall make a full report of the case to his superior officer, if any, and be guided by the order which he shall receive on such report ;

(b) the powers of such officer other than the Commissioner or Collector shall be subject to such further modifications or restrictions as the local Government may determine.

Offences under the Act to be bailable.

19. (1) All offences punishable under this Act shall be bailable.

(2) Any officer authorised under section 18 to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, to any person arrested without warrant for an offence punishable under this Act.

Articles serized during investigation.

20. When anything has been seized by any officer exercising powers under section 18, such officer, after such inquiry as may be necessary—

(*a*) if it appears that such thing is required as evidence in the case of any person arrested, shall forward the thing to the magistrate to whom such person is forwarded or before whom bail has been taken for his appearance ;

(*b*) if it appears that such thing is liable to confiscation, but is not required as evidence as aforesaid, shall send the thing with a report of the particulars of the seizure to his superior officer, if any;

(*c*) if no offence appears to have been committed, shall return the thing to the person from whose possession it was taken and shall report to his superior officer, if any, accordingly.

Officers and persons required to assist in detection of offences under the Act.

21. All village officers, all village servants useful to Government and all officers of the Departments of Police, Forest, Customs, Salt Revenue, and all persons in the employment of the Bombay Port Trust shall be bound—

(*a*) to give immediate information to any of the officers mentioned in section 12 or section 13 or section 18 of the commission of any offence and of the intention or preparation to commit any offence under this Act which may come to their knowledge ;

(*b*) to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to belive is about to be committed ; and

(*c*) to assist such officer in carrying out the provisions of this Act.

Penalty for neglecting to assist officers acting under the Act.

22. Any officer or person mentioned in the preceding section who without lawful excuse neglects or refuses to give information or to take preventive measures or to give assistance to any of the officers mentioned in section 12 or section 13 or section 18 in the manner required by the preceding section shall, on conviction, be punishable witn fine which may extend to Rs. 500.

Penalty for vexatious search or arrest.

23. Any officer empowered under this Act who—

(*a*) without reasonable ground of suspicion, enters or searches, or causes to be searched any place, or

(*b*) vexatiously and unnecessarily seizes the property of any person on the pretext of seizing or searching for anything liable to confiscation under this Act, or

(c) vexatiously and unnecessarily detains, searches or arrests any person

shall, on conviction, be punishable with fine which may extend to Rs. 500.

Jurisdiction.

24. No magistrate other than a Presidency Magistrate, or a Magistrate of the First Class, or a Magistrate of the Second Class duly empowered in this behalf, shall take cognizance of any offence under this Act.

Cognizance of offences.

25. No magistrate shall take cognizance of any offence punishable under this Act,

(a) except on the complaint or report of the Commissioner or a Collector or any other officer duly empowered under section 12 or a police officer, or

(b) except upon his own knowledge or suspicion.

Things liable to confiscation.

26. Whenever any offence under this Act has been committed, all opium, prepared opium, instruments of smoking and apparatus used in the preparation of opium found in the place or with the persons forming an opium smoking assembly, together with the receptacles, packages, coverings, animals, carts, vessels or other conveyances used in carrying them shall be liable to confiscation.

Procedure in making confiscation.

27. (1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the court shall decide whether any article seized under this Act is liable to confiscation under the preceding section, and if it decides that the article is so liable, it may order its confiscation accordingly.

(2) When any article seized under this Act appears liable to confiscation under the preceding section but the person who committed the offence in connection therewith is not known or cannot be found, the Collector or other officer duly empowered in this behalf may inquire into and decide such liability and may order confiscation accordingly :

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in support of this claim ;

Provided further that if any such article, other than opium, is liable to speedy and natural decay, or if the Collector or other officer is of opinion that its sale would be for the benefit of its owner, he may at any time direct it to be sold, and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

CHAPTER V.

MISCELLANEOUS.

Delegation of powers.

28. The powers conferred on the Commissioner or Collector under this Act may, subject to the general or special orders of Government, be delegated by the Commissioner or Collector, as the case may be, in whole or in part, to any subordinate officer.

Power to make rules.

29. (1) The local Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may be made for all or any of the following purposes:—

(a) regulating the disposal of things confiscated,

(b) prescribing and regulating the payment of rewards out of fines imposed under this Act,

(c) providing for any other matter for which there is no provision or there is insufficient provision in this Act and for which provision is, in the opinion of the local Government, necessary for giving effect to the provisions of this Act.

(3) Rules made under this section shall be subject to the condition of previous publication in the *Bombay Government Gazette.*

(4) Rules made under this section shall be laid upon the Table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by resolution of the said Council, and such rule shall, after notification in the *Bombay Government Gazette*, be deemed to have been modified or rescinded accordingly:

Provided that when, in the opinion of the local Government, such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the local Government may, by notification in the *Bombay Government Gazette*, declare that such modification or rescission shall have no effect, and thereupon the rule shall remain in force as if it had not been modified or rescinded.

Protection of persons acting in good faith, and limitation of suits or prosecutions.

30. No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit shall be instituted against Government and no prosecution or suit shall lie against any officer in respect of anything done or alleged to have been done in pursuance of this Act, unless such suit or prosecution has been instituted within three months of the date of the act complained of.

Certain officers to be public servants.

31. All officers empowered under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

SCHEDULE.

Bond to abstain from the commission of offences under the Bombay Opium Smoking Act, 1936.

(SECTION 11)

Whereas I (name) inhabitant of (place) ; have been called upon to enter into a bond to abstain from the commisson of offences under section 7, section 8 and section 9 of the Bombay Opium Smoking Act, 1936, for the term of I hereby bind myself not to commit any such offence during the said term and, in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India the sum of rupees.

Dated this day of 19 .

(Signature)

(Where a bond with sureties is to be executed, add—)

We do hereby declare ourselves surreties for the above-named that he will abstain from the commission of offences under section 7, section 8 and section 9 of the Bombay Opium Smoking Act, 1936, during the said term ; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees.

Dated this day of 19 .

(Signatures)

THE PARSI PUBLIC TRUSTS REGISTRATION ACT, 1936.

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THE
Parsi Public Trusts Registration Act, 1936

BOMBAY ACT No. XXIII OF 1936

[*31st December 1936*

Prefatory note.—The following is the Statement of Objects and Reasons attached to the Bill :—

"It is a well known fact that a large amount of money is locked up in endowment for Parsi public charities. Unfortunately, these charities are not organised and there is a great deal of overlapping. In view of the provision of section 118 of the Indian Succession Act, which is applicable to Parsis and having regard to the restrictions contained in it, there are innumerable secret Trusts for public, religious and charitable purposes for Parsis, of which the community has no knowledge. There are a good many such Trusts, the aims and objects of which are unknown to the community. It cannot be gainsaid that under these circumstances, there is a great chance of carelessness in management and even a peculation. It is, therefore, high time that some system be established to exercise of certain amount of control over the accounts of these charities by making at least the bigger chari-

ties registrable. It would give a chance to organise the charities, to prevent overlapping, and would also serve as a guide to future donors as to the direction in which charity would be most useful to the community. No doubt, certain provisions of the Charities and Religious Trust Act of 1920 and section 92 of the Civil Procedure Code, 1908, do provide for certain contingencies; but these provisions are extremely limited inasmuch as before taking any action under section 92 it is necessary for the aggrieved party to satisfy the Advocate General that there has been a breach of trust. The Act of 1920 marks an improvement inasmuch as under this Act it is open to any interested person to get the help of the Court to determine the nature and object of the Trust, and to have the accounts of such Trust audited, but as a matter of fact under the Act there is no obligation on the Trustees to keep any accounts at all. Under these circumstances no substantial advantage has been taken of this Act. The object of this Bill is, therefore, to secure a positive remedy by making compulsory the registration of the important Trusts as also the auditing of their accounts and their periodic submission to the Registrar. Registration and the publication secured thereby of the aim and objects of the various Trusts would undoubtedly be of great advantage to the community at large. Care has been taken to exclude from the operation of this Bill the smaller Trusts. This Bill deals with Trusts the value of the property of which exceeds Rs. 5,000. It is intended to watch the benefit derived from this measure [illegible] tending it to the smaller Trusts."

An Act to make provision for the registration, publica[illegible] and inspection of Trusts created or existing for a publ[illegible] purpose for the benefit of Parsis and of certain Trusts created by Parsis and for the keeping, auditing, filing, inspection and publication of accounts in respect thereof.

[illegible] from the Bombay [illegible] not to [illegible] default [illegible] dia.

WHEREAS it is expedient to provide for the registration, publication and inspection of Trusts created or existing for a public purpose of a charitable or religious nature for the benefit of Parsis and of certain Trusts created by Parsis, and for the keeping, auditing, filing, inspection and publication of accounts in respect of the same; AND WHEREAS the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act and the previous sanction of the Governor required by section 80C of the said Act have been obtained for the passing of this Act; It is hereby enacted as follows :—

Preliminary.

Short title and extent.

1. (1) This Act may be called the Parsi Public Trusts Registration Act, 1936.

(2) It extends to the whole of the Bombay Presidency.

(3) Government may, by notification in the *Bombay Government Gazette*, direct that this Act shall come into force on such date as may be appointed in the notification.

Application.

2. (1) The provisions of this Act shall in the first instance apply to public trusts created or existing solely for the benefit of the Parsi community for any section of such community and, having an annual gross income of not less than Rs. 1,000.

(2) Government may by notification in the *Bombay Government Gazette* exempt any trust or any class of trusts from all or any of the provisions of this Act.

(3) In the case of a public trust of which the author belongs to the Parsi community and which is created or exists not solely for the benefit of the said community, Government may, on application of such author, or, if such author is dead, of the majority of tke trustees of such trust, by notification in the *Bombay Government Gazette* apply all or any of the provisions of this Act to such trust.

(4) The provisions of the Bombay Public Trust Registration Act, 1935, shall not apply to any public trust to which any of the provisions of this Act apply.

Definitions.

3. In this Act unless there is anything repugnant in the subject or context,

(1) "Manager" means a trustee or any other person who for the time being either alone or in association with some other person or persons administers the property of any public trust.

(2) "Prescribed" means prescribed by rules made under this Act.

(3) "Public trust" means an express or constructive trust created or existing for public purposes of a religious or charitable nature.

(4) "Registrar" means a person appointed under section 4 to exercise the powers and perform the duties of a Registrar of Parsi Public Trusts under this Act.

(5) "Rules" means rules made under this Act.

(6) Words or expressions used but not defined in this Act and defined in the Indian Trusts Act, 1882, shall have the meanings assigned to them in that Act.

Appointment of Registrars.

4. Government may appoint officers belonging to the Judicial Service not below the rank of a Subordinate Judge of the First Class or a Judge of a Court of Small Causes to be Registrars of Parsi Public trusts for the purposes of this Act, and may define the district or area within which each of them shall exercise his powers and perform his duties.

Note.—"This clause as originally drafted provided that the Registrars of Parsi Public Trusts should be Parsis. This would not be practicable in several

places. In our opinion, the Registrars of such Trusts should, however, be judicial officers not below the rank of a Subordinate Judge of the First Class or a Judge of a Court of Small Causes. We have amended the clause accordingly." (*Report of the Select Committee*).

Obligation to furnish particulars relating to public trusts.

5. (1) Every manager of the property of a public trust shall, in the case of—

(*i*) a public trust created before the commencement of this Act, within twelve months of the commencement of this Act, and

(*ii*) a public trust created after the commencement of this Act, within twelve months of the vesting in or the assumption by him of the administration of the property of such trust

submit to the Registrar within whose jurisdiction the whole or any substantial portion of the subject-matter of such trust is situate or the property or funds of such trust or any substantial portion thereof are for the time being administered a statement in the prescribed form and accompanied by the prescribed fee, containing the following particulars :—

(*a*) the names and addresses of the trustees and the manager and the mode of succession to the office of trustee,

(*b*) the description of the trust property, both moveable and immoveable, sufficient for the identification thereof, and approximate value thereof,

(*c*) the gross average annual income of such property estimated on the income of the three years immediately preceding the date on which the statement is submitted or of the period which has elapsed since the creation of the trust, whichever period is shorter,

(*d*) the amount of the average annual expenditure in connection with the public trust estimated on the expenditure incurred within the period to which the particulars under clause (*c*) relate,

(*e*) any other particulars as may be prescribed.

(2) A copy of the deed or instrument creating the public trust or such extract thereof as in the opinion of the Registrar sufficiently shows the origin, nature and object of such trust shall accompany such statement or if no such deed or instrument has been executed or if a copy thereof cannot be obtained such statement shall contain full particulars so far as they are known to the manager of the origin, nature and object of the public trust.

(3) Such statement shall be signed by the manager or his agent specially authorised in this behalf.

(4) Every person signing the statement shall verify it in the manner prescribed.

(5) The Registrar may for sufficient cause extend the period for furnishing a statement under this section.

Note.—"This clause has been redrafted by us on the lines of section 5 of the Bombay Public Trusts Registration Act, 1935. We have, however, made three important alterations. We have provided that the manager may also submit the prescribed statement to the Registrar within whose jurisdiction the property or the funds of the trust or a substantial portion thereof are for the time being administered. This is because there appear to be many Parsi public trusts whose property consists mainly of securities which are kept with the Parsi Panchayat at Bombay, who have no knowledge as to how the funds are actually administered. We have also empowered the Registrar to extend the prescribed period for filing statements under this clause. The other important alteration made by us is that the manager need not send along with the statement the whole copy of the deed or instrument creating the public trust but only such portion thereof as, in the opinion of the Registrar, sufficiently shows the origin, nature and object of the trust." (*Report of the Select Committee*).

Power of Registrar to hold inquiry.

6. (1) A Registrar may either on his own motion or upon the petition of a person having an interest in a public trust hold an enquiry in the prescribed manner to ascertain—

(*i*) whether a trust is a public trust,

(*ii*) whether any property is the property of such trust,

(*iii*) whether the whole or any substantial portion of the subject-matter of the trust is situate, or whether the property or funds of such trust or any substantial portion thereof are for the time being administered, within his jurisdiction,

(*iv*) the names and addresses of the trustees and manager of such trust and the mode of succession to the office of trustee of such trust,

(*v*) the origin, nature and object of such trust,

(*vi*) the amounts of gross average annual income and expenditure of such trust, and

(*vii*) any other particulars as may be prescribed under sub-section (1) of section 5.

(2) The petition referred to in sub-section (1) shall show in what way the petitioner claims to be interested in the public trust and shall be signed and verified in the manner prescribed for the signing and verification of a statement under section 5.

(3) If it comes to the knowledge of the Registrar that a suit has been instituted in any Court in regard to any of the matters mentioned in sub-section (1), he shall stay the enquiry so far as it relates to, or is likely to be affected by the Court's findings or orders in regard to such matters, until the suit is finally decided in that Court.

(4) The Registrar shall from time to time ascertain whether such suit has been finally decided and after the final decision of the suit, he shall proceed with the enquiry in regard to such matters as may not have been decided in such suit.

(5) On completion of the enquiry provided for in sub-sections (1) and (4), the Registrar shall record his findings as to the matters mentioned in the said sub-sections except such matters as may have been decided in such suit.

(6) For the purpose of this section the Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters :—

(*a*) enforcing the attendance of any person and examining him on oath,

(*b*) compelling the production of documents and material objects,

(*c*) issuing commissions for the examination of witnesses,

(*d*) proof of facts by affidavits.

(7) Save as provided in this section, the Registrar shall not determime any question of title between persons claiming adversely to each other or to the trust.

Register of Parsi Public Trust.

7. The Registrar shall, after the submission of a statement under section 5 and an enquiry, if necessary, held under section 6, or merely after an enquiry held under section 6, record entries in such form as may be prescribed in a register called the Register of Parsi Public Trusts and shall file the statement, if any.

Note.—This section corresponds to s. 7 of the Bombay Public Trusts Registration Act, 1935, and provides for the maintenance of a Register of Parsi Public Trusts and for the amendment of entries made in it.

Amendment of entries in Register.

8. (1) When any change occurs in any of the particulars recorded in the Register of Parsi Public Trusts, the manager shall, within six months of the occurrence of such change, report to the Registrar such change in a statement in the prescribed form and accompanied by the prescribed fee. The provisions of sections 5 and 6 shall, so far as may be, apply to such statement.

(2) For the purpose of verifying the correctness of the entries in the Register of Parsi Public Trusts or ascertaining whether any change has occurred in any of the particulars recorded in such register, the Registrar may hold an enquiry in the prescribed manner and the provisions of section 6 shall, so far as may be, apply to such inquiry.

(3) If the Registrar, after receiving a report under sub-section (1) and holding an enquiry, if necessary, under sub-section (2), or merely after an enquiry held under sub-section (2), is satisfied that a change has occurred in any of the particulars recorded in the Register of Parsi Public Trusts with regard to a public trust, he shall amend in the prescribed manner the entry or entries affected

by such change and shall file the statement furnished under sub-section (1) along with the statement, if any, relating to the said trust filed under section 5.

Note.—This section corresponds to s. 8 of the Bombay Public Trusts Registration Act, 1935, and provides for the maintenance of a Register of Parsi Public Trusts and for the amendment of entries made in it.

Stay of inquiry or entry in Register.

9. (1) No Registrar shall proceed with an enquiry under section 6 or 8, or shall act under section 7, in regard to any public trust particulars of which have been recorded in the Register of Parsi Public Trusts by the Registrar of any other district or area.

(2) If an enquiry under section 6 or 8 in regard to any public trust is pending before the Registrars of two or more districts or areas, Government shall, on the application of any of the parties having an interest in such trust or of any of such registrars or on their own motion, determine which of such Registrars shall proceed with the enquiry in regard to such trust; and upon such determination no Registrar other than such Registrar shall proceed with an enquiry under section 6 or 8 or act under section 7 in regard to such trust.

Note.—This section corresponds to s. 9 of the Bombay Public Trusts Registration Act, 1935, and provides that if an enquiry as regards any trust is pending before two or more Registrars, Government shall decide which Registrar shall proceed with and complete the inquiry.

Entries in Register to be final subject to section 11.

10. (1) Entries made by the Registrar in the Register of Parsi Public Trusts in accordance with the provisions of sections 6 and 8 shall, subject to the provisions of section 11, be final for the purposes of this Act.

(2) Nothing in this section shall be deemed to bar in any way the right of any person aggrieved by any such entry to institute a suit in a court of competent jurisdiction in regard to any matter affected by such entry.

Note.—"This clause provides that the entries made in the Register of Public Trusts shall, subject to the provisions of clause 11, be final. We have, however, added a proviso that nothing in this clause shall bar the right of any person to institute a suit in a Civil Court in regard to any matter affected by entries in such Register. In view of this provision, original clause 15 of the Bill, which provided for an appeal against the decision of the Registrar, has been deleted by us." (*Report of the Select Committee*).

Amendment of Register by order of Court.

11. A Civil Court of competent jurisdiction deciding any question relating to any trust to which this Act applies or in respect of which any entry has been recorded in a Register of Parsi Public Trusts shall communicate its decision

to the Registrar and the Registrar shall make entries or amendments of entries in the Register of Parsi Public Trusts relating to the said trust in accordance with its decision.

Note.—This clause provides that a Civil Court deciding any question relating to any trust to which this Act applies or in respect of which an entry has been recorded in the Register of Trusts shall communicate its decision to the Registrar. We have also made it obligatory on the Registrar to make entries or amendments of entries in the Register of Trusts according to the decision of the Civil Court.

Maintenance of accounts and their audit.

12. (1) Every manager of a public trust in respect of which an entry has been recorded in the Register of Parsi Public Trusts under section 6 shall keep regular accounts of all moveable and immoveable properties, except such articles as are of a perishable nature, received, and of all encumbrances created on the trust property and of all payments and alienations made, on behalf of the public trust of which he is the manager. Such accounts shall be kept in such form and shall contain such particulars as may be prescribed.

(2) The accounts shall be balanced each year on the thirty-first day of March, or such other date, as the manager of any particular public trust may at his option choose in regard to such trust : provided that when such date is so chosen, the manager shall as soon as practicable intimate to the Registrar the date so chosen ; provided further that the date so chosen may be altered only with the consent of the Registrar and subject to such conditions as he may think fit to impose. The accounts so balanced shall be examined and audited annually in such manner and by a person who is the holder of a certificate granted under section 144 of the Indian Companies Act, 1913, or by such persons as may be prescribed.

(3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers, other documents and records in the possession or under the control of the manager.

(4) Within six months after the thirty-first day of March, or such other date, as may be chosen by the manager in any particular case, under sub-section (2) of the year for which the accounts are balanced, every manager shall prepare and furnish to the Registrar, a full and true statement of the accounts, in such form and containing such particulars as may be prescribed together with the audit note, if any, relating thereto :

Provided that the Registrar may, if he is satisfied that there is any sufficient cause for so doing, extend the time for the furnishing of any statement of accounts and audit note under this section.

Exception.—Nothing in this section shall apply—

(1) to any public trust in respect of which a scheme has been settled under section 92, Civil Procedure Code, 1908, and such

scheme requires the submission of accounts of such trusts to the court and audit thereof by any person appointed or approved by the court, or

(2) to any trust property which is vested in the Treasurer of Charitable Endowments, the Administrator General of the Official Trustee.

Trustees entitled to pay costs of audit, etc., from trust funds.

13. Notwithstanding anything contained in the deed or instrument creating any trust, every manager may pay from the income of the trust property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 5 or section 6 or in respect of the preparation or audit of the annual accounts for the purpose of this Act.

Inspection and copies.

14. Any person who in the opinion of the Registrar has an interest in any public trust shall, on payment of the prescribed fee, be entitled to inspect in the prescribed manner or to obtain a copy of any statement of particulars or any other document furnished to the Registrar under section 5 or section 6 or any statement of accounts furnished to him under section 12 (4) or any audit report made on an audit under section 12 (2) relating to such trust.

Annual contribution from Parsi public trusts.

15. Every public trust shall, for the purpose of meeting the charges for and expenses incidential to the registration of public trusts, the maintenance of the registers of such trusts and generally carrying into effect the provisions of this Act, be liable to pay to the Parsi Public Trusts Administration Fund of the district or area concerned, annually such contribution, on such date and in such manner, as may be prescribed :

Provided that the contributions prescribed under this section shall be fixed at rates in proportion to the gross income of the public trust but in accordance with a progressively diminishing scale.

Explanation.—Progressively diminishing scale shall, for the purposes of this section, mean a scale of rates which shall diminish in proportion to the increase in the income of any public trust.

Note.—This section corresponds to s. 14 of the Bombay Public Trusts Registration Act, 1935.

Parsi Public Trusts Administration Fund.

16. For each district or area for which a Registrar is appointed under section 4 there shall be created a fund to be called the Parsi Public Trusts Administration Fund of the district or area concerned, and there shall be placed to the credit thereof the following sums, in so far as they arise in such district or area, namely :—

(*a*) any fees which may be levied under section 5, 8 or 14,

(*b*) contributions under section 15,

(*c*) any sums received by the Parsi Public Trusts Administration Fund from private sources,

(*d*) any sums allotted by Government or by any local authority to the Parsi Public Trusts Administration Fund.

Explanation.—For the purposes of this section the City of Bombay shall be deemed to be a district.

Note—This section is on the lines of s. 15 of the Bombay Public Trusts Registration Act, 1935.

Application of Parsi Public Trusts Administration Fund.

17. The Parsi Public Trusts Administration Fund of a district or any area as created under section 16 shall, subject to the provisions of this Act, be under the control and management of the Registrar and shall be applicable to the payment of charges for and expenses incidental to the registration of public trusts, the maintenance of the registers of such trusts and generally carrying into effect the provisions of this Act.

Note.—This section is on the lines of s. 16 of the Bombay Public Trusts Registration Act, 1935. Sections 15, 16 and 17 provide for the creation of Parsi Public Trusts Administration Fund in each district or area, the contributions payable to it by the trusts and the purposes for which it will be applied. The Fund is to be under the control and management of the Registrar (*Report of the Select Committee.*)

Special audit.

18. It shall be competent to the Registrar, at any time, for reasons to be recorded in writing, to order a special audit of the accounts of a public trust by such person as may be prescribed and to order the cost of such audit to be paid by the trustee or manager from the income of the property of the public trust or out of the Parsi Public Trusts Administration Fund.

Publication of list of Parsi public trusts.

19. Every Registrar shall publish annually under his signature, in the *Bombay Government Gazette* and in a newspaper published in the principal vernacular of, and circulating in, the district or area, a list of public trusts and a statement of the sums standing to the credit of the Parsi Public Trusts Administration Fund, in such form and on such date as Government may prescribe.

Penalty for failure to furnish or for furnishing false statements under section 5, 6 or 8.

20. (1) If any manager fails or neglects to submit a statement to the Registrar as required under section 5, 6 or 8 or submits a statement under either of these sections which he knows or has reason to believe to be false in any material particular, such manager shall on conviction be punishable with fine not exceeding Rs. 500.

(2) If any manager fails or neglects to keep accounts or to furnish a statement of accounts under section 12 or furnishes a statement which he knows or has reason to believe to be false in any material particular, such manager shall on conviction be punishable with fine not exceeding Rs. 200.

Penalty for failure to furnish statement of accounts or furnishing false statements under section 12.

(3) If any person fails to comply with any order issued by the Registrar under or in pursuance of the provisions of this Act, such person shall on conviction be punishable with fine which may extend to Rs. 100.

Penalty for failure to comply with the order of Registrar.

(4) Any Court may, in passing an order of conviction and sentence for any of the offences under sub-section (1), (2) or (3), specify a period within which the person convicted shall comply with the provisions of this Act which may be found to have been contravened by him and may also prescribe a daily fine not exceeding Rs. 50 for every day for the period during which the default continues after the expiry of the period so specified:

Penalty for continuing offence and power of Magistrate to direct compliance with the provisions of the Act.

Provided that if the person failing to comply with any direction issued by the Court satisfies the Court that there was good reason for his failure to do so and applies for extension of the period specified under this section, the Court may, if it thinks fit, extend the period and may remit the whole or any part of the fine paid or due.

21. (1) No prosecution under this Act shall be instituted except on the complaint of the Registrar within whose jurisdiction the whole or a substantial portion of the property of the public trust in respect of which the offence is committed is situate or within whose jurisdiction the property or funds of such trust or any substantial portion thereof are for the time being administered.

Cognizance of offences.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try any offence under this Act.

22. Every Registrar appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Registrar to be deemed a public servant.

23. No action for damages and no prosecution shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Bar of prosecution of persons acting in good faith.

Note.—This section provides that no action for the damages and no prosecution shall lie against any person for anything done in good faith done under this Act.

Recovery of sums due under this Act.

24. All sums due under this Act shall be recoverable as arrears of land revenue.

Power of Government to make rules.

25. (1) Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without preiudice to the generality of the foregoing provisions, such rules may be made for all or any of the following purposes, namely :—

(*a*) Prescribing the form in which a statement shall be furnished to the Registrar and the fee payable along with such statement under section 5 (1).

(*b*) Prescribing the particulars to be included in the statement to be furnished to the Registrar under section 5 (1), clause (*e*).

(*c*) Prescribing the manner in which the statement furnished to the Registrar shall be verified under section 5 (4).

(*d*) Prescribing the manner in which the Registrar shall make an inquiry under sections 6 and 8.

(*e*) Prescribing the form of Register of Parsi Public Trusts to be kept under section 7 and the manner in which entries recorded therein shall be amended under section 8 (3).

(*f*) Prescribing the form of the statement reporting a change and the fee payable along with such statement under section 8.

(*g*) Prescribing the form and particulars of accounts to be kept in respect of a public trust under section 12 (1).

(*h*) Prescribing the manner in which and the persons by whom the accounts of public trusts shall be audited under sections 12 (2) and 18.

(*i*) Prescribing the form and particulars of accounts to be furnished to the Registrar under section 12 (4).

(*j*) Prescribing the fee payable for the inspection of the Register of Parsi Public Trusts under section 14.

(*k*) Prescribing the conditions under which inspection of statements, notices, intimations, accounts and audit notes shall be permitted and the fees payable for such inspection under section 14.

(*l*) Prescribing the fee payable for obtaining certified copies of entries in the Register of Parsi Public Trusts and of documents filed with the Registrar under section 14.

(*m*) Prescribing the amount of contribution payable by a Public Trust and the date and the manner of such payment under section 15.

(*n*) Prescribing the objects in addition to those specified in section 17, to which the Parsi Public Trusts Administration Fund shall be applied under the said section.

(*o*) Any other matter not specifically provided for in this Act, but which in the opinion of Gevernment is necessary for carrying into effect the provisions of this Act :

Provided that the rules made under clauses (*a*), (*f*), (*j*) and (*m*) shall provide for such adjustment from time to time of the rates of fees payable under sections 5, 8 and 14 and the contributions payable under section 15 in respect of the public trusts in any district or area as not ordinarily to leave any surplus in the Parsi Public Trust Administration Fund of the said district or area at the end of any year in excess of the amount sufficient in the opinion of Government for payment of the charges and expenses referred to in section 17.

(3) The rules made under this section shall be subject to the condition of previous publication in the *Bombay Government Gazette.*

(4) Rules made under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by a statutory motion of the said Council and such rules shall, after notification in the local official Gazette, be deemed to have been modified or rescinded accordingly :

Provided that when, in the opinion of Government, such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, Government may, by notification in the *Bombay Government Gazette*, declare that the modification or rescission shall have no effect and thereupon the rules shall remain in force as if they had not been modified or rescinded.

PLEADERS (Caste Questions) REGULATION
Bom. Regulation II of 1827

[*1st January, 1827.*

A Regulation for defining the constitution of Courts of Civil Justice, and the powers and duties of Judges and Officers thereof.

PREAMBLE. *Rep. Act XIV of 1869.*

CHAPTER I.

[*Supreme Court of Sadr Adalat.*]

1 to 15. *Rep. Act XII of 1873.*

CHAPTER II.

OF ZILA COURTS, INCLUSIVE OF THE SUBSIDIARY COURTS OF THE ASSISTANT JUDGES.

16 to 20. [*Appointment of Judge; his Court; his seal; his oath; acting Judge.*] *Rep. Act XIV of 1869.*

21. *First.—The Jurisdiction of the Civil Court shall extend to the cognizance of all original suits and complaints between Natives and others not British-born subjects, respecting the right to moveable or immoveable property, rents, Government-revenues, debts, contracts, marriage, succession, damages for injuries, and generally of all suits and complaints of a civil nature**; it being understood that no interference on the part of the Court in caste-questions is hereby warranted, beyond the admission and trial of any suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff, arising from some illegal act or unjustifiable conduct of the other party.

Caste-question.

Application of this section to Zanzibar.—Under the Zanzibar Order in Council, 1884, Zanzibar is to be treated as a "Zilla or district in the Presidency of Bombay," and, therefore, cl. (1) of this section applies to Zanzibar (*Nathu v. Keshawji*, 26 Bom. 174).

Caste—question—Test.—The test of determining that a particular question is a caste-question so as to exclude the jurisdiction of the Civil Courts is whether it involves an "interference with the autonomy" of any caste. The circumstance that the right to any property claimed depends on the decision of question relating to religious rites or ceremonies cannot justify the courts to decline jurisdiction (*Vyankaji v. Janardan*, P. J. 1891, p. 65).

Defamatory communication made to a caste.—Where a person complains of a defamatory communication made to the caste, the first question to be determined is, whether apart from the truth or falsity of the statement, the communication is or is not privileged, *i.e.*, one made in the performance of a duty owed to the caste. If it is made in the performance of such a duty for the protection and the interest of the caste, the question whether the imputation is true or not is immaterial (*Aditram v. Hargovan*, 6 Bom. L. R. 684).

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* S. 21, *Clause* first (except so much as prohibits interference of the Civil Courts in caste questions), was repealed by Acts 10 of 1869 and 14 of 1861.

Excommunication from caste.—A suit brought for a declaration that excommunication of the plaintiffs from their caste by their caste-men was illegal, and that they were still members of the caste, falls within s. 21 (1) of this Regulation and is not cognizable by a Civil Court.

Per Chandavarkar J.—A suit raising a caste-question must fall in one of the three classes :—

I. It may be a suit brought by a member of a caste complaining of his exclusion from it and asking for a declaration that the expulsion is illegal and that he is still a member of the caste and as such entitled to its social privileges. The Civil Courts have no jurisdiction to entertain such a suit.

II. It may be a suit, brought by a member of a caste expelled from it, for a declaration that the excommunication is illegal and that he is entitled to certain rights of property or office as a member of the caste. The Civil Courts have jurisdiction to entertain such a suit, if the result of the excommunication is to deprive a man of his *civil rights*, but even here the jurisdiction is limited. All that the Court can enquire into is whether the order of excommunication was passed *bona fide* in accordance with natural justice. The enquiry is to be conducted from the point of view of the caste and not of the Court into the reasonableness of the rule for a breach of which the order of excommunication was passed. If these conditions are fulfilled, the Court must hold that the caste acted within its powers as a domestic tribunal with whose discretion it will not interfere.

III. It may be a suit brought by an expelled member for damages on account of loss of caste or character. The Civil Courts have jurisdiction in such a suit; but the jurisdiction is subject to the law that a libel to a man's position in his caste can give him no right to claim damages from any of his caste-fellows if they have acted *bona fide* for the protection of their caste interest in the discharge of their caste duty (*Nathu v. Keshavji*, 26 Bom. 174).

A person, who is a trustee of a caste fund, has no legal claim to a roving inspection of all caste documents on the ground that some of such documents may possibly be found to contain entries bearing upon questions of expenditure having some connection with the trust. A right to inspection of documents belonging to a caste, existing in any person by virtue of his being member of the caste, cannot be involved by a reference to English law. A Court will not grant a decree for the enforcement of a privilege granted by a caste, because such a privilege may be taken away by the caste at any time and the decree may be rendered nugatory. The proper tribunal in such cases is the caste itself and not a Civil Court. 'Autonomy of a caste must at least mean that where rights to property are not involved, all matters of internal management must be left to the decision of the caste. Courts will not interfere where the rules of the caste make special provision of the question in dispute. Where there is a question in dispute between the caste and a section of the caste, it is outside the jurisdiction of the Court. The Hindu caste is an unique aggregation so wholly unknown to the English law that English decisions concerning English corporations and partnerships tend rather to confusion than to guidance upon matters relationg to a caste. A Hindu caste may have points of resemblance to English corporations and partnerships, but its points of difference appear more numerous and radical (*Jethabai v. Chapsey*, 11 Bom. L. R. 1014; 34 Bom. 467).

What are caste questions:—A suit to re-admit a member to participation in a caste excommunication and privileges (*Narotam v. Mithalal*, P. J. for 1878, p. 235), a claim by a Mahajan or head man of a caste, to be entitled to the disposal of money paid, according to the custom of the caste, to the Panch on marraiges, and brought against a member of the Panch, to recover money paid to him in accordance with that custom (*Dodhma v. Khemchand*, P.J. for 1882, p. 377), a claim to receive fees claimed as mehtars of a caste on a marriage (*Murar v. Nagari*, 6 Bom. H. C. R., 17), a claim to be Chalvadi of the Ligayat caste the official duty being to bear on public occassions insignia or symbols of the caste without any right to levy fees or receive salary but voluntary gratuities (*Shankara v. Hanma*, 2 Bom. 470), a claim by the members of one Division of a caste against the members of other division of that caste for the recovery of half of certain property belonging to the caste or their value (*Girdhar v. Kalya*, 5 Bom. 83), also a claim to a caste office and to be entitled to perform the honorary duties of that office or enjoy privileges and honors at the hands of the members of that caste in virtue of that office (*Mu ari v. Suba*, 6 Bom. 725) are all caste-questions.

The Court does not decline to give effect to the expressed wishes of the majority of a caste as to the management and custody of a caste property which the minority seek to set at naught, by reason of the suit involving a caste question. In matters relating to the management of caste property and the administration of its affairs, the majority of the caste has authority to control the minority. But the Court will not, by its decree, enable the majority to make a tyrannical use of its power. It would not assist the majority to deprive without cause the minority of their right to use what is the common property of all or give effect to a resolution passed in violation of the rules of natural justice or of a directly confiscatory nature (*Lalji v. Walji*, 19 Bom. 507).

Depriving a member of a caste of man-pan invitation gives no cause of action (*Raghunath v. Janardan*, 15 Bom. 507).

What are not caste questions.—The meaning of this section is that the internal economy of a caste is not to be interfered with by the Courts, not that no possible matter of litigation in which a question of caste usage, or right, or privillege may arise, can be taken cognizance of. Therefore the right of exclusive worhship of an idol at a particular place set up by a caste is a civil right for adjudication by the Civil Court and not a caste question (*Anandrao v. Shankar*, 7 Bom. 327).

This section does not debar a Civil Court from taking cognizance of a suit in which a question of caste rule or of membership of a caste may be raised by way of answer to a claim for property or on a breach of contract. This section provides that there shall be no interference on the part of the Court in caste questions. But to take evidence of the customary law of a caste to recognize the law and the vote of majority as given effect to by the law, is not to interfere in caste questions. It is simply to recognize the existence of caste as corporation with civil rights and an autonomy suitable to the purposes of their existence (*Pragji v. Govind*, 11 Bom. 534).

A dispute as to the right of an office as Khatib of preacher (*Sayad v. Hussen Shah*, 13 Bom. 427) and a claim by a Khot for damages by rerson of the defendant having wrongfully received cocoanuts and betel leaves and a marriage fee from a

man of a Bhandari caste, and thereby infringing the customary rights or appurtenances to the plaintiff's office of Khot (*Aba Raghuji v. Deriji*, P. J. for 1884, p. 297) are not caste-questions.

Where the plaintiff as the head of a math alleged his exclusive right of performing a certain religious worship and sued the defendant for recovery of the perquisites received by him by wrongfully performing those ceremonies and the defendant contended that he had performed that as deputy of the head of another math who and not the plaintiff was entitled to perform them, but neither party alleged that the caste had any voice in the matter, *held*, that the suit was not barred (*Komarswami v. Gurubasaswami*, P. J. for 1891, p. 334).

Where the defendant borrowed a cooking pot belonging to a certain Mahomedan community and refused to return the same to the Panch, *Held*, that a suit by the Panch who was in charge of it on behalf of the community to recover it or its price was cognizable by the Civil Court (*Kasam v. Madubhai*, P. J. 1896, p. 391).

Second to Seventh.—[Provisoes as to admission of suits; jurisdiction over British-born subjects.] *Rep. Acts X of 1861 and XIV of 1869.*

22 to 33. *Rep. Act XIV of 1869.*

Chapters III–VI and Appendices A to L.

(*Repealed*)

THE BOMBAY PLEADERS ACT, 1920

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SCHEDULES I—III.

The Bombay Pleaders Act, 1920

Bombay Act No. XVII of 1920. [a]

[*13th December 1920.*

(As repealed in part by Government of India Acts XXI and XXII of 1926, amended by Bombay Acts XI of 1928, VI of 1929 and XVIII of 1931 and by High Court Notifications Nos. 2124, 2308, 3632, 311, 2539 and 2036, dated the 28th April 1925, 16th April 1928, 2nd July 1928, 26th January 1929, 23rd December 1932 and 30th August 1935).

An Act to consolidate and amend the Law relating to pleaders in the Presidency of Bombay.

WHEREAS it is expedient to consolidate and amend the law relating to pleaders in the presidency of Bombay ; and whereas the previous sanction of the Governor General required by section 79, sub-section (2), of the Government of India Act, 1915, has been obtained for the passing of this Act ; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Bombay Pleaders Act, 1920.

(2) It extends to the whole of the presidency of Bombay except Sind and Aden.

Definitions.

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

(1) "the High Court" means the High Court of Judicature at Bombay ;

(2) " court subordinate to the High Court" means any court, tribunal, or person whose decree, order, decision or award is, or may hereafter be, subject to the appellate or revisional jurisdiction of the High Court ;

(3) "pleader" means a pleader admitted under this or any previous Act, and includes an attorney of the High Court appearing, pleading or acting for a client elsewhere than in the City of Bombay, but nothing in sections 3, 4, 5, 6, 11, 12, 13, 24, 25, 27, or 30 shall apply to an attorney of the High Court ;

(4) "district" means the local limits of the jurisdiction of a principal civil court of original jurisdiction other than the High Court ;

(5) "the Letters Patent" means the Amended Letters Patent of the High Court of Judicature for the presidency of Bombay,

[a]—For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1920, Pt.V, p.402; for Report of Select Committee, *see ibid*, 1920, Pt.V, p. 794(2), and for Proceedings in Council, *see ibid*, 1920, Pt. V, pp. 671 and 971.

dated the 28th December 1865, subject to any amendments thereto and alterations therein made or hereinafter to be made pursuant to clause 44 thereof or section 106 (1A) of the Government of India Act;

(6) "prescribed" means prescribed by rules made under this Act.

Classes of pleaders.

3. Pleaders admitted by the High Court under this Act shall be of two classes, namely, vakils of the High Court and district pleaders.

Sanads.

4. (1) The High Court shall issue to every pleader on his admission a sanad in form A or form B in Schedule II, as the case may be, or in such other form as the High Court may prescribe.

(2) In the case of the sanad of a district pleader, the name of the district [a] or districts [a] for which the sanad is available shall be specified therein.

Extent and transfer of sanads.

5. (1) No district pleader shall hold a sanad in respect of more than one district at the same time:

[b] Provided that when a district for which a sanad is to be issued comprises any area which for the purpose of administration of revenue or criminal justice or both is also included in any other district the sanad may be held in respect of both such districts.

(2) On the application of a district pleader holding a sanad which is available for any [c] district the High Court may from time to time, by endorsement on such sanad, render the same available for any other district.

(3) A pleader holding a sanad in respect of any district may appear, plead and act for a client in any particular civil proceeding in a Court of any other district with the previous written authority of the District Judge in such other district.

Conditions of admission.

6. (1) Any person who is duly qualified and is of good moral character and is not in Government service shall be entitled to be admitted as a pleader.

(2) The number of pleaders shall not be limited.

(3) If a pleader after obtaining a sanad accepts Government service, he shall not be entitled to practise whilst in such service, even if he be on leave.

[a—a]—These words were inserted by Bom VI of 1929, s. 2.

[b]—This proviso was added by *ibid*, s. 3 (1).

[c]—The word "one" was deleted by *ibid*, s. 3 (2).

Where vakils of High Court are entitled to practise.

7. (1) Subject to the provisions of any law for the time being in force and, with respect to the right of vakils of the Hight Court to practise in the High Court, subject to any rules for the time being in force under clause 10 of the Letters Patent, a vakil of the High Court shall be entitled to practise—

(*a*) in the High Court;

(*b*) in any court subordinate to the High Court;

(*c*) before the tribunal of appeal constituted under the City of Bombay Improvement Act, 1898;

(*d*) in or before any other court, tribunal or person in or before which or whom vakils of the High Court are or may hereafter be entitled by law to practise; and

(*e*) before any public officer in any of the following proceedings:—

an investigation held in accordance with the first paragraph of section 73 and on appeal under section 77 of the Bombay Hereditary Offices Act;

proceedings under section 87 of the Bombay Land Revenue Code, 1879;

proceedings before a Tribunal of Arbitration under the Bombay Town Planning Act, 1915;

such proceedings under any enactment in force in the Bombay Presidency as the local Government, by notification in the *Bombay Government Gazette*, may specify.

(2) The provisions of sub-section (1) shall apply, *mutatis mutandis*, to attorneys of the High Court.

Where district pleaders are entitled to practise.

8. Subject to the provisions of any law for the time being in force a district pleader shall, within the district [*a*] or districts [*a*] in respect of which he holds a sanad, be entitled to practise—

(*a*) in such civil court or courts as the District Judge may from time to time assign to him;

(*b*) in any criminal court;

(*c*) in or before any other court, tribunal or person in or before which or whom district pleaders are or may hereafter be entitled by law to practise; and

(*d*) before any public officer in any of the following proceedings:—

[*a*—*a*] —These words were inserted by Bom. VI of 1929, s. 4.

an investigation held in accordance with the first paragraph of section 73 and an appeal under section 77 of the Bombay Hereditary Offices Act ;

proceedings under section 87 of the Bombay Land Revenue Code, 1879 ;

proceedings before a Tribunal of Arbitration under the Bombay Town Planning Act, 1915 ;

such proceedings under any enactment in force in the Bombay Presidency as the local Government, by notification in the *Bombay Government Gazette*, may specify.

Appearance in civil court by unauthorized person forbidden.

9. No person shall appear, plead or act for any party in any civil proceeding in any court unless he is a pleader as defined in this Act and is entitled and duly empowered to appear, plead and act for such party in such proceeding:

Provided that nothing in this section shall apply—

(*a*) to any party appearing, pleading or acting on his own behalf, or appearing or acting by his recognized agent as defined in rule 2, Order III of the Code of Civil Procedure, 1908, or

(*b*) to any advocate of the High Court.

[*a*] 10. [*Repealed.*]

Retaining fee.

11. (1) A party engaging a pleader shall pay him a retaining fee of an amount not less than one rupee.

(2) Where a party fails so to do, the pleader shall demand such fee and shall not perform any services for such party until the fee has been paid.

(3) Every pleader receiving such fee shall give a receipt in writing for the same, specifying the date of receipt.

Pleader not to act for party adverse to his client, and not to refuse to act for his client without the permission of the Court.

12. No pleader after accepting a retaining fee shall without the permission of the Court—

(*a*) appear, plead or act, or agree so to do, on behalf of any other party whose interest in the case is adverse to that of his client, or

(*b*) refuse or omit to appear, plead or act for his client.

Receipt to be given for documents.

13. Every pleader receiving a document of any kind from his client shall—

(*a*) on demand give a receipt in writing for such document at the time when he receives it,

[*a*]—Section 10, repealed by Act XXII of 1926, s. 3, is omitted.

(*b*) subject to the provisions of section 30 return such document if his client requires the same and gives a receipt in writing therefor.

Pleaders bound to attend on day fixed for proceeding except in certain cases.

14. (1) A pleader shall be bound to attend in court on any day which, by notice duly given or in accordance with the practice of the court, is fixed for the hearing of a proceeding in which he is employed.

(2) Where a pleader employed in any such proceeding is, from indisposition or any other reasonable cause, unable to attend on such day or at the time when the proceeding is called on, he shall notify the same to the court and thereupon the proceeding shall be stayed for such time as the court may deem reasonable:

Provided that in proceedings in which a party is represented by more than one pleader and one of such pleaders is present, the court may proceed therewith.

(3) In any proceeding in which a pleader ceases, temporarily or permanently, to act for his client, because he has accepted Government service, or has been permitted to withdraw from the proceeding, or has been suspended or dismissed, or has died, or for any other reason, the proceeding shall be stayed for such time as the court may deem reasonable.

Pleaders not to give or take commission.

15. No pleader shall tender, give, retain or consent to retain any gratification for procuring or having procured the employment of himself or of any other pleader in any legal business.

Pleaders not to take instructions except from client or authorized agent, or accept employment through a tout.

16. No pleader shall—

(*a*) take instructions in any proceeding except from the party on whose behalf he is retained or from some person who is, within the meaning of the Code of Civil Procedure, 1908, the recognized agent of such party, or from some person authorized by such party to give such insrtuctions, or

(*b*) accept any employment in any legal business through a person who has been proclaimed as a tout.

[*a*] 17. [*Repealed*].

[*a*] Section 17, repealed by Act XXI of 1926, s. 6 is omitted.

18. (1) Where costs are awarded to a party in any proceeding, the amount of the pleader's fee to be taxed in the bill of costs as recoverable by such party, if represented by a pleader, from his adversary, shall be computed in accordance with the rules in Schedule III unless such fee has been settled under the provisions of section [a] 3 of the Legal Practitioners (Fees) Act, 1926 [a] for a lesser amount in which case no more than such lesser amount shall be recoverable.

Computation of taxed fee.

(2) Nothing contained in sub-section (1) of this section or in section 20 shall apply to fees payable to pleaders in the Court of Small Clauses of Bombay.

[b] 19. [*Repealed.*]

20. (1) Where a party has, before the first hearing of a proceeding, engaged more than one pleader, the fees of two pleaders may be taxed in the bill of costs in the following cases:—

When fees of two pleaders may be taxed.

(a) in any original suit, of which the amount or value of the subject-matter exceeds Rs. 5,000, in any court subordinate to the High Court;

(b) in any contested proceeding under the [c] Indian Succession Act, 1865, the Probate and Administration Act, 1881, [a] or the Land Acquisition Act, 1894, of which the amount or value of the subject-matter exceeds Rs. 5,000, in any court subordinate to the High Court;

(c) in any appeal to the High Court from a decree deciding on the merits any suit or any contested proceeding of the kind referred to in clause (a) or clause (b);

(d) in any suit of which the amount or value of the subject-matter is less than Rs. 5,000, where the court certifies by order in writing that the fees of two pleaders may be taxed:

Provided that nothing in this section shall affect suits or appeals by paupers, or suits or appeals governed by the Dekkhan Agriculturist's Relief Act, 1879.

(2) Except in the cases specified in this section, a party employing more than one pleader shall not be entitled to recover from his adversary more than one set of pleader's fees.

21. Where in any proceeding there are several parties having the same interests or putting forward the same defence they shall not, if awarded costs, be allowed more than one set of pleaders' fees on party and party taxation unless the Court otherwise directs.

Cases where there are several parties having the same interest or putting forward the same defence.

[a—a] These words and figures were substituted for the original figures "17" by Bom. XI of 1928, first Schedule.

[b] Section 19, repealed by Act XXI of 1926, s. 6, is omitted.

[c] These Acts have been repealed by the Indian Succession Act, 1925 (XXXIX of 1925), Schedule IX.

Taxation of costs in appeals to High Court.

22. In any civil appeal or application to the High Court from the decree or order of a court subordinate to the High Court, if costs between party and party are awarded by the High Court, such costs shall be taxed by an officer of the High Court and included in the bill of costs attached to the decree or order of that Court in the prescribed manner.

Taxasion of costs in mofussil courts.

23. In any court subordinate to the High Court situate elsewhere than in the City of Bombay the amount of the pleader's fee to be taxed in the bill of costs attached to the decree or order of that Court shall not be in excess of the amount computed in accordance with the rules in Schedle III:

Provided that nothing in this section shall apply to bills of costs framed under the provisions of the Indian Companies Act, 1913.

Suspension or removal of pleader by High Court on conviction of criminal offence.

24. The High Court may suspend or remove from practice a pleader who has been convicted by any criminal court in British India of a criminal offence implying a defect in his character which in the opinion of the High Court renders him unfit to be a pleader.

Punishment of pleader by High Court for improper conduct.

25. On the application of the Government Pleader in the High Court, or on a report from a District Court or Court of Session, or from the Chief Judge of the Court of Small Causes of Bombay, or from the Chief Presidency Magistrate for Bombay, or otherwise, the High Court may suspend or remove from practice, or may fine or reprimand, a pleader on reasonable cause.

Disciplinary jurisdiction—At a meeting held in Ahmednagar, opponent No. 1 presided, while opponent No. 2 moved and opponent No. 3 seconded a resolution congratulating Ali brothers, who were on their trial at Karachi, and a pleader of Belgaum who was on his trial at Dharwar. Opponents Nos. 1 and 2 were District Court Pleaders, and opponent No. 3 was a Vakil of the High Court. The Government Pleader applied to the High Court for the opponents being dealt with under its disciplinary jurisdiction. *Held*, that inasmuch as the opponents took part in the passing at a public meeting of a resolution which amounted to a criticism of the pending proceedings, "a reasonable cause" was made out for dealing with them under the disciplinary jurisdiction under clause 10 of the amended Letters Patent and this section. *Per Shah Ag. C. J.*—Anything done or said which may amount to criticism of any proceedings pending in a Court of Justice is calculated to hinder the even and impartial administration of Justice. Officers of this Court who hold Sanads of this Court are expected to extend their co-operation and assistance in the task of the administration of justice; and the least that could be expected of them is that by their act they will cause no hind-

rance to the even and impartial administration of justice. *Per Crump J.*—To publicly glorify as a martyr a man who is on his trial must tend to hinder and embarrass the proper administration of justice (*Government Pleader v. Vinayak Balvant Chaukar*, 24 Bom. L. R. 1049, s. c. 47 Bom. 117).

The High Court in its disciplinary jurisdiction has full power to suspend the sanad of a pleader, if he has been adjudicated an insolvent, until he obtains a discharge, if, in the circumstances of the case, it considers that the insolvency coupled with the surrounding circumstances supplies a reasonable cause for such a suspension. It is largely a matter of discretion. The Chief Justice receiving an application of this kind can well be satisfied from the circumstances that are put forward that there is no objection to grant an insolvent pleader permission to continue to practise, and in doing so he would be acting on behalf of the Court, but if he considers that the case is one where there is reason to doubt the advisability of granting such permission, he can ask the Government Pleader to bring it before the Court in its disciplinary jurisdiction (*Government Pleader v. Dattatraya Narayan Deshpande*, 52 Bom. 559).

Extent of pleader's authority.—It is the duty of counsels towards their clients to use their own jugdment, experience and discretion and as a result, whatever be their instructions, to exclude all topics and observations of which the case does not properly admit. They should be careful to express anything in a form which will not be unduly insulting or opprobrious to the officer, who has to receive the notice. Where a notice by the pleader contained the following extracts "you should not have asked my client to attend the court at 11 a. m." when he was not going to be examined at that time. He was not bound in law to wait indefinitely till you choose to call him for examination. A witness's time is as much valuable, if not more than the time of the Court. Obviously enough, your order was not only arbitrary and high-handed, but also spiteful and malicious. From what is stated above, you will clearly see the enormity of your own acts." It was *held* that there was a clear excess of the privilege of the Bar, amounting to improper conduct (*Government Pleader v. L. B. Bhopatkar*, 30 Bom. L. R. 934).

"Reasonable cause."—There is no substantial difference between a case dealt with under this Act on "reasonable cause," and a case dealt with under the Bar Councils Act for misconduct. No cause can be considered reasonable for taking disciplinary action against a pleader, unless the pleader had been guilty of misconduct, and if misconduct is proved, that amounts to reasonable cause (*Jamshed Byramji Kanga v. Kaikhushru Bomanji Bharucha*, 36 Bom. L. R. 1136, F. B.).

Misconduct-Pleader accepting vaklats from both sides—A pleader who appears for the accused in a criminal case accepting a Vaklat from them and applies for bail on their behalf and subsequently accepts and files a vaklatnama on behalf of the complainant is guilty of professional misconduct and deserves to be severely reprimanded (*Government Pleader, Bombay v. Ramanlal Jethalal*, 36 Bom. L. R. 1225).

Powers of District Court or Court of Session in respect of improper conduct of pleader.

26. Where it appears to a District Court or Court of Session or to the Chief Judge of the Court of Small Causes of Bombay, or to the Chief Presidency Magistrate for Bombay, that a pleader has been guilty of neglect of duty or of a violation of any of the provisions of this Act

or of any other improper conduct, such court may hold an inquiry regarding such conduct and report the result of such inquiry to the High Court.

Improper conduct.—Where a pleader who had been authorised by the Court to examine the accounts for certain specific wakf properties issued certain circular postcards describing that he had been given authority to audit the accounts of wakf properties generally by an order of the Court and he also canvassed for work, it was *held* that the pleader was guilty of an offence under this section. It was, however, *held* that considering the fact that the pleader was a junior practitioner, he could be let off after being severely reprimanded (*The Govt. Pleader v. Siddick*, 53 Bom. 640).

Conduct of case in High Court against pleader.

27. (1) Where any case under section 24, section 25 or section 26 is heard by the High Court, the Advocate General or such counsel or pleader as may appear for the Crown shall argue the case against the pleader against whom the allegation is made, and such pleader may appear in person or by counsel or pleader.

(2) In any such case the High Court may make such order as to costs as it thinks fit.

[*a*] 28. [*Repealed.*]

Recovery of taxed fees.

29. A pleader whose bill of costs has been taxed may apply to the Court by which, or by whose officer, the same has been taxed, for an order against his client for the sum allowed on taxation or such sum as may remain due. The Court may make such order or may refer the pleader to a suit.

Any such order may be executed under order 21 of the Code of Civil Procedure, 1908, as a decree for money.

Lien for taxed fees.

30. In every matter in which costs are due to a pleader by his client which have been or are capable of being taxed the pleader shall as against his client be entitled to a lien for the amount of such costs, as taxed, upon—

(*a*) all documents come into his possession in the course of his engagement in connection with such matter, and for which he has given a receipt in accordance with the provisions of section 13 (*a*) and

(*b*) all moveable property recovered or preserved by his exertions in such matter.

Rules.

31. (1) The High Court may make rules consistent with the provisions of this Act—

[*a*]—Section 28, repealed by Act XXI of 1926, s. 6, is omitted.

(*a*) prescribing the qualifications and mode of admission of pleaders and the fees payable for admission ;

(*b*) prescribing the fees payable in respect of examinations (if any) held for the office of pleader ;

(*c*) regulating, and providing for the recognition of, bar associations and for granting sanction to the rules of such associations ;

(*d*) requiring that a pleader shall be a member of, and submit to the rules of, a bar association ;

(*e*) requiring that a pleader shall be a member of, and subscribe to, the law library attached to the principal Court in which he practises ;

(*f*) providing for the taxation of costs between party and party ;

(*g*) providing for the allowance and taxation of costs between pleader and client whether in litigious or non-litigious business;

(*h*) prescribing, in lieu of the forms in Schedule II, the form of sanad to be given to pleaders and the form of vakalatnamas ;

(*i*) prescribing, in lieu of or in addition to the rules in Schedule III, the manner in which the pleader's fee shall be computed, and the amount of the pleader's fee, and determining the amount or value of the subject-matter in particular classes of cases or in cases generally, for the purpose of calculating the pleader's fee ;

(*j*) prescribing the manner in which costs in appeals or applications to the High Court from decrees or orders of courts subordinate to the High Court shall be taxed, in cases where costs between party and party are awarded by the High Court;

(*k*) fixing the scale of costs which may be awarded in cases under sub-section (2) of section 27 ;

(*l*) generally, to give effect to such provisions of this Act as may require to be provided for by rules.

(2) Where the High Court prescribes any new forms in lieu of the forms in Schedule II, or makes any new rules in lieu of or in addition to the rules in Schedule III, such new forms or rules respectively shall on publication be deemed to be enacted in such Schedule in lieu of or in addition to the forms or rules now therein enacted.

(3) All rules made under this Act shall be published in the *Bombay Government Gazette* and shall thereupon have effect as if enacted in this Act.

Savings.

32. Nothing in this Act shall be deemed to limit or otherwise affect the powers conferred upon the High Court by sections 106 and 107 of the Government of India Act, 1915, or by clauses 9 and 10 of the Letters Patent or by any law for the time being in force.

Pending cases.

33. Nothing in this Act regarding the appointment, appearance or remuneration of pleaders or the taxation of costs shall apply in respect of any proceedings pending in any court at the commencement of this Act, and all such proceedings, until their final disposal by the court in which they are pending, shall be governed, in respect of such matters, by the laws and rules in force immediately before the commencement of this Act.

Repeal.

34. The enactments mentioned in Schedule I are hereby repealed to the extent specified in the third column thereof.

SCHEDULE I.

(*See section 34.*)

No. and date of enactment.	Title.	Extent of repeal
Bombay Regulation II of 1827.	A Regulation for defining the constitution of the Courts of Civil Justice and the Powers and Duties of the Judges and Officers thereof.	So much as has not already been repealed, excepting the part of section 21 which prohibits interference of the civil courts in caste questions.
Act I of 1846 ...	An Act for amending the law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.	The whole, excepting section 5.
Act XX of 1853,..	An Act to amend the law relating to Pleaders in the Courts of the East India Company.	Section 2.

SCHEDULE II

FORM A.

Sanad for a Vakil of the High Court.

(Clause 10 of the Amended Letters Patent and section 4 of the Bombay Pleaders Act, 1920.)

In His Majesty's High Court of Judicature, Appellate Side, Bombay.

Bombay, 19

To

In conformity with the Rules made under the provisions of clause 10 of the Amended Letters Patent constituting the High

Court of Judicature at Bombay and published under the date and in conformity with the provisions of the Bombay Pleaders Act, 1920, you
are hereby approved, admitted and enrolled as a Vakil of the said High Court, and you will not be liable to be removed or suspended from practice, except for reasonable cause.

By order of His Majesty's High Court
of Judicature at Bombay.

Deputy Registrar.

Seal of the High Court.

Sealer.

The —— day of 19 .

FORM B.

Sanad for a District Pleader.

(Section 4 of the Bombay Pleaders Act, 1920.)

In His Majesty's High Court of Judicature, Appellate Side, Bombay

Bombay, 19 .

To

In conformity with the provisions of the Bombay Pleaders Act, 1920, you
are hereby appointed to the office of District Pleader in the district of

You will not be liable to be removed or suspended from practice except for reasonable cause.

By order of His Majesty's High Court
of Judicature at Bombay.

Deputy Registrar.

Seal of the High Court.

Sealer

The day of 19 .

FORM C.—[*Repealed*] [*a*]

SCHEDULE III.

(See Section 18.)

Rules for computing the pleader's fee

I.—(*a*) [*b*] "Subject to the provisions of rule VI" [*b*] in suits which decide on the merits the real dispute between the parties,

[*a*] Form C of Schedule II, repealed by Act XXII of 1926, section 3, is omitted.

[*b*—*b*] These words were added by High Court Notification No. 2036 dated 30th August 1935.

(*b*) in appeals from decrees (including preliminary decrees) other than appeals from execution proceedings, which decide on the merits the real dispute between the parties,

(*c*) in applications or proceedings under the

[*a*] (i) Indian Succession Act, 1925, excepting applications or appeals falling under sub-clauses (ii) and (iii) of clause (*e*) of rule V [*a*]

[*a*] (ii) Land Acquisition Act, 1894,

the amount of the pleaders' fee shall be computed on the amount or value of the subject-matter in dispute in the suit, appeal, application or proceeding at the rates specified below :—

[*b*] If the amount or value of the subject matter in dispute does not exceed Rs. 5,000, at 3 per cent.

If such amount or value exceeds Rs. 5,000 but does not exceed Rs. 10,000, on Rs. 5,000 as above and on the remainder at 2 per cent.

If such amount or value exceeds Rs. 10,000, but does not exceed Rs. 20,000, on Rs. 10,000 as above and on the remainder at 1 per cent.

If such amount or value exceeds Rs. 20,000, on Rs. 20,000 as above and on the remainder at ½ per cent.

[*c*] *Exception.*—The amount of pleaders' fees in a suit, appeal, application, or proceeding between landlord and tenant shall be calculated on the amount or value of the claim for the purposes of court fees and not on the amount or value of the claim for the purposes of jurisdiction;

Provided that the amount may at the discretion of the Court be calculated on the amount or value of the claim for the purposes of jurisdiction when the Court is of opinion, having regard to the labour involved in the preparation of the case or to the complexity of the issues arising therein, that the higher rate of valuation is appropriate [*c*].

II.—(*a*) [*d*] "Subject to the provisions of rule VI" [*d*] in appeals from orders,

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[*a*—*a*] This clause has been substituted for original clauses (i) and (ii) and clause (iii) has been renumbered clause (ii) by the Bombay High Court Notification (A. S.] No. 2539, dated the 23rd December 1932.

[*b*] This paragraph was substituted for the original paragraphs 1 and 2 by Bom. XVIII of 1931, s. 2.

[*c*] This exception and proviso were added by High Court Notification No. 2308, dated the 16th April 1928.

[*d*—*d*]—These words were added by High Court Notification No 2036, dated the 30th August 1935.

(*b*) in civil applications or proceedings other than applications and proceedings necessary for the progress of a suit or appeal and other than applications, proceedings or appeals falling under rules I, IV, and V and

(*c*) in all other cases not otherwise provided for,

the amount of the pleader's fee to be allowed shall be one-fourth of that payable according to the rates specified in rule I.

Mode of fixing pleader's fee for defendant.—A Judge is not entitled to alter the amount for the pleader's fees stated in the plaint in favour of the defendant without giving notice to the plaintiff. Where a suit has been dismissed for default of appearance of the plaintiff it does not come under rule 1 because the case has not been decided on the merits but it falls under rule 2 (*c*) of Schedule III as being a case "not otherwise provided for." Consequently the defendant will be entitled only to one-fourth of the costs (*Lokappa v. Hiramani*, 31 Bom. L. R. 471).

III.—[*a*] "Subject to the provisions of rule VI" [*a*] the fee prescribed in rules I and II shall be taken to be the remuneration for the pleader's services until the final decree or order in the suit, appeal, application, reference or proceeding, is passed.

IV.—In execution proceedings the pleader's fee to be allowed shall be one-fourth of the fee calculated at the rates specified in rule I on the amount or value of the relief or money claimed in the application to execute the decree. [*b*] Such fee shall be chargeable on the first application and on every subsequent contested application.

V.—(*a*) In any reference made to the High Court under section 113 of the Code of Civil Procedure, 1908,

(*b*) in any application to the High Court under section 115 of the said Code,

(*c*) in any application to the High Court under section 25 of the Provincial Small Cause Courts Act, 1887,

(*d*) in any application for the exercise of the High Court's Extraordinary Jurisdiction in civil matters,

(*e*) in all applications or appeals under

(*i*) the Guardians and Wards Act, 1890,

[*c*] (*ii*) Part X of the Indian Succession Act, 1925,

[*c*] (*iii*) Part VII of the Indian Succession Act, 1925,

(*iv*) the Indian Trusts Act, 1882,

(*v*) the Provincial Insolvency Act [*c*] 1920,

(*vi*) any other special or local Act,

a sum of Rs. 30 shall be allowed as the pleader's fee.

[*a*—*a*]—These words were added by High Court Notification No. 2036, dated the 30th August 1935.

[*b*]—These words were added by High Court Notification, A. S. No. 2124 dated the 28th April 1925.

[*c*]—These amendments have been made by the Bombay High Court Notification (A. S.), No. 2539, dated the 23rd December 1932.

[a] "VI. In all suits, appeals, applications or proceedings in which a commission is issued under the provisions of section 75 of the Civil Procedure Code the pleader's fee shall consist of—

(a) an amount computed in accordance with whichever of rules I to V would be applicable to the suit, appeal, application or proceeding but for the issue of the commission,

(b) and such fees not exceeding Rs. 20 per day for appearing before the Commissioner as the Court may in its discretion allow :

provided

(i) that no fees shall be allowed for appearing before a Commissioner if the Court when issuing the commission certifies that the presence of a pleader before the Commissioner is not necessary,

(ii) and provided further that no fees shall be allowed for appearing before a Commissioner in the town or village which is the headquarters of the Court issuing the Commission." [a]

[b] VII In no case, whether specially provided for in this Schedule or otherwise, shall the pleader's fee payable in any civil suit, appeal, application, or proceedings other than execution proceedings be less than

(a) Rs. 30 in the High Court,

(b) Rs. 15 in a District Court,

(c) Rs. 15 in the Court of a Subordinate Judge, subject to the provisions of clause (d) and the proviso below,

(d) Rs. 5 in the Court of a Subordinate Judge in suits of the nature cognizable by a Court of Small Causes, or in the Court of a Jagirdar or Inamdar exercising jurisdiction under Bombay Regulation XIII of 1830 and Act XV of 1840, or in the Court of a Mamlatdar under the Mamlatdars' Courts Act, 1906 :

Provided that suits by a superior holder for the recovery of his dues in the Court of a Subordinate Judge shall be governed by clause (d) and not by clause (c), unless in the opinion of the Court the suit involves questions of a complicated nature affecting title to land.

[c] "Provided further that if a commission is issued under the provisions of section 75, Civil Procedure Code, in the suit, appeal, application or proceeding, in calculating for the purposes of this rule the pleader's fee payable in such suit, appeal, application or proceeding the fees payable under the provisions of rule VI, clause (b), shall be excluded."

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[a]—This rule was added by the Bombay High Court Notification No. 2036 dated 30th August 1935.

[b]—This rule which was substituted for the original rule VI by the Bombay High Court Notification (A. S.) No. 311, dated the 26th January 1929, was renumbered rule VII by the Bombay High Court Notification No. 2036, dated 30th August 1935.

[c] This proviso was added by the Bombay High Court Notification No. 2036, dated 30th August 1935.

POLICE (Duties and Powers of Magistrates) (Bom. Reg. XII of 1827).

[*1st January, 1827.*

A Regulation for the establishment of a system of Police throughout the zilas subordinate to Bombay, for providing rules for its administration, and for defining the duties and powers of all Police-authorities and servants.

PREAMBLE. *Repealed by Act XVII of 1862, and again by Act XII of 1876.*

1 to 18. *Rep. Acts XVII of 1862, VII of 1867, VIII of 1867, II of 1870, X of 1872 and X of 1873.*

Power to make rules as to resort to dharmsalas, etc.

19. *First.*—It shall be lawful for the District Magistrate, when the public benefit and comfort is in question, to institute rules respecting dharmsalas, liquor-shops, public wells, town-gates, and generally all places of public resort, regulating the hours at which they are to be open, the manner in which they are to be used, the equal and appropriate application of their accommodations, and such matters as conduce to maintaining orderly conduct among those who resort to them.

Second to Fifth.—[*Cutting firewood, etc.; removal of nuisances and combustible substances.*] *Repealed by Act XVII of 1862.*

Publication of rules and submission to Sadar Faujdari Adalat.

Punishment for violating rules.

Sixth.—In exercising the authority conferred by this section, the District Magistrate shall commence by issuing an injunction, which, if a particular individual be concerned, shall be personal to him, otherwise it shall be notified by oral proclamation made, and written notice fixed and kept, at such place or places as may be best adapted to convey information to the public, or the class concerned; a copy of which shall, at the same time, be forwarded to the Court of Sadr Faujdari Adalat, and it shall remain in force, unless forbidden by that Court: and should any person persist in disobeying the injunction, any Magistrate may compel observance thereof by force, and punish disobedience by fine not exceeding one month's computed average income of the culprit, simple imprisonment not exceeding one month, or any of these combined.

Person deeming private rights infringed may try case in Civil Court.

Seventh.—Provided, however, that, in all questions arising out of the preceding clause of this section, it shall be competent to any individual who may deem himself possessed of a private right, which cannot equitably be interfered with, to file a suit in the Civil Court against the District Magistrate to support his claim, and the Magistrate before whom proceedings against such individual are being held, if applied to, shall stay his proceedings for a reasonable petiod to allow of such suit being instituted.

Any Magisrrate may take charge of property left without owner.

Eighth.—Any Magistrate may take charge of property found without an owner, and, if the provisions of Regulation VIII, A. D. 1827, Chapter 11, do not apply to the case, shall retain it for the eventual benefit of the said owner, on his defraying any

expenses incurred; but, at any period, when these may have amounted to the computed value of the property, it may be sold to defray the same.

Scope.—Sub-section (1) of this section relates only to places, the right of the public to which is not disputed. A Magistrates has, therefore, no authority to institute rules with regard to a *dharmashala* when there is a *bona fide* dispute as to its ownership (Or. Rg. 42 of 1888).

License.—A District Magistrate has no power, under this section, to forbid the keeping of a billiard saloon without a license. Disobedience of such an order is not an offence (*Edward Goldstein*, Or. Rg. 59 of 1889).

A Magistrate cannot, under sub-section (1) of this section, make a rule prohibiting bathing or washing near ferry approaches (Or. Rg. 45 of 1887).

Sub-section (6).—It is not competent to a Magistrate to issue a notice, under sub-section (6), calling on the inhabitants of *pols* to employ a watchman, if they lock *pol* gates at night, in order to open the gates to the Police when required (Rat. Un. Cr. C. 159).

District Magistrate to keep standards of weights and measures

20. The District Magistrate shall keep standards of such weights and measures as are used in retail-dealings throughout the districts under his charge, and they shall be open to the inspection of any one who may desire to examine them.

21. *Repealed by Act XVII of 1862.*

22. *Repealed by Bombay Act VIII of 1867.*

23 to 26. *Repealed by Act XVII of 1862.*

27, *First.*—[*Imprisonment in default of recognizance or security.*] *Repealed by Act XVII of 1862.*

Powers in respect of precautionary measures.

Second.—But the District Magistrate is not precluded from adopting percautionary measures of more lenient nature, in the case of a person who may be unable to furnish satisfactory recognizance or security for his attendance; such as, provided the District Magistrate considers them sufficient for the purpose, allowing the party to remain under the inspection of some trustworthy person possessing influence over his conduct, or at some place of public resort, under charge of persons in usual attendance there; and similar measures may, under similar circumstances, be adopted to secure the good conduct of a suspected person; in which case additional restrictions may be made, as suggested by the party's habits, and the evil apprehended, such as prohibiting his leaving his residence, or certain limits, at particular times, or providing himself with a horse or arms, or any other restrictions which will not unreasonably affect his personal liberty, or deprive him of the means of procuring a livelihood; all which restrictions shall be notified to the party in writing, a copy thereof, with his signature, in token of assent, being kept by the District Magistrate, and any breach thereof shall be punishable by simple imprisonment for a period not exceeding six months, which penalty also shall be inserted in the instrument.

Scope.—This section contemplates the taking of security for good behaviour or, with the assent of the person concerned, the more lenient measure described therein; and the Magistrate alone can take these steps; and the proper remedy, for failure to comply with the terms imposed and accepted, is an exaction of security for good behaviour (*Balu Hati*, Or. Rg. 28 of 1886).

Procedure.—Before any action under this section can be taken against a person, (1) he must be shown, in accordance with legal procedure, to have been a suspected person and (2) his assent to the measure adopted should be taken (*Kavtick Chitaram*, 8 Bom. L. R. 241).

Conditions of issue of notice.—A notice under this section can only be issued after the proceedings have been taken against each person individually under Chapter VIII of Cr. P. C., and it is only on his failure to furnish security under that Chapter that the restrictions mentioned in the latter half of this section can be enforced and that too with the assent of the accused person (*Gahina*, 7 Bom. L. R. 459).

This section contemplates an order being made with the assent of the suspected person, in order to obviate the severer procedure of the suspect being committed to prison in default of furnishing security. A condition requiring the suspect to attend roll-call at such time and place as may be notified to him by the D. S. P. is not in compliance with the terms of this section. The District Magistrate cannot delegate his duties to the Superintendent of Police (*Umar*, 6 S. L. R. 177).

28–36. *Repealed by Act XVII of 1862 and Bom. VII of 1867.*

Villages liable to fine in case of robbery committed within their bounds.

37. *First.*—When robbery has been committed within the boundary of a village, or the perpetrators of a robbery have been satisfactorily traced thereto, and neglect or connivance be charged against the inhabitants or the police-establishment, with regard to prevention, detection or apprehension, it shall be competent to the District or Sub-Divisional Magistrate to investigate the matter as a criminal offence, and, if the fact be well substantiated, to exact a fine not exceeding the value of the property lost, the whole or part of which may be awarded in compensation to the owner, according as the degree of caution and activity which he evinced on the occasion may deserve.

Levy of fines.

Second.—If the fine be ewarded against the inhabitants at large, it shall be realized by the Collector in the same manner as revenue-demands, and paid to the order of the Magistrate; if against individuals of the police-establishment, it shall be levied as directed for fines in general.

Third.—[*Orders by Court of Circuit.*] *Repealed by Act X of 1872.*

"Neglect".—Cowardice in not resisting the dacoits is not tantamount to neglect within the meaning of this section. The neglect must at least consist of acts or omissions which lead to the inference that the villagers were in sympathy with the robbers and endeavouring to obstruct or defeat the police investigation. This section imposes responsibility on the whole community residing within the boundary of the village. A Magistrete issuing notice under this section can only deal with the community as a body. He has no jurisdiction to exempt particular hamlets, or to exempt particular villagers from his order (*Chakarkote*, 6 S. L. R. 124).

Village.—This section empowers the Magistrate to take proceedings against the inhabitants of a village, and he cannot make an order affecting only individual villagers or a part of a village. The word "village" might be construed to mean also a hamlet or any such independent cluster of houses as might be described as a village or hamlet (*Syed Abdula Shah*, 4 S. L. R. 269).

38–53. *Repealed by Act XVII of 1862 and Bom. Acts VII and VIII of 1867.*

Appendices A to M. [*Rep. Bom. Act VI of 1886 and Acts XVI of 1862, XII of 1876 and IV of 1894.*

PUBLIC AUTHORITIES SEALS ACT

(Bom. Act No. V of 1883)

[*5th November, 1883.*

An Act to enable Government to prescribe the Official Seals of Sessions Judges, Magistrates and other public authorities.

WHEREAS it is expedient [1]* * * * * to enable the Government to prescribe what official seals [1]* public authorities [1]* * * shall have and use; It is enacted as follows :—

Short title.

1. This Act may be called the Bombay Public Authorities Seals Act, 1883.

Repeal of Bom. Act II of 1870.

2. Bombay Act II of 1870 is hereby repealed. Every notification issued under the said Act and now in force shall be deemed to have been issued under this Act.

Government empowered to prescribe the seals of certain public authorities.

3. The Governor in Council may, from time to time, by notification in the Bombay Government Gaztte, direct what official seals each of the following [2]* * * * public authorities shall have and use (namely):-

(1) Sessions Judges, Additional and Joint Sessions Judges and Assistant Sessions Judges;

(2) Presidency Magistrates;

(3) any other Magistrates;

(4) any other judicial officer or public authority, whose official seal is not prescribed by law and no other authority is legally competent to prescribe.

Every such notification may from time to time be modified or rescinded by the Governor in Council by like notification.

Date on which notifications under last section shall take effect.

4. Every notification made under the last preceding section shall come into force on such date as the Governor in Council shall therein fix in this behalf.

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1. The words and figures "to extend the provisions of Bombay Act 2 of 1870 (*an Act to enable the Government of Bombay to prescribe the official seals of the Magistrates*) so as" the word "other" and the words "besides Magistrates" were repealed by the Amending Act, 1895 (16 of 1895).

2. The words "Courts and others" were repealed by the Amending Act, 1895 (16 of 1895).

THE
Presidency Area (Emergency) Security Act

Bom. Act No. XVII of 1929

[*19th November 1929.*

'An Act for safeguarding life and property in the Presidency Area in times of emergency

WHEREAS it is expedient to make provision in manner hereinafter appearing for the safeguarding of life and property in the Presidency Area in times of emergency ;

And whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Presidency Area (Emergency) Security Act, 1929.

Extent, commencemnet and duration.

2, (1) This Act shall extend to the whole of the Presidency of Bombay and shall remain in force for five years.

(2) Section 5 shall come into force on the date or dates on which a state of emergency is declared under section 4 and shall continue in force for three months from such date or dates. The rest of the Act shall come into force at once.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

"Presidency Area" means the City of Bombay and the Bombay Suburban District.

Power to declare state of emergency.

4. The Local Government, if satisfied that the public tranquillity and security of life and property in the Presidency Area or any part thereof are endangered, may at any time, by notification in the *Bombay Government Gazette*, declare that a state of emergency exists and shall set forth the reasons for such declaration in the notification.

Power to order removal of turbulent character.

5. (1) Whenever the Commissioner of Police or District Magistrate exercising jurisdiction in the Presidency Area is satisfied that any person within his jurisdiction is committing or has committed or is about to commit or is assisting, abetting or inciting by words either spoken or written the commission of

(*a*) a non-bailable offence against any person or property, or

(*b*) the offence of criminal intimidation, or

(c) any offence involving a breach of the peace,

so as to be a danger to or cause or be likely to cause alarm to the inhabitants of the Presidency Area or any section thereof, the Commissioner of Police or the District Magistrate, as the case may be, may, subject to the control of the Local Government, by written order briefly stating his reasons therein direct such person to remove himself from the Presidency Area within such time and by such route as may be specified in the order and not to return thereto for a period (not exceeding six months) to be specified in the order without the written permission of the Commissioner of Police or the District Magistrate, as the case may be.

(2) An order under sub-section (1) against any person may, unless the Commissioner of Police or the District Magistrate, as the case may be, is satisfied in respect of such person that both he and his father were born in the Presidency of Bombay or that he is a member of a family which has settled in the Presidency of Bombay and is himself so settled, direct that such person shall remove himself from the Presidency of Bombay within such time and by such route as may be specified in the order and shall not return thereto for a period not exceeding six months) to be specified in the order save with the written permission of the Commissioner of Police or the District Magistrate, as the case may be.

(3) An order under sub-section (1) shall be served personally on the person against whom it is directed in such manner as the authority making the order thinks fit.

Procedure to be adopted in making order under section 5.

6. (1) Before making an order under section 5 the Commissioner of Police or the District Magistrate, as the case may be, shall give an opportunity to the person against whom the order is proposed to be made to show cause against the order, and shall consider such representation as he may make verbally or in writing.

(2) Within forty-eight hours from the making of an order under section 5 the Commissioner of Police or the District Magistrate, as the case may be, shall forward in writing to the Local Government his reasons for making the order.

Power to modify order under section 5.

7. When by an order under section 5 any person has been directed to remove himself from the Presidency of Bombay and has complied with the order, or when any person has been removed in police custody outside the Presidency of Bombay under section 10, the Commissioner of Police or the District Magistrate, as the case may be, may, of his own motion or upon application made to him in this behalf, if he is satisfied that both such person and the father of such person were born in the Presidency of Bombay or

that such person is a member of a family which has definitely settled in the Presidency of Bombay and is himself so settled, modify the order in such manner as to permit such person to return to and remain in any part of the Presidency of Bombay outside the Presidency Area.

Review.

8. (1) As soon as possible after the issue of a notification under section 4 the Local Government shall appoint a committee consisting of such number of persons as it thinks fit for the purpose of reviewing, in manner hereinafter provided, the orders passed under section 5:

Provided that at least one member of such committee shall be a person who for a period of not less than ten years

(i) has held any judicial office in the service of the Crown in India, or

(ii) has been a Barrister, Advocate, Pleader, Attorney, or Solicitor of any court in British India.

(2) Every order passed by the Commissioner of Police or the District Magistrate, as the case may be, under section 5 shall, as soon as possible, be forwarded by him together with the relevant papers of the case to the committee appointed under sub-section (1).

(3) When an order has been served on any person under section 5 and has been complied with by him, he or any agent authorized by him in writing may, within fifteen days of such service, file a representation before the committee appointed under sub-section (1) giving reasons why such order should be modified or revoked.

(4) The committee shall, within one month from the date of service of an order under sub-section (1) of section 5, examine the proceedings relating to such order and shall consider such representation as may be made to it under sub-section (3) and shall forward the same together with its recommendation thereon to the Local Government who may confirm, modify or revoke the order.

Right of appeal.

9. When an order has been served on any person under section 5 and has been complied with by him, he or an agent authorized by him in writing may petition the Local Government to revoke or modify the order and thereupon the Local Government shall consider such facts and circumstances relating to the case as may be placed before it, and may confirm, modify or rovoke the order.

Failure to comply with order.

10. Any person who, having been directed by an order made and served on him under section 5—

(*a*) to remove himself from the Presidency Area or from the Presidency of Bombay, fails to remove himself therefrom within the time specified in the order,

(*b*) not to return to the Presidency Area or the Presidency of Bombay within a specified period, returns thereto within such period without the written permssion of the Commissioner of Police or the District Magistrate, as the case case be,

may be arrested without a warrant by any police officer, and—

(i) may be removed in police custody outside the Presidency Area or the Presidency of Bombay, as the case may be, or

(ii) on conviction before a Presidency Magistrate or a Magistrate of the first class, may be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both:

Provided that notwithstanding such conviction and punishment if the period for which such person was directed to remove himself under sub-section (1) or sub-section (2) of section 5 has not expired on the date on which the fine, if any, is paid or the term of his imprisonment, if any, under this clause expires he may be removed in police custody outside the Presidency Area or the Presidency of Bombay, as the case may be, for the unexpired portion of such period.

Explanation.—For the purposes of this proviso the period of imprisonment undergone by such person shall be treated as a part of the period for which such person was directed to remove himself under sub-section (1) or sub-section (2) of section 5.

Indemnity.

11. No suit, prosecution or other legal proceeding whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

The President's Salary Act, 1924

Bombay Act No. XII of 1924.

[*13th January 1925.*

(*As amended by Bombay Act VIII of 1927.*)

An Act to determine the salary of the President of the Bombay Legislative Council.

WHEREAS in accordance with sub-section (5) of section 72C of the Government of India Act the salary of the elected President of the Bombay Legislative Council is to be determined by Act of the said Council ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the President's Salary Act, 1924.

Salary of elected President.

2. There shall be paid to the elected President of the Bombay Legislative Council a salary calculated at the rate of three thousand rupees a month.

[1] [(2) He shall not during the tenure of his office practise any profession or engage in any trade or undertake for remuneration any employment other than his duties as President of the Legislative Council.]

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[1] This sub-section was inserted by Bom. VIII of 1927, s. 2.

THE BOMBAY

PRIMARY EDUCATION ACT, 1923.

Bombay Act No. IV of 1923

(As amended by Bom. Acts Nos. XV of 1927 and VI of 1934.)

[*22nd February 1923.*

An Act to provide for compulsory elementary education and to make better provision for the management and control of primary education in the Bombay Presidency.

Whereas it is the declared policy of the Government that universal, free and compulsory elementary education for boys and girls should be reached by a definite programme of progressive expansion and Whereas it is expedient to provide for a progressive development and expansion of primary education so as to reach that goal on lines recommended by the Compulsory Education Committee of 1921 appointed by the Government, and Whereas it is expedient for this purpose to provide for compulsory elementary education and to make better provision for the management and control of primary education in the Presidency of Bombay and Whereas the previous sanction of Governor General required by clause (*e*) of sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act ; it is hereby enacted as follows :—

1. *Short title and extent.*—(1) This Act may be called the Bombay Primary Education Act, 1923.

(2) It extends to the whole of the Bombay Presidency except the City of Bombay.

"Whereas it is expedient, &c ."—Preamble—The preamble of an Act is a key to its understanding and it generally fixes its scope or limit (*Edwards*, 1 Bom. 333).

Extent of Act.—This Act extends to the whole of the Bombay Presidency except the City of Bombay. 'Presidency of Bombay' is defined is s. 3 (7) of the Bombay General Clauses Act, 1904, as follows : " "Presidency of Bombay" shall mean the territories within British India for the time being under the administration of the Governor of Bombay in Council."

Operation of Act.—When any Bombay Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it is first published in the Bombay Government Gazette after having received the assent of the Governor General (*Bombay General Clauses Act, 1904, s. 5*).

Object of the Act.—The main object of the Act is to empower local bodies to introduce compulsory education and to see that a child is not left without the benefit of education. It is sufficient if it is receiving efficient instruction elsewhere than in a recognized Primary School (*Emperor v. Nemchand Natha*, 47 Bom. 942).

Education.—'Education' is that function in life which will develop the faculties of the individual in such a way that he will not only be able to fulfil his allotted task as an ordinary tradesman or professional man, but will also become best fitted to serve the community in which he dwells and to render that service which shall enable him to leave the world better than he found it. Education makes or should make the individual as an individual realises his highest potentialities. Education may be justified on economic, moral and social grounds. Upon moral grounds because it acts as a deterrent against vice and crime; upon economic grounds because knowledge increases skill and ability and should result in increased output and wealth; upon social grounds because so far as is consistent with natural ability it affords equality of opportunity (*See Clarke's Local Government in the United Kingdom*, p. 198). *Vide* also Aiyangar's Municipal Corporations in British India, 2nd ed., pp. 691-92.

Primary Education Act is a separate enactment—Budget and re-appropriations.—The Bombay Primary Education Act is a separate enactment and any power conferred by that Act on the District Local Board cannot be held subject to the provisions of the Bombay Local Boards Act. In the circumstances reappropriations from the School Board Budget can be sanctioned only by the District Local Board and not by the Standing Committee (G. R. G. D. No. 4456 of 16th August 1927).

In preparing the Budget estimates of School Boards the Local Authorities need not wait for forecasts of cess income from the Collectors of the Districts as the Local Authrities know their receipts from month to month and also the total revenue for the previous financial year and should frame their estimates on the basis of the average for the previous three years (G. M. G. D. No. 4516-F of 16th August 1929).

2. *Definitions.*—In this Act unless there is anything repugnant in the subject or context—

"approved school" means a school or part of a school in which instruction in elementary education is given and which is for the time being approved by the school board or by the Government on appeal from a decision of the school board refusing approval;

"area of compulsion" means the area in which elementary education is compulsory;

to "attend" an approved school means to be present for instruction at such school on such days and at such time and for such periods on each day as may be required by the school board with the approval of the Government;

"child" means a child whose age at the beginning of the school year is not less than six and not more than eleven years;

"elementary education" means the education from time to time imparted in infant classes and vernacular standards I to IV inclusive as prescribed or sanctioned under section 17;

"local authority" means a district local board or a municipality which is authorised by the Government to manage its own schools and includes in the case of Aden, the Executive Committee of Aden;

"parent" includes a guardian and any person who has the actual custody of a child ;

"prescribed" means prescribed by rules made by the Government for the purposes of this Act.

Maintenance of School.—A school is not a trade or business, but is an organisation or an institution for the training—mental, physical and moral—of young persons. Boarding of the boys is subsidiary to their general training and education. The keeping of a school is not either a trade or a business. See *Frederick v. Bognor Water Co.* (1 Ch. 147) where it was *held* that supply of water to a Boarding School was not supply of water to a trade or business.

In England the local authorities are required to maintain and keep efficient all the necessary public elementary schools within their limit ; and with reference to higher education, they are bound to consider the educational needs of their areas and to take such steps as seem to them desirable after consultation with the Board of Education to supply or aid the supply of education other than elementary and promote the general co-ordination of all forms of education (See the provisions of Education Acts of 1902 and 1911). In India education of the masses within its local limits is in fact one of the duties of Municipal Corporations. Subject to the general powers of supervision and recognition exercised by the Local Government, the administration of many of the educational institutions in every province is in the hands of the local bodies, *i. e.*, municipalities and district (or rural) boards. Municipal Acts contain express provision on the subject and municipal fund has been authorized to be spent on objects of education of the citizens within the municipal areas. Responsible Indian thought reliased that the rate of progress from a bureaucratic to a democratic form of Government must be largely dependent on the evolution of a popular electorate capable of exercising the franchise and so, ultimately, on the rate of expansion of literacy amongst the masses. Expansion under a voluntary system of education was proving a slow and uncertain business and there was incessant demand in recent years for the introduction of free and compulsory education in India, especially in urban areas, the demand which is based upon well accepted principles of civilized world, that no child shall be allowed to grow in ignorance. The solution appeared to be the early introduction of compulsory education ; and with this object in view the Primary Education Act was passed. In the Municipal Acts elaborate provision is made for the constitution of Education Comittees, or Educational Boards, their powers and duties, for the creation of an educational fund and the objects for which the said fund or other municipal fund could be spent (*Vide* Aiyangar's Municipal Corporations In British India, 2nd ed., pp. 693-94).

3. *Constitution of school Boards.*—(1) For every local authority there shall be a school board. The school board shall be constituted as prescribed and shall consist of not less than seven and not more than nine elected members, if the local authority is a municipality, and not less than nine and not more than sixteen elected members if the local authority is a district local board. The members shall be elected by the local authority and shall, so far as may be, include persons experienced in education, women, representatives of minorities, [1] intermetiate classes, and scheduted classes [1] and, if the local authority is a district local board, re-

[1-1] The words "Intermediate classes and scheduled classes" were substituted for the original words "backward classes and depressed classes" in sub-section (1) and the Explanation thereto, by the Bombay Primary Education (Amendment) Act (VI of 1915) s. 2.

presentatives of municipalities in the district which are not local authorities. Such members shall not necessarily be members of the local authority.

Explanation :—[1] Intermediate and scheduled classes [1] shall mean classses so declared by the Government.

(2) The Government may appoint not more than three additional members if the local authority is a municipality and not more than four if the local authority is a district local board.

(3) The term of the school board shall be co-extensive with the term of the local authority ; and at the end of such term the members of the school board shall vacate office, provided that they shall continue in office till a new school board is appointed.

(4) Casual vacancies during the terms of the school board shall be filled by election or nomination as the case may be for the remaining period.

The School Board.—The School Board is a public corporation as opposed to private corporation and has been created by statute. In the absence of a quorum having been prescribed, either by the statute creating it or by the rule framed thereunder, there is no reason why the ordinary common law rule prevailing in England should not apply. The Common law rule provides that when a statute grants powers on any definite number of persons in respect of a public as opposed to a private trust, and contain no indication to the contrary, it is necessary that a majority of that number should act together and should attend every meeting when any corporate act is done or purported to be done (*Lalchand v. Isser Singh*, A. I. R. 1928, Sind 126.)

Liability of District School Board to be sued.—The members of a District School Board cannot act individually and have to act collectively. The Board has a perpetual succession and capacity to act as an individual. It is a corporate body, liable to be sued for torts committed by it. The fact that it is controlled in many respects by the District Local Board or that it is not called a corporation in the Act, is immaterial (*District School Board, Bijapur v. Bhagwan Vasudeo*, 34 Bom. L. R. 1500).

Contingencies.—Expenditure incurred on articles of stationery for the use of a School Board office is not debitable to the contingencies for schools.

Travelling allowances.—(1) (*a*) The members of a School Board, if the Local Authority is a District Local Board, shall receive payment for expenses incurred in travelling for the purpose of the business of the Board on the same scale as members of the District Local Board in accordance with the rules made in this behalf by Government under s. 50 (*i*) of the Bombay Local Boards Act, 1923.

(*b*) The Chairmen and members of School Boards of local authority municipalities are entitled to travelling allowance at the following rates for journeys per-

[1-1] The words "intermediate classes and scheduled classes" were substituted for the original words "backward classes and depressed classes" in sub-section (1) and the Explanation thereto, by the Bombay Primary Education (Amendment) Act (VI of 1935), s. 2.

formed by them outside the municipal limits at the express direction of the School Boards concerned :—

Municipal boroughs which are local authorities.

Chairmen of the School Board–At rates admissible to officers of the first grade.
Members of School Boards–At rates admissible to officers of the second grade.

Other municipal local authorities.

Chairmen of the School Board–At rates admissible to officers of the second grade.
Members of School Board—At rates admissible to officers of the third grade.

When travelling allowance is claimed in accordance with the orders, the bills should be placed before the School Board for approval before the amount is drawn (G. R. E. D. No. S. 97 of 12–12–1929).

Conveyance allowances claimed by School Board Chairmen or members of Municipality Local Authority for visiting schools will be admitted against the P. E. Fund but will not be approved forpurposes of Government grants. In this case also the bills should be placed before the School Board for approval, before the amount is drawn (G. R. E. D. No. S. 96 and S. 97 of 25th September and 12th December 1929 respectively).

Travelling allowance bills of members of School Board require the countersignature of the Chairman of the School Board (G. M. E. D. No. 3867/5268 F of 18th Oct. 1927).

4. *Powers and duties of school boards. Commencement.*—(1) From such date as the Government may direct in this behalf in respect of each school board, and subject to the general control of the local authority, the school board shall exercise and perform such powers and duties as may be enacted in or prescribed under this Act.

(2) The school board shall exercise the powers and perform the duties of the local authority for which it is constituted in respect of primary education and if the local authority is a district local board, it shall also exercise the like powers and perform the like duties of the municipalities in the district which are not local authorities. The school board shall also enforce the provisions of this Act.

(3) The school board shall submit its annual budget and all alterations therein for the sanction of the local authority.

(4) The school board shall further exercise such powers and perform such duties in respect of any educational purpose as may be delegated to it by the local authority or any such municipality as aforesaid.

(5) The school board shall elect its chairman from amongst the members of the board.

5. *Delegation of duties.*—The school board may from time to time delegate any of its powers and duties to any sub-committee or member or honorary or stipendiary officer of the board ; such committee, member or officer shall conform to any instructions that may from time to time be given by the school board ; the board may at any time discontinue or alter the constitution of any sub-committee so formed or withdraw any of the powers or duties so delegated.

6. *Transfer of schools by municipality to district local board; re-transfer.*—(1) Every municipality which is not a local authority shall on a date to be notified by the Government in this behalf transfer to the district local board of the district in which it is situate all primary schools, with their lands, buildings, records and equipment, which vest in it and shall pay over annually to the said district local board for educational purposes such amount as may from time to time be fixed by the Government on the basis of the number of children of the municipal district receiving primary education from the district local board, and the income accruing from any funds (including trust funds) held and all monies received by it for purposes of primary education.

(2) If any such municipality is at any time authorized by the Government to manage its own schools, the, district local board of the district shall on a date to be notified by the Government in this behalf transfer to such municipality all primary schools, with their lands, buildings, records and equipment, situated in the area subject to such municipality; and such municipality shall from the aforesaid date no longer be liable to make the payments required by sub-section (1).

7. *Control of primary education by school committee to cease.*—Where in any municipality a school committee has been appointed under section 28 of the Bombay District Municipal Act, 1901, the control by that committee of primary education shall from a date to be notified by the Government in this behalf cease.

8. *Absorption of existing educational staff by local authorities: services of such officers shared by local authorities.*—(1) A local authority shall take over and employ such primary school teachers employed under the Educational Department of the Government as the Government may direct, on the same terms and conditions on which such persons were employed under the said department.

(2) The existing and future rights, liabilities, duties and powers of the Government in respect of such teachers shall vest in and be exercised or performed by the local authority:

Provided (*a*) that any such teacher shall have a right of appeal to the Government against any order of dismissal;

(*b*) that the scales of pay and allowances applicable to such teachers at the time at which they are taken over and employed by the local authority shall not be altered without the ** [1] sanction of the Government;

[2] "and Government may, in such cases as they think fit, direct that such alterations shall take effect from any date prior to that on which such sanction is given. Such direction shall not take effect from a date prior to that determined by the local authority in this behalf." [2].

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[1] The word "previous" deleted by Bom. XV of 1935, is omitted.

[2-2] These words were inserted by *Ibid.*

(3) A local authority shall make such payments to such other local authority as the Government may direct in respect of services rendered to such authority by any teacher taken over by such other authority under the provisions of sub-section (1).

(4) The provisions of this section shall apply to all primary school teachers employed under the Educational Department of the Government on or before the 1st July 1923 or on or before the date prescribed under section 4, sub-section (1), whichever shall be later.

Notes.—(*a*) Under sub-section (2) of this section the power of sanctioning changes in birth-dates of the teachers handed over to Local Authorities under sub-section (1) vests in the Local Authorities. Alterations in birth dates which affect the scales of pay and allowances of such teachers may not, however, be made without the previous sanction of Government.

(*b*) The power of changing birth-dates of officers, clerks and others lent by Government vests in Government.

(*c*) In the case of officers, clerks, teachers and others employed by the Local Authorities, the power of changing birth dates vests in the Local Authority.

(G. R. E. D. No. 2534 of 27th December 1927).

Power of L. A. to punish its officers.—Under sub-section (2) of this section, read with P. E. Rule 34 (*c*) a L. A. has power to punish its officer by reducing his pay. Under proviso (*b*) the scales of pay and allowances cannot be altered without the previous sanction of Government, but any punishment which affects a particular teacher's salary is not alteration of the scale of pay. The scale of pay remains the same as is applicable to other teachers of the same class but the pay of a particular teacher is by way of punishment reduced. What is really done in the case of a particular teacher who is punished, is that he is fined 'X' rupees and that amount is deducted from his pay (G R. E. D. No. 2534 of 17th August 1927).

Guaranteed teachers.—Guaranteed teachers, *i. e.*, teachers handed over to Local Authorities under sub-section (1), may exchange the existing Pension Rules in the Civil Services Regulations for the new Pension Rules in the Manual of the Bombay Civil Services Rules.

School Board Employees other than Primary teachers—All special teachers (*e. g.*, drawing teachers, music teachers, drill teachers, etc.) who were transferred to Local Authorities under sub-section (1) of this section will be continued on the same terms and conditions as before.

On the retirement, resignation or death of these teachers, the posts will ordinarily be abolished and Government will not admit for grant any expenditure on such posts unless it is specially sanctioned by them.

The expenditure on all special teachers appointed subsequent to the transfer in new posts created with the previous approval of Government will be admitted for grant to the extent of one-half where the Local Authority is a Municipality and two-thirds where it is a Local Board.

No new posts of this character will be approved nor will any posts created since the transfer in anticipation of the approval of Government be approved or admitted for Government grant.

(G. R. E. D. No. S 96 of 3rd Feb. 1930).

9. *School Board Administrative Officer.*—(1) The local authority shall, ["after inviting and considering the suggestions, if any"]* of the school board and with the approval of the Government, appoint an officer who shall be called the School Board Administrative Officer. He shall be the chief executive officer of the school board and his pay, powers and duties shall be determined by rules made in this behalf by the local authority and sanctioned by the Government.

(2) No such officer shall, save with the previous sanction of the Government, be removable from office, reduced or suspended unless by the votes of at least two-thirds of the whole number of councillors.

The post of an Administrative Officer of local authority municipality can be made pensionable under C. S. R. Article 802 with the sanction of Government (G. R., E. D., No. 3651 (41) of 20th August 1928.

School Board Administrative Officer not a public servant.—Section 197 of the Criminal Procedure Code relates to a public servant who is not removeable from his office save with the sanction of a local Government or some higher authority. Under sub-section (2) of this section the Administrative Officer of a School Board can be removed from his office without the sanction of the Government, by the votes of two-thirds of the whole number of Councillors. He is not, therefore, such a public servant to which s. 197 of the Criminal Procedure Code relates and can, therefore, be prosecuted under s. 409 of the Indian Penal Code, without the sanction of the Government (*G. S. Shirke, In re,* 33 Bom. L. R, 1177). In this case 56 Cal. 227 was distinguished.

10. *Declaration by local authority of intention to provide compulsory elementary education.*—(1) A local authority may by resolution declare its intention to provide compulsory elementary education in the whole or any part of the area subject to its jurisdiction in the case of children of either sex or both sexes and, if the local authority is a distrcit local board, in any area subject to the jurisdiction of a municipality situate in the district which is not a local authority and shall submit its proposals to the Government in the form of a scheme.

(2) A local authority, if called upon by the Government so to do, shall within a time to be specified by the Government submit a scheme to provide compulsory elementary education in such area as above as the Government may direct and in the case of children of either sex or both sexes as the Government may specify.

(3) Every local authority shall, within the prescribed period, prepare as complete a programme as possible for the universal introduction of compulsory education within the area subject to its jurisdiction within a definite period.

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*Amendment.—These words were substituted for the original words "on the recommendation" by Bom. Act XV of 1927, s. 2.

Introduction of compulsory education.—The Local Authority may by a resolution passed at a meeting specially convened for the purpose provide that Elementary Education shall be compulsory within the whole or a specified part of the local area under its jurisdiction for all children of either sex or both sexes. The Resolution has to be submitted to Government for sanction, and on the acceptance of the Resolution by the Government, a notification is issued in the *Bombay Government Gazette* declaring that Primary Education shall be compulsory and thereupon the provisions of this Act come into force.

11. *Particulars to be contained in scheme.*—The scheme shall contain the following particulars :—

(*a*) the area of compulsion ;

(*b*) a census of children of either sex or both sexes residing within such area and classified by communities and vernaculars ;

(*c*) a list of existing and proposed schools indicating the private schools which will be approved schools ;

(*d*) a schedule of existing and proposed teaching, inspecting and supervising staff ;

(*e*) the manner in which provision will be made for the compulsory elementary education in their vernaculars of the children of all communities in the area of compulsion ;

(*f*) the recurring and non-recurring cost of the scheme and how the local authority purposes to meet its share of it ; and

(*g*) if there is a municipality which is not a local authority within the area of compulsion, the annual contribution which the municipality in the opinion of the local authority should make.

12. *Sanction of Government to scheme*—The Government may after such enquiry as shall seem necessary sanction such scheme with or without modification.

13. *Government to make financial provision for scheme.*—(*a*) If the scheme is sanctioned the Government shall bear half of the additional recurring and non-recurring annual cost of the scheme if the local authority is a municipality and two-thirds of the said cost if the local authority is a district local board ; but the liability of the Government shall not exceed half or two-thirds, as the case may be, as it was estimated by the local authority.

(2) Nothing in this section shall affect the claim of any local authority to any annual grant which at the time this Act comes into operation is being paid to it by the Government for purposes of primary education, provided that if the Government consider that the educational fund of any local authority has been or is about to be misused or misapplied, they may call upon such local authority for an explanation of such misuse or misapplication; and if not satisfied with the explanation given may make such reduction in the grants payable to such local authority as they deem proper.

14. *Duty of local authority.*—When a scheme has been sanctioned the local authority shall make adequate provision for compulsory elementary education within the area of compulsion and no fee shall be charged in any school within such area managed by the school board in respect of the elementary education of any child.

15. *Modification, etc., of scheme after sanction.*—A sanctioned scheme may with the sanction of the Government be withdrawn or from time to time modified by a local authority or may by an order published with the reasons for making it in the *Bombay Government Gazette* be modified, cancelled or temporarily suspended by the Government.

Dispute as to membership—Jurisdiction of Civil Court.—The plaintiff was elected member of a municipality for a period of three years commencing from April, 1925 and in May he was elected to be a member of the School Board. In August 1925, the election to the Municipality was set aside. The Chairman of the School Board having refused to recognise the plaintiff as a member of the School Board, he instituted a suit for a declaration. *Held,* that the declaration as to invalidity of the election did not terminate plaintiff's membership of the School Board and that the chairman of the Board was not competent to decide whether plaintiff continued to be a member. The presumption is that such a power vests in the Civil Courts (*Keshav v. Laxman,* 32 Bom. L. R. 614).

16. *Inspection of schools. Return.*—(1) Every approved school and every primary school maintained or aided by a local authority shall be open during school hours to inspection by the inspecting officers of the Government and of the local authority, for the purpose, in particular, of ascertaining—

(*a*) whether instruction is given as prescribed or sanctioned under section 17;

(*b*) whether any instruction of a pernicious nature is given;

(*c*) whether the provisions of the Act for the compulsory attendance of children are being carried out; and

(*d*) whether the prescribed registers and records are being maintained.

(2) The school board in respect of any such school maintained by a local authority, and the manager of any other such school shall furnish such returns and supply such information as the Government or the local authority may from time to time require.

17. *Subjects, curriculla, etc., of approved schools.*—The subjects, curriculla, books and standards of teaching of approved schools and other primary schools maintained or aided by a local authority shall be as prescribed but may be altered by the school board with the sanction of the Government to suit local requirements.

18. *Duty of parents to cause children to attend school.*—In every area of compulsion the parent of every child to whom a scheme applies shall in the absence of a reasonable excuse as hereinafter provided and if such parent and child ordinarily reside in such area cause such child to attend an approved school in such area.

Duty of parents to educate.—Apart from statute, a parent is under no obligation whatever to educate his child (*Hodges v. Hodges*, Peake Ad. Ca. 79). Neither educational rights nor educational duties are directly recognised at Common Law. In England, there is now a statutory duty on every parent of a child between the age of 5 and 14 years to cause that child to receive efficient elementary instruction in reading, writing and arithmetic (See the Education Act, 1921). The Courts also recognize that a father may have a duty to provide such further education for his children as may be suitable to their station in life (*Andrews v. Partington*, 2 Cox, Eq. 223). The mother, however, is not under a similar obligation—not even when the father is dead (*Haley v. Bannister*, 4 Madd. 273). On the issue of a notification as provided for in this Act declaring primary education compulsory, it shall be the duty of the parent or guardian of every boy of school age resident in such area to cause such boy to attend a recognized, primary school unless there is a reasonable excuse for his non-attendance. "Guardian of a boy" has been defined to mean any person to whom the care, nurture, or custody of any child falls by law or by a natural right or recognized usage or who has accepted or assumed the care, nurture or custody of any child or to whom the care or custody of any child has been entrusted by any lawful authority. See also Aiyangar's Municipal Corporations in B. I. pp. 601-02.

19. *Meaning of reasonable excuse.*—A parent shall be deemed to have a reasonable excuse for failure to cause a child to attend an approved school in any of the following cases :—

(*a*) where the child is prevented from attending school by sickness, infirmity or other unavoidable cause ;

(*b*) where the child is receiving, otherwise than in an approved school, instruction which in the opinion of the school board is efficient, or has received from the school board a certificate of having already completed his elementary education ;

(*c*) where there is no approved school within a distance to be fixed by the Government in consultation with the school board and measured according to the nearest road, from the residence of the child ;

(*d*) where after due application, entrance to an approved school has been refused to the child and there is no other approved school to which he can be admitted within the distance fixed under clause (*c*) until such time as the parent is notified that the child can be admitted ;

(*e*) where there is no approved school in the locality in which instruction is given in the vernacular of the child ;

(*f*) where there is no approved school in the locality to which the parent can send the child without exposing it to religious instruction to which the parent objects.

Reasonable excuses.—This Act has given six sorts of reasonable excuses. The following may also be considered as reasonable excuses :—

(1) When the boy is prevented from attending the school by reason of domestic necessity, seasonal needs of agriculture, or his being the sole bread-winner of the family.

(2) When the boy is receiving instruction in some other satisfactory manner.

(3) The father has a reasonable excuse when his child frequently played truant without his knowledge when he had done all that could reasonably be expected of him to secure the attendance of the child (*Belper School Attendance Committee v. Bayley*, 9 Q. B. D. 259).

(4) Where it was shown that non-attendance was caused by a girl with fair elementary instruction having been engaged in respect of an employment earning wages which she gave to her parents who were poor, industrious and respectable people and applied them to the support of other children, whom otherwise from no faults of the parents, they would have been unable to sufficiently support, it was held that there was reasonable excuse for non-attendance (*London School Board v. Duggon*, 13 Q. B. D. 146).

Instruction.—The expression "instruction" does not mean primary education ; it is an expression bearing wider import, its efficiency is to be decided by the opinion of the School Committee and not by compliance with some standard fixed and recognized by Government (*Emperor v. Nemchand Natha*, 47 Bom. 942).

20. *Issue of attendance order.*—(1) Where the school board is satisfied that the parent of any child who is bound under the provisions of section 18 to cause such child to attend an approved school, has failed to do so, the school board, after giving the parent an opportunity of being heard and after such enquiry as it considers necessary, may pass an order directing the parent to cause such child to attend an approved school on and from a date which shall be specified in the order.

(2) This power may be delegated by the school board to a person or committee appointed by it.

School Attendance order and disobedience thereof.—If the school board is satisfied that a parent or guardiance who is required to cause a child of school age to attend an approved school, has failed to do so, the school board, after giving the parent an opportunity of being heard, may pass an order directing the parent to cause such child to attend an approved school on and from a date which shall be specified in the order and this is technically called a *school attendance order* ; and any parent who fails without reasonable excuse to comply with such an order can be convicted by a Magistrate or patel, &c.

Where a parent was summoned for non-compliance with an attendance order directing that his child should attend at a certain school and it was proved that since the date of the attendance order the child has been withdrawn from the school named in the order and had been entered as a pupil at another public elementary school at which she had made 29 out of 46 possible attendances, it

was *held* that the child was not attending school to which she has been transferred in such a way as to constitute a reasonable excuse for non-compliance with the attendance order and that the parent had committed the offence for which he was summoned (*Thomson v. Rose*, 65 L. R. 851).

A parent may allege as a defence to a complaint for non-compliance that the child is being efficiently instructed at home in the same manner as he could have alleged it upon the application for the attendance order (*R. v. Morris, Exparte Broadbent*, 26 T. L. R. 419). The surviving parent though having the custody of and being liable to maintain a child cannot be proceeded against for failing to comply with an attendance order made against the other parent who died after the order was made (*Hance v. Fairhurst*, 51 L. J. (M. C.) 139). Where a parent against whom attendance order has been made, used such reasonable efforts to cause his child to attend school in accordance with the order as would have amounted to a reasonable excuse for non-compliance with a bye-law, it was *held* that he had a defence against being fined for disobeying the order but not a reasonable excuse for non-compliance with it and that the magistrates have power to order the child to be sent to an industrial school (*Hewcett v. Thompson*, 59 L. J. (M. C.) 60).

Where a School Committee, duly appointed, called upon the accused to show cause why his daughter should not attend a regular primary school and on the accused failing to show cause, the committee passed an order directing his daughter to be sent to a recognized primary school on a particular date and the accused wrote back to the committee saying that his daughter was attending a national primary school and was already receiving proper education, the committee thereupon without enquiring into the truth of the above statement or of the efficiency of instruction imparted in the National School authorized the prosecution of the accused, it was *held* that the Legislature had cast on the school committee the duty of deciding whether the instruction received by a child otherwise than in a primary school is efficient or not, that duty on the part of the committee has not been discharged merely because they have passed an attendance order and it is clearly the function of the Court to whom a complaint is made to see whether it is proved that the parent failed to send the child to a recognized school without reasonable cause on or after the date specified in the attendance order (*Emperor v. Nemchand Natha*, 47 Bom. 942).

21. *Penalty for failure to cause child to attend school.*—(1) Any parent against whom an order with reference to a child has been passed under section 20 and who fails to comply with the provisions of section 18 with respect to such child on and after the date specified in such order shall, if he resides in a town or village where there is a Magistrate, on conviction by such Magistrate, and, if he resides elsewhere, on conviction by a revenue or police patel or other person empowered in this behalf by the District Magistrate, be liable to a fine not exceeding two rupees and, if such failure continues after such conviction, he shall also on conviction by such Magistrate, patel or person be liable to a fine of eight annas for every day that the failure continues or is repeated.

(2) No magistrate, patel or person shall take cognizance of an offence under sub-section (1) except on the complaint of the authority or person who passed the order under section 20, or by any person authorized by the said board in this behalf.

22. *Penalty for employing child liable for compulsory education.*—(1) Whoever knowingly takes into his employment, either on his own behalf or on behalf of any other person, any child in respect of whom the provisions of section 18 apply, so as to interfere with the efficient instruction of such child, shall, on conviction before a magistrate, be liable to a fine not exceeding twenty-five rupees.

(2) No court shall take cognizance of an offence under this section except on the complaint of the school board or the School Board Administrative officer or any person authorized by the said board or officer in this behalf; and before making any complaint under this section against any person, the school board or the School Board Administrative Officer or such person shall, unless such person has previously been convicted under this section in respect of the same child, cause a warning to be given to such person.

Duties and Liabilities of Employers.—A person must not take into his employment any child to whom the provisions of this Act apply so as to interfere with the attendance of such child at a recognized primary school and on breach of this rule the employer shall, on a conviction before a magistrate, be liable to a fine not exceeding twenty-five rupees. A father who kept a child at home to manage his house was held not to take it into his *employment* and it made no difference that the effect of the child being at home was to enable the mother to go out and work for gain (*Mather v. Lawrence*, 1 Q B. 1000): nor did a father who kept a delicate child at home and by a doctor's advice let the child help him casually in his trade but without making any profit out of his help (*R. v. Austin*, 71 J. P. 29). The proper remedy, if any, in such cases is to proceed against the parent *qua* parent for failure to cause his child to attend school or for neglect to cause his child to receive efficient elementary education (*Halsbury*, Vol. 12, p. 63). Where the offence of taking a child into employment in contravention of the foregoing rules is in fact committed by the agent or workman of the employer, the agent or workman is liable to penalty as if he were the employer (*See Elementary Education Act*, 1878, s. 39).

23. *Fines how dealt with.*—(1) If a fine imposed under section 21 or 22 by a magistrate, patel or person is paid, it shall be credited to the local authority and applied by the said authority for educational purposes.

(2) If such fine be not paid, the amount thereof shall be recoverable by the local authority in the same manner as an amount claimed on account of tax.

24. *Appeal.*—An appeal from a conviction under section 21 by a patel or person shall lie to the nearest magistrate having jurisdiction in the town or village where the appellant resides.

25. *Power to exempt particular classes.*—The Government may by notification in the *Bombay Government Gazette* exempt children of either sex of any particular class or community in any area of compulsion or part thereof from the operation of this Act.

26. *Default by local authority.*—(1) If a local authority when called upon makes default in preparing a scheme or after a scheme has been sanctioned omits to make adequate provision for compulsory elementary education in accordance with a scheme as sanctioned and to bring into operation or continue to keep in operation such scheme, the Government may after due enquiry appoint a person to prepare the scheme or to bring it into operation or to continue to keep it in operation as the case may be, and the expense thereof shall be paid by the local authority to the Government.

(2) If the expense is not so paid, the Government may make an order directing any person who has for the time being custody of any moneys on behalf of the local authority either as banker or in any relation to pay such expense from such moneys as he may have in his hands or may from time to time receive and such person shall be bound to obey such order.

27. *Rules.*—(1) The Government may by notification in the *Bombay Government Gazette* makes rules regulating—

(*a*) the exercise and performance of the powers and duties of local authorities, municipalities which are not local authorities, school boards and School Board Administrative Officers and their relations with the Government Educational Department and with each other in educational matters ;

(*b*) the maximum and minimum pay, the grant of pension or provision of provident funds, the grant of leave and other conditions of service of, to or for the teaching, inspecting and supervising staff employed by a local authority ;

(*c*) matters to be prescribed under the Act.

(2) Rules made under sub-section (1) shall be made after previous publication.

(3) The local authority may from time to time with the sanction of the Government make regulations not inconsistent with the provisions of this Act and the rules thereunder for carrying out the purposes of this Act ; in particular and without prejudice to the generality of the foregoing provisions, the local authority may make regulations—

(*a*) including in the curriculum of primary education courses of practical instruction suitable to local needs ;

(*b*) for the instruction in experimental science, modelling, nature study, manual training, and prevocational work including household science of children of any age receiving primary education ;

(c) for the physical and moral training of children of any age receiving primary education ;

(d) determining the pay and terms of employment of the teaching, inspecting and supervising staff and regulating the administration and management of primary schools ;

(e) for the supply of books, slates and educational requisites to indigent children of any age receiving primary education ;

(f) prescribing provocational courses as a part of upper primary education.

28. *Repeal of Bom. I of 1918.*—The Bombay Primary Education (District Municipalities) Act, 1918, is hereby repealed :

Provided that in any municipal district where a notification under section 3 of that Act has issued, the provisions of this Act shall from the date of repeal have effect as though the municipality had followed the procedure described in this Act.

General Instructions.

1. School Boards may frame rules regarding the taking of security from Taluka masters, under section 27 (3) (d) of the Bombay Primary Education Act. (D.P.I.'s No. S-99/173-D.)

2. Expenditure on account of subscription to School Boards' Conference and travelling allowance on account of the School Board Administrative Officers' attendance at Educational Conferences, etc., was admitted for grant during the period of transfer of control just effected. It is not desirable to admit such expenditure indefinitely. All expenditure incurred on this account after 12th December 1927, will be disallowed for Government grant. (G.M., E.D., No. 3867 (63)-7234-F of 18th November 1927 and G M., E D., No. 2534/1053-F of 23rd March 1928.)

3. Expenditure on account of deputation of clerks to the typewriting class to learn the touch system of typing is not admissible for Government grant. (G.M., E. D., No. 3369/8085-F of 23rd December 1927.)

4. Expenditure on teachers' conferences except that incurred on travelling allowance for journeys performed by Administrative Officers and Supervisors of School Boards to attend such conferences, is not admissible for Government grant. (G.R., E D., No. 2534 of 22nd December 1927.) (D.P.I.'s file No. S-67-(d)-20-(f)-D.)

5. Expenditure on schemes drawn up by Local Authorities for the introduction of the teaching of weaving as an optional subject in primary schools is not admissible for Government grant. (G.M., E.D., No. 3437/7426-F of 30th November 1927.) (D.P.I.'s file No. S-67-(d)-10-(a)-D.)

6. The charges on account of Empire Day celebrations are not admissible for Government grant for Primary education. Such expenditure should be met by public subscription. (G.M., E.D, No. 3867/548-F of 28th April 1927)

7. The expenditure on "Raspan" (drinking of sugar-cane juice) to students in Primary schools and their guardians, etc., is not admissible for Government grant. The charge is not educational and should be met by public subscription. (G.M , E.D., No. S-81 (11)/4351-F of 13th August 1929.)

THE BOMBAY
Prevention of Prostitution Act, 1923

Bom. Act No. XI of 1923

[*27th October 1923.*

(*As amended by Bom. Acts IX of 1926, IX of 1927, XII of 1930 and XX of 1931*).

An Act to consolidate and amend the Law relating to Prostitution in the City of Bombay.

WHEREAS it is expedient to consolidate and amend the law relating to prostitution in the City of Bombay and to provide for the extension thereof to other local areas in the Presidency of Bombay, and Whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for passage of this Act; It is hereby enacted as follows:—

Short title.

1. (1) The Act may be called the Bombay Prevention of Prostitution Act, 1923.

Extent: Extension.

(2) This section, section 6, [*a*] section 8 (3), [*a*] section 9, [*b*] section 12 and section 13, sub-section (1) [*b*] extend to the whole of the Bombay Presidency. The rest of this Act shall extend in the first instance to the City of Bombay, but the Government may by notification extend to any other local area all or any of its provisions, with such verbal modifications as having regard to the principles of this Act may be necessary, for the purposes of such extension.

Definition.

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

[*c*] "Brothel" means any house, room or place, or any part thereof, occupied or let or intended to be occupied or let as a single tenement which is habitually used by more than one person for the purposes of prostitution;

"place of public amusement" shall mean any place, enclosure, building, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing, or any diversion or game, or the means of carrying on the same, is provided, and to which the

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[*a—a*] The word, brackets and figures "section 8 (3)" were substituted for the original words, brackets and figures "sub-section 8 (3)" by Bom. IX of 1926 s. 2.

[*b—b*] The words, brackets and figures "section 12 and section 13, sub-section (1)" were substituted for the original words and figures "and section 12", by Bom Act IX of 1926, s. 2.

[*c*] This definition was substituted for the original definition by Bom. Act XII of 1930, s. 2.

public are admitted either on payment of money, or with the intention that money may be collected from those admitted; and shall include a race-course, circus, theatre, music hall, billiard-room, bagatelle-room, gymnasium or fencing school;

"place of public entertainment" shall mean any place, whether enclosed or open, to which the public are admitted, and where any kind of food or drink is supplied for consumption on the premises for the profit or gain of any person owning or having an interest in or managing such place;

and shall include a refreshment-room, eating-house, coffee-house, liquor-house, boarding-house, lodging house, hotel, tavern or wine, beer, spirit, arrack, toddy, ganja, bhang, or opium shop.

Soliciting.

3. Whoever in any street or public place or place of public resort or within sight of and in such manner as to be seen or heard from any street or public place, whether from within any house or building or not,—

(*a*) by words, gestures, wilful and indecent exposure of his person or otherwise attracts or endeavours to attract attention for the purpose of prostitution [*a*] or carnal intercourse [*a*], or

(*b*) solicits or molests any person or loiters for the purpose of prostitution [*a*] or carnal intercouse[*a*],

shall be punished with imprisonment for a term which may extend to [*b*] three months [*b*] or with fine which may extend to [*c*] one hundred [*c*] rupees.

Prostitutes in places of public amusement.

4. Whoever being the keeper of any place of public amusement or entertainment, knowingly permits prostitutes, or persons of notoriously bad character, for the purposes of their trade to meet or remain in such place, shall be punished with fine which may extend to one hundred rupees.

Living on the earnings of prostitution:

5. (1) Any [*d*] person not below the age of 16 years [*d*]who knowingly lives, wholly or in part, on the earnings of prostitution [*e*] of another person [*e*] shall be punished with imprisonment which may extend to [*f*] three years, or with fine which may extend to one thousand rupees, or with whipping, or with any two of those punishments.

[*a*—*a*] These words were inserted by Bom. Act XII of 1930, s. 3.

[*b*—*b*] The words "three months" were substituted for the original words "eight days" by Bom. Act IX of 1926, s. 3 (*a*).

[*c*—*c*] The words "one hundred" were substituted for the original word "fifty" by Bom. Act IX of 1926, s. 3 (*b*).

[*d*—*d*] These words were substituted for the words "male person" by Bom. XII of 1930, s. 4 (*a*) (*i*).

[*e*—*e*] These words were inserted by Bom. XII of 1930, s. 4 (*a*) (*ii*).

[*f*] The word "three" was substituted for the word "two" by Bom. XII of 1930, s. 4 (*a*) (*iii*).

(2) Where [a] any person is proved to be living with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, [b] or to be keeping or managing or assisting in the management of a brothel [b], it shall be presumed, until the contrary is proved, that he is knowingly living on the earnings of prostitution.

Presumption thereof.

6. Any person who procures or attempts to procure any woman or girl, whether with or without her consent, to become a prostitute, or who, with intent that she may for the purposes of prostitution become the inmate of or frequent a brothel, persuades a woman or girl to leave her usual place of abode, shall be punished with imprisonment which may extend to three years or with fine which may extend to one thousand rupees, or with whipping, or with any two of those punishments.

Procuration.

Procuration.—This section is directed against attempts to seduce the virtue of a woman or a girl for the purpose of prostitution, whether with or without her consent or whatever her age. This section is directed against both a brothel-keeper and her procuress ; the brothel-keeper who avails hereself of the supply of her procuress is guilty of abetment of the offence under this section. The brothel-keeper facilitates the prostitution and completes it (*Emperor v. Vithabai Sukha*, 52 Bom. 403=30 Bom. L. R. 613.)

7. Any person who brings or attempts to bring into the City of Bombay any woman or girl with a view to her becoming a prostitute, shall be punished with imprisonment which may extend to three years or with fine which may extend to one thousand rupees, or with whipping, or with any two of those punishments.

Importing woman or girl for prostitution.

Prostitute.—The idea underlying prostitution is that a woman should surrender her body for a monetary consideration to some one who is in law not entitled to have sexual intercourse with her. The position of a mistress is not necessarily that of a prostitute. The relationship is of a more permanent nature than the casual relationship implied in prostitution. Having a stray paramour would not constitute a woman a prostitute (*Emperor v. Lalya Bapu*, 31 Bom. L. R. 521).

The matter whether a woman is an ordinary or common prostitute rests more on degree than on kind (*Ibid.*)

8. (1) Whoever detains any woman or girl against her will,—

Unlawful detention for prostitution :

(*a*) in any house, room or place in which the business of a common prostitute is carried on, or

(*b*) in or upon any premises with intent that she may have sexual intercourse with any man, other than her husband, whether any particular man or generally,

[a] The word "any" was substituted for the words "a male" by Bom. Act XII of 1930, s. 4 (*b*) (*i*).

[*b*—*b*] These words were inserted by Bom. Act XII of 1930, s. 4 (*b*) (2).

shall be punished with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with whipping, or with any two of those punishments.

Presumption thereof :

(2) Where a woman or girl is in any house, room or place in which the business of a common prostitute is carried on or is in or upon any premises for the purpose of having sexual intercourse referred to in sub-clause 1 (*b*), a person shall be deemed to detain such woman or girl in such house, room, place or in or upon such premises if, with intent to compel or induce her to remain there, such person withholds from her any wearing apparel, personal ornaments or other property belonging to her ; or where wearing apparel, personal ornaments, other personal property or money has been lent or otherwise supplied to such woman or girl by or by the direction of such person, if such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel or personal ornaments or other personal property so lent or supplied, or for the recovery of such money.

Bar of certain legal proceedings.

(3) No civil suit shall lie, and no proceedings whether civil or criminal shall be taken, against any such woman or girl or against any person on her behalf, by or on behalf of any person occupying or managing or acting or assisting in the management of any such house, room, place or premises, for the recovery of any wearing apparel, personal ornaments or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by or for her or for the recovery of any money alleged to be payable by or on behalf of such woman or girl.

No punishment of whipping under sections 5 to 8 for females.

[*a*] 8A. Nothing in sections 5, 6, 7 and 8 shall render a female liable to be punished with whipping.

Punishment for leting or permitting use of, premises as a brothel.

[*a*] 8B. Any person who—

(*a*) being the owner, tenant, lessee, occupier or person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel ; or

(*b*) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof, with the knowledge that the same or any part thereof may be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof, as a brothel ;

shall be punished with imprisonment, which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

[*a*] Sections 8A and 8B were inserted by Bom. Act XII of 1930, s. 5.

Punishment for subsequent offence.

[a] 8C. Any person who, having been convicted of an offence punishable under section 8B, is convicted of a subsequent offence punishable under the said section, shall be punished with imprisonment, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and may, in addition to such punishment, be required by the Court to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Court may direct, and, in default of executing such bond, may be imprisoned for a period not exceeding six months in addition to any punishment awarded in respect of his offence.

Determination of tenancy of premises on conviction for permitting use as a brothel or for purposes of habitual prostitution.

[a] 8D. (1) On conviction of the tenant, lessee or occupier of any offence under section 8B, clause (*a*), the convicting Court shall give notice thereof in writing to the landlord or lessor, who shall then be entitled to require the person so convicted to assign the lease or other contract, under which the said premises are held by him to some person approved by the landlord or lessor, which approval shall not be unreasonably withheld, and, in the event of the person so convicted failing within three months to assign the lease or contract as aforesaid, the landlord or lessor shall be entitled to determine the lease or other contract, but without prejudice to the rights or remedies of any party to such lease or contract accruing before the date of such determination.

(2) If the landlord or lessor determine a lease or contract of tenancy under the provisions of sub-section (1), the Court which has convicted the tenant, lessee or occupier may make an order for delivery of possession to the landlord or lessor within such time not being less than seven days as the Court may direct. The order shall be served on the person against whom it is made in the manner provided in the Code of Criminal Procedure, 1898, for the service of a summons, and if such person fails to comply with it, he shall be punished with imprisonment which may extend to one month or with fine which may extend to two hundred rupees or with both.

(3) If the landlord or lessor, after he has received notice in writing of such conviction, fails to exercise his rights under sub-section (1) and subsequently during the subsistence of the lease or contract, any such offence is again committed in respect of the premises, the landlord or lessor shall be deemed to have abetted that offence, unless he proves that he had taken all reasonable steps to prevent the recurrence of the offence.

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[a] Sections 8C and 8D were inserted by Bom. XII of 1930, s. 5,

(4) Where a landlord or lessor determines a lease or other contract under this section, and subsequently grants another lease or enters into another contract of tenancy to, with, or for the benefit of the same person, without causing to be inserted in such lease or contract all reasonable provisions for the prevention of a recurrence of any such offence, he shall be deemed to have failed to exercise his rights under the provisions of this section, and any such offence committed during the subsistence of the subsequent lease or contract shall be deemed, for the purposes of this section, to have been committed during the subsistence of the previous lease or contract.

Segregation of brothels:

9. (1) The Commissioner of Police may at any time cause a notice to be served upon any person who occupies or manages or acts or assists in the management of, or upon any woman who resides in, uses or frequents, any house, room, or place in the City of Bombay in which the business of a common prostitute is carried on, requiring such person or woman after a date to be mentioned in the notice, which shall not be less than seven days from the date of the notice, not to reside in, use or frequent any street or place specified in the notice; or directing such person or woman after a date to be mentioned and fixed as aforesaid to remove himself or herself to such place, whether within or without the City of Bombay, by such route or routes and within such time as the Commissioner of Police shall prescribe.

(2) If any person or woman so directed under sub-section (1) fails or refuses to remove himself or herself as directed within the time specified the Commissioner of Police may cause such person or woman to be arrested and removed in police custody to the place prescribed.

(3) No direction under the second alternative in sub-section (1) shall be made without the previous sanction of the Government.

Penalties.

(4) Any person on whom a notice under this section shall have been served, disobeying the requisition therein contained, shall be punished with imprisonment for a term which may extend—

(*a*) in the case of first offence to one month, and

(*b*) in the case of a second or subsequent offence, to three months.

(5) Whoever, within two years from the date of his removal under the provisions of this section, returns to any place within the City of Bombay, without the permission in writing of the Commissioner of Police, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

[a] (6) (a) Elsewhere than in the City of Bombay all or any of the powers conferred by this section on the Commissioner of Police for the City of Bombay may be exercised, as regards his district or part of his district, by the District Magistrate when empowered in that behalf by the Governor in Council by a notification in the *Bombay Government Gazette*.

(b) Any person on whom a notice issued by the District Magistrate under the powers exercisable by him under clause (a) shall have been served, disobeying the requisition therein contained shall be liable to the punishment provided in sub-section (4).

(c) Whoever, within two years from the date of his removal under the provisions of this sub-section, returns to any place within the district from which he has been removed without the permission in writing of the District Magistrate shall be liable to the punishment provided in sub-section (5).

Arrest without warrant.

10. [b] (1) Any police officer on information, and, if the offence is committed in his view, any police officer specially authorised in this behalf by the Commissioner of Police, may arrest without a warrant any person committing any offence punishable under section 3.

(2) Any police officer may, without an order from a magistrate and wishout a warrant, arrest any person who has been concerned in any offence punishable under section 8 or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in an offence under that section or of his having committed an offence under section 9, sub-section (5).

Arrest without complaint—A police-officer, who is not specially authorized by the Commissioner of Police as required by sub-section (1) of this section, cannot arrest a woman under sub-section (1) without a complaint under s. 3, and the Magistrate has no jurisdiction under s. 190 of the Criminal Procedure Code to try the woman so wrongly arrested for the offence, unless a complaint within the meaning of s. 4 (1) (h) is made to him (*Chandri Bawoo v. Emperor*, 49 Bom. 212 = 26 Bom. L. R. 1925).

11. [c] [Repealed.]

Offences triable by certain magistrates only.

12. Offences punishable under sections 5, 6, 7 or 8 shall be triable by the Courts of Session, stipendiary Presidency Magistrates and stipendiary Magistrates of the First Class only.

Repeals and amendments.

13. (1) In the City of Bombay Police Act, 1902,—

[a] This sub-section was added by Bom. Act IX of 1926, s. 4.

[b] This sub-section was substituted for the original sub-section (1) by Bom. IX of 1926, s. 5.

[c] This section was repealed by Bom. XII of 1930, s. 6.

(*a*) in sub-section 1 (2) the figures "28" shall be repealed and for the words, letters and figures "110A and sub-section (3) of section 126A" the word, letters and figures "and 110A" shall be substituted:

(*b*) section 28 shall be repealed;

[*a*] (*c*) in [*b*] section 33 (*i*) [*b*] after the figures "126" the word "or" shall be deleted and after the figures "23" the words and figures "or under section 128" shall be inserted;

(*d*) in [*c*] section [*c*] 33 (*j*) the words "or section 126A" shall be repealed;

[*d*] (*e*) the following shall be inserted as sub-section (1) of section 35:—

"Any police officer empowered in this behalf by the Commissioner of Police may arrest without warrant for any offence specified in section 120";

(*f*) in section 120, clause (*a*) and (*b*) and the letter "(*c*)" shall be repealed;

(*g*) in section 125, in clause (*a*) the word "or" and clause (*b*) shall be repealed;

(*h*) section 126A shall be repealed;

(*i*) in section 128, the words and letters "or section 28" shall be repealed;

(*j*) section 129 shall be repealed;

(*k*) in section 130 for the word, letter and figures "126A, 127 or 128" the word and figures "or 127" shall be substituted.

(2) In any municipal district [*e*] or municipal borough [*e*] to which section 3 may be extended under section 1, sub-section 2), section 152 of the Bombay District Municipal Act, 1901, [*f*] or section 188 of the Bombay Municipal Boroughs Act, 1925, as the case may be, [*f*] shall be deemed to have been repealed from the date of such extension.

[*a*] This sub-clause was substituted for the original sub-clause (*c*) of sub-section (1) of section 13 by Bom. IX of 1926, s. 6 (*a*).

[*b*—*b*] The word, figures and brackets "section 33 (*i*)" were substituted for the original word, figures and brackets "clause 33 (*i*)" by Bom. IX of 1927, s. 2 and Sch. I.

[*c*—*c*] The word "section" was substituted for the original word "clause" by Bom. IX of 1927, s. 2 and Sch. I.

[*d*] This sub-clause was substituted for the original sub-clause (*e*) of sub-section (1) of section 13 by Bom. IX of 1926, s. 6 (*b*).

[*e*—*e*] These words were inserted by Bombay Act XX of 1931, s. 2.

[*f*—*f*] These words were inserted by Bom. Act XX of 1931, s. 2.

The Bom. Public Conveyances Act, 1920

Bombay Act No. VII of 1920.

[*17th June 1920*

(*As Amended by Bom. Acts II and XI of 1924 and VII of 1928*).

An Act to amend the law relating to the regulation of Public Conveyances.

WHEREAS it is expedient to amend the law relating to the regulation of public conveyances ; and whereas the previous sanction of the Governor General required by sub-section (2) of section 79 of the Government of India Act, 1915, has been obtained for the passing of this Act ; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Bombay Public Conveyances Act, 1920.

(2) This section and sections 36, 38, and 39 extend to the whole of the Presidency of Bombay. The rest of the Act extends, subject to the provisions of section 36, only to the City of Bombay.

Definitions.

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

(*a*) "Commissioner of Police" means the Commissioner of Police for the City of Bombay and includes any person authorised by him to exercise or perform any power or duty imposed or conferred on the Commissioner of Police by this Act ;

(*b*) "public conveyance" means a wheeled vehicle, drawn by one or more horses or other animals or by hand, which is used for the purpose of plying for hire for the conveyance of persons or goods ;

Public Conveyance.—There seems to be a difference between "letting for hire" and "plying for hire." If A keeps motors at Poona in order to let them out to clients who wish to go at Mahableshwar, the motors would not become on that account public conveyances ; it would be otherwise if A kept a motor bus which plied regularly between Poona and Mahableshwar (*Emperor v. Nasarwanji Bavanji*, 25 Bom. L. R. 95).

[*a*] "(*c*) 'licensing year' means the year commencing on such date as the Commissioner of Police shall, subject to the condition of previous publication, fix for the purpose of licenses granted under this Act ;

(*d*) "driver" includes a conductor, attendant or other person in charge of a public conveyance ;

(*e*) "licensee" means the holder of a license granted under this Act for a public conveyance or a horse or a driver of a public conveyance ;

[*a*] Clause (*c*) was substituted for the original clause by Bom. Act 7 of 1928, s. 2.

Licensing of public conveyances.

Public conveyances to be licensed.

3. (1) No person shall keep or let for hire any public conveyance without a license granted by the Commissioner of Police in this behalf.

(2) On every public conveyance—

(*a*) the number of the conveyance as entered in the license granted for the same, and

(*b*) where the conveyance is licensed to carry passengers, the number of passengers which it is licensed to carry,

shall be clearly inscribed in such manner as the Commissioner of Police may direct.

Licenses for public conveyances.

4. (1) Such licenses shall remain in force for the licensing year, unless sooner determined under the provisions of this Act, and shall be renewable.

(2) Such licenses shall contain the following and such other particulars and conditions as the Commissioner of Police may prescribe:

(*a*) the full name and address of the licencee;

(*b*) the date on which the license was granted and the date on which it will expire by efflux of time;

(*c*) the local area for which the license is granted;

(*d*) the number and class of the conveyance;

(*e*) the number of horses or other animals (if any) by which it is to be drawn;

(*f*) the number of passengers (if any) which it may carry.

(3) Such licenses shall not be transferred by the licensee to any other person without the sanction of the Commissioner of Police and if transferred without such sanction shall thereon become void. Such sanction when granted shall be endorsed on the license.

Grounds on which license may be refused or cancelled.

5. (1) The Commissioner of Police may refuse to grant a license for a public conveyance if in his opinion the conveyance is insufficiently found or is otherwise unfit for the purpose for which it is intended.

(2) The Commissioner of Police may refuse to renew, and may at any time suspend or cancel, a license for a public conveyon either of the forgoing grounds, or if in his opinion—

(*i*) the licensee has committed a breach of any provision of this Act or of a rule made under this Act or of a condition of the license, or

(*ii*) a conveyance licensed for carrying goods has been used for carrying passengers.

(3) When refusing to renew, or suspending or cancelling a license for a public conveyance, the Commissioner of Police may erase the inscription made thereon in accordance with this Act.

Number &c., to be inscribed on conveyance.

6. (1) When granting or renewing a license for a public conveyance, and at other times when necessary, the Commissioner of Police shall cause the particulars required by clauses (*a*) and (*b*) of sub-section (2) of section 3 to be painted or otherwise clearly inscribed upon the conveyance.

(2) No fee shall be charged for any inscription made under the foregoing sub-section when it is made at the time when the license is granted or at the annual renewal of the license, but when such inscription is made at any other time [*a*] the licensee shall pay such sum towards the cost of or such inscription as the Commissioner of Police shall by rules direct. [*a*].

Fees for public conveyance licenses.

7. (1) For the grant of a license for a public conveyance a fee shall be charged at such rate as the Commissioner of Police shall prescribe.

(2) For the renewal of such license a fee at one-half of the rate chargeable under the foregoning sub-section shall be charged.

Licensing of horses.

Licensing of horses.

8. (1) No horse shall be used for drawing a public conveyance except under a license granted by the Commissioner of Police in respect of such horse.

(2) Such licenses shall remain in force for the licensing year unless sooner determined under this Act, and shall be renewable.

(3) Such licenses shall contain the following and such other particulars and conditions as the Commissioner of Police may prescribe:

(*a*) the full name and address of the licensee;

(*b*) the date on which the license was granted and the date on which it will expire by efflux of time;

(*c*) the local area for which the license is granted;

(*d*) a description of the horse for which the license is granted and the marks of identification of the same;

(*e*) the class of conveyance to draw which the horse may be used.

(4) Such licenses may not be transferred by the licensee to any person without the sanction of the Commissioner of Police and if transferred without such sanction shall thereupon become void. Such sanction shall be endorsed on the license.

[*a*—*a*] These words were substituted for the original words by Bom. VII of 1924, s. 3.

* "(5) Such licenses shall if so directed by the Commssioner of Police be carried in the public conveyance for drawing which the horse is being used and shall be produced for inspection whenever required by any police officer."

Branding of horses.

9. When granting a license for a horse the Commissioner of Police † [may, if he thinks it necesary,] brand such horse on the hoof in such manner that it may be easily identified.

Grounds on which license for horse may be refused or cancelled and examination by a veterinary practitioner.

10. (1) The Commissioner of Police may refuse to grant or renew, and may at any time suspend, a license for a horse if in his opinion such horse is in any way unfit for use in a public conveyance.

(2) In case of such refusal or suspension the owner of the horse or licensee, as the case may be,may require that such horse be examined by a veterinary practitioner of the Government or of a local authority, and, if in the opinion of such practitioner the horse is fit for use in a public conveyance, the Commissioner of Police shall grant or renew the license or cancel the order of suspension.

Licensing of drivers.

Drivers to be licensed.

11. (1) No person shall act as driver of a public conveyance without a license granted by the Commissioner of Police in this behalf.

(2) Such licenses shall remain in force for the licensing year unless sooner determined under this Act, and shall be renewable.

(3) Such licenses shall contain the following and such other particulars and conditions as the Commissioner of Police may prescribe :

(*a*) the full name and address of the licensee ;

(*b*) the date on which the license was granted and the date on which it will expire by efflux of time ;

(*c*) the local area for which the license is granted ;

(*d*) the class of public conveyance which the licensee is licensed to drive.

Grounds on which driver's license may be refused or cancelled.

12. (1) The Commissioner of Police may refuse to grant a license to a driver if in his opinion such driver is not competent and careful or is unfit on account of youth, infirmity, bad character or any other reason to pursue the occupation of driver of a public conveyance.

(2) The Commissioner of Police may refuse to renew, and may any time suspend or cancel, a driver's license on the foergoing grounds or if the holder has committed a breach of any provision

* Sub-section (5) was added by Bom. Act VII 1928.

† These words were inserted by Bom. Act VII of 1928.

of this Act or of a rule made under this Act or of a condition of the license.

Drivers' badges.

13. (1) When granting a license to a driver the Commissioner of Police shall provide him with a metal badge bearing the number of the license.

(2) Every driver who has received such badge shall wear the same on a conspicuous part of his dress at all times when pursuing his occupation as driver.

(3) No driver who has received such badge shall permit any other person to wear the same: provided that any person, other than the driver to whom a badge has been given by the Commissioner of Police, who shall wear such badge shall be presumed, until the contrary is proved, to wear it with such driver's permission.

Fees for drivers' licenses.

14. For the grant of a license to a driver a fee shall be charged at such rate as the Commissioner of Police shall prescribe.

(2) For the renewal of such license a fee at one-half of the rate chargeable under the foregoing sub-section shall be charged.

Provisions relating to licensees.

Licenses when suspended or cancelled to be returned.

15. Every license which has been suspended or cancelled shall be returned by the licensee to the the Commissioner of Police within twenty-four hours after the suspension or cancellation thereof.

Change of address of licensee to be reported.

16. Whenever a licensee shall change his residence he shall within one week thereafter give notice thereof in writing signed by himself to the Commissioner of Police.

Licensee to report name of person left in charge of conveyance during his absence.

*"16A. Whenever the licensee of a public conveyance shall be absent from the City of Bombay for a period exceeding fifteen days he shall, if the public conveyance is used for the purpose of plying for hire, give, previous to his departure, notice thereof in writing signed by himself to the Commissioner of Police. Such notice shall state the name of the person left in charge of the public conveyance. Such person shall, until the return of the licensee, perform all the duties of a licensee of a public conveyance and be liable to all the penaltiee to which such licensee is liable under this Act."

Public conveyance or horse to be produced for inspection when required.

17. Every licensee of a public conveyance or horse shall produce such conveyance or horse for inspection whenever the Commissioner of Police shall require him do so.

* Section 16A was inserted by Bom. Act VII of 1923, s. 6.

Fares and stands.

Rates of fares.

18. The Commissioner of Police shall, subject to the conditions of previous publication and the previous sanction of the Governor in Council, fix the legal rates of fares for public conveyances.

Stands.

19. The Commissioner of Police shall appoint stands or places, at which alone public conveyances may stand to ply for hire* [and may, at any time, abolish any such stand or place.]

Driver to have his license as driver and list of fares.

20. (1) Every driver of a public conveyance shall have with him when pursuing his occupation as driver the license granted to him under section 11 of this Act and a clean and legible list, in English and such vernacular language or languages as the Commissioner of Police may direct, bearing the name in full of the licensee of the conveyance and showing the rates of fares fixed for the time being for the hire of the conveyance, with an abstract of the law relating to public conveyances.

(2) Every such driver shall on demand by police officer produce for inspection such license and list.

(3) Every such driver shall on demand produce such list for the information of any hirer of, or passenger travelling in, the conveyance.

Book of fares to be issued.

21. Lists of the fares fixed for public conveyances, as for the time being in force, together with the abstract referred to in the preceding section, shall be prepared by the Commissioner of Police and sold to the public at a reasonable price.

Offences and punishments.

Keeping public conveyance without license.

22. Any person who shall

(*a*) keep or let for hire any public conveyance without a license granted by the Commissioner of Police in this behalf and for the time being in force, or

(*b*) who shall keep or let for hire any public conveyance on which the number and other particulars required by section 3 are not clearly inscribed in such manner as the Commissioner of Police directs,

shall be punishable with fine which may extend to one hundred rupees.

Failure to cause public conveyance to ply when so required by the police.

23. Any licensee of a public conveyance who shall without sufficient reason fail to cause such conveyance to ply for hire when required to do so by a police officer, and any driver of a public conveyance who shall without sufficient reason fail duly to pursue his occupation when re-

* These words were added by Bom. Act VII of 1928, s. 7.

quired to do so by a pulice officer, shall be punishable with fine which may extend to fifty rupees.

Licensee of public conveyance permitting unlicensed driver to use the same or permitting the same to be drawn by unlicensed horse.

24. Any licensee of a public conveyance who shall, when the same is used for the purpose of a public conveyance, permit any person to act as driver thereof other than a driver duly licensed under this Act, or who shall, when such conveyance is used for the purpose aforesaid, permit the same to be drawn by a horse other than a horse for which a license is in force under this Act, shall be punishable with fine may extend to fifty rupees.

Failure to produce public conveyance or horse for inspection.

25. Whoever, being the licensee of a public conveyance or horse, shall fail to produce such conveyance or horse for inspection when required to do so by the Commissioner of Police shall be punishable with fine which may extend to twenty rupees.

Offences by drivers of public conveyances.

26. (1) Whoever shall act as driver of a public conveyance without a driver's license granted by the Commissioner of Police in this behalf and for the time being in force or *[without a badge, if he has received a badge from the Commissioner of Police or, when acting as such driver, shall fail to wear a badge so received] on a conspicious part of his dress; and

(2) whoever, being the driver of a public conveyance, shall—

(*a*) permit any other person to use his license or badge ;

(*b*) permit more passengers to be carried in a public conveyance than it is licensed to carry ;

(*c*) conceal or permit to be concealed from public view the inscription made on a public conveyance in accordance with this Act, or prevent or attempt to prevent any person taking note of such inscription ;

(*d*) permit any person to be carried, without the express consent of the hirer, in a public conveyance the whole of which has been hired by any person ;

(*e*) fail to produce, on demend by a police officer, the license‡ [if any,] granted to him under section 8 or section 11 or a list of the legal rates of fares as required by this Act ;

(*f*) fail to produce, on demand by a higher of, or passenger travelling in, a public conveyance a list of the legal rates of fares for such conveyance as required by this Act ;

(*g*) refuse or neglect to give way, if he conveniently can, to any private conveyance, or obstruct or hinder the driver of any

* The words in brackets were substituted for the original words Bombay Act VII of 1928, s. 8.

‡ The words "if any" were inserted by Bom. Act VII of 1928, s. 8.

other public conveyance in taking up or setting down any person into or from such other public conveyance ;

(*h*) be intoxicated at any time while pursuing his occupation as driver ;

(*i*) make use of insulting or abusive language or gesture ;

(*j*) refuse to obey the reasonable orders of any person hiring a public conveyance of which he is in charge ;

(*k*) when acting as driver, permit the inside of a public conveyance of which he is in charge to be dirty ; or

(*l*) when in charge of a public conveyance other than a cart used for conveyance of goods,—

(*i*) demand payment of his fare, or

(*ii*) refuse without reasonable cause to carry any person desiring to hire the conveyance, or

(*iii*) refuse or delay to proceed with reasonable expedition, or

(*iv*) demand for the hire of the conveyance more than the legal fare, or

(*v*) stand to ply for hire at any place other than a stand or place appointed under this Act or loiter for the purpose of being hired in or upon any public street, road or place,

shall be punishable with fine which may extend to fifty rupees.

Applicability.—The precincts of the Victoria Terminus at Bombay on the G. I. P. Ry., though formed as a railway district by a Government Notification do not on that account cease to be a part of the City of Bombay according to sub-section (5) of s. 2 of Bombay Police Act. To such a place the provisions of this Act are applicable and a person plying a conveyance without license within the railway yard of the Victoria Terminus can be prosecuted under this section (*Emperar v. Ali Hussan*, 34 Bom. L. R. 1662).

Driving without license.—Where the accused, a licensed public conveyance driver, was convicted under sub-section (2) of this section for failure to produce his license and it was found that his license had been suspended by Assistant Superintendent of Police under s. 12 (2) in exercise of the powers delegated to him only orally by the Superintendent of Police, it was *held* that the conviction of the accused was illegal. The delegation of powers under the Act can be effected but in a case where there has been an exercise of power under alleged delegated authority it is clearly necessary that the delegation should be clearly shown. The question of such authority should not depend on a general verbal order but it should be by written orders giving references to the various sections of the Act and specifying particular powers and duties delegated to an Assistant or Depaty Superintendent of Police (*Emperor v. Karim*, 27 Bom. L. R. 1421).

Failure to return license or to notify address.

27. Any licensee

(*a*) who shall fail to return a license which has been suspended or cancelled to the Commissioner of Police within twenty-four hours after the suspension or cancellation thereof, or

(*b*) who, after changing his residence, shall fail to give notice thereof in writing signed by himself to the Commissioner of Police within one week after such change has taken place, or

[1] "(*bb*) who, before leaving the City of Bombay for a period exceeding fifteen days shall fail to give notice thereof in writing signed by himself to the Commissioner of Police, or"

(c) who shall contravene any condition of his license,
shall be punishable with fine which may extend to twenty rupees.

Injury to public conveyance.

28. Any person using a public conveyance who shall wilfully or negligently injure the same shall be punishable with fine which may extend to twenty rupees, and shall also pay the owner of such conveyance such compensation as the magistrate may direct, and such compensation shall be leviable as a fine.

Compensation payable by driver causing damage.

29. The driver of any public conveyance who shall by negligence or misconduct cause any hurt or damage shall, in addition to any punishment to which he may be liable by law, pay the complainant such reasonable compensation as the Magistrate may direct, and such compensation shall be leviable as a fine.

Procedure.

Arrest by police.

30. Any police officer may arrest without warrant any person who has committed any offence under this Act, and may seize and detain any conveyance or horse in relation to which such offence has been committed.

Procedure in case of dispute.

31. (1) In case of any dispute between the hirer and driver of a public conveyance, either party may require the other to proceed forthwith to the nearest Magistrate's Court, where the dispute shall be determined in a summary manner by the Magistrate then sitting.

(2) If no Magistrate is then sitting either party may require the other to proceed to the [2] [officer in charge of the nearest police station] who shall, if necessary, arrange for the hearing of the case at the next sitting of the Court.

(3) On failure of either party to appear before the Magistrate in pursuance of a requisition under sub-section (1) or sub-section (2), or to attend the Court at any subsequent sitting to which the

[1] Clause (*bb*) was inserted by Bom. Act VII of 1928, s. 9.

[2] These words were substituted for the original words "nearest police of rank not below that of inspector" by Bom. Act VII of 1928, s. 19.

case may be adjourned, the Magistrate may decide the case *ex-parte* and his decision shall be binding on both parties.

(4) Provided that, if the hirer is about to leave the City of Bombay, a police officer to whom reference has been made under sub-section (2) may, after hearing both parties, require the hirer to deposit such sum, if any, as appears to be due by him, and, if any compensation appears to be due under section 28, an additional sum of ten rupees, and the hirer shall not be required to attend the Magistrate's Court. The police officer shall report the dispute to the Magistrate and the Magistrate may award the driver such sum, if any, not being in excess of the amount deposited by the hirer, as he considers just, and if any offence appears to have been committed, shall inquire into the same according to law. In either case where any surplus remains of the deposit made by the hirer, the Magistrate shall give notice thereof to the hirer and return it to him on demand.

(5) Where the Magistrate is satisfied that one party had no reasonable ground for requiring the other party to proceed to his Court or to the nearest police officer, he may direct the former party to pay to the latter such compensation not exceeding fifty rupees as he thinks fit, and such compensation shall be leviable as a fine.

Licensee may be required to produce driver: Penalty.

32. (1) When a complaint is made before a Magistrate against a driver of a public conveyance under this Act, the Magistrate may, if the driver fails to appear, summon the licensee of such conveyance to appear and produce the driver.

(2) If the licensee after being duly summoned fails without reasonable excuse to appear or to produce the driver he shall be punishable with fine not exceeding fifty rupees.

Refusal to pay fare.

33. If any person who has hired a public conveyance refuses to pay the legal fare thereof, the Magistrate may order payment of such fare and also of reasonable compensation for loss of time; such fare and compensation shall be leviable as a fine.

Miscellaneous.

Disposal of property: penalty.

34. (1) All property left in any public conveyance shall be forthwith deposited by the licensee or driver of such conveyance at the nearest police station.

(2) The Commissioner of Police shall cause such property to be returned to such person as shall prove to his satisfaction that he is entitled to the same, on payment by such person of all expenses reasonably incurred and of such compensation to the driver of the public conveyance as the Commissioner of Police may consider just.

(3) Any licensee or driver failing to deposit any property as required by sub-section (1) shall be punishable with fine which may extend to fifty rupees.

Rules.

35. [1] (1) The Commissioner of Police, subject to the condition of previous publication, may make rules not inconsistent with this Act,—

(*a*) fixing the sum to be paid towards the cost of an inscription under sub-section (2) of section 6 ;

(*b*) generally for the regulation of public conveyances."

(2) Such rules shall be published in the *Bombay Government Gazette.*

[1] "(3) Such rules may provide that a contravention thereof shall be punishable with fine which may extend to thirty rupees."

Extension of Act.

36. (1) The Commissioner in Sind or the Commissioner of a division may by notification in the *Bombay Government Gazette* extend this Act or any specified provisions thereof to any area within his jurisdiction from a date to be stated in such notification.

(2) Where this Act or any portion thereof is extended to any such area, the Commissioner in Sind or the Commissioner of the division, as the case may be,—

(*a*) shall by notification appoint some person to perform the functions assigned by this Act to the Commissioner of Police, and

(*b*) may by notification direct that any particular Magistrates or classes of Magistrates shall exercise jurisdiction under this Act, and

[2] "(*c*) may by notification direct that any class of vehicles shall be exempt from all or any of the provisions of this Act."

(3) A notification under this section extending this Act or any portion thereof to any area shall be published at least thirty days before the date fixed for its coming into effect.

[2] "(3A) When this Act or any specified provisions thereof are extended to any area by a notification under this section the expression 'City of Bombay' occurring in the foregoing provisions of this Act shall be construed as meaning the area to which this Act or any specified provisions thereof are extended by such notification."

(4) When this Act or any portion thereof is extended to any area, the powers of fixing fees and of appointing [3] "and abolishing" stands and of making rules shall be exercised subject

[1] Sub section (1) of s. 35 was substituted for the original sub-section and sub-section (3) was inserted by Bom. Act VII of 1928, s. 11.

[2] Clause (*c*) of sub-section (2) was substituted for the original clause and sub-section 3A was inserted by Bom. Act VII of 1928, s. 12.

[3] The words in inverted comas were inserted by Bom. Act VII of 1928, s.12.

to the approval of the Commissioner in Sind or the Commissioner of the division, as the case may be.

[1] (5) In any area to which this Act or any specified provisions thereof have been extended under sub-section (1) of this section, the cost of administering this Act shall be met from the fees charged in such area under this Act, or rules made thereunder.

Any balance remaining after the cost of administering this Act or any specified provisions thereof in such area has been met, shall be paid to the local authority for such area :

Provided that where there is more than one local authority for such area such balance shall be paid to such local authorities in such proportion as the Commissioner in Sind or the Commissioner of the Division, as the case may, shall direct.

Power to apply or adapt certain provisions to vehicles not used for the purpose of plying for hire.

[2] "37. The Governor in Council, or, in any area to which this Act or any specified provisions thereof have been extended under section 36, the Commissioner in Sind, or the Commission of a division, as the case may be, may, by notification in the *Bombay Government Gazette*, apply or adapt all or any of the provisions of this Act, except those which relate to plying for hire, or any part of any such provision, to vehicles or to any class of vehicles which are kept, or ordinarily let for hire, but which are not used for the purpose of plying for hire.

Explanation.—A vehicle shall not be deemed to be kept for hire if it is let for hire only occasionally by private agreement."

Powers may be exercised from time to time.

38. All powers conferred by this Act may be exercised from time to time as occasion requires.

Repeal of certain enactments.

39. The enactments specified in the Schedule are hereby repealed to the extent stated in the fourth column thereof.

SCHEDULE.

(*Not printed*)

[1] This sub-section was substituted by Bom. Act XI of 1924.

[2] This section was substituted for the original section by Bom. VII of 1928.

THE BOMBAY
Public Trusts Registration Act, 1935
Bombay Act No. XXV of 1935.

[*19th November 1935*

An Act for the registration of trusts created or existing for a public purpose of a religious or charitable nature and for the audit and filing of accounts of such trusts with a view to ensuring the better management thereof.

WHEREAS it is expedient to provide for the registration of trusts created or existing for a public purpose of a religious or charitable nature and for the audit and filing of accounts of such trusts with a view to ensuring the better management thereof; And whereas the previous sanction of the Governor General required under sub-section (3) of section 80-A and of the Governor required under section 80-C of the Government of India Act have been obtained for the passing of this Act; It is hereby enacted as follows :—

Short title, extent and operation.

1. (1) This Act may be called the Bombay Public Trusts Registration Act, 1935.

(2) It extends to the whole of the Presidency of Bombay.

(3) Government may, by notification in the *Bombay Government Gazette*, direct that this Act shall come into force on such date as may be appointed in the notification.

Application and saving.

2. (1) The provisions of this Act shall in the first instance apply to public trusts created or existing solely for the benefit of the Hindu community or any section of such community and, having an annual gross income of not less than Rs. 1,000.

(2) Subject to the provisions of sub-section (3), Government, on a motion of the Bombay Legislative Council or otherwise, may, after previous publication by notification in the *Bombay Gvernment Gazttlee*, direct that all or any of the provisions of this Act shall apply to any other public trust or class of public trusts.

(3) The provisions of this Act shall not apply to public trusts to which the Mussalman Wakf Act, 1923, applies.

Definitions.

3. In this Act unless there is anything repugnant in the subject or context—

(1) "Manager" means any person who for the time being either alone or in association with some other person or persons administers the property of any public trust.

(2) "Prescribed" means prescribed by rules made under this Act.

(3) "Public trust" means an express or constructive trust created or existing for public purposes of a religious or charitable nature.

(4) "Registrar" means an officer appointed under section 4 to exercise the powers and perform the duties of a Registrar of Public Trusts.

(5) "Rules" means rules made under section 27.

(6) Words or expressions used but not defined in this Act and defined in the Indian Trusts Act, 1882, shall have the meanings assigned to them in that Act.

Appointment of Registrars.

4. Government may appoint officers belonging to the judicial service not below the rank of a subordinate Judge of the second class or a Judge of a Court of Small Causes as Registrars of Public Trusts for the purposes of this Act and may define the district or area within which each of them shall exercise his powers and perform his duties.

Obligation to furnish particulars relating to public trusts.

5. (1) Every manager of the property of a public trust shall, in the case of—

(*i*) a public trust created before the commencement of this Act, within twelve months of the commencement of this Act and

(*ii*) a public trust created after the commencement of this Act, within twelve months of the vesting in or the assumption by him of the administration of the property of such trust

submit to the Registrar within whose jurisdiction the whole or any substantial portion of the subject matter of such trust is situate a statement in the prescribed form and accompanied by the prescribed fee, containing the following particulars:—

(*a*) the names and addresses of the trustees and the manager and the mode of succession to the office of trustee,

(*b*) the description of the trust property, both moveable and immoveable, sufficient for the identification thereof, and the approximate value thereof,

(*c*) the gross average annual income of such property estimated on the income of the three years preceding the date on which the statement is submitted or of the period which has elapsed since the creation of the trust, whichever period is shorter,

(*d*) the amount of the average annual expenditure in connecnection with the public trust estimated on the expenditure incurred within the period to which the particulars under clause (c) relate,

(*e*) any other particulars as may be prescribed.

(2) A copy of the deed or instrument creating the public trust shall accompany such statement or if no such deed or instrument has been executed or if a copy thereof cannot be obtained such statement shall contain full particulars so far as they are known to the manager of the origin, nature and object of the public trust.

(3) Such statement shall be signed by the manager or his agent specially authorised in this behalf.

(4) Every person signing the statement shall verify it in the manner prescribed.

Power of Registrar to hold inquiry.

6. (1) Registrar may either on his own motion or upon the petition of a person having an interest in a public trust hold an enquiry in the prescribed manner to ascertain—

(i) whether a trust is a public trust,

(ii) whether any property is the property of such trust,

(iii) whether the whole or any substantial portion of the subject matter of the trust is situate within his jurisdiction,

(iv) the names and addresses of the trustees and manager of such trust and the mode of succession to the office of trustee of such trust,

(v) the origin, nature and object of such trust,

(vi) the amounts of gross average annual income and expenditure of such trust, and

(vii) any other such particulars as may be prescribed under sub-section (1) of section 5.

(2) If it comes to the Registrar's knowledge that a suit has been instituted in any Court in regard to any of the matters mentioned in sub-section (1), he shall stay the enquiry so far as it relates to, or is likely to be affected by the Court's findings or orders in regard to such matters, until the suit is finally decided in that Court.

(3) The Registrar shall from time to time ascertain whether such suit has been finally decided and after the final decision of the suit he shall proceed with the enquiry in regard to such matters as may not have been decided in such suit.

(4) On completion of the enquiry provided for in sub-sections (1) and (3), the Registrar shall record his findings as to the matters mentioned in the said sub-sections except such matters as may have been decided in such suit.

(5) For the purpose of this section the Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :—

(*a*) enforcing the attendance of any person and examining him on oath,

(*b*) compelling the production of documents and material objects,

(*c*) issuing commissions for the examination of witnesses,

(*d*) proof of facts by affidavits.

(6) Save as provided in this section, the Registrar shall not determine any question of title between persons claiming adversely to each other or to the trust.

Register of Public Trusts.

7. The Registrar shall, after the submission of a statement under section 5 and an enquiry, if necessary, held under section 6, or merely after an enquiry held under section 6, record entries in such form as may be prescribed in a register called the Register of Public Trusts and shall file the statement, if any.

Amendment of entries in Register of Public Trusts

8. (1) When any change occurs in any of the particulars recorded in the Register of Public Trusts, the manager shall, within three months of the occurrence of such change, report to the Registrar such change in a statement in the prescribed form and accompanied by the prescribed fee. The provisions of sections 5 and 6 shall, so far as may be, apply to such statement.

(2) For the purpose of verifying the correctness of the entries in the Register of Public Trusts or ascertaining whether any change has occurred in any of the particulars recorded in such Register, the Registrar may hold an enquiry in the prescribed manner and the provisions of section 6 shall, so far as may be, apply to such inquiry.

(3) If the Registrar, after receiving a report under sub-section (1) and holding an enquiry, if necessary, under sub-section [1] (2), or merely after an enquiry held under sub-section (2), is satisfied that a change has occurred in any of the particulars recorded in the Register of Public Trusts with regard to a public trust, he shall amend in the prescribed manner the entry or entries affected by such change and shall file the statement furnished under sub-section (1) along with the statement, if any, relating to the said trust filed under section 5.

Stay of enquiry or entry in Register.

9. (1) No Registrar shall proceed with an enquiry under section 6 or 8, or shall act under section 7, in regard to any public trust particulars of which have been recorded in the Register of Public Trusts by the Registrar of any other district or area.

(2) If an enquiry under section 6 or 8 in regard to any public trust is pending before the Registrars of two or more districts or

[1] The figure (2) was substituted for the original figure (1) by Bom. Act XXIV of 1936.

areas, Government shall, on the application of any of the parties having an interest in such trust or of any of such Registrars or on their own motion, determine which of such Registrars shall proceed with the enquiry in regard to such trust; and upon such determination no Registrar other than such Registrar shall proceed with an enquiry under section 6 or 8 or act under section 7 in regard to such trust.

Entries in Register of Public Trusts to be final subject to section 11.

10. Entries made by the Registrar in the Register of Public Trusts in accordance with the provisions of sections 6 and 8 shall, subject to the provisions of section 11, be final for the purposes of this Act.

Amendment of Register by order of Court.

11. A Civil Court of competent jurisdiction deciding any question relating to any registered public trust shall communicate its decision to the Registrar and the Registrar shall make entries or amendments of entries in the Register of Public Trusts relating to the said trust in accordance with its decision.

Maintenance of accounts and their audit.

12. (1) Every manager of a public trust in respect of which an entry has been recorded in the Register of Public Trusts under section 6 shall keep regular accounts of all moveable and immoveable property, except such articles as are of a perishable nature, received, and of all encumbrances created on the trust property and of all payments and alienations made, on behalf of the public trust of which he is the manager. Such accounts shall be kept in such form and shall contain such particulars as may be prescribed.

(2) The accounts shall be balanced each year on the thirty-first day of March, or such other day, as may be fixed by the Registrar in any particular case, and shall be examined and audited annually in such manner and by a person who is the holder of a certificate granted under section 144 of the Indian Companies Act, 1913 or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout British India or by such persons as may be prescribed.

(3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers, other documents and records in the possession or under the control of the manager.

(4) Within six months after the thirty-first day of March, or such other day, as may be fixed by the Registrar in any particular case, of the year for which the accounts are balanced, every

manager shall prepare and furnish to the Registrar, a full and true statement of the accounts, in such form and containing such particulars as may be prescribed together with the audit note, if any, relating thereto :

Provided that the Registrar may, if he is satisfied that there is any sufficient cause for so doing, extend the time for the furnishing of any statement of accounts and audit note under this section.

Exception.—Nothing in this section shall apply—

(1) to any public trust

(*a*) which is governed by the Religious Endowments Act 1863,

(*b*) in respect of which a scheme has been settled under section 92, Civil Procedure Code, 1908, or

(2) to any trust property which is vested in the Treasurer of Charitable Endowments, the Administrator General or the Official Trustee.

Inspection and grant of copies.

13. Subject to such conditions and on payment ot such fee, as may be prescribed, the Registrar shall on application by—

(*a*) any person who appears to him to have an interest in any entry or portion thereof in the Register of Public Trusts or any statement, notice, intimation, account, audit note or any other document filed under this Act, or

(*b*) any other person permitted by the registrar in this behalf—

(*i*) allow such person inspection of the entries in such Register or of such document, or

(*ii*) furnish such person with copies certified under his hand, of any entry or portion thereof in such Register or of any of such documents.

Annual contribution from public trusts.

14. Every public trust shall, for the purpose of meeting the charges for and expenses incidental to the registration of public trusts, the maintenance of the registers of such trusts and generally carrying into effect the provisions of this Act, be liable to pay to the Public Trusts Administration Fund of the district or area concerned, annually such contribution, on such date and in such manner, as may be prescribed :

Provided that the contributions prescribed under this section shall be fixed at rates in proportion to the gross income of the public trust but in accordance with a progressively diminishing scale.

Explanation.—Progressively diminishing scale shall, for the purposes of this section, mean a scale of rates which shall diminish in proportion to the increase in the income of any public trust.

15. For each district or area for which a Registrar is appointed under section 4 there shall be created a fund to be called the Public Trusts Administration Fund of the district or area concerned, and there thall be placed to the credit thereof the following sums, in so far as they arise in such district or area, namely:—

Public Trusts Administration Fund.

(*a*) any fees which may be levied under section 5, 8 or 13,

(*b*) contributions under section 14,

(*c*) any sums received by the public Trusts Administration Fund from private sources,

(*d*) any sums allotted by Government or by any local authority to the Public Trusts Administration Fund.

Explanation.—For the purpose of this section the City of Bombay shall be deemed a district.

16. The Public Trusts Administration Fund a of district or any area as created under section 15 shall, subject to the provisions of this Act, be under the control and management of the Registrar and shall be applicable to the payment of charges for and expenses incidental to the registration of public trusts, the maintenance of the registers of such trusts and generally carrying into effect the provisions of this Act.

Application of Public Trusts Administration Fund.

17. It shall be competent to the Registrar, at any time, for reasons to be recorded in writing, to order a special audit of the accounts of a public trust by such person as may be prescribed and to order the cost of such audit to be paid by the trustee from the income of the property of the public trust or out of the Public Trusts Administration Fund.

Special audit.

18. Every Registrar shall publish annually under his signature, in the *Bombay Government Gazette* and in a newspaper published in the principal vernacular of, and circulating in, the district or area, a list of public trusts and a statement of the sums standing to the credit of the Public Trusts Administration Fund, in such form and on such date as Government may prescribe.

Publication of list of public trusts.

19. If any manager fails or neglects to submit a statement to the Registrar as required under section 5, 6 or 8 or submits a statement under either of these sections which he knows or has reason to believe to be false in any material particular, such manager shall on conviction be punishable with fine not exceeding Rs. 500.

Penalty for failure to furnish or for furnishing false statements under section 5, 6 or 8.

Penalty for failure to furnish statement of accounts or furnishing false statements under section 12.

20. It any manager fails or neglects to keep accounts or to furnish a statement of accounts under section 12 or furnishes a statement which he knows or has reason to believe to be false in any material particular, such manager shall on conviction be punishable with fine not exceeding Rs. 200.

Penalty for failure to comply with the order of Registrar.

21. If any person fails to comply with any order issued by the Rrgistrar under or in pursuance of the provisions of this Act, such person shall on conviction be punishable with fine which may extend to Rs. 100.

Penalty for continuing offence and power of Magistrate to direct compliance with the provisions of the Act.

22. Any Court may, in passing an order of conviction and sentence for any of the offences under section 19, 20 or 21, specify a period within which the person convicted shall comply with the provisions of this Act which may be found to have been contravened by him and may also prescribe a daily fine not exceeding Rs. 50 for every day for the period during which the default continues after the expiry of the period so specified :

Provided that if the person failing to comply with any direction issued by the Court satisfies the Court that there was good reason for his failure to do so and applies for extension of the period specified under this section, the Court may, if it thinks fit, extend the period and may remit the whole or any part of the fine paid or due.

Cognizance of offences.

23. (1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Registrar given in the prescribed manner within whose jurisdiction the whole or a substantial portion of the subject-matter of the public trust in respect of which the ofience is alleged to have been committed is situate.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try an offence under this Act.

Registrars to be public servants.

24. Every Registrar appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Prosecution of persons acting in good faith.

25. No suit or prosecution or other proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

Recovery of sums due under this Act.

26. All sums due under this Act shall be recoverable as arrears of land revenue.

Power of Government to make rules.

27. (1) Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may be made for all or any of the following purposes, namely :—

(*a*) Prescribing the form in which a statement shall be furnished to the Registrar and the fee payable along with such statement under section 5 (1).

(*b*) Prescribing the particulars to be included in the statement to be furnished to the Registrar under section 5(1), clause (*e*).

(*c*) Prescribing the manner in which the statement furnished to the Registrar shall be verified under section 5 (4).

(*d*) Prescribing the manner in which the Registrar shall make an inquiry under sections 6 and 8.

(*e*) Prescribing the form of Register of Public Trusts to be kept under section 7 and the manner in which entries recorded therein shall be amended under section 8 (3).

(*f*) Prescribing the form of the statement reporting a change and the fee payable along with such statement under section 8.

(*g*) Prescribing the form and particulars of accounts to be kept in respect of a public trust under section 12 (1).

(*h*) Prescribing the manner in which and the persons by whom the accounts of public trusts shall be audited under sections 12 (2) and 17.

(*i*) Prescribing the form and particulars of accounts to be furnished to the Registrar under section 12 (4).

(*j*) Prescribing the fee payable for the inspection of the Register of Public Trusts under section 13.

(*k*) Prescribing the conditions under which inspection of statements, notices, intimations, accounts and audit notes shall be permitted and the fees payable for such inspection under section 13.

(*l*) Prescribing the fee payable for obtaining certified copies of entries in the Register of Public Trusts and of documents filed with the Registrar under section 13.

(*m*) Prescribing the amount of contribution payable by a public trust and the date and the manner of such payment under section 14.

(*n*) Prescribing the objects in addition to those specified in the said section, to which the Public Trusts Administration Fund shall be applied under section 16.

(*o*) Prescribing the manner in which the Registrar may gave sanction under section 23.

(*p*) Any other matter not specifically provided for in this Act, but which in the opinion of Government is necessary for carrying into effect the provisions of this Act :

Provided that the rules made under clauses (*a*), (*f*), (*j*) and (*m*) shall provide for such adjustment from time to time of the rates of fees payable under sections 5, 8 and 13 and the contributions payable under section 14 in respect of the public trusts in any district or area as not ordinarily to leave any surplus in the Public Trusts Administration Fund of the said district or area at the end of any year in excess of the amount sufficient in the opinion of Government for payment of the charges and expenses referred to in section 16.

(3) The rules made under this section shall be subject to the condition of previous publication in the *Bombay Government Gazette*.

(4) Rules made under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by a statutory motion of the said Council and such rules shall after notification in the local official *Gazette* be deemed to have been modified or rescinded accordingly :

Provided that when, in the opinion of Government, such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, Government may, by notification in the *Bombay Government Gazette*, declare that the modification or rescission shall have no effect and thereupon the rules shall remain in force as if they had not been modified or rescinded.

THE
Bombay Race-Courses Licensing Act
Bombay Act No. III of 1912

(Printed as amended by Bom. Act IV of 1931)

[*6th June 1912*

An Act to provide for the licensing of race-courses in the Bombay Presidency.

WHEREAS it is expedient to make provision for the regulation of horse-racing in the Bombay Presidency; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Bombay Race-Courses Licensing Act, 1912.

(2) This section extends to the whole of the Bombay Presidency. The rest of the Act extends only to such areas as the Governor in Council may by notification in the *Bombay Government Gazette* direct.

Definitions

2. In this Act—

(*a*) "horse-race" means any race in which any horse, mare or gelding runs or is made to run in competition with any other horse, mare or gelding for any price of what nature or kind soever, or for any bet or wager made or to be made in respect of any such horse, mare or gelding or the riders thereof, and at which more than twenty persons shall be present;

(*b*) "race-course" means any ground on which a horse-race can be held.

Prohibition against horse-racing on unlicensed race-horses.

3. (1) No horse-race shall be held save on a race-course for which a license for horse-racing granted in accordance with the provisions of this Act is in force.

(2) The terms of such license shall be published in the *Bombay Government Gazette.*

Application for license for horse-racing.

4. (1) The owner, lessee or occupier of any race-course may apply to the Governor in Council for a license for horse-racing on such race-course.

Grant of license for horse-racing.

(2) The Governor in Council may withhold such license, or grant it subject to such conditions and for such period as he may think fit.

(3) The Governor in Council may by such licence authorize the licensee to grant, subject to such conditions as shall be specified by the Governor in Council in such licence, a licence or permit of

any bookmaker for such period not exceeding the period of the licence granted to the licensee as the licensee may think fit.

Cancellation of license.

(4) The Governor in Council may at any time cancel any license granted under this section in the event of any breach of the conditions subject to which it was granted.

Penalty for taking part in horse-race on unlicensed race-course.

5. Whoever takes part in any horse-race on any race course for which a license granted in accordance with the provisions of section 4 is not in force shall be punishable with fine which may amount to two hundred rupees.

Penalty for owner, etc., allowing racing in unlicensed place.

6. If any horse-race is held on any race course for which a license granted in accordance with the provisions of section 4 is not in force, any person being the owner, lessee or occupier of such race-course shall be punishable with fine which may amount to one thousand rupees.

Penalty for contravening conditions of license.

7. (1) If any person to whom a license has been granted in accordance with the provisions of section 4 contravenes any of the conditions subject to which such license was granted, such person shall be punishable with fine which may amount to one thousand rupees.

(2) If any person to whom a licence or permit has been granted by a licensee in pursuance of the provisions of sub-section (3) of section 4 contravenes any of the conditions subject to which such licence or permit was granted he shall be punishable with fine which may extend to one thousand rupees.

Cognizance of offences under this Act.

8. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try an offence under this Act.

Exemptions.

9. The Governor in Council may from time to time by general or particular order published in the *Bombay Government Gazette* exempt any horse-race from the operation of this Act.

RENT FREE ESTATES ACT

Act No. XI of 1852[1]

[*13th February, 1852*

An Act for the Adjudication of Titles to Certain Estates claimed to be wholly or partially Rent-fee in the Presidency of Bombay.

Preamble.

WHEREAS in the territories of the Dekkhan, Khandesh and Southern Maratha Country, and in other districts more recently annexed to the Bombay Presidency, claims against Government on account of Inams and other estates wholly or partially exempt from payment of land-revenue are excepted from the cognizance of the ordinary Civil Courts[2] * * *;

and whereas it is desirable that the said claims should be tried and determined without further delay;

It is declared and enacted as follows :—

1. [*Rules not applicable to certain districts.*] *Rep. Act 4 of 1894.*

Power to appoint Inam Commissioner with Assistants and establishments.

2. The Governor of Bombay in Council may appoint in any zila or other division of the territories subject to the Presidency of Bombay, which were not brought under the general Regulations of Government by[3] * * Regulation[4] XXVIII of 1827, an Inam Commissioner with so many Assistants, and such subordinate establishment, as may be necessary for the purposes hereinafter mentioned.

Duties how discharged.

3. The duties of each Inam Commissioner and his Assistants shall be discharged according to the rules in Schedule A annexed to this Act.

Inam Commissioner, effect of decision of.—The Inam Commissioner's decisions, under this Act, on matters falling within his jurisdiction, are final, except when and as modified by an appeal to Government in his judicial capacity, under this Act and binding not only upon the Inamdar, but upon Government itself, in its executive capacity, and where a Government officer infringes the rights of an Inamdar thus determined, an action lies against him in the Civil Court (*Vasudeo v. Collector of Poona*, 10 Bom. H. C. R. 471).

In an enquiry under this Act the Inam Commissioner, on the 30th January 1865, decided that a certain Inam village should be continued to the male desend-

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1. As to the application of this Act, see the Bombay Land-revenue Code, 1879 (Bom. Act 5 of 1979), s. 127.

2. The words and figures "and incapable of being justly disposed of under the rules for the determination of titles and the rules of proceedure contained in Chapters IX and X of Regulation XVII of 1827 of the Bombay Code and their supplements" were repealed by the Repealing and Amending Act, 1894 (4 of 1894).

3. The words "the said" were repealed by the Repealing and Amending Act, 1894 (4 of 1804).

4. Bom. Reg. 28 of 1827 was repealed by the Repealing Act, 1873 (12 of 1873).

ants of the orginal grantee. *Held,* that the decision of the Inam Commissioner was only intended to regulate the duration of the exemption of the Inam village from assessment, and not to regulate the enjoyment of it as between the heirs of the grantee (*Vasudeo v. Ramkrishra,* 2 Bom. 529).

The object of the Act is confined to providing a summary mode of disposing of claims to exemption from payment of the revenue as against Government (*Irappa v. Apasaheb,* 16 Bom. 649).

Determination of titles of claimants to exemption.

4. In the adjudication of claims to exempt lands or interests therein, the titles of claimants shall be determined by the rules in Schedule B annexed to this Act.

Powers to enforce attendance of witnesses to take evidence, etc.

5. Each Inam Commissioner and his Assistants shall have the same authority to procure the attendance of witnesses, and to take evidence, as now is, or from time to time may be, by law vested in the ordinary Civil Courts; and so far as concerns the penalties for not giving evidence, for false testimony, for resistance of process, contempts and other like matters connected with cases under cognizance by any one of the said officers, his office shall be held to be a Court of civil jurisdiction of the same authority as the superior Civil Court of the zila or district in which his office from time to time shall be established :

Complaints against, or appeals from, proceedings of Commissioner and Assistants.

Provided that all complaints against, or appeals from the proceedings of the Inam Commissioner or any of his Assistants in exercise of the authority conferred on them respectively by this section, shall be made under the second rule of Schedule A annexed to this Act: and shall not be cognizable by any other authority or in any other manner than as therein specified.

Punishment of misconduct of officers on Commission.

6. Bribery, extortion, and generally all acts of abuse or misapplication of authority, or other misconduct, committed by any officer belonging to the establishment of the Inam Commission, or temporarily employed therein under the provisions of this enactment, shall be punishable as criminal offences with fine and ordinary imprisonment without labour for a period not exceeding five years, and the receipt of a present, directly or indirectly, by any such officer from any person against whom or in whose behalf he may be officially employed, shall be considered extortion.

Extortion defined.

Other prosecution not barred.

And no penalty or punishment adjudicated under this clause shall preclude any other civil prosecution to which the offender may be liable.

7. [*Jurisdiction of Courts barred.*] *Rep. Act 10 of 1876.*

SCHEDULE A.

RULES FOR DEFINING THE DUTIES OF EACH INAM COMMISSIONER ANE HIS ASSISTANTS.

Duty defined.

1. The Duty of the Inam Commissioner and his Assistants shall be to investigate, in the manner prescribed by this enactment, the titles of persons holding or

claiming against Government the possession or enjoyment of inams or jagirs, or any interest therein, or claiming exemption from the payment of land-revenue, and generally to act according to the instructions of Government in all matters not specifically provided for in this enactment.

Appeal from orders of Assistant Commissioners and Commissioner.

2. All orders of the Assistant Commissioners shall be appealable to the Inam Commissioner, who shall also have the authority of revising and of modifying, reversing or annulling, if necessary, their orders and proceedings, and the orders and proceedings of the Inam Commissioner shall be in like manner appealable to, and subject to modification, reversal or annulment by, the Governor of Bombay in Council, whose orders shall in every case be final.

Government in its appellate character is not precluded in rectifying its previous decision under this Act though it has been practically superseded by Bom. Act II of 1863 (*Janardanrao v. Secretary of State for India,* P. J. for 1892. p. 151).

Duty to receive statements of title and record evidence in support.

3. The Inam Commissioner or his Assistants shall receive from the persons, holding or claiming to hold lands or any interest therein exempt from the payment of revenue, statements explaining the nature of the title by which the lands or interests are so held, and shall take and record the evidence offered in support of such statements.

Statements how received.

4. These statements may be received either directly by the officers of the Inam Commission, or through the medium of the revenue authority of the taluqa in which the land or interest so held or claimed as exempt is situated, or in which the alleged proprietor resides, without any previous procedure, except a general invitation to such landholders of a district who shall hold or claim to hold lands exempt as aforesaid to state the nature of their titles.

Notice when to issue.

5. But, when such general invitation is not sufficiently attended to, a notice may be issued to any party holding or claiming to hold any lands or any interest therein wholly or partially exempt as aforesaid, requiring him, personally or by his agent, to show his title.

The notice issued in such cases shall state the nature of the investigation which is intended, and shall call upon the alleged proprietor of the exempt lands or interest, held or claimed to be held exempt as aforesaid, to attend either personally or by an authorized agent, at a specified place, and within a specified period (which shall never be less than two months from the date of the notice being served), to explain the nature of his title to hold such lands or interest exempt as aforesaid, and to produce all the evidence forthcoming to prove it.

The notice shall further explain that a failure to comply with its terms will render the land, or interest to which it relates, liable to attachment.

Service of notice.

6. The notice shall be served upon the party holding or claiming to hold the land or interest exempt as aforesaid, or, if his place of residence be not known, upon the person acting for him, or, in default of such, upon the person in charge of the land or interest.

7. If such persons cannot be found, a notice shall be posted in the office of the Native Revenue-officer of the district, and in the chauri, or most public place of the village where the land or interest under inquiry is situated, calling on any person who may claim as proprietor to appear, either personally, or by his agent, to prove his title within six months from the date of the notice, under penalty of the attachment of the land or interest, and, on failure of the appearance of a claimant, the land or interest shall be liable to attachment.

Posting notice when land-holder not found.

8. The attachment provided for by rules 5 and 7 shall be enforced by the Collector or chief revenue-authority of the district in which the land to which it relates is situated, at the written requisition of the Inam Commissioner or his Assistant, which shall be a sufficient warrant to the Collector for the attachment of the land, and for the collection of the rents accruing thereform on account of Government during its attachment.

Attachment by whom enforced.

9. As soon as possible after the receipt of the statements in each district and of the evidence by which they are supported, they shall be tested by the entries in the Government accounts and State records, and by any other evidence procurable, whether in favour of Government or of the claimants, and decisions shall then be passed on them as to the continuance, resumption or full or partial assessment of the lands.

Procedure on receipt of statements and evidence of title.

10. In cases where the notices provided for in sections 5 and 7 fail to procure the attendance of the persons to whom they are addressed, and no claimant appears to prosecute his claim, the Commissioner or Assistant Commissioner shall proceed to ascertain the facts of the case from such evidence as may be forthcoming or procurable, and shall pronounce such decision thereupon as to him shall seem just regarding the lands or interests to which the notices referred.

Procedure on failure of notice to procure attendance.

11. An attachment enforced under rule 8 shall be removed by the Collector or chief revenue-authority by whom it was made, on receipt of a communication from the Inam Commissioner or his Assistant, certifying that he considers the attachment to be no longer necessary; but the rents collected from the land during its attachment shall in no case be restored to the alleged proprietor, except under the general or special instructions of Government.

Removal of attachment.

Restoration to proprietor of rents collected.

12. Certified copies of decisions, made according to the provisions of rule 9, shall be delivered, as soon as possible after each decision is passed, to the persons on whose claims the decision shall have been pronounced, or their agents; and copies of all decisions made in the absence of any claimant acccording to the provisions of rule 10 shall be sent to the mamlatdar or other revenue-manager of the taluq in which the lands to which they relate are situated, who shall deliver them to the parties affected by them, should they

Copies of decisions to be delivered to claimants.

Copies of decisions made in their absence how dealt with.

be discoverable, or otherwise cause them to be publicly posted in the village to which the lands in question belong.

Execution of decisions.

13. Decisions affecting any lands or any interests therein passed under this enactment shall be carried into execution by the Collector or chief revenue-authority of the district in which the lands to which they relate are situated at the requisition of the Inam Commissioner or his Assistant, in any manner which may, from time to time, be prescribed by the Governor of Bombay in Council.

Procedure in appeal.

14. In all cases where a person may be desirous of appealing against any decision of the Inam Commissioner or his Assistants, he shall apply by a petition, addressed to the authority by whom, according to rule 2, his appeal is cognizable, which petition shall be presented to such authority within one hundred days from the date of the decree appealed against, a copy of which must accompany the petition of appeal, and no appeal which is not so made shall be admitted, without proof of the existence of a just and necessary cause for its not having been preferred in due time; and it is hereby provided that no decree passed by the Inam Commissioner or any of his Assistants shall be liable to be set aside for want of form in the proceedings, but only for matters affecting the justice of the decision.

Setting aside decrees.

SCHEDULE B.

RULES FOR THE ADJUDICATION OF TITLES TO ESTATES CLAIMED AS INAM OR EXEMPT FROM PAYMENT OF LAND-REVENUE.

Continuance of inams already decalred permanent.

1. All lands held under a specific and absolute declaration by the British Government, or any competent officer acting under it, that they were to be continued hereditarily or in perpetuity exempt, wholly or partially, from the payment of revenue, are to be so continued according to the purport of such declaration.

Disposal of question as to competency to make declaration.

Provision 1st.—If any question shall arise as to the competency of the officer to make or give such declaration as aforesaid, the Commissioner or Assistant Commissioner is to suspend his judgment, and report the circumstances of the case to the Governor of Bombay in Council, to whom a power is hereby reserved of determining finally whether such officer was competent to make or give such declaration, and the Commissioner or Assistant Commissioner, upon receiving the determination of the said Governor in Council, shall decide accordingly.

Continuance of holding under sanad declaring it hereditary, where granted by competent authority.

2. Any land held under a sanad declaring it to be hereditary shall be so continued according to the terms of the sanad.

Provision 1st.—Provided that the grant was either made, or specifically recognised, by authority competent to alienate Government revenue in perpetuity, the question of which recognition and competency is to be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

Provision 2nd.—And provided that there be nothing in the conditions of the tenure which cannot be observed without a breach of the laws of the land, or the rules of public decency.

and conditions of tenure legally observable;

Provision 3rd.—And provided that the grant was not afterwards revoked or disallowed, or an alteration of its terms ordered or recognized by a competent authority.

and grant not revoked, disallowed or altered.

3. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of sixty years before the introduction of the British Government, and then in the authorized possession of a grandson in male descent or male heir of the body of such grandson, of the original grantee, shall continue to be so held so long as there shall be in existence any male heir of the body of the person who was incumbent at the introduction of the British Government, tracing his lineage from such incumbent through male heirs only.

Continuance of holdings exempt or partially exempt for sixty years before British rule.

4. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of forty years before the introduction of the British Government, and then in the authorized possession of a son, or male heir of the body of a son, of the original grantee, are to be continued for one succession further than that of the person who was incumbent at the introduction of the British Government, that is, until the death of his last surviving son.

Continuance of holdings so exempt for forty years.

Provision 1st.—The authorized possession contemplated by rules 3 and 4 does not involve the necessity of proving any specific authority from, or recognition by, the Government or paramount Power. The mere entry of the holding, as continued in the genuine accounts of the district officers (even in those not audited and passed by the Government of the time being), will be sufficient to bring it under the heads of "uninterrupted" and "authorized" so far as regards the purposes of this rule: Provided only that there are no entries in the collectorate-accounts which show that the holding of such lands exempt as aforesaid must have been unauthorized by the Government or paramount Power.

Authorized possession how proved.

Provision 2nd.—If there be not evidence forthcoming to disprove a claimant's assertion that his holding has been undisputedly enjoyed for the number of years and descents requisite to fulfil the conditions of rules 3 and 4 respectively, his prescriptive right shall be admitted.

Prescriptive right of claimant when admissible.

Provision 3rd.—The introduction of the British Government is to be reckoned from the time the East India Company became the Covernment or paramount authority over each district as regards its inams. In the territories ceded by or conquered from the Peshawa, therefore, whether khalsat mahals or saranjams, etc., held exclusive of inams, etc., the introduction of the British Government will date from the close of that of the Peshawa.

Introduction of British Governmont when to date —in territories late of Peshwa.

But in case of the lapse of an independent principality, or of a jagir more ancient than the Peshwa's Government, and over the inams of which he did not claim any authority, the introduction of the British Government should be reckoned only from the date at which the general management of the districts may have come into the hands of the Company;

in independent principality or jagir more ancient than Peshwa's government.

and in case any question shall arise as to the precise date when the East India Company became the Government over any district, or when the general management of any district came into their hands, such question shall be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

Disposal of question as to date of East India Company acquiring Government.

*6. Land held as wholly exempt from payment of revenue, or on partial assessment, the possession of which is not continuable under the preceding rules, is to be resumed :on the demise of the incumbent.

Land resumable on demise of incumbent.

Provision 1st.—In case the incumbent at the time of the introduction of the British Government may have died, the permission to hold for life is to be extended to the person in whose name the land may be continued, when the investigation is commenced, if there be no fraud apparent, nor other reason for withholding this indulgence.

Extension of Life tenure of holding of which incumbent died before British rule.

Provision 2nd.—When land is evidently held by fraud recently committed (as when an inam which was resumed under the late Government has been re-occupied under the present Government without authority, or as when a pretended inam is found to have originated since the introduction of this Government with the connivance of district or village-officers) it shall be at once resumed, not being continuable under this or any of the preceding rules.

Resumption of land held by fraud.

7. All lands held for the support of mosques, temples or similar institutions, of the permanent character of which there can be no doubt, are to be continued permanently, even though their permanent continuance may not have been expressly provided for when they were granted.

Continuance of holdings for suport of mosques, temples, etc.

Provisions 1st, 2nd and 3rd.—The same as the corresponding provisions of rule 2 of this Schedule in those cases in which title-deeds or other records proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Corresponding provisions of rule 2 applied.

Provision 4th.—When there is no proof forthcoming to show whether or not an inam, coming under the provisions of this rule, was granted, or even specifically recognized, by a competent authority, still, if it has been undisputedly enjoyed for a period of forty years before the introduction of the present Government, it

Effect of enjoyment for 40 years where no proof of grant forthcoming.

* There is no rule numbered 5.

shall be permanently continued, and enjoyment proved by the mere entry of the inam, as continued in genuine accounts of the district-officers (even in those not passed by the Government of the time being), is to be considered sufficiently "uninterruped" to give an inam the benefit of this provision, if there be no entries in the Government accounts which show that it must have been unauthorized by them.

Prescriptive title when admissible where records do not go back enough to test enjoyment for forty years.

Provision 5th.—If the forthcoming records do not go far enough back to test the existence of enjoyment of the duration contemplated in provision 4th as establishing full prescriptive title in such inams, still, if so far as they do go, they are not opposed to the claimant's assertion that sufficient enjoyment has taken place, the prescriptive title of the inam shall be admitted according to his assertions, unless there be other evidence forthcoming to disprove them.

Rule where not applicable.

Provision 6th.—The peculiar advantages of this rule shall not apply to the holdings of individuals in their own names for the performance of ceremonial worship, claims to which must be decided under the rules for personal claims.

Adjudication of certain claims coming under rule.

Provision 7th.—When claims of the denomination coming under this rule are found to be unsupported by proof of original valid title, and are proved void of sufficient prescriptive enjoyment, they are to be adjudicated according to rule 6.

Continuance of holdings by official tenure meant to be hereditary.

8. All lands authorizedly held by an official tenure which it is evident from local usage was meant to be hereditary, and has been so considered heretofore even though there be no sanads declaring it to be so,—for instance, inams which form the authorized emoluments of any hereditary office, as of kazis, village joshis, etc., and are not merely personal,—are to be continued permanently.

Corresponding provision of Rule 2 applied.

Provisions 1st, 2nd and 3rd.—The same as the corresponding provisions of rule 2 of this Schedule in those cases in which title-deeds or other records, proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Continuance of inam enjoyed as official holdibg during period covered by evidence though grant or recognition not proved.

Provision 4th.—When there is no proof forthcoming to show whether or not an inam, coming under the provisions of this rule, was granted or even specifically recognized by competent authority, still, if it has been undisputedly enjoyed as an official, and not merely personal, holding from the earliest period to which the forthcoming evidence does relate, it shall be continued permanently as official emolument, unless the claimant's own statement renders this course improper.

Exemption from rule of emoluments for certain services to State.

Provision 5th—The provisions of this rule are not in any way to apply to emoluments continued for service performed to the State, as the service watans of desais, sardesais, nadgaudas, deshpandes, patels, kulkarnis, mhars, talavaras, whose claims are to be disposed of according to the rules whcih are or may be established for the regulation of such holdings.

Provision 6th.—It is to be understood that mere length of enjoyment of land as inam by an official person is not of itself sufficient to entitle a claim to be brought under this rule.

Length of enjoyment by itself does not entitle to benefit of rule.

Provision 7th.—If a holding claimed under this rule be found incapable of permanent continuance under it, the claimant shall be allowed the advantages of any of the preceding rules of this Schedule which may be applicable to his case.

Benefit of preceding rules when allowable.

9. On the resumption of any lands under the rules of this Schedule, a moiety or other portion may be continued to the widows of the last incumbents during their lives, in cases of proved poverty and destitution.

Provision for widows of last incumbents of resumed holdings.

Provision 1st.—In the case of a holding which is recognizable as an hereditary personal inam, the widow of a proprietor who dies without surviving male issue, or other heirs to whom his inam will of necessity descend, is by right his sole heir, and during her life the inam cannot be regarded as having lapsed to Government: it should, therefore, in such a case, be continued undiminished during the widow's life.

Continuance to widow and sole heir of holder of hereditary personal inam.

10. These rules shall not be necessarily applicable to jagirs, saranjams or other tenures for service to Government, or tenures of a political nature, the titles and continuance of which shall be determined as heretofore under such rules as Government may find it necessary to issue from time to time.

Exception of certain tenures from application of rules.

Saranjam.—Where a Saranjam is held on terms of the kind mentioned in rule 10 of Schedule B to this Act or clause 3 (2) of s. 2 of Bom. Act VII of 1863, the Saranjamdar has not an absolute estate. The grant of mirasi rights is not necessarily an alienation which will not be binding beyond the lifetime of the Saranjamdar making the grant (*Madhavrao Imam Bahu*, 28 Bom. L. R. 433).

SARANJAM RULES.

1. Saranjams shall be ordinarily continued in accordance with the decision already passed or which may hereafter be passed by Government in such case.

2. A Saranjam which has been decided to be hereditarily continuable shall ordinarily descend to the eldest lineal male representative, in the order of primogeniture, of the senior branch of the family descended from the first British grantee or any of his brothers who were undivided in interest. But Government reserve to themselves their right for sufficient reason to direct the continuance of the Saranjam to any other member of the said family, or, as an act of grace, to a person adopted into the said family with the sanction of Government. When a Saranjam is thus continued to an adopted son, he shall be liable to pay to Government a Nazarana not exceeding one year's value of the Saranjam, and it shall be levied from him in such instalments as Government may in each case direct.

3. In the case of Saranjams which have been decided to be continuable for two generations with a pension to be third, the eldest

surviving son shall be considered to represent a generation, and the entire Saranjam shall descend to him when he represents the second generation from the first British grantee, and a pension when he represents the third. But if the elder son or sons of the first British grantee have died before their father, but leave sons, the grandson who ranks first in the order of primogeniture shall, on his grandfather's death be regarded as the second generation, and the entire Saranjam shall be continued to him, no pension being granted to the next generation.

4. Proposed orders regarding succession to Saranjams in accordance with the above rule, must as they constitute a technical regrant of the Saranjam, be submitted, in all cases, for the sanction of Government.

5. Every Saranjam shall be held as a life-estate. It shall be formally resumed on the death of the holder, and in cases in which it is capable of further continuance, it shall be made over to the next holder as a fresh grant from Government, unincumbered by any debts or charges save such as may be specially imposed by Government itself.

5A. In cases in which there is no suitable person to whom a regrant can immediately be made, or in which an immediate regrant would be injurious to the interests of the estate, the Saranjam may be attached and placed under Government management for such period as Government may consider necessary ; and the revenues of the Saranjam, after deduction of the expenses of management, may be assigned for the maintenance of the representatives of the deceased Saranjamdar, in such manner and in such proportion as Government may from time to time direct. [B. G. G. 1901, Part I, page 1159.]

6. No Saranjam shall be capable of sub-division.

7. Every Saranjamdar shall be responsible for making a suitable provision for the maintenance of the widow or widows of th preceding Saranjamdar, his own brothers, or any other member of his family who, having a valid claim arising from infancy, mental or physical infirmity, rendering such member incapable of earning a livelihood, may be deemed deserving of support at his hands. When this obligation is not fulfilled by the Saranjamdar, Government may direct him to make suitable provision for such persons and may fix the amount, which he shall pay, in each instance : provided that no one who has independent means of his own in the opinion of Government otherwise sufficiently provided for, shall be entitled to maintenance from the Saranjamdar.

8. Every order passed by Government under the above rule for the grant of maintenance by a Saranjamdar shall hold good during his life only.

9. If an order passed by Government under Rule 7 is not carried out, Government may, whatever the reason may be, direct the Saranjam, or a portion of it, to be resumed, as the circumstances of the case may require. Provision for the members of the Saranjamdar's family entitled to maintenance shall then be made by Government out of the revenues of the Saranjam so resumed.

10. Whenever it appears that a Saranjam or its revenues have passed by attachment or any other process of the Civil Court into the hands of a person other than the Saranjamdar, Government will ordi-

narily direct the Saranjam to be resumed and pass such order as to its regrant or other disposal as may seem to them fitting.

11. The above rules shall be applicable not only to Saranjams proper, but also to Chouth Saranjams.

12. Any Inam granted on political consideration shall be continued in the terms of the Sanad or order creating the grant. In the event of any such Inam passing out of the possession of the family for whose support it was granted, it shall be liable to resumption, unless there be an express provision permitting such transfer in the terms of the grant (B. G. G. 1898, Part I, page 424).

Rules as to resumption and continuance of lands held for service in supercession of all existing rules.

1. An enquiry into the title by which any land held for service is enjoyed may be instituted from time to time, by such officer as Government may direct.

2. Lands originally held for service, and which have been continued, or may hereafter be continued under s. 15, Bom. Act III of 1874, on condition of payment of a certain portion of the assessment thereof in commutation of service, shall continue to be held in accordance with the terms of the Sanads issued or hereafter to be issued in confirmation of the said commutation settlements.

3. Service lands, in respect of which no such commutation settlement has been effected, and which have been already declared by Government, or by any officer acting under the orders of Government, to be resumable on the demise of certain persons, or on the extinction of certain families or lines of descent, shall be resumed accordingly.

4. Service lands which do not fall under either of the two last rules shall be continued, subject to the provisions of Bom. Act III of 1874, and of any other law for the time being in force relating thereto, to the heirs of the present holders, or in the event of the same being at any time lawfully alienated to the heirs of the alienees, without restriction as to adoption or female or collateral succession; but such lands shall be resumed in default of any heir in whom, in the ordinary course of descent, the deceased holder's private property would vest, and shall not be liable to be dealt with under the ordinary law for the time being in force relating to intestate property.

Provided that if Government are at any time satisfied that the service, in respect of which any such lands are held, is no longer performed, or that its performance is no longer necessary, or that for the service performed the remuneration derived from the profits of the enjoyment of such lands is unnecessarily high, or, in the case of service lands to which the provisions of Bom. Act III of 1874 do not apply, if it shall appear that the holder has been guilty of any serious offience or misconduct, or that such lands or any part thereof or any of the profits thereof have or has by succession, or otherwise, come into the possession of a female or of any person other than the person who for the time being is duly authorized to perform and does actually perforin the service in respect of which such lands are held, Government will in their discretion by general or special order, direct either (1) the resumption of such lands, or (2) the continuance of the same subject to such new conditions as they shall deem fit to impose, or (3) the resumption

of a portion of such lands and the continuance of the rest thereof, subject to such conditions as aforesaid.

5. When the Sanad issued in confirmation of any service commutation settement expressly authorizes the alienation or transfer of the service lands, the same shall be continued without question to any lawful holder thereof on fulfilment of the terms of the Sanad. But in every other case contemplated by No 2 of these rules, and in every case contemplated by Nos. 3 and 4 of these rules, if any land held for service or any of the profits thereof shall at any time be or become alienated contrary to the provisions of Bom. Act III of 1874, or of any other law for the time being in force, or, in the case of land to which the provisions of Bom. Act III of 1874 do not apply, if the same or any of the profits thereof shall be alienated or in any way encumbered without the previous sanction of Government, the said land shall, if Government deem fit so to direct by general or special order, be forthwith resumed, anything in the said rules to the contrary notwithstanding.

6. It shall be lawful for the Collector, whenever it may be necessary, in carrying out any direction given by Government under No. 4 or No. 5 of these rules :—

(*a*) summarily to evict any person wrongfully in possession of any land, or

(*b*) to levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand.

Explanation.—For the purposes of this rule any person in possession of land, the resumption of which has been directed by Government under No. 4 or 5 of these rules, shall be deemed to be a person wrongfully in possession thereof (B, G. G. for 1902, Pt. I, p. 674).

Modification in favour of claimants and interpretation rules.

11. Any of these rules may be relaxed in favour of claimants under instructions from the Governor of Bombay in Council, in whom shall also be vested the power of interpreting the precise meaning of any of the rules respecting which a question may arise.

THE
Bombay Revenue Jurisdiction Act

ACT No. X OF 1876

(As amended by Acts XVI of 1877, XV of 1880, XII of 1891, IV of 1894, XIV of 1895 and Bom. Act. XXI of 1929).

[*28th March 1876*

An Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.

Preamble.

WHEREAS in certain parts of the Presidency of Bombay, the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive that it is in the rest of the Presidency;

And whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing ;

And whereas it is also expedient to amend the Bombay Civil Courts Act, section 32, and to revive certain provisions of the [1] thirteenth section of Regulation XVII of 1827 of the Bombay Code, which was repealed by the Land Improvement Act, 1871 ; [2]

It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1876."

Commencement.

So much of section four as relates to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land revenue, shall come into force on such [3] day as the Governor General in Council directs in that behalf by notification in the *Gazette of India*. The rest of this Act shall come into force on the passing thereof ;

Extent.

And it shall extend to all the territories for the time being under the Government of the Governor of Bombay in Council, but not so as to affect —

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[1] Section 17 of this Act which revised s. 13 of Bom. Reg. 17 of 1827 was repealed by Act XV of 1880, except in scheduled districts to which the Bombay Land Revenue Code, 1879 (Bom. Act 5 of 1879) has not been extended.

[2] The portion repealed by the Repealing and Amending Act IV of 1894 is omitted.

[3] The 10th September 1881—G. N. 1881, Pt. I, s. 92.

(*a*) any suit regarding the assessment of revenue on land situate in the Collectorate of Bombay, or the collection of such revenue ;

(*b*) any of the provisions of Bombay Acts V of 1862 and VI of 1862, or of Act XXI of 1881, or of Act XXIII of 1871 ;

[*a*] * * * * * *

2. [*Repeal of enactments*] *Rep. Act XII of 1891.*

Interpretation clause.

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

"Land."

"Land" includes the sites of villages, towns and cities: it also includes trees, growing crops and grass, fruit upon, and juice in, trees, righs-of-way, ferries, fisherses and all other benefits to arise out of land, and things attached to the earth, or permanently fastened to things attached to the earth :

"Land-revenue."

"Land-revenue" means all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force :

"Revenue officer"

"Revenue officer" means any officer employed in or about the business of the land-revenue, or of the surveys, assessment, accounts or records connected therewith.

Bar of certain suits.

4. Subject to exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :—

(*a*) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service ;

[*a*] Clause (*c*) was repealed by the Repealing and Amending Act XVI of 1895.

Scope.—So far as a plaintiff's claim to perform the duties of any office or claim for the cancellation of the watan register is concerned, the words of this section are wide enough to preclude the Civil Courts from entertaining such claim. A suit, however, for a declaration that the plaintiffs are the nearest heirs of the deceased representative watandar is not barred by this section (*Hanmant v. Secretary of State*, 54 Bom. 126 ; s. c. 32 Bom. L. R. 155).

Where a person in possession of vatan lands under a miras lease or mortgage from the owner continues in adverse possession of the land after death of the owner for the statutory period, he is still liable to be ousted under the Hereditary Offices Act, and so he is at most entitled only to an injunction restraining the owners from taking proceedings other than under the Hereditary Offices Act to recover possession. An order which, though purporting to be passed under the Hereditary Offices Act, is not authorized by the Act, does not come within the purview of this Act (*Maganchand v. Vithalrao*, 37 Bom. 37).

Suit to recover Saranjam lands.—A suit to recover back possession of land, the Saranjam rights in which have been resumed by Government, is not barred by this section (*Gururao v. Secretary of State*, 41 Bom. 408).

"Claims to perform duties of Hereditary officer."—The plaintiff who was a Deshpande, an Hereditary District Officer, claimed against Government to perform the duties of a Deshpande's office. *Held*, that such suits were excluded from the jurisdiction of the Civil Courts (*Narayan v. Secretary of State*, P. J. 1897, p. 425).

"Claims relating to property of village officer."—When it has been decided that a particular land is service inam land, the Civil Court, under this clause, ceases to have jurisdiction over the plantiff's claim against Government in respect of the trees growing thereon, as such claims related to property appertaining to the office of a village officer (*De Souza Devino v. Secretary of State for India*, 18 Bom. 319).

"Claims in respect of injury."—A suit in respect of any injury caused by exclusion from office or service is barred by the 2nd paragraph of cl. (*a*) of this section. Having regard to the wording of the clauses of the section, the bar therein provided is not limited to suits against Government (*Naro v. Mahadeo*, 12 Bom. 614).

"Treaty."—The word 'treaty' in this clause ought not to be broadly interpreted. The word 'treaty' must, seeing that it is not defined in this Act, receive its generally accepted meaning, *viz*, that it is an agreement between two or more independent sovereign powers of State (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

"Claims to lands held on political tenure."—A suit in a Civil Court against Government to recover possession of Inam lands together with arrears of the amals is barred both under this section and s. 4 of the Pensions Act (XIII of 1871). It was barred under Reg. XXIX of 1827. These Acts, though not retrospective in their operation, still do not create rights to relief against the Government where none subsisted before (*Shivram v. Secretary of State for India*, 11 Bom. 222).

Commutation of watan.—Where a Collector orders commutation of vatan services at the instance of the widow of the last vatandar, but without ob-

serving the precedure prescribed by s. 73 of the Bom. Hereditary Offices Act, 1874, the order passed is *ultra vires* of him; and a suit to set it aside can be entertained by a Civil Court notwithstanding the provisions of cl. (*a*) of this section (*Bhikaji v. Secretary of State*, 27 Bom. L. R. 463).

Suit for declaration.—A suit for declaration that the plaintiffs are hereditary Vatandar Kulkarnis, and that they are entitled to be Vatandar and entitled to the Vahivat of the Vatan hereditarily, is barred by the provisions of clause (*a*) of this section (*Damodar v. Collector of Nasik*, 44 Bom. 261).

Suit for share in emoluments of watan.—Neither Act III of 1874 nor this Act contains any provision excluding the jurisdiction of Civil Courts in a suit brought to establish a share in the emoluments of a watan which has ceased to be a service watan (*Moheyodin v. Chhotibibi*, 5 Bom. 578).

Suit for damages.—A suit in respect of any injury caused by exclusion from office or service, claiming damages by reason of a breach of an agreement between the co-sharers, is barred by para. (2) of cl. (*a*) of this section (*Naro v. Mahadeo*, 12 Bom. 614).

This section applies to all suits, and not to suits against Government only (*Ibid*).

Mantainability of suit as against Government.—Where an order was passed by the Government under s. 36 of the Watan Act recognizing the claim of a certain person to succeed a deceased representative watandar, it was *held* that a suit against Government to have the resolution of the Government set aside is barred under this section (*Hunmant v. Secretary of State*, 54 Bom. 125, s. c. 32 Bom. L. R. 155).

Suit against Government.—So far as the plaintiffs seek to have their own right to officiate declared, the Civil Court has no jurisdiction since the passing of the Bom. Hereditary Offices Act, 1874; but that Act did not take away the jurisdiction of Civil Courts to determine who were watandars. The discretion of the collector only came into play when it is determined if one is a watandar; so far as the plaintiffs ask for a declaration that defendant is not entitled to be on the list of watandars, the Civil Courts have jurisdiction (*Yellappa v The Secretary of State*, P. J. 1888, p. 224).

Where an order is passed by revenue officers that a person is not a Vatandar, a suit to obtain a declaration from a Civil Court that the decision is bad, is barred under the 3rd paragraph of cl. (*a*) of this section. If such a suit seeks relief against Government relating to vatan land, it falls also within the first paragraph of cl. (*a*) (*Baslingappagouda v. Secretary of State*, 28 Bom. L. R. 651).

A party against whom an order *ex-parte* is made by revenue authorities is entitled to have the matter fully heard after arguments on both sides. An order so passed on further hearing is not an order passed in revision, but an order properly made after hearing both the parties, one of whom had not been heard on the previous occasion (*Ibid*).

Jurisdiction of Civil Courts.—The Civil Court has no jurisdiction to set aside orders made under ss. 11, 11A and 9 (2) of the Bombay Hereditary Offices Act (*Ibid*).

Under para. 2 of cl. (*a*) of this section the jurisdiction of a Civil Court is excluded in a suit by a Deshpande, an hereditary district officer, claiming against

Government the right to perform the duties of a Deshpande's office. The meaning of the words "claims to perform the duties of any such officer or servant" is to be taken from the preceding sentence (*Narayan v. Secretary of State*, P. J. 1894, p. 450).

A Civil Court has no jurisdiction to entertain a suit brought by Mahars for a declaration that they are entitled to a share in the Maharki Vatan and for an injunction restraining the defendants from obstructing them in the enjoyment of the said share (*Bhiva v. Vithya*, 25 Bom. 186).

Under this section a Civil Court has no jurisdiction to entertain a suit for a declaration that the plaintiffs are watandar patils and kulkarnis of the village, and for cancellation of the watan register. The words of this section in question are wide enough to preclude the Civil Courts from entertaining any claim to the watan offices in opposition to the claim of the hereditary officers appointed or recognized under the Bom. Hereditary Offices Act, 1874, and also any claim for the cancellation of the watan register (*Laxmanrao v. Shrinivas*, 51 Bom 830, P C.).

The jurisdiction of the Civil Courts to entertain the claim for a refund of the contribution levied under the Bom. Hereditary Offices Act, 1874, is not barred by this section (*Ibid*).

The Mamlatdar passed a decree in plaintiff's favour in an assessment suit for rent. In the course of the execution proceedings under that decree, the plaintiff got attached a buffalo belonging to the defendant. On this, the petitioner applied to the Mamlatdar to raise the attachment on the ground that the buffalo had been pledged to him and the same was ordered. Plaintiff's case was that the alleged pledge was a fraud and she sued for damages. *Held*, that the suit was intended for the rehearing of the decision of the Mamlatdar as to whether the buffalo was pledged to the applicant and was not a *bona fide* suit for damages for a fraud practised on the court and that consequently it was not maintainable (*Sadashiv v. Radhabai*, 31 Bom. L. R. 504).

It is competent to a Civil Court to grant a declaration that the plaintiffs are Watandars of a Maharki Watan (*Raoji v. Dagdu*, 41 Bom. 23; s. c. 18 Bom. L. R 839).

Where Government have resolved that a certain person should be recognized as a representative watandar of a watan, a suit brought against Government to set aside the Government Resolution is barred under this section (*Hanmant v. Secretary of State*, 54 Bom. 125; s. c. 32 Bom. L. R. 155).

Cognizance of Civil Court.—A suit by the Mahar Vatandars to restrain the villagers of their village from delivering the carcasses of dead animals and paying baluta to the mangs, is not cognizable by a Civil Court, having regard to s. 18 of the Bom. Hereditary Offices Act, 1874 (*Mahadu v. Krishna*, 47 Bom. 95).

A suit to obtain a declaration that the Plaintiff, being of the eldest family, is the nearer heir to the late Vatandar than the defandant, is cognizable by the Civil Court (*Shankar v. Dattatraya*, 17 Bom. L. R. 725).

Cl. (a) ultra vires.—The plaintiff, a watandar patil, was, under orders of Government, dismissed from his office, and his life-interest in Patilki watan was forfeited. He sued the Secretary of State for a declaration that the order of Government was illegal and did not legally effect forfeiture within the meaning of

s. 61 of the Bom. Hereditary Offices Act, and for possession of the lands. The lower Court dismissed the suit on the ground that it is was barred by para. (1) of cl. (*a*) of this section. The plaintiff appealed contending that para. (1) of cl. (*a*) was *ultra vires* of the Government of India. *Held*, that para. (1) of cl. (*a*) was not *ultra vires* of the Government of India, inasmuch as a claim like the plaintiff could not have been brought in the ordinary Civil Courts against the East India Company by virtue of the preamble to Act XI of 1852 (*Rashangauda v. Secretary of State*, 21 Bom. L. R. 1155).

"Claims to land held for service"—This clause bars the jurisdiction of the Civil Courts to entertain suits against Government regarding land of which the plaintiff is put into occupation by Government free from exemption of the reward of his service. The plaintiff cannot escape from the bar by contending that his claim is for the possession of land, while the property that appertains to his office is not the land but the revenue arising from the land (*Appaji v. Secretary of State*, 28 Bom. 435).

Land held in Saranjam—Suit against Government.—The Inam Commissioner decided in 1858, under the provisions of Act XI of 1852, that certain estate was Saranjam and not sarva Inam. On the death of its holder P, in 1899, Government resumed the property on the ground that it was Saranjam and granted it to V, one of the grandsons of P. The plaintiff, another grandson of P, sued the Secretary of State for India and V, for a declaration of title to and for possession of the property, alleging that it was Serva Inam and that it was not competent to Government to resume and regrant it to any one it liked. *Held*, (1) that the decision of the Inam Commissioner was, by virtue of the provisions of r. 2 of Sch. A of Act XI of 1852, final as regards interests concerned in the decision; (2) that the title to and continuance of the estate must be determined under Sch. B. r. 10 of the Act under such rules as Government might find it necessary to issue from time to time; (3) that in accordance with those rules the estate was on P's death resumed by Government who re-granted it to V; (4) that the suit having been one against Government relating to land held as Saranjam, was excluded from the jurisdiction of the Civil Court by the provisions of sub-section (*a*) of this section (*Ramrao v. The Secretary of State*, 11 Bom. L. R. 1333).

Mahar Vatan.—The plaintiffs who were residing in a village, sought for an injunction to prevent the skins of their dead animals being taken away by defendants who were Village Mahars and claimed the right of taking away the skins as Vatandars. The lower Courts held that the suit was barred by s. 18 of the Hereditary Offices Act, 1874, and sub-section (*a*) of this section. The plaintiffs having appealed, it was *held*, (1) that the question, whether there was or was not a Mahar Vatan as contended for, was within the jurisdiction of the Civil Court; (2) that the plaintiffs would be entitled to injunction unless the Mahars should succeed in showing that there was an hereditary office as alleged by them (*Savla v. Santya*, 20 Bom. L. R. 993).

Alienation.—Where, on an application by a Vatandar to declare that a particular alienation is null and void, the Collector refuses to make an order that the alienation is null and void, it is open to the party aggrieved to file a suit in a Civil Court against the alienee in respect of the alienation (*Dattatraya v. Tukaram* 23 Bom. L. R. 376).

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

Objections.—An objection to come within either of the two heads 1 and 3 of cl. (*b*) of this section must be an objection which reaches them directly, *i. e.*, an objection to them *per se* which admits the liability to pay land revenue on the part of the objector but quarrels with its amount or incidence or the validity and effect of the notification of survey settlement as *by themselves* objectionable, not because some other right affects them or makes them inapplicable to this particular case. Objections in cl. (*b*) may be raised by a suit or in defence to a suit; but in whichever way they are raised, they must be of the particular nature described in cl. (*b*). Where they fall outside that class, they can be raised in defence as well as by a suit (*Lakshuman v. Govind*; *Govind v. Lakshuman*, 28 Bom. 74).

"Objection to amount.....land-revenue."

In a suit by an inamdar of a village against a Khot to recover rent in kind (according to the market rate at the time of payment), the defendant (Khot) contended that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid and that the Civil Court had no jurisdiction to entertain the suit under this clause. *Held*, that as there was no objection by either party to the amount or incidence of assessment of land-revenue fixed by Government, and the question being whether the Khot was liable to pay to the inamdar maktas or assessment, the suit was not taken away from the cognizance of a Civil Court by this clause (*Gangadhar v. Morbhat*, 18 Bom. 525).

Jurisdiction of Civil Court.—Where water-rate is levied under s. 48 of the Irrigation Act, the question whether the Civil Courts have jurisdiction in view of cl. (*b*) of this section, in a suit for the determination of the legality or otherwise of such levy, depends upon whether the incidence of the rate is authorized by the provisions of s. 48 of the Irrigation Act. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal, but the opinion of the Canal Officer that it has so percolated, he and not the Civil Court being made the Judge of such percolation for the purposes of the Act. Such water-rate falls within the denomination of land-revenue (*Balwant v. Secretary of State*, 22 Bom. 377).

(*c*) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance, by Government or any officer duly authorized in that behalf, to superior holders or occupants for the recovery of their dues from inferior holders or tenants;

claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue;

"Claims connected with proceedings for realization of land revenue.—The plaintiff sued to redeem certain land mortgaged by him to the first defendant. The second defendant claimed the land as owner, alleging that the mortgagee had failed to pay the assessment on the land to the Native Chief to whom it was due. The latter had accordingly sold it by public auction to realise the assessment, and he (defendant No. 2) had bought it. The Court of first instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under provisions of this Act and the Land Revenue Code. On appeal, the District Court reversed the decree and remanded the case for trial on the merits. *Held*, confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the Native Chief on whom the defendant relies, the jurisdiction of the Civil Court was not taken away by cl. (*c*) of this section (*Mahadu v. Lakshman*, 17 Bom. 68.).

"Claim to set aside sale for arrears of land revenue."—Plaintiff was the owner of a certain village. Defendant No. 3 was the watandar Kulkarni of the village. He enjoyed for the performance of his duties some inam lands, and a cash allowance of Rs. 5 paid annually by the inamdar. In 1884 defendant No. 3 having failed to perform the service in person or by deputy, the Collector appointed defendant No. 2 to act as Kulkarni. Defendant No. 2 officiated from 20th November 1884 to 4th December 1886. On the application of Defendant No. 2, the Collector increased his remuneration according to the scale fixed for Government villages known as the Wingate scale, and ordered plaintiff to pay the increased remuneration, so as to make up the amount due under that scale. On 26th September 1890, the Collector recovered the sum of Rs. 171 from the plaintiff by attachment of his property. The plaintiff thereupon sued the Secretary of State for India in Council to recover this amount as being illegally levied. The defendant pleaded that the Collector, having determined the amount of Defendant No. 2's remuneration under s. 17 of the Hereditary Offices Act, 1874, the plaintiff had no cause of action against him, and that the suit was barred under this clause. *Held*, that as the cash payment made by the plaintiff to the vatandar was certain, and not of a fluctuating or indeterminate character, the Collector had no power to increase the remuneration of the officiator under s. 17 of the Hereditary Offices Act, and that the suit was not barred by this clause (*Anantacharya v. Secretary of State*, 19 Bom. 581).

An order made by a Collector removing A's lands from his Khata, and transferring them to B.'s Khata, on the ground that A had allowed the assessment thereof to fall into arrears and that B had paid the assessment, does not by itself amount to forfeiture of A's interest in the lands. A suit by A to recover such land from B being simply a suit between private parties for the purpose of establishing a private right, this clause does not bar the jurisdiction of the Civil Court (*Bhanu v. Hari*, 20 Bom. 747).

"Proceeding for the realization of land-revenue."—A suit for a declaration that an order of forfeiture under s. 153 of the Bombay Land Revenue Code passed after an attachment issued under s. 159 of the same Code was illegal is not barred by this clause, as the order of forfeiture is not a proceeding for the realization of land-revenue (*Samaldas v. Secretary of State*, 16 Bom. 455).

Land-revenue does not include abakri revenue.—The plaintiff sued to recover from the defendant, a farmer of Abkari duties on the manufacture of spirits, under s. 60 of Bom. Reg. XXI of 1827, a sum of money alleged to have been illegally levied by him as a tax or rent in respect of certain cocoanut trees tapped by the plaintiff. *Held*, that the Civil Courts have jurisdiction to entertain such a suit. If the claim be held to be one in respect of land-revenue, it falls within the exception contained in cl. (*c*) of s. 5. If it is not, this section has no application (*Narayan v. Sakharam*, 9 Bom. 462).

Right of Government to sell land.—Whenever the land-revenue is in arrears, Government is entitled to sell the land and to realize its due, whoever is the defaulter (*Balkrishna v. Madhavrao*, 5 Bom. 73).

Suit to set aside sale on ground other than fraud.—This clause excepts from the jurisdiction of the Civil Courts claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue. It is doubtful whether the exception of fraud in this clause is confined to fraud on the part of officers conducting sale for arrears of land revenue ((*Ibid*).

Suit to set aside Collector's order.—The predecessor-in-title of defendants Nos. 2 to 8 alienated his vatan land to the plaintiff. After the death of the alienor, the defendants applied to the Collector to take proceedings for the protection of the vatan. On October 5, 1904, the Collector made a declaration under s. 11 of the Vatan Act, that the alienation was null and void. The Collector did not summarily resume possession of the land but decided to assess it at a full rent. On July 6, 1908, the Collector held further proceedings and assessed the land at a rental of Rs. 75 per annum. On March 15, 1915, the Collector ordered to forfeit the land as the plaintiff had not paid the full amount of arrears of rent then due. The plaintiff sued for a declaration that the order of forfeiture made by the Collector was invalid. He contended that the rent was due from July 6, 1908, when the assessment was fixed; and there were, therefore, no arrears of rent due. *Held*, that the plaintiff's suit was barred by cl. (c) of this section (*Dhondi v. Secretary of State*, 25 Bom. L. R. 185).

Wrongful attachment.—The defendant who was a Mamlatdar of Khanapur, in the Satara District, attached some pieces of jaggery which were being taken in five carts on a public road by the plaintiff's son from the fields of D, who owed arrears of land-revenue to Government and had to satisfy two decrees in assistance cases. The defendant was not invested by the Collector of Satara District, with the powers contained in s. 140 of the Land-Revenue Code. The plaintiff filed s suit against the defendant to recover damages for wrongful attachment. The lower Court dismissed the suit on the ground that it was barred by s. 4 (*c*) of this Act; and that as the defendant acted *bona fide* and was authorized under s. 154 of the Land Revenue Code to distrain the property, the suit was barred by s. 6 of this Act. On appeal it was *held* that s. 4 (*c*) was not a bar to the suit, in which there was a claim arising out of the alleged illegality of the proceedings taken for the realization of the land-revenue. The proceedings mentioned in s. 4 (*c*) must be in their inception legal (*Gangaram v. Dinkar*, 15 Bom. L. R. 665).

(*d*) claims against Government —

(1) to be entered in the revenue survey or settlement records or village papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue survey or settlement, or

(3) to have any such entry either omitted or amended;

(*e*) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act IV of 1868 or any other law for the time being in force;

(*f*) claims against Government—

to hold land wholly or partially free from payment of land-revenue, or to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized by Government under the provisions of any law for the time being in force, or respecting the occupation of waste or vacant land belonging to Government;

Claim to hold lands free from payment of Government revenue.—The effect of the amendment of this section by Act XVI of 1877 is that Civil Courts mentioned in the Districts annexed to the amending Act are not prevented from exercising their jurisdiction over claims against Government to hold lands wholly or partially free from payment of land-revenue (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

"Claims respecting occupation of waste land."—The fact that the tenants of the neighbouring lands have cut the grass on the disputed land for the rab of their rice cultivation and have taken the produce of the tree standing thereon would not change the character of the land which was always treated as unassessed waste land (*Shridhar v. The Secretary of State*, P. J. for 1893, p. 248).

Right of Government over waste lands.—While the Courts may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village, still they can go no further and enjoin the Collector to pursue any particular course in connection with them, while he is acting *bona fide* in pursuance of the powers which the provisions of the statute confer upon him. The claim being against Government respecting the occupation of the waste land belonging to Government, the Civil Courts are precluded from entertaining it under cl. (*f*) of this section. A question relating to the discontinuous occupation of village wastes by the village cattle is as much a question of land-revenue as one relating to the permanent occupation of them or a portion of them by an individual (*Trimbak v. The Secretary of State*, 21 Bom. 684).

(*g*) claims regarding boundaries fixed under Bombay Act No. of 1865, or any other law for the time in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks:

Proviso.

Provided that if any person claim to hold land wholly or partially exempt from payment of land-revenue under—

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

Adverse possession of survey numbers.—The Collector's decision as to the fixation of boundaries, under sec. 121 of the Land-Revenue Code, 1879, does not prevent one of the disputing parties filing a suit in the Civil Court on the ground that he has acquired a portion of his neighbour's survey number by adverse possession (*Bhaga v. Dorabji*, 43 Bom. 67).

Proviso contains no exceptions in respect of holdings unaccompanied by proprietary right in the soil and there is no saving clause which would suggest that such a claim to such holdings might fall within the purview of the Pensions Act. The right of an alienee of the revenue to sue for disturbance of his possession by a stranger or by Government is clearly recognized by the proviso, and the only condition required is that the claim should be under an enactment, instrument, sanad, written grant or judgment such as is described in the proviso (*Balvant v. The Secretary of State for India*, 29 Bom. 480).

A person claiming the benefit of the proviso must prove that there was a written grant by the British Government, and it cannot be presumed that a written grant of some kind must have been made simply because a grant is not denied (*The Secretary of State v. Dalpatbhai*, P. J. for 1893, p. 168).

The effect of the proviso is that where an occupancy tenant holdidg under Government is called upon to pay land-revenue according to the survey rates it is open to him to resist the claim of Government in a Civil Court on the ground that he holds under a written grant or an enactment, &c., which prevents Government from claiming more than can be recovered under the grant or enactment &c. (*Laksuman v. Govind*, 28 Bom. 26).

(*h*) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

Note.—Clauses (*h*), (*i*), (*j*) and (*k*) stand independent of one another ; the source of title, referred to in each, stands apart from the rest, and each clause is connected only with that portion of the proviso which precedes clause (*h*) (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

(*i*) an instrument or sanad given by or by order of the Governor of Bombay in Council under Bombay Act No. II of 1863, section I, clause first, or Bombay Act No. 7 of 1863, section 2, clause first, or

(*j*) any other written grant by the British Government expressly creating or confirming such exemption, or

"Any other written grant."—The phrase "any other written grant" in this clause means any written grant other than that which falls within cls. (*h*) and (*i*) of this section (*Kalabhai v. Secretary of State*, 29 Bom. 19).

"Such exemption."—These words obviously refer to the exemption mentioned in that portion.

(*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of 1827, chapter X, or under Act No. XI of 1852, which declares the particular property in dispute to be exempt;

such claim shall be cognizable in the Civil Courts.

"Competent officer."—These words, as used in this clause, included the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852 (*Janardanrao v. Secretary of State*, 13 Bom. 442)

Khatib inam.—Lands assigned to a Khatib inam were enjoyed rent-free by the grantee and continued to him on the same terms by the Inam Commissioner in 1856 under Act XI of 1852. Plaintiff, an alienee from a Khatib, enjoyed them similarly from 1864 to 1910 and claimed to have performed the Khatib service. In 1911 the Commissioner resumed the lands by levying full assessment on them. Plaintiff sued for a declaration that he was the full owner of the lands of the Khatibgari right appertaining to them. *Held*, that the plaintiff's claim to hold the land wholly or partially free from payment of land revenue under an adjudication order passed by a competent officer under Act XI of 1852 was cognizable in the Civil Courts under proviso (*k*) to this section (*Fakrodin Saheb v. Secretary of State*, 22 Bom. L. R. 1166).

Land exempted from land-revenue.—Lands appurtenant to Kaji Vatan were continued by the Inam Commissioner in 1852 as sarva inam to a predecessor-in-title of the plaintiff. Plaintiff, an alienee from a Kaji, held the lands free of assessment, through the service of the Kaji continued to be perform- by the descendants of the Kaji. The Collector ordered in 1914 full assessment to be levied for the lands in question and in case of non-payment lands to be forfeited. Plaintiff sued for a declaration that the Collector's order was illegal and *ultra vires*. *Held*, that cognizance of the suit by the Civil Court was not barred under s. 4 (*a*) (1) of this Act, for the suit fell within proviso (*k*) (*Mahamadsaheb v. Secretary of State*, 21 Bom. L. R. 1159).

Illustration to (*h*).

(1) It is enacted that, in the event of the proprietary right in lands, the property of Government being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain land is transferred to A at an assessment of Rs. 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2) It is enacted that when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of the land worth Rs. 100 for assessment. He claims to be assessed at Rs. 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption

not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3) It is enacted that land-revenue shall not be leviable from any land held and entered in the land-registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land-register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5) It is enacted that assessment shall be fixed with reference to certain considerations, and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class, and no objection to an assessment under such an enactment is cognizable in a Civil Court.

Applicability.—The revenue authorities have no jurisdiction to decide the rights based on adverse possession, which is a matter peculiarly within the jurisdiction of the Civil Court (*Secretary of State v. Javerchand*, 35 Bom. L. R. 583).

Mulla.—A Mulla is not a hereditary officer within the Watan Act and the revenue authorities have no jurisdiction to pass orders for the resumption of mulanki lands alienated by the Mulla or for the restoration of such lands to the alienees. A suit against the alienees for recovery of possession of the lands ordered to be restored to them is not barred by this section (*Bapu Appa v. Mahomed Imam Mulla*, 34 Bom. L. R. 944).

Bar of suit.—A suit for a declaration that the order of commutation was illegal and invalid and that the rights of the plaintiffs in certain kulkarni watans remained uneffected and that they are entitled to officiate as watandar kulkarnis and for an injunction against the Secretary of State to prevent him from doing anything which would alter or modify or in any way affect the character and tenure and incidents of kulkarni watan of the plaintiffs, falls within this section. The Civil Courts have no jurisdiction, therefore, to take cognizance of such a suit (*Dattatraya Waman v. Secretary of State*, 33 Bom. L. R. 239).

No suit lies in the Civil Court under 1st para of cl. (*a*) of this section in respect of a claim against the Government, where the claim relates to property appertaining to the office of an hereditary officer. It makes no difference if the plaintiff does not desire to get any order against the Government as to the way, in which the property should be dealt with and only wants a declaration as to this title which would bind the Government (*Basangavda v. Secretary of State*, 32 Bom. L. R. 1370).

Saving of certain suits.

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits :—

(*a*) Suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount;

(*b*) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue survey or settlement or in any village papers;

A suit between private parties relating to inam land for the purpose of establishing a private right falls within cl. (*b*) of this section (*Mootoo v. Trivenabai*, P. J. for 1881 p. 191).

(*c*) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (*g*), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government, for possession of any land being a whole survey number or a recognized share of a survey number;

* and nothing in section 4 shall be held to prevent the Civil Courts in the district mentioned in the second schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March 1876, they could have exercised over claims against Government—

(*a*) relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III or 1874 or any other law for the time being in force, or of any other village-officer or servant;

(*b*) to hold land wholly or partially free from payment of land revenue;

(*c*) to receive payments charged on, or payable out of, the land-revenue.

Bar of certain suits against Revenue officers.

6. Revenue officers shall not be liable to be sued for damages in any Civil Court for any act *bona fide* done, or ordered to be done, by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue officer absconds or does not attend when called on by his official superior, and if the Collector of the District proceeds against him or his sureties for public money, papers or

* This para. was added by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877).

property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

Act not done in pursuance of law.—

The defendant who was a Mamlatdar of Khanapur in the Satara District, attached some pieces of jaggery which were being taken in five carts on a public road by the plaintiff's son from the fields of D, who owed arrears of land revenue to Government and had to satisfy two decrees in assistance cases. The defendant was not invested, by the Collector of Satara District, with the powers contained in s. 140 of the Land Revenue Code. The plaintiff filed a suit against the defendant to recover damages for wrongful attachment. The lower Court dismissed the suit on the ground that as the defendant acted *bona fide* and was authorized under s. 154 of the Land Revenue Code to distrain the property, the suit was barred by this section. On appeal, it was *held* that the defendant was not entitled to claim protection under this section which required that the act complained of should have been done *bona fide* in pursuance of the provisions of any law, as he was not invested by the Collector of the District with powers contained in s. 140 of the Land Revenue Code and it was not proved that he believed the property distrained to be that of the defaulter, as required under s. 154 of the Land Revenue Code (*Gangaram v. Dinkar*, 15 Bom. L. R. 665).

Punishment or prosecution of Revenue officers no bar to Civil remedies.

7. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue officer for any offence or breach of duty, or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such officer.

8-10. [*Suits against Revenue officers ; appeals from their proceedings ; power for Local Government to call for record.*] *Rep. Act XV of 1880.*

Suits not to be entertained unless plaintiff has exhausted right of appeal.

11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue officer unless the plaintiff first proves, that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

Construction.—This section being a section which deprives the subject of a right to litigate against the Government, it must be construed strictly although not unfairly (*Anant Krishnaji v. Secretary of State*, 33 Bom. L. R. 165).

Bar of suit.—In considering whether to appeal from a revenue order so as to avoid the bar contained in this section, the subject is entitled to look strictly at the words of the order served upon him and is not bound to speculate on what the revenue authority may have meant. Where an order passed by Revenue officer is *ultra vires* and invalid, plaintiff is not bound to appeal therefrom but is entitled to wait until he is attacked. The attempt to enforce that order against him would give him a valid cause of action and his suit would not be barred by this section (*Ibid*).

This section requires only presentation of appeal and not waiting for the reply.—This section does not require that a plaintiff should wait till he receives a reply to his appeal from Government. It is enough that he has presented an appeal—otherwise his suit might become time-barred before he receives the reply (*Abaji v. Secretary of State for India*, P. J. for 1896, p. 686 ; s. c. 22 Bom. 579).

"Act."—The word 'act' is wide enough to cover a judicial or quasi-judicial act, *viz.*, the passing of an order or decision by revenue officer (*Secretary of State v. Hussenabu Daudbhai*, 33 Bom. L. R. 361).

Under section 62 of the Land Revenue Code, the Collector ordered certain Government land to be sold. *Held*, that passing this order is an "act" within the meaning of this section (*Natha v. The Secretary of State*, P J. for 1896, p. 341.)

Forest Officer is not a Revenue Officer.—This section only applies to an act or omission of a revenue officer, and only in cases where the law allows an appeal. A Forest Officer is not a Revenue Officer. This Act must be constructed strictly. No right of appeal can be given except by express words (*Narayan v. Secretary of State*, 20 Bom. 803).

The bar of jurisdiction contained in this section does not apply to cases in which a Collector moves under s. 81 of the Forest Act (VII of 1878) to recover, at the request of a Forest Officer, the price of cut-timber sold by the latter under s. 81 of the Forest Act (*Haribhai v. Secretary of State*, 20 Bom. 714).

"All such appeals."—This expression means appeals in respect of the "act or omission." Hence the bar created by this clause does not apply where the act or omission concerned is not an order or decision in respect of which there is a right of appeal under the Land Revenue Code (*Sakharam v. Collector of Ratnagiri*, 28 Bom. 332).

"Appeal allowed by law."—The words "appeal allowed by law" do not mean "an appeal within the time allowed by law." They refer to the appeals which the law prescribes, and have no reference to the limitation in point of time, which the law may impose upon the bringing of such appeals (*Ranchod v. Secretary of State*, 22 Bom. 583).

Application to Commissioner is appeal allowed by law.—Where the plaintiffs had obtained a decree declaring that the Government had not the right to enhance the land revenue on their village, and the Collector pending an appeal from such decree, took measures to levy such enhanced assessment, it was *held* that though the pliantiffs might have obtained an injunction against the Collector by motion either in the Court which had passed the decree,

or in the High Court, that did not prevent the plaintiff from bringing an independent suit for that purpose, and that this section did not apply. Even assuming that an application to set aside a Collector's order made to the Revenue Commissioner would be an "appeal allowed by law" within the meaning of this section, the present case was not within Bombay Regulation V of 1820, inasmuch as cl 4 (1) of that Regulation would have excluded his intervention, as the claim to exemption from liability to enhancement of revenue had already been the subject of judicial investigation, and was still *sub-judice* in the High Court (*The Government of Bombay v. Bhimabhai*, P. J. for 1879, p 351).

Practice-Procedure.—Under this Act, in a suit to which this Act applies, the Court, before taking evidence on the merits, should require the plaintiff to prove first of all that he has, previously to bringing the suit, presented all such appeals allowed by the law for the time being in force as within the period of limitation allowed for bringing such suit it was possible to prevent (*Ranchhod v. Secretary of State*, 22 Bom. 173).

No appeal to revenue authority.—Where a plaintiff files a suit for the reversal of an order of the Collector directing him to remove an encroachment on a public road and for an injunction, his omission to file an appeal from the Collector's order to the Revenue Commissioner or Government bars the suit under this section (*Dayal Khushal v. Secretary of State*, 22 Bom. L R 1089).

Suit to set aside Collector's order.—The plaintiff's land was forfeited on the 6th May 1911 ; after which he applied first to the Collector and then to the Commissioner to set aside the order Eventually he filed a suit on 14th October 1915 for a declaration that the proceedings held by the revenue authorities in respect of the forfeiture were illegal and *ultra vires* *Held*, that the suit was barred by limitation since if the plaintiff wished to have a decision of the Court upon the legality or illegality of the order of forfeiture, he was bound to put his plaint on the file within one year of the date of the order (*Ganesh v. Secretary of State*, 44 Bom. 451).

Suit to set aside notice of demand to pay assessment.—The plaintiffs, who held their land free of rent, were all of a sudden served by the Mamlatdar with a notice of demand to pay assessment. No order of the Collecto was forthcoming. The plaintiffs having filed a suit for a declaration that they were entitled to hold their land rent free, the Secretary of State contended that the suit was barred under this section. *Held*, that this section did not apply to the case, since the notice of demand by the Mamlatdar could not be treated as an order or decision within the meaning of ss. 203 and 204 of the Bombay Land-Revenue Code (*Mathuram v. Secretary of State*, 46 Bom. 811).

Suit for injunction.—The Collector of Surat ordered the plaintiff, on the 6th February 1917, to remove an encroachment on a public road. No appea was made to the Revenue Commissioner or to Government. On the 21st April the Collector intimated to the plaintiff that unless he filed a suit, the encroachment would be removed. On the 27th April, 1917, the present suit was filed for a reversal of the order and for an injunction to restrain the defendant from carrying out the order. *Held*, that no appeal from the Collector's order having been made either before the suit was filed or afterwords, the suit was barred by the provisions of this section (*Wayal v. Secretary of State*, 22 Bom. L. R. 1089).

Power of Government to refer questions for decision of the High Court.

12. If, in the trial or investigation of any suit, claim or objection, which, but for the passing of this Act, might have been tried or investigated by a Civil Court, there arises any question on which the Governor General in Council or the Local Government desires to have the decision of the High Court, the Governor-General in Council or the Local Government, as the case may be, may cause a statement of the question to be prepared, and may refer such question for the decision of the High Court of Judicature at Bombay.

The said High Court shall fix an early day for the hearing of the question referred, and cause notice of such day to be placed in the Court house.

The parties to the case may appear and be heard in the High Court in person or by their advocates or pleaders.

The High Court, when it has heard and considered the case, shall send a copy of its decision, with the reasons therefor under the seal of the Court, to the Government by which the reference was made, and subject to any appeal which may be presented to Her Majesty in Council, the case shall be disposed of conformably to such decision.

If the High Court considers that any such statement is imperfectly framed, the High Court may return it for amendment.

The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs.

Reference by Government to High Court.—Under this section Government can refer a question for the decision of the High Court, when investigating any claim or objection which before 1876 may have been excluded from the cognizance of a Civil Court (*Vasudav Harihar Pandit, In re,* 23 Bom. L. R. 161; s. c. 45 Bom. 463).

This section gives the High Court absolute power not only to deal with costs by directing as to who should pay them, but also by giving directions as to how those costs should be ascertained (*Jagannath Vasudeo Pandit, In re,* 23 Bom. L. R. 189; s. c. 45 Bom. 1177).

The British Government granted by a Sanad in 1818 some villages in the talukas of Chikodi and Manowlee in Inam Dharmadaya from generation to generation to a predecessor of the respondent. Thereafter the Government ceded those talukas to the Maharaja of Kolhapur subject to the grant. In 1821, the Maharaja granted some more villages in the said talukas to the same grantee. In 1827, the two talukas came to be handed back to the British Government by the Maharaja of Kolhapur under a treaty which confirmed the grant. In about 1864 the Government made a summary settlement of the village with the grantee's son. The widow of a descendent of the grantee made an adoption which was upheld by the Privy Council in 1914. The Maharaja took up the position that the adoption was invalid in absence of his consent; and that as the lands were held under treaty or on political tenure they were excluded from the settlement by s. 1 (2) of the Summary

Settlement Act. *Held*, that the claim of the Maharaja was excluded from the jurisdiction of the Civil Courts under s. 4 *supra* and that, therefore, the Government were entitled to make a reference to the High Court under this section (*Maharaja of Kolahpur v. Bala Maharaj*, 48 Bom. 1; 50 I. A. 308).

"In each case".—These words in the last paragraph of this section imply the jurisdiction of the High Court to give special directions in each case (*Ibid*).

Power of Civil Judge to refer questions of jurisdiction to High Court.

13. If in any suit instituted, or in any appeal presented in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

The High Court may order the Judge making the reference, either to proceed with the case or to return the plaint.

The order of the High Court on any such reference shall be subject to appeal to Her Majesty in Council, and save as aforesaid, shall be final

Composition of Bench.

14. Every reference under section twelve or section thirteen shall be heard by a Bench consisting of such number of Judges not less than three as the Chief Justice from time to time directs.

Amendment of section 32 of Bombay Civil Courts Act.

15. For section thirty-two of the Bombay Civil Courts Act, No. XIV of 1869, the following shall be substituted (namely): "No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section nineteen) such suit shall be instituted.

Privileges of Government in suits defended by it.

* 16. Whenever any suit is brought in any Court of a Subordinate judge of the first class against Government, or against any Revenue Officer, and the Government undertakes the defence thereof, it shall be lawful for the Government, by certificate signed by a Secretary thereto, to require that the trial of any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in the Court of the first class subordinate judge, or, if the suit is transferred, in the Court of the District Judge; and the Court shall give effect to every such requirement.

The privilege conferred on Government by this section shall, *mutatis mutandis*, apply to any appeal or special appeal against any decree in any such suit as is described in this section.

* This section was substituted for the original section by Bom. Act XXI of 1929, s. 2.

17. [*First clause.—Revival of section 13 of Bom. Reg. XVII of 1827.*] *Repealed by Act XV of 1880; but the repeal does not operate in any scheduled district unless and until the Bomboy Land Revenue Code (Bom. Act V of 1979) has been extended to such district.*

[*Second clause.—Operation of Bom. Reg. XVII of 1827 in sites of villages and towns.*] *Rep. Act XV of 1880.*

[*Third clause.—Recovery of certain advances made by Local Government.*] *Rep. Act XV of 1880.*

SCHEDULE

[ENACTMENTS REPEALED]

Repealed by Act XII af 1801

THE SECOND SCHEDULE [1]

The district of Ahmedabad.

The district of Kaira, exclusive of the Panch Mahals.

The district of Broach.

The district of Surat, exclusive of the lapsed State of Mandvi, as described in the schedule annexed to [2] Act X of 1848.

The district of Thana.

The district of Kolaba, exclusive of the lapsed State of Kolaba mentioned in [2] Act VIII of 1853.

The district of Ratnagiri.

The district of Kanara.

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[1] This schedule was added by the Bombay Revenue Jurisdiction (Amendment) Act 1877 [16 of 1877]. It is referred to in s. 5.

[2] *Acts* 10 of 1848 and 8 of 1853 were repealed by the Repealing and Amending Act, 1891, 12 of 1891.

The Bombay Salt Act, 1890

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The Bombay Salt Act, 1890

Bombay Act No. II of 1890

[*9th July 1890*

(*As amended upto 1st January 1935*)

An Act to consolidate and amend the law relating to salt and the salt-revenue throughout the Presidency of Bombay

WHEREAS it is expedient to amend the Bombay Salt Act, 1873, and to enact a consolinated salt law for the whole of the Bombay Presidency ; It is enacted as follows : —

CHAPTER I.

PRELIMINARY.

1. (1) *Short title.*—This Act may be cited as the Bombay Salt Act, 1890.

(2) *Extent.*—It extends to the whole of the Presidency of Bombay[*a*]

2. (1) *Repeal of enactments.*—The Bombay Salt Act, 1873, and Bombay Act V of 1882 (*an Act to amend the Bombay Salt Act, 1873*) are repealed :

(2) Provided that—

(*a*) all rules and appointments made, licenses and permits granted, notifications published and powers conferred under either of the said enactments and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, published and conferred hereunder ;

(*b*) the said repeal shall not affect any act done, or any offence committed, or any proceedings commenced, or any claim which has arisen, or any penalty which has been incurred, before this Act comes into force.

3. *Definitions.*—In this Act, unless there is something repugnant in the subject or context—

[*b*](*a*) "Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 ;

(*b*) "Collector", "Deputy" and "Assistant Collector" mean, respectively, a Collector or a Deputy or Assistant Collector of Salt-revenue ;

(*c*) "salt-revenue-officer" means an officer of the Salt Department and includes any other person, whether a Government officer or not, invested under section 10 with any power under this Act ;

(*d*) "natural salt" means salt spontaneously produced, natural saline deposits and efflorescence ;

(*e*) "salt" includes natural salt ;

[*a*] The words "but it shall not come into force in Sind till such date as the Governor of Bombay in Council, by notification in the *Bombay Government Gazette* fixes in this behalf" repaled by Act XVI of 1895, First Schedule, Part II, are omitted.

[*b*] This clause was substituted for the original clause by Act XXII of 1925, s. 2 and Schedule, Part III (2).

(*f*) "salt-earth" means earth naturally impregnated with salt, or with which salt is mixed ;

(*g*) "manufacture" includes every process by which salt is separated from brine or earth or any other liquid or substance, and also every process for the purification or refinement of salt;

(*h*) "salt-work" includes—

(*i*) a place used or intended to be used for the manufacture of salt and all embankments, reservoirs, condensing and evaporating pans, buildings and waste places situated within the limits of the same ;

(*ii*) all drying grounds and storage platforms and store-houses appertaining to any such place ; and

(*iii*) land on which salt is spontaneously produced ;

(*k*) a "private salt-work" is one not solely owned or not solely worked by Government ;

(*l*) "licensee of a salt-work" means a person licensed to manufacture, excavate or collect salt at or to remove salt from, a salt-work ;

[*a*](*m*) "contraband salt" means—

A.—Salt or salt-earth removed from a salt-work or from a Government warehouse, or store, or manufactured, excavated, collected, packed, stored, landed, transported or had in possession in contravention

(*i*) of this Act or of any other enactment relating to the salt-revenue at the time being in force ; or

(*ii*) of any rule or order made under this Act or under any other such enactment as aforesaid ; or

(*iii*) of any license or permit issued under this Act, or under any other such enactment as aforesaid ; and

B.—Salt which has evaded payment of any duty imposed under section 7 (*a*) of the Indian Salt Act, 1832, or of any duty leviable under any Tariff Act in force for the time being ;

(*n*) "maund" means an Indian maund of $82\frac{2}{7}$ pounds avoirdupois weight ;

(*o*) "possession" or "removal" of salt or salt-earth by a servant or agent of any person, on that person's account, shall be deemed to be possession or removal thereof by such person.

CHAPTER II.

ESTABLISHMENT AND CONTROL.

4. (1) [*c*] *Power far Governor General in Council* [*c*] *to appoint superior officers of the Salt Department* —[*b*]The [*c*]Governor General in Council[*c*] may, from time to time, appoint, either by name or by virue of their office, so many persons as he thinks fit to be officers of the Salt Department :

[*d*] Provided that the Governor General in Council before appointing a Collector of Salt-revenue shall consider any recommendation made by the Governor in Council in this behalf[*d*].

[*a*] This clause was substituted for the original clause by Bom. I of 1901 s. 1.

[*b*] Words repealed by Act XXII of 1925, s. 2 and Schedule, Part III, (3) (*b*) are omitted.

[*c—c*] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (3) (*a*).

[*d—d*] This proviso was added by Act XXII of 1925, s. 2 and Schedule Part III, (3) (c).

(2) The said officers shall be appointed under the designations of-

(a) [a] Collector of Salt-revenue ;

[b]

(c) Deputy Collector of Salt-revenue ;

(d) Assistant Collector of Salt-revenue ;

and such other designations, if any, as the [c]Governor General in Council[c] thinks fit.

(3) Each such officer shall be appointed for such local area as the [b]Governor General in Council[b] from time to time defines in this behalf.

(4) The [b]Governor General in Council[b] may suspend, remove, dismiss or accept the resignation of, any person appointed under this section.

(5) The [c]Governor General in Council[c] may at any time withdraw from any officer any of the powers or duties which are or which may be conferred or imposed by or under this Act.

5. (1) *Collectors charged with carrying out this Act.*—Subject to the control and direction of the [d]Central Board of Revenue[d], the Collectors are charged with the collection of salt-revenue and with the carrying out of the provisions of this Act within the local areas for which they are respectively appointed :

[e](2)

6. *Power of* [d]*Collectors.*—Subject to such orders as may from time to time be passed by [f]the Governor General in Council[f] in this behalf, the [f]Collectors may—

(a) *to appoint subordinate officers of the Salt Department, and to punish them for misconduct.*—appoint such subordinate officers of the Salt Department, with such designations as they deem fit ;

(b) at any time, after inquiry recorded in writing, fine, dismiss, suspend or reduce any officer so appointed, for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct.

7. *Delegation of powers by Collectors to Deputy Collectors, etc.*—The powers conferred on [f]Collectors by the last preceding section may be delegated by any [f]Collector, in whole or in part, to any [g]Deputy or Assistant Collector, and any such delegation may be at any time cancelled by the [f]Collector.

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[a] This word was substituted for the original word "Commissioner" by Act XXII of 1925, s. 2 and Schedule. Part III, (1).

[b] Clause (b) repealed by Act XXII of 1925, s. 2 and Schedule, Part III, (3) (d) is omitted.

[c—c] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (3) (a).

[d—d] These words were substituted for the original words "Commissioners to whom they are respectively subordinate and to the orders of Government" by Act XXII of 1925, s. 2 and Schedule, Part III, (4) (a).

[e] Sub-section (2) was omitted by Act XXII of 1925, s. 2 and Schedule, Part III, (4) (b).

[e—e] These words were substituted for the original word "Government" by Act XXII of 1925, s. 2 and Schedule, Part III, (5).

[f] This word was substituted for the original word "Commissioners", by Act XXII of 1925, s. 2 and schedule, Part III, (1)

[g] The words "Collector or" repealed by Act XXII of 1925, s. 2 and Schedule III, (6), are omitted.

8. *Provisions of Chapter III, Bombay Land Revenue Code, 1879, to apply to salt-revenue officers and their sureties.*—All officers of the Salt Department shall be deemed to be revenue-officers within the meaning and for the purposes of Chapter III of the Bombay Land Revenue Code, 1879, and all the provisions of the said chapter relating to revenue-officers and their sureties shall be applicable respectively to officers of the Salt Department and their sureties: provided that all the powers conferred and duties imposed by the said chapter on the Collector or the Superintendent of Survey, shall in respect of officers of the Salt Department and their sureties, be exercised and performed by the Collectors of Salt-revenue only.

[a]Provided further, that the powers conferred on Government by section 23 of the said Code shall, in respect of officers of the Salt Department, be exercised by the Central Board of Revenue only [a].

9. [*Existing officers in Sind.*] *Repealed by Act XVI of 1895.*

10. (1) *Conferment of powers under this Act.*—The [b]Central Board of Revenue[b] may, from time to time by notification in the [c]*Gazette of India*[c], invest

(a) any officer of the Salt Department, either personally or in virtue of his office, or

(b)[d] with the approval of the Governor in Council in respect of an officer of a department under the Governor in Council[d] any Government officer of any other department, either personally or in virtue of his office; or

(c) any other person;

with all or any of the powers described or contemplated in sections 28, 38, 39, 42 and 44.

(2) The [b]Central Board of Revenue[b] may delegate the power vested in [e]it by this section, either wholly or partly, to a [f]Collector, subject to such limitations or conditions as [e]it may by any order prescribe.

CHAPTER III.

MANUFACTURE, EXCAVATION AND COLLECTION OF SALT AND SALT-EARTH.

11. *Manufacture, etc., prohibited except under a license.*—No salt shall be manufactured and no natural salt and, except under the provisions of section 14, no salt-earth shall be excavted or collected or removed, otherwise than by the authority and subject to the terms and conditions of a license to be granted by the Collector in this behalf:

[a—a] This proviso was added by Act XXII of 1925, s. 2 and schedule Part III, (7).

[b—b] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (8) (a).

[c—c] These words were substituted for the original words "*Bombay Government Gazette*", by Act XXII of 1925, s. 2 and Schedule, Part, 3 (9).

[d—d] These words were inserted by Act XXII of 1925, s. 2, and Schedule, Part III, (10) (a).

[e] This word was substituted for the original words "him" and "Government" respectively by Act XXII of 1925, s. 2 and Schedule, Part III (10) (b).

[f] This word was substituted for the original word "Commissioner" by Act XXII of 1925, s. 2 and Schedule, Part III, (1).

[a]provided that no such license shall be necessary for any process of manufacture of salt on which duty has been paid.

Sub-lease of license—Licensee, prohibited from sub-letting his license, may admit his family members and others as partners in the business Such admission of partners does not mean sub-lease (*Champsey Dosa v. Gordhandas*, 19 Bom L. R. 391).

The lessee, from the Government of Salt pans on conditions not to sub-let them without written permission, cannot do so without such permission, and the sub-lease against the condition of the license is unenforceable at law (*Rabiabibi v. Gangadhar Vishnu Puranik*, 46 Bom. 651, s. c. 24 Bom. L R. 111).

12. *Licenses to be granted by the Collector.*—The Collector shall, on application, grant a license for the manufacture, excavation, collection or removal of salt, to any person entitled to the same under section 16 or section 17, and may, in his discretion, grant licenses for any of the said purposes or for the excavation, collection or removal of salt-earth to any other persons.

13. (1) *Licenses what to contain.*—Each such license shall specify-

(*a*) the name of the person to whom it is granted ;

(*b*) the limits within which the manufacture, excavation or collection under it is to be carried on ; and

(*c*) the place where the salt or salt-earth so manufactured, excavated, collected or removed is to be stored ;

and shall be in such form and contain such conditions as the [*b*]Collector, subject to the directions of[*c*]the Governor General in Council[*c*] from time to time prescribes.

(2) The Collector may, at any time, call for any such license and alter or amend it in accordance with the conditions so prescribed.

(3) A register of licenses granted under this section shall be kept in the office of the Collector.

14. *Power for Government to make rulee for permitting excavation, collestion or removal of salt-earth without a license.*—The [*d*]Governor General in Council[*d*] may, from time to time, make rules for permitting the excavation, collection or removal, by any person or class of persons, in any local area or place defined in such notification, of salt-earth, without a license from the Collector, and may in such rules frame such provisions as he shall deem fit for limiting and regulating such excavation, collection or removal and prescribe the uses to which salt-earth so obtained may be put.

15. *Village-officers bound to report illicit manufacture of salt, etc.*—Every village-officer shall communicate to a salt-revenue-officer or to a Magistrate, or to an officer in charge of a police station, within three days after the same shall come to his knowledge, any information which he may obtain of the manufacture, excavation, collection or removal of salt or salt-earth without a license or of any new formation of natural salt in or near his village.

[*a*] This proviso was inserted by Bom. II of 1892, s. 1.

[*b*] This word was substituted for the original word "Commissioner" by Act XXII of 1925, s. 2 and Schedule, Part III, (5).

[*c*—*c*] These words were substituted for the original word "Government" by Act XXII of 1925, s. 2 and Schedule, Part III, (5).

[*d*—*d*] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (8) (*b*).

CHATER IV.

PRIVATE SALT-WORKS.

Proprietors entitled to manufacturing licenses.

16. *Special and permanent rights of manufacturing salt to be recognized.*—The proprietor of a private salt-work who has by virtue of a sanad, granted by the British or any former Government, a special and permanent right to manufacture salt, or to excavate or collect natural salt, shall, unless his salt-work is suppressed under section 24 of this Act or has been suppressed under section 33 of the Bombay Salt Act, 1873, be entitled, on application, to a license for such purpose.

17. (1) *Rights of ordinary proprietors of existing salt-works.*—Except as is hereinafter otherwise provided, every proprietor of a private salt-work, to which section 16 does not apply and which is being lawfully worked at the time when this Act comes into force, or which was lawfully worked at any time within three years next before the date on which this Act comes into force, shall, unless his salt-work is suppressed under section 24 of this Act or has been suppressed under section 33 of the Bombay Salt Act, 1873, be entitled, on application, to a license to manufacture salt or to excavate or collect natural salt at such work;

(2) Provided that the Collector may at any time withdraw or withhold a license from the proprietor of any salt-work to which section 16 does not apply, if no salt shall have been manufactured, excavated, or collected in such salt-work for the three years ending on the thirtieth day of June last preceding the date of his order or, with the previous sanction of the [a]Central Board of Revenue[a], if such salt-work shall not have produced, on an average, during the said three years, at least five thousand maunds of salt per annum.

Control of works.

18. (1) *Chaukis and preventive stations may be established by the Collector in or near salt-works.*—The Collector may, for the purposes of this Act, cause chaukis to be erected in such places as he thinks fit within a private salt-work and the proprietor or licensee of the salt-work shall have no claim for compensation for the ground occupied by such chaukis.

(2) The Collector may also, for the purposes of this Act, station such salt-revenue-officers and other persons as he deems fit within the limits of a private salt-work, and establish preventive stations wherever he thinks fit in the neighbourhood of any such salt-work.

19. (1) *Disposal of sifted or refuse salt at a private salt-work.*—The Collector may, at any time, by written notice, require the licensee of a private salt-work to store in heaps any sifted or refuse salt which may be lying on such work, or, at such licensee's option, to destroy the same.

(2) If the licensee shall fail, within ten days from the date of service of any such notice, either to store in heaps or effectually to destroy the same, the Collector may cause the salt to be effectually destroyed and the cost of so doing shall be recoverable by him from the licensee of the salt-work.

[a—a] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (8) (a).

(3) The decision of the Collector as to whether any salt is sifted or refuse salt shall, for the purposes of this section, be conclusive.

20. (1) *Heaps of salt at a private salt-work when opened to be entirely removed or reheaped.*—When any heap of salt in a private salt-work has been opened and a portion of it removed, the salt-revenue-officer in charge of the salt-work may, by written notice, require the licensee of the salt-work either to remove the remaining portion of the salt in such heap or to reheap and secure the same in such manner as the said officer shall deem sufficient.

(2) If the licensee shall fail to comply with such notice within three days from the date of service thereof, the officer aforesaid may offer the salt remaining from the heap for sale, and, if the price offered be not less than the duty leviable thereon, may sell it. If the price offered be less than the amount of the duty, he may cause the salt to be destroyed, and the cost of so doing shall be recoverable by him from the licensee of the salt-work.

21. (1) *Power for certain salt-revenue-officers to require licensees of private salt works to repair or re-construct places for storage of salt or to provide for protection of salt or to repair store-houses.*— Any salt-revenue-officer not lower in rank than a sarkarkun may, by written notice, require the licensee of a private salt-work—

(*a*) to repair or re-construct any embankment, platform or place for the storage of salt within such salt-work ;

(*b*) to protect, in any manner which shall appear to such officer sufficient, by thatch or in any other mode customary in the locality, any salt stored upon any such embankment, platform, or place ;

(*c*) to repair, to such officer's satisfaction, any store-house, building or premises used for the storage of salt manufactured, excavated or collected at such salt-work on which duty has not been paid.

(2) If the licensee shall fail to comply with such notice within twenty days from the date of service thereof, the officer aforesaid may cause the necessary work to be executed, and the cost of so doing shall be recoverable by him from the licensee of the salt-work.

22. *Provision for execution of emergent works.*—If the salt-revenue officer aforesaid shall be of opinion that, unless any such work as is mentioned in the last preceding section is executed without delay, the salt-revenue will be endangered, he may, by written notice, and after recording his reasons for so doing in writing, require the licensee of the salt-work to execute the said work within such period as may be reasonably sufficient for the execution thereof, and, if the licensee fails to comply with the notice within such period, may cause the work to be executed ; and the cost of so doing shall be recoverable by him as aforesaid.

23. (1) *Power of Collector to require licensees of private salt-works to construct, reconstruct, alter or extend store-houses or to construct places for the storage of salt.*— The Collector may, by written notice, require the licensee of a private salt-work, within a reasonable period to be prescribed in such notice, to his satisfaction—

(*a*) to construct within or adjacent to such salt-work a store-house or other building or premises for the storage of salt manufactured, excavated or collected at such salt-work, on which duty has not been paid ; or

(*b*) to re-construct, alter or extend any existing store-house or other building or premises used for the storage of such salt as aforesaid;

(*c*) to construct within such salt-work any embankment, platform or place for the storage of salt.

(2) If the licensee shall fail within the prescribed period to comply with such notice, the Collector may cause the necessary work to be executed; and the cost of so doing shall be recoverable by him from the licensee of the salt-work.

24. (1) *Power for* [*a*] *Central Board of Revenue* [*a*]*to suppress a private salt-work or to suspend or withdraw license, if the licensee offends against this Act: or to fine the licensee if an offence is committed by any person employed at a private salt-work*—If the licensee of any private salt-work, or his agent, has been found by an authority competent in this respect to have committed any offence punishable under this Act the [*a*]Central Board of Revenue [*a*]may suppress such salt-work, or suspend or withdraw the license to manufacture, excavate or collect salt thereat or to remove salt therefrom.

(2) If any such offence is committed by any person employed at a private salt-work, the [*a*]Central Board of Revenue[*a*] may impose a fine not exceeding one thousand rupees on the licensee of such work, unless the said licensee establishes, to the satisfaction of the [*a*]Central Board of Revenue,[*a*] that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

(3) For the purposes of this section the decision of the [*a*]Central Board of revenue[*a*] as to whether any such offence as aforesaid has been committed shall be conclusive.

(4) If any fine imposed under this section is not paid forthwith, the amount thereof may be recovered, upon application by the Collector, by any Magistrate as if the same were a fine inflicted by such Magistrate.

25. *Acquisition of private salt-works under Act X of 1870.*—Whenever it shall appear necessary to the [*a*]Central Board of Revenue[*a*] to obtain the ownership of any private salt-work with a view to suppressing it, [*b*]the Governor in Council shall, on the request of the Board [*b*] proceed to acquire such salt-work under the provisions of the Land Acquisition Act, 1870.[*c*]

26. *Power to destory suppressed and unlicensed salt-works*—Whenever, under any of the provisions of this Act, a private salt-work is suppressed, or a license to manufacture, excavate or collect salt at or to remove salt from any salt-work is withheld, suspended or withdrawn, the Collector may flood the said work with water or take such other measures as he may deem fit for preventing the manufacture or the spontaneous production of salt therein.

[*a*—*a*] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (8) (*a*).

[*b*-*b*] These words were substituted for the original words "he may" by Act XXII of 1925, s. 2 and Schedule, Part III, (11).

[*c*] This reference to Act X of 1870 should now be read as applying to Act I of 1894.

27. (1) *Removal of salt from suppressed and unlicensed private salt-works.*—Salt in store at any private salt-work on the date when it is suppressed or when a license for the manufacture, excavation or collection of salt thereat or the removal of salt therefrom is withheld, suspended or withdrawn, may be removed by the licensee of the salt-work within the period of six months from the said date, and for the purpose of such removal the license shall for the said period be deemed to continue in force.

(2) The collector may cause any salt which remains at any such salt-work after the expiry of the said period of six months to be put up for sale, and if the price offered be not less than the duty leviable thereon may sell it. If the price offered be less than the amount of the duty, he may cause the salt to be destroyed.

CHAPTER V.

REMOVAL OF SALT FROM SALT-WORKS OR GOVERNMENT WAREHOUSES.

28. *Removal of salt from a salt-work or Government ware-house without a permit prohibited.*—No salt shall be removed from any salt-work or from any Government warehouse or store, otherwise than on account of Government, except under the authority and subject to the terms and conditions of a permit to be granted by a salt-revenue-officer empowered in this behalf.

29. *Permit to be granted only after payment of duty and charges and on a written application.*—No such permit shall be granted until after payment of the duty and other charges, if any, payable to Government in respect of the salt intended to be removed, nor except upon a written application for the same.

30. (1) *Payment of duty and charges.*—The duty and other charges if any, payable to Government shall be paid to such officer as the [a]Collector from time to time directs; and he shall give a receipt for the payment in such form as the [a]Collector may prescribe.

(2) If the officer authorized to receive the said payment is the same salt-revenue-officer who is empowered to grant the permit, the amount of the duty and other charges, if any, payable to Government in respect of the salt intended to be removed shall be presented to the said officer, along with the written application for a permit, and the said officer's receipt therefor may be attached to the permit. Otherwise the receipt of the officer authorized to receive payment of the duty and other charges, if any, shall accompany the written application for a permit.

31. (1) *Form and contents of receipt, written application and permit.*—The receipt and written application shall, respectively, be in such form and be signed by such persons and contain such particulars as the [a]Collector from time to time directs.

(2) The permit shall specify—

(*a*) the amount of duty and other charges, if any, paid;

(*b*) the quantity of salt to be removed;

(*c*) the salt-work, or Government warehouse or store from which and the person by whom the salt is to be removed;

(*d*) in the case of salt removed from a salt-work, the preventive station at which the salt is to be examined;

[*a*] This word was substituted for the original word "Commissioner", by Act XXII of 1925, s. 2 and schedule, Part III, (1).

(*e*) the place to which and the route by which the salt is to be taken ;

(*f*) the period for which the permit shall be in force ;

and shall be in such form and contain such other particulars, if any, as the [*a*]Collector from time to time directs.

32. (1) *Order to subordinate salt-revenue-officer may be attached to permit.*—If the [*a*]Collector so directs, there shall be attached to the permit an order to the salt-revenue-officer in subordinate charge of the salt-work or Government warehouse or store from which salt is to be removed requiring him to allow the quantity of salt mentioned in the permit to be removed, and to endorse upon the order a certificate signed by himself and by the person who removes the salt and, if it is removed from a private salt-work, by the licensee of the salt-work, as to the correctness of the weighment and of the scales and weights used in weighing the salt.

(2) The said order and certificate shall be in such form and contain such particulars as the [*a*]Collector from time to time prescribes.

33, *Course to be followed by salt-revenue officer in subordinate charge of salt works etc., when permit is persented to him.*—When a permit is presented to the salt-revenue-officer in subordinate charge of a salt-work, or of a Government warehouse or store, he shall—

(*a*) fill up the blanks therein, if any, intended to be filled up by him ;

(*b*) permit the authorized amount of salt to be weighed out for removal ;

(*c*) tear off and retain the order, if any, attached to the permit ;

(*d*) fill in and take the signatures of the proper persons beneath, and himself attest the certificate to be endorsed on the said order, if any ;

(*e*) return the permit to the person entitled to remove the salt and permit the salt to be removed.

34. (1) *Salt how to be dealt with after leaving a salt work.*—Salt removed from a salt-work under a permit as aforesaid shall be taken together with the permit covering it, direct to the preventive station named in the permit, within the period prescribed in such permit.

(2) Subject to such orders as the Collector from time to time issues in this behalf, the salt-revenue-officer in charge of the preventive station may examine and re-weigh the salt under removal.

(3) If the said officer shall be satisfied that the quantity of salt under removal is not in excess of the quantity specified in the permit, he shall allow it to pass, and after endorsing the permit to the effect that he has passed the same, shall return it to the person removing the salt.

(4) Thereafter the salt shall be conveyed to the place named in the permit within the period prescribed therein.

35. *Responsibilities of permit-holders.*—It shall be incumbent on every person who has obtained a permit for the removal of salt, either personally or through an agent lawfully appointed for this purpose—

[*a*] This word was substituted for the original word "Commissioner" by Act XXII of 1925, s. 2 and Schedule, Part III (1).

(*a*) to test the scales and weights used in weighing out such salt;

(*b*) to prevent the removal of salt in excess of the quantity named in the permit;

(*c*) if so required by the salt-revenue-officer in subordinate charge of the salt-work or Government warehouse or store, from which the salt is removed, to sign a certificate as to the correctness of the weighment and of the scales and weights used in weighing out the salt;

(*d*) to susperintend the removal of the salt.

CHAPTER VI

WAREHOUSING OF SALT FOR SALE

36. *Salt not to be stored for the purpose of sale within certain limits without a license.*—No salt shall be stored or had in possession for the purpose of sale—

[*a*][*b*] (*a*) within one mile from the Matunga Salt-work in the Island of Bombay; or

[*b*](*b*) within ten miles from any salt-work, or from any customs-station established under section 4 of Act No. XXIX of 1857 (*an Act to make better provision for the collection of land-customs on certain foreign frontiers of the Presidency of Bombay*), or from any port or place at which at the time being it is lawful to import salt by sea or to land the same, [*c*]such salt-work, customs-station, port or place being a salt-work, customs-station, port or place out of Sind[*c*]; or

[*b*](*c*) within any other limits which shall from time to time be defined for this purpose by the [*d*]Central Board of Revenue[*d*] by notification in the [*e*]*Gazette of India*[*e*];

except under the authority and subject to the terms and conditions of a license to be granted by the Collector in this behalf.

37. *The*[*d*]*Governor General in Council*[*d*]*may make rules to regulate the storage, etc., of salt for purpose of sale in the said limits.*—(1) The [*f*]Governor General in Council[*f*] may, from time to time, make rules for regulating and licensing the storage or possession of salt for the purpose of sale within any of the limits aforesaid.

(2) *Licenses to store, etc., and sell salt, may be issued by the Collector.*—Subject to the provisions of any rules so made, the Collector may, from time to time, grant licenses to such persons as he deems fit, authorizing them to store or possess salt within any of the said limits, for the purpose of sale.

[*a*] The original clause "(*a*) in Sind; or" repealed by Bom. I of 1910, Second Schedule, Part II, Serial No. 1, is omitted.

[*b*] The original clauses "(*b*), (*c*) and (*d*)" were ordered to be renamed clauses "(*a*), (*b*) and (*c*)" by Bom. 1 of 1910, First Schedule, Part II, Serial No. 20.

[*c*—*c*] These words were inserted by Bom. Act 1 of 1910, First Schedule, Part II, Serial No. 20.

[*d*—*d*] These words were substituted for the original words "the Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (8) (*a*).

[*e*—*e*] These words were substituted for the original words "*Bombay Government Gazette*" by Act XXII of 1925, s, 2 and Schedule, Part III, (9).

[*f*—*f*] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III (8) (*b*)

38. (1) *Possession of salt, exceeding one maund in weight prohibited within the said limits except under a permit, etc.*—No person shall, within any of the limits described in section 36, transport or possess salt exceeding one maund in weight, unless the same—

(*a*) is being removed under a permit obtained under section 28;or

(*b*) is stored or possessed for the purpose of sale under a license granted under the last preceding section ; or

(*c*) has been legally imported from a foreign port or place, at some port or place within the said limits and is covered by a certificate signed by a customs-officer of the payment of the import duty leviable thereon; or

(*d*) is covered by a special permit granted under the power next hereinafter conferred.

(2) The Collector or Deputy or Assistant Collector or any salt-revenue-officer empowered in this behalf may grant to such persons, as they shall think fit, special permits authorizing them to be possessed of salt exceeding one maund in weight for their private consumption within or for conveyance out of any of the said limits.

CHAPTER VII

POWERS OF SALT-REVENUE-OFFICERS

39. *Power of salt-revenue-officers : to enter any place where illicit manufacture of salt is suspected to be going on* :—Any salt-revenue-officer empowered in this behalf, may—

(*a*) enter, at any time by day or by night, any land, building, enclosed place or premises upon or in or from which he has reason to believe that—

(*i*) salt is being manufactured, excavated, collected or removed without a license granted under this Act ; or

(*ii*) there is a natural formation of salt ; or

(*iii*) contraband salt is stored or concealed ;

(*b*) *to overcome resistance.*—in case of resistance, break open any door and remove any other obstacle to his entry upon or into such land, building, enclosed place or premises;

(*c*) *to take possession of or destroy salt illicitly manufactured*—take possession of, or destroy any salt so manufactured, excavated, collected or formed, and any work, apparatus, implement, utensil or material constructed or employed for the purpose of such manufacture, excavation, collection or removal, or of utilizing the salt so formed contrary to any of the provisions of this Act or of any rule made hereunder ;

(*d*) *to enter and inspect salt works and stores or vessels laden with salt.*—enter and inspect, at any time by day or night, any salt-work or any building, enclosed place, or premises used for storing salt, or any vessel laden with, or which is being laden with, or which it is intended to load with, salt ;

(*e*) *to detain, and search any person, animal, etc., for contraband salt.*-detain and search any person, animal, vessel, conveyance, goods or package upon or in whom or which he shall have reason to believe that there is contraband salt ;

(*f*) *to seize contraband salt, etc.*—seize in any open place, or in transit, any article which he has reason to believe to be contraband

salt and any package or covering in which such article is found and the other contents, if any, of such package or covering in which the same is found, and any animal, vessel or conveyance used or intended to be used in carrying the same ;

(*g*) *to detain, search and arrest any offender against this Act.*—detain and search and, if he think proper, arrest any person whom he has reason to believe to be guilty of any offence punishable under this or any other law for the time being in force relating to sale-revenue, or in whose possession contraband salt is found.

40. *Searches and arrests how to be made.*—All searches and arrests under the last preceding section shall be carried out in accordance with the provisions of the Code of Criminal Pracedure, 1882[*a*], relating respectively to searches and arrests made under that Code.

41. *Officers of certain departments bound.*—It shall be incumbent on every village officer and on every officer of the departments of Police, Customs, Opium, Abkari, Forests and Revenue—

(*a*) *to give information concerning offences punishable under this Act*—to communicate to some salt-revenue-officer, not lower in rank than a sarkarkun or a daroga, any information which he receives of a design to commit or of the commission of any offence punishable under this Act ;

(*b*) *to prevent such offences.*—to interpose for the purpose of preventing and to prevent, by the use of all reasonable means within his power, the commission of any such offence ;

(*c*) *to assist salt-revenue-officers.*—on receipt of notice, or of a request from any salt-revenue-officer, to assist such officer in carrying out any of the provisions of this Act.

42. (1) *Issue of search-warrants.*—Any [*b*]Collector, or [*c*]other salt-revenue-officer empowered in this behalf, and any Magistrate, may issue a warrant for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe that contraband salt is kept or concealed.

(2) Every warrant issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1882[*a*], relating to search-warrants, by a police-officer or by a salt-revenue-officer empowered in this behalf, or if the officer issuing the warrant deems fit, by any other person.

43. (1) *Person in possssion of artiles which are to be searched or examined, bound to unpack and weigh the same.*—Any officer who makes a search under this Act, or who examines any salt or salt-earth for any of the purposes of this Act, or of any rule made under this Act, may require the person who has the immediate possession or control of any animal, vessel, conveyance, goods or package which he desires

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[*a*] This reference to Act X of 1882 should now be read as applying to Act V of 1898.

[*b*] This word was substituted for the original word "Commissioner" by Act XXII of 1925, s. 2 and Schedule, Part III, (4).

[*c*] The words "Collector or" repealed by Act XXII of 1925, s. 2 and Schedule Part III, (6), are mitted.

to search, or of any salt or salt-earth which he desires to examine, without delay and in such manner as he thinks fit to direct—

(*a*) to unload, unpack or open, any such animal, vessel, conveyance, goods or package; and

(*b*) to weigh any such salt, or salt-earth; or

(*c*) before or after such search, examination or weighing is completed, to remove any such animal, conveyance, goods or packages beyond the limits of any wharf, landing-place or preventive station, or to deposit any such goods or package until further orders at any spot indicated by such officer within such limits.

(2) If the said person shall fail to comply with any such requirement, the officer aforesaid may cause the animal, vessel, conveyance, goods or package to be unloaded, unpacked, opened, removed or deposited or the salt or salt-earth to be weighed in the manner which he requires, and the cost of so doing shall be recoverable by the said officer from the said person.

44. *Disposal of person arrested.*—Every person arrested under section 39 shall be forwarded without delay to the nearest salt-revenue officer empowered to send persons so arrested to a Magistrate, or, if there be no such salt-revenue-officer within a reasonable distance, to the officer in charge of the nearest police-station.

45. *Procedure to be followed by officer in charge of a police-station in cases of offences punishable under this Act.*—The officer in charge of a police-station to whom any person is forwarded under the last preceding section, or who receives direct, any complaint or information of the commission of an offence punishable under this Act, shall inquire into and deal with the case under the provisions of the Code of Criminal Procedure, 1882[*a*], relating to cognizable cases.

46. (1) *Inquiry how to be made by salt-revenue officers against arrested persons forwarded to them under section 44.*—When any person is forwarded under section 44 to a salt-revenue-officer empowered to send persons so arrested to a Magistrate, the said salt-revenue-officer may detain such person and shall proceed to inquire into the charge against him.

(2) For this purpose the said salt-revenue-officer may exercise the like powers and shall be subject to the same provisions as the officer in charge of a police-station may exercise and is subject to, under the Code of Criminal Procedure, 1882[*a*], when investigating a cognizable case:

(3) Provided that—

(*a*) if the said salt-revenue-officer shall be of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall forward him to a Magistrate having power to take cognizance of the offience:

(*b*) if it appears to the said salt-revenue-officer that there is not sufficient evidence or reasonable ground as aforesid, he shall release the accused on his executing a bond, with or without sureties as such salt-revenue-officer may direct, to appear, if and when so required, before a Magistrate having power as aforesaid, and make a full report of all the particulars of the case to his official superior and be guided by the order which he shall receive upon such report.

[*a*] This reference to Act X of 1882 should now be read as applying to Act V of 1898.

CHAPTER VIII.

PENALTIES.

47. *For illicit manufacture of salt, etc.*—Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license or permit obtained under this Act,—

(*a*) manufactures, removes or transports salt ;

(*b*) excavates, collects or removes natural salt, or salt-earth ;

and whoever—

(*c*) except in the exercise of some power or the discharge of some duty conferred or imposed upon him under this Act or any other enactment at the time in force, receives, [*a*]or is in possession of[*a*] or, without lawful excuse, retains contraband salt, knowing or having reason to believe the same to be contraband salt ;

shall for every such offence be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Offence under the section.—A conviction under s. 117 of the Penal Code for an offence under this section is not illegal merely because the accused was charged under s. 9, as well. The two sections relate to two distinct offences. Section 117 of the Penal Code relates not to the offence of abetment simply but to abetment by the public generally, or by any number or class of persons exceeding ten (*Emperor v. Ganesh Waman Joshi*, 33 Bom. L. R. 56 (1931)).

Dishonest intention.—The provisions of this section do not in express terms or by necessary implication make intention or knowledge an essential ingredient of the offence. Hence, to support a conviction under this section, it is not necessary to prove dishonest intention on the part of the accused (*Emperor v. Maganlal*, 28 Bom. 346).

The possession of salt-water even with the intention of manufacturing salt thereform is not made an offence under this Act (*Dhabai*, 23 Bom. 788).

Principal not liable for his Agent's illegal act.—A principal cannot be held liable for an illegal act done by an agent on his own account and that the language of s. 3 cl. (*a*) ought not to be interpreted so as to impose penalties under this section on an innocent principal, where there has been no knowledge or connivance in the act of his agent (*Balu Miya*, Cr. Rg. 40 of 1881).

Possession and transport of contraband salt.—It is illegal to possess as well as to transport, contraband salt, however small in quantity (*King Emperor v. Sawlo*, 4 Bom. L R. 83).

Clause (c).—The accused was found with two boxes containing contraband salt and belonging to an association declared unlawful by the Government of Bombay. He was convicted under cl. (c) of this section of being in possession of contraband salt and also of an offence under section 17 (1) of the Criminal Law Amendment Act for assisting the operations of an unlawful association. *Held*, the accused could not be convicted under two different enactments for the same act (*Emperor v. Bhogilal Chimanlal*, 33 Bom. L. R. 648) (1931).

Procedure.—A magistrate shall not arrest without warrant. A summons shall ordinarily issue in the first instance. The offence is bailable. It is not compoundable. Any Magistrate can try the offence.

[*a*—*a*] These words were inserted by Bom. I of 1901, s. 2.

48. *For offences against this Act committed by public servants.*—Whoever, being a salt-revenue-officer or a village-officer or an officer of any of the departments of Police, Customs. Opium, Abkari, Forests or Revenue,—

(*a*) does any act, or is guilty of any omission, in contravention of this Act, or of any rule or order made under this Act; or,

(*b*) with intent to cause injury or annoyance to any person vexatiously and unnecessarily makes use of any power conferred upon him under this Act;

shall for every such offence be punished with fine which may extend to five hundred rupees.

Procedure—The same as is given under s. 47.

[*a*]**48A.** *Failure of salt-revenue-officer in duty.*—Any salt-revenue officer—

(*a*) who ceases or refuses to perform or withdraws himself from the duties of his office, unless he has obtained the express written permission of the [*b*]Collector, or has given to his superior officer two months' notice in writing of his intention or has other lawful excuse, or

(*b*) who is guilty of cowardice, shall on conviction before a Magistrate be punished with imprisonment which may extend to three months, or with fine which may extend to three months' pay, or with both.

49. *For preparing or using incorrect application for a permit or an incorrect certificate under section 32.*—Whoever prepares, or signs, or uses, or attempts to use, an incorrect application for a permit to remove salt, or an incorrect certificate purporting to be such as is required by section 32, knowing or having reason to believe such application or certificate to be incorrect, shall, for every such offence, be punished with fine which may extend to two hundred rupees, and, in default of payment of the fine, with simple imprisonment for a term which may extend to one month.

50. *What things are liable to confiscation.*—All contraband salt, and every vessel, animal or conveyance used, or intended to be used in carrying contraband salt, and

all goods, packages and coverings in or among which contraband salt is found, and

every apparatus, implement, utensil or material employed, or intended to be employed, for the manufacture, excavation, collection or removal of salt without a license or for the purpose of utilizing natural salt or salt-earth contrary to any of the provisions of this Act or of any rule made hereunder,

shall be liable to confiscation.

CHAPTER IX.

PROCEDURE.

51. *Cognizance of offences.*—All offences punishable under this Act shall be cognizable by any Magistrate.

[*a*] This section was inserted by Bom. X of 1922, s. 2.

[*b*] This word was substituted for the original word "Commissioner", by Act XXII of 1925, s. 2 and Schedule, Part III, (1).

52. (1) *Orders of confiscation by whom to be made.*—All confiscations under this Act shall be adjudged by the Collector or by any officer empowered by the [a]Central Board of Revenue[a] in this behalf :

(2) *Proviso.*—Provided that no order of confiscation shall be made without hearing any person who within one month from the date of its seizure claims a right to anything intended to be confiscated and the evidence, if any, which he produces in support of his claim :

(3) *Power to regulate disposal of things seized.*—Provided also that it shall be lawful for the [b]Governor General in Council[b] to make from time to time rules consistent with this Act to regulate the disposal and destruction of things seized under this Act.

Such rules may, among other matters, provide—

(*a*) that any officer of a class which shall be designated in such rules may, at any time after a seizure under this Act has been made of any goods which appear to him to be subject to speedy and natural decay, direct such goods to be sold by public auction, destroyed or otherwise disposed of ;

(*b*) that the owner or person in charge of any animal seized under this Act shall provide from day to day for its keep, while detained, and that, if he omits to do so, such animal may, if any officer such as is referred to in clause (*a*) so direct, be sold by public auction and the expenses, if any, incurred on account of it defrayed from the proceeds of such sale ;

(*c*) that the surplus proceeds of a sale under clause (*a*) or clause (*b*) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

(4) *Redemption of thing confiscated to be permitted on payment of fine*—Whenever confiscation is ordered under this Act, the owner of the thing confiscated shall be given an option of redeeming it, on payment of such fine as the Collector or other officer aforesaid thinks fit.

53. (1) *Power to summon persons to give evidence and produce documents in inquiries under this Act.*—Any salt-revenue-officer not lower in rank than a sarkarkun or a daroga shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct : provided that exemptions under sections 640 [c]and 641[c] of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section ;

[a—a] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s 2 and Schedule, Part III, (8) (*a*)

[b—b] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s 2 and Schedule, Part III, (8) (*b*).

[c] These references to Act XIV of 1882 should now be read as applying to Act V of 1908.

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements;

and to produce such documents and other things as may be required.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code.

54. *Summons to be in writing, signed and sealed. How to be served*—Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and shall also bear his official seal, if he have any; and shall be served by tendering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

55. (1) *Service of notices.*—Every notice under this Act shall be deemed to be served on the date on which a copy thereof is tendered or delivered to the person on whom it is to be served, or to his agent if he have any;

or, when the notice has not been so served, the date which shall appear to the officer holding the inquiry to be the date on which the person on whom the same is to be served has become aware of the issue and purport thereof.

(2) *Notice not void for error.*—No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced a material misconception of the intended intimation.

56. *Recovery of costs*—Whenever it is provided in this Act that the cost of doing anything shall be recoverable from any person by a salt-revenue-officer, the said officer may recover the same by detention of any property of the person liable therefor and by sale of such property; and the said costs shall also be recoverable, if necessary, by a revenue officer in any manner in which, under the law at the time in force, an arrear of land-revenue may be recovered.

57. (1) *Appeals.*—Every order passed by any salt-revenue-officer other than a [a]Collector [b]shall be appealable to such officer's immediate superior at any time within sixty days from the date of such order.

(2) Every order passed by a Collector shall be appealable within ninety days from the date of such order to the [c]Central Board of Revenue[c].

[d] (3) The Governor General in Council may, on the application of any person aggrieved by any order passed under this Act by the Central Board of Revenue, reverse or modify such order.

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[a] The word "Collector" was substituted for the original word "Commissioner" by Act XXII of 1925, s. 2 and Schedule, Part III, (1).

[b] The words "or a Collector" repealed by Act XXII of 1925, s. 2 and Schedule Part III, (12) (a) are omitted.

[c] These words were substituted for the original words "Commissioner, if any, to whom the Collector is subordinate, and, if there be no such Commissioner, to Government", by Act XII of 1925, s. 2 and Schedule, Part III, (12) (b).

[d] This sub-section was substituted for original sub-sections (3) and (4) by Act XXII of 1925, s. 2 and Schedule, Part III, (12) (c).

CHAPTER X

MISCELLANEOUS

58. *Further matters for which the* [a]*Governor General in Council*[a] *may make rules.*—[b]In addition to the rules which the [a]Governor General in Council[a] is hereinbefore empowered to make, he may from time to time make rules consistent with this Act, to regulate the following matters, namely:—

(a) the manufacture, deposit and storage of salt at any salt-work;

(b) the deposit and storage of salt in any building, enclosed place or premises used for the deposit or storage of salt on which duty has not been paid;

(c) the removal of salt from any such building, enclosed place or premises as last aforesaid or from any salt-work;

(d) the routes by which salt shall be taken from any such building, enclosed place or premises as aforesaid or from any salt-work to any preventive station;

(e) the routes by which manufacturers of salt and other persons shall approach, enter or leave any salt-work and the hours during which any person may remain within the limits of any salt-work or in any such building, enclosed place or premises as aforesaid;

(f) the conservancy of any salt-work and of any such building, enclosed place or premises as aforesaid;

(g) the granting and the refusal of permission to construct within a salt-work or in the immediate vicinity thereof places of residence for manufacturers of salt and other workpeople employed therein; and the terms as to the situation and construction of any such places as may be permitted;

(h) the attendance and the enforcement of the contract or agreement of any person who has contracted or agreed to manufacture, excavate or collect salt at any salt-work under the immediate management and control of Government;

(i) the licensing and control of hamals and labourers for hire by whomsoever employed at salt-works and at preventive stations;

(j) the grant of amended or duplicate copies of documents relating to proceedings under this Act, and the fees to be charged for such copies;

[c](k) the making and disposal of appeals under this Act.

59. *Penalties may be attached by the* [a]*Governor General in Council*[a] *to breach of rules.*—In making a rule under this Act, the [a]Governor General in Council[a] may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and in default of payment of the fine, with simple imprisonment for a term which may extend to one month.

[a—a] These words were substituted for the original words "Governor in Council" by Act XXII of 1925, s. 2 and Schedule, Part III, (8) (b).

[b] The figure "(1)" repealed by Bom. IV of 1905, Second Schedule, is omitted.

[c] This clause was added by Act XXII of 1925, s. 2 and Schedule, Part III (13).

60. *Publication of rules.*—All rules made under this Act shall be published in the [a]*Gazette of India*[a][b] and shall thereupon have the force of law.

61. (1) *No person to be liable to penalty or damages for act done in good faith in pursuance of duty.* No person shall be liable to any penalty or to payment of damages on account of any act done or order made in good faith, in pursuance or intended pursuance of any duty imposed or any authority conferred on him by this Act, or by any rule, order, or direction made or appearing to have been made under the provisions thereof by a person having or appearing to have authority in that behalf.

(2) *No suit or prosecution in respect of an act done under colour of duty as aforesaid shall be entertained, or shall be dismissed, if not instituted within six months.*—In the case of an alleged offence or wrong on the part of any person by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein it shall appear to the Court that the offence if committed or the wrong if done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed if instituted, more than six months after the act complained of.

(3) *In suits as aforesaid one month's notice to be given and sufficient description of wrong complained of.*—In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrong-doer one month's notice at least of the intended suit, with a sufficient description of the wrong complained of, failing which such suit shall be dismissed.

(4) *Plaint to set forth service of notice and tender of amends.*—The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if any what, tender of amends has been made by the defendant. A copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.

[a—a] These words were substituted for the original words "*Bombay Government Gazette*" by Act XXII of 1925, s, 2 and Schedule, Part III, (9).

[b] Words repealed by Act XXII of 1925, s. 2 and Schedule, Part III, (14) are omitted.

The Bombay Securities Contracts Control Act, 1925.

BOMBAY ACT No. VIII of 1925.

[*29th December 1925.*

An Act to regulate and control certain contracts for the purchase and sale of securities in the City of Bombay and elsewhere in the Bombay Presidency.

WHEREAS it is expedient to regulate and control certain contracts for the purchase and sale of securities in the City of Bombay and elsewhere in the Bombay Presidency in manner hereinafter appearing; And whereas the previous sanction of the Governor General required by section 80A (3) of the Government of India Act has been obtained for the passing ot this Act: It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Securities Contracts Control Act, 1925.

Note:—The repeated occurrence of crisis in the Bombay Stock-Exchange led to a demand by the public in 1923 by an enquiry by Government into the administration of the Exchange. A committee was accordingly appointed to investigate and submit a report to Government in 1924 making certain recommendations for the better administration of Stock-Exchange. By passing this Act Government took authority to enforce such rules as they considered necessary to the interests of the public (*Statement of Objects and Reasons*).

Extent and operation.

2. (1) This Act shall apply to the whole of the Presidency of Bombay.

(2) It shall come into operation in the city of Bombay on such date as the Governor in Council may, by notification in the *Bombay Government Gazette*, appoint: the Governor in Council may further, by notification in the *Bombay Government Gazette*, direct that the Act shall come into operation in any place in the Bombay Presidency other than the city of Bombay on such date as may be specified in such notification.

Definitions.

3. In this Act unless there is something repugnant in the subject or context,

(1) "Securites" include stocks, shares, bonds, debentures, debenture stock and any other instruments of a like nature.

(2) "Stock-exchange" means any association, organisation or body of individuals, whether incorporated or not, established for the purpose of assisting, regulating and controlling business in buying, selling and dealing in stocks, shares, bonds, debentures, debenture stock and any other like securities.

(3) "Recognised stock-exchange" means a stock-exchange which is, for the time being, recognised by the Governor in Council as provided in section 4.

(4) "Ready delivery contract" means a contract for the purpose or sale of securities for performance of which no time is specified and which is to be performed immediately or within a resonable time.

Explanation.—The question what is a reasonable time is in each particular case a question of fact.

4. (1) A stock-exchange desirous of being recognized for the purpose of this Act shall make an application in writing to the Governor in Council for such recognition, and shall submit rules for the regulation and control of transactions in securities other than ready delivery contracts and furnish such information in regard to such recognition as the Governor in Council may require.

Recognition.

(2) The Governor in Council may give or refuse such recognition provided that the rules submitted by the stock-exchange under sub-section (1) shall be published in the *Bombay Government Gazette* one month before such recognition is given.

(3) The Governor in Council may at any time withdraw the recognition given to a stock-exchange under sub-section *(2)*, and such stock-exchange shall thereupon cease to be a recognized stock-exchange.

5. (1) A stock-exchange subject to the sanction of the Governor in Council may make and may from time to time add to, vary or rescind rules for the regulation and control of transactions in securities (other than ready delivery contracts).

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for :—

(*a*) the government of the stock-exchange by a governing body and the constitution of such governing body ;

(*b*) the powers and duties of the governing body and the manner in which its business shall be transacted ;

(*c*) the fixing of a scale of charges ;

(*d*) the making, settling and closing of bargains ;

(*e*) the exercise of emorgency powers in the case of corners ;

(*f*) the regulation of dealings by members for their own account, and

(*g*) the settlement of disputes arising between members and the punishment of defaulting members.

(3) Rules made by a stock-exchange under sub-section (1) shall be published in the *Bombay Government Gazette* one month before they are sanctioned by the Governor in Council and shall again be published after sanction.

6. Every contract for the purchase or sale of securities, other than a ready delivery contract, entered into after a date to be notified in this behalf by the Governor in Council shall be void, unless the same is made subject to and in accordance with the rules duly sanctioned under section "5" and every such contract shall be void unless the same is made between members or through a member of a recognised stock-exchange ; and no claim shall be allowed in any Civil Court for the recovery of any commission, brokerage, fee or reward in respect of any such contract.

Contracts not made subject to rules to be void.

Changes:—The figure "5" was substituted for the orginal figure "4" by the Bombay Repealing and Amending Act (Bom. Act No IX of 1827) Sch. I.

THE BOMBAY
Special (Emergency) Powers Act, 1932
Bombay Act No. XVI of 1932

(As supplemented by India Act IX of 1933 and amended by Bom. Act XXVII of 1935)

An Act to confer special powers on Government and its officers for the maintenance of the public security in case of emergency.

WHEREAS it is expedient to confer special powers upon Government and its officers for the maintenance of the public security in case of emergency [1]"especially such as is likely to arise from movements such as are commonly known as communism, terrorism and civil disobedience movement";[1] and whereas the previous sanction of the Governor-General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY

Short title, commencement, extent and operation.

1. (1) This Act may be called the Bombay Special (Emergency) Powers Act, 1932.

[2]"(2) It shall remain in force up to the 31st December 1938."[2]

(3) This Chapter extends to the whole of the Presidency of Bombay and the Governor in Council may by notification in the *Bombay Government Gazette* extend all or any of the remaining provisions of this Act to such district or area as may be specified in the notification.

(4) This Chapter shall come into operation at once and the Governor in Council may by notification in the *Bombay Government Gazette* direct that all or any of the remaining provisions of this Act shall come into operation in any district or area to which they have been extended on such date as may be appointed in the notification.

Applicability.—It is doubtful if this Act can be made to apply to a person who is not a resident in the Bombay Presidency and not even in British India but resides in foreign territory (*Krishnarao Ramchandra, In re,* 57 Bom. 690, s. c. 35 Bom. L. R. 845).

Definitions.

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

(1) "The Code" means the Code of Criminal Procedure, 1898; and

(2) "District Magistrate" means, in the case of the City of Bombay, the Commissioner of Police.

CHAPTER II

SPECIAL POWERS.

Power to arrest and detain suspected persons.

3. (1) Any officer of Government authorised in this behalf by general or special order of the Governor in Council may, if satisfied that there are reasonable grounds for believing that any person has

[1—1] These words were inserted by Bom. Act XXVII of 1935, s. 2.

[2—2] Sub-section (2) was substituted by Bom. Act XXVII of 1935, s. 3.

acted, is acting, or is about to act, in a manner prejudicial to the public safety or peace, himself arrest such person without warrant, or may direct the arrest without warrant of such person, and in makeing such arrest any powers and means which may be exercised or used in making an arrest, with or without warrant, under the Code, may be exercised and used.

(2) An arrest made by or on the direction of any officer under this section shall be reported forthwith to the Governor in Council by the officer so making or so directing the arrest, as the case may be, who shall forward with his report a written record of the statement, if any, made by the person so arrested, and such officer may, by order in writing, commit any person so arrested to such custody as the Governor in Council may, by general or special order, specify in this behalf:

Provided that no person shall, unless the Governor in Council by special order otherwise directs, be so detained in custody for a period exceeding fifteen days:

Provided further that no person shall be so detained in custody for a period exceeding two months.

Power to control suspected persons.

4. (1) The Governor in Council, if satisfied that there are reasonable grounds for believing that any person has acted, is acting, or is about to act, in a manner prejudicial to the public safety or peace or in furtherance of a movement prejudicial to the public safety or peace, and after having taken into consideration the record in writing made or caused to be made by the District Magistrate of the statement, if any, made by such person, may, by order in writing, give any one or more of the following directions, namely, that such person—

(*a*) shall not enter, reside or remain in any area specified in the order;

(*b*) shall reside or remain in any area specified in the order;

(*c*) shall remove himself from, and shall not return to, any area specified in the order;

(*d*) shall conduct himself in such manner, abstain from such acts, or take such order with any property in his possession or under his control, as may be specified in the order.

(2) An order made under sub-section (1) shall not, unless the Governor in Council by special order otherwise directs, remain in force for more than one month from the making thereof.

(3) An order made under sub-section (1) shall be served on the person to whom it relates in the manner provided in the Code for service of a summons.

(4) The Governor in Council shall, subject to the provisions of section 21 of the Bombay General Clauses Act, 1904, so far as conveniently may be, at intervals of six months take into consideration and review any orders in force made or deemed to have been made under sub-section (*1*) and when in the opinion of the Governor in Council it is compatible with the public safety or peace to cancel or modify any of such orders, the Governor in Council shall cancel or modify any such orders accordingly. Any decision of the Governor in Council that any such order can or cannot be cancelled or modified

or as to the manner in or the extent to which any such order can be modified shall be final and conclusive.

Power to prohibit or limit access to certain places.

5. The District Magistrate may, by order in writing, prohibit or limit, in such way as he may think necessary in the interests of the public safety or peace, access to any building or place in the possession or under the control of Government or of any railway administration or local authority, or to any building or place in the occupation, whether permanent or otherwise, of his Majesty's Naval, Military or Air Forces or of any police force, or to any place in the vicinity of any such building or place.

Power to prohibit or regulate traffic.

6. The District Magistrate may, by order in writing, prohibit or regulate, in such way as he may think necessary in the interests of the public safety or peace, traffic over any road, pathway, bridge, waterway or ferry.

Power to regulate means of transport.

7. (1) The District Magistrate may, by order in writing, require any person to make, in such form and within such time and to such authority as may be specified in the order, a return of any vehicles or means of transport owned by him or in his possession or under his control.

(2) The District Magistrate, if, in his opinion, it is necessary in the interests of the public safety or peace, may, by order in writing, require any person owning or having in his possession or under his control any vehicle or means of transport to take such order therewith for such period as may be specified in the order.

Power to control posts and telegraphs.

8. The District Magistrate, if, in his opinion, it is necessary in the interests of the public safety or peace, may, in consultation with the chief postal authority in the district, control the operation of any post, telegraph, telephone or wireless office or station, and, in particular, may intercept any postal article or telegraphic, telephonic or wireless message in the course of transmission, may ascertain its contents and may prohibit its further transmission.

Power to regulate the use of railways and vessels.

9. The District Magistrate, if, in his opinion, it is necessary in the interests of the public safety or peace, may—

(*a*) require accommodation to be provided on any railway train or any vessel for any passengers or goods, and, for this purpose, exclude from such train or vessel any passengers or goods which it is already carrying or about to carry;

(*b*) require that any specified persons or classes of persons or persons proposing to travel to specified destinations, or any specified goods or classes of goods or goods consigned to specified destinations, shall not be carried on any railway or vessel;

(*c*) exclude or eject any passenger from any train or vessel;

(*d*) stop, or prohibit the stopping of, trains or vessels at any station; or

(*e*) in consultation with the local railway authorities, require special trains to be provided for the conveyance of troops, police or other persons.

Power to secure reports of public meetings.

10. The District Magistrate, if, in his opinion, it is necessary in the interests of the public safety or peace, may, by order in writing, depute one or more police officers not below the rank of head constable, or other persons, to attend any public meeting for the purpose of causing a report to be made of the proceedings, and may, by such order, authorise the persons so deputed to take with them an escort of police officers.

Explanation.—For the purposes of this section a public meeting is any meeting which is open to the public or to any class or portion of the public, and a meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto is restricted by ticket or otherwise.

Power to issue search-warrants.

11. The power to issue search-warrants conferred by section 98 of the Code shall be deemed to include a power to issue warrants authorising—

(*a*) the search of any place in which any Magistrate mentioned in that section has reason to believe that any offence under this Act or any act prejudicial to the public safety or peace has been, is being or is about to be committed, or that preparation for the commission of any such offence or act is being made;

(*b*) the seizure in or on any place searched under clause (*a*) of anything which the officer executing the warrant has reason to believe is being used, or is intended to be used, for any purpose mentioned in that clause;

and the provisions of the Code shall, so far as may be, apply to searches made under the authority of any warrant issued, and to the disposal of any property seized, under this section.

General power of search

12. Any authority on which any power is conferred by or under this Chapter may, by general or special order, authorise any person to enter and search any place the search of which such authority has reason to believe to be necessary for the purpose of—

(*a*) ascertaining whether it is necessary or expedient to exercise such power; or

(*b*) ascertaining whether any order given, direction made, or condition prescribed in the exercise of such power has been duly complied with; or

(c) generally, giving effect to such power or securing compliance with, or giving effect toi any order given, direction made or condition prescribed in the exercise of such power.

Power to give effect to orders if disobeyed.

13. (1) If any person disobeys or neglects to comply with an order made, direction given, or condition prescribed, in accordance with the provisions of this Chapter, the authority which made the order, gave the direction or prescribed the condition may take or cause to be taken such action as it thinks necessary to give effect thereto.

(2) No claim for compensation may be lodged for loss or damage caused in any case where action has been taken under sub-section (1),

Penalty for disobeying order under section 4.

14. Whoever intentionally disobeys or neglects to comply with any order made or direction given in accordance with the provisions of section 4 shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

Essentials of offence under this section.—In order that there should be an offence under this section it is necessary that there should be a valid order under s. 4 (*Krishnarao Ramchaadra, In re,* 57 Bom. 690, s. c. 35 Bom. L. R. 845).

The accused, on whom an order had been served under this Act directing him *inter alia* to abstain from encouraging or inciting any person to interfere with the administration of the law and order, made speeches, using strong language, expressing strong disapproval of the action of the Government in issuing an order under s. 144 of the Criminal Procedure Code, and warning the Government what, in his opinion, will be serious consequences of its action. He finished up his speech by telling the people that as the order had been made, they must not disobey it. *Held,* that the accused did not encourage or incite anybody to commit a breach of the law and that his conduct did not involve any breach of the terms of the order made against him (*Emperor v. Vishwasrao,* 36 Bom. L. R. 963).

Penalty for disobeying other orders under this Chapter.

15. Subject to the provisions of section 14, whoever intentionally disobeys or neglects to comply with any order made, direction given, or condition prescribed in accordance with the provisions of this Chapter or impedes the lawful exercise of any power referred to in this Chapter shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Delegation of powers.

16. (1) The Governor in Council may invest the District Magistrate with the powers of the Governor in Council under sub-section (1) of section 4.

(2) The Governor in Council may invest any Sub-divisional Magistrate, or any police officer not below the rank of Deputy Superintendent, with any of the powers of a District Magistrate under this Chapter.

Scope.—Under this section the Governor in Council can delegate to a Districit Magistrate power to make any order referred to in s. 4 (1) of this Act, to be enforceable throughout the Presidency of Bombay (*Emperor v. Vishwasrao,* 36 Bom. L. R. 968).

CHAPTER III.

SPECIAL PROVISIONS AGAINST [1] "UNLAWFUL INSTIGATION OF NON-PAYMENT" [1] OF CERTAIN LIABILITIES

Power to declare notified areas and notified liabilities.

17. (1) The Governor in Council may, by notification in the *Bombay Government Gazette,* declare that any district or area shall be a notified area for the purposes of this Chapter.

(2) The Governor in Council may further, by the same or by subsequent notification, declare that in such notified area land-revenue or any sum recoverable as arrears of land revenue, or any tax, rate, cess or other due or amount payable to Government or to any local

[1-1] These words were substituted for the original words "illegal refusal of the payment" by Bom. Act XXVII of 1935, s. 4.

authority, or rent of agricultural land, or anything recoverable as arrears of or along with such rent, shall be a notified liability.

Punishment for unlawful instigation to the non-payment of notified liability.

18. Whoever, by words either spoken or written, or by signs or by visible representations, or otherwise, instigates, expressly or by implication, any person or class of persons not to pay or to defer payment of any notified liability,

and whoever does any act, with intent or knowing it to be likely that any words, signs or visible representations containing such instigation shall thereby be communicated directly or indirectly to any person or class of persons, in any manner whatsoever,

shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

[1] "*Explanation.*—Any words or acts intended to assist by unlawful means the redress of any grievance relating to a notified liability shall not be an offence under this section merely because they result in or may lead to the non-payment or deferring payment of such notified liability."[1]

Special rule of procedure.

19. No Court shall take cognizance of any offence punishable under section 18 except upon a complaint in writing made either by the Collector or by an Assistant or Deputy Collector authorised by general or special order in writing by the Collector in this behalf.

Power to collect an arrear of a notified liablity as an arrear of land-revenue.

20. (1) Any local authority to which an arrear of a notified liability is due may apply in writing to the Collector to realise it, and the Collector may, after satisfying himself that the amount claimed is due, proceed to recover it as an arrear of land-revenue, in accordance with the law applicable to the recovery of arrears of land-revenue in the area concerned.

(2) Nothing in this section shall prevent any local authority to which an arrear of a notified liability is due from recovering it in accordance with the law applicable to the recovery of such arrear.

(3) Any person from whom an amount has been recovered under this section in excess of the amount due from him may recover such excess in accordance with law from the local authority on whose behalf the Collector has realised it.

CHAPTER IV

SUPPLEMENTAL

Jurisdiction.

21. No Court other than a court of a Presidency Magistrate or a Magistrate of the First Class shall take cognizance of or try any offence under this Act.

Offences under the Act to be cognizable and non-bailable.

22. Notwithstanding anything contained in the Code, any offence punishable under this Act [2]"except an offence punishable under section 18"[2] shall be cognizable and any offence punishable under section 14* * [3]shall be non-bailable.

[1-1] This explanation was added by Bom. Act XXVII of 1935, s. 5.

[2--2] These words were inserted by Bom. Act XXVII of 1935, s. 6.

[3—3] The word and figures "or 18" repealed by Bom Act XXVII of 1935 are omitted.

Procedure for trial of offences

23. Notwithstanding anything contained in the Code, a Presidency Magistrate or a Magistrate of the First Class, in the trial of an offence under this Act, may, in his discretion, follow the procedure for the summary trial of cases in which an appeal lies, laid down in Chapter XXII of the Code.

Power of court to disallow adjournments.

24. In the trial of an offence under this Act, a court shall not be bound to adjourn the trial for any purpose unless such adjournment is, in the opinion of the Court, necessary in the interests of justice.

25. *Repealed by Bom. Act XXVII of 1935, s. 7.*

Powers of courts to deal with refractory accused.

26. (1) Where any accused, in a trial of an offence under this Act, has, by his voluntary act, rendered himself incapable of appearing before the Court, or resists his production before it or behaves before it in a persistently disorderly manner, the Court may, at any stage of the trial, by order in writing made after such inquiry as it may think fit, dispense with the attendance of such accused for such period as it may think fit, and proceed with the trial in his absence.

(2) Where a plea is required in anwer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being respresented by a pleader at any stage of the trial, or of being present in person if he has become capable of appearing, or appears in court and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code, no finding, sentence or order passed in a trial of an offence under this Act shall be held to be illegal by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

Special rule of evidence.

27. Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial of an offence under this Act if such person is dead or cannot be found or is incapable of giving evidence, and the court is [1]"for reasons to be recorded in writing"[1] of opinion that such death, disappearance or incapacity has been caused in the interests of the accused.

Application of orndiary law.

28. The provisions of the Code or of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act, shall apply to all matters connected with, arising from or consequent upon a trial of any offence under this Act.

[1-1] These words were inserted by Bom. Act XXVII of 1935, s. 8.

Jurisdiction brrred.

*29. Except as provided in this Act, no proceeding or order taken or made or purporting to be taken or made or deemed to have been so taken or made under this Act, shall be called in question by any court, and no civil or criminal proceeding shall be instituted against any person for anything done or in good faith intended to be done under this Act or against any person for any loss or damage caused to or in respect of any property whereof possession has taken under this Act.

Interference by High Court.—The special Courts under this Act fall within the purview of the superintendence of the High Court under s. 107 of the Government of India Act. The High Court will, however, interfere only if considerations of justice require it to do so. Hence this section is no bar to the High Court entertaining a petition for the quashing of proceedings taken under this Act (*Krishnarao Ramchanara, In re,* 57 Bom. 690, s. c. 35 Bom. L. R. 845).

Operation of other penal laws not barred.

30. Nothing contained in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence punishable under this Act.

Validity of things done under Ordinance.

31. Anything done or deemed to have been done in pursuance of any provision of the Special Powers Ordinance, 1932, shall, where the corresponding provisions of this Act have come into operation before the expiry of the said Ordinance, be deemed to have been done in pursuance of the corresponding provision of this Act and shall have effect, and the provisions of this Act shall have effect accordingly.

32, 33. *Repealed by Bom. Act XXVII of 1935.*

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* Section 29 shall have effect as if it had been enacted by the Indian Legislature (*Vide* Act IX of 1933, s. 3).

STATE PRISONERS
(Bom. Reg. XXV of 1827)[1].

[*1st January, 1827.*

A Regulation for the confinement of State prisoners and for the attachment of the lands of Chieftains and others for reasons of State.

Preamble.

WHEREAS reasons of State, embracing the due maintenance of the alliances formed by the British Government with foreign Powers, the preservation of tranquillity in the territories of Native Princes entitled to its protection, and the security of the British dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceedings, or when such proceedings may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper;

and whereas it is fit that, in every case of the nature herein referred to, the measures adopted should emanate immediately from the Governor in Council;

and whereas the reasons above declared sometimes render it necessary that the estates and lands of zamindars, taluqdars and others situated within the zilas subordinate to Bombay should be attached and placed under the temporary management of the Revenue authorities, without having recourse to any judicial proceeding;

the following rules have therefore been enacted [2];

CHAHTER I.

RULES FOR THE APPREHENSION AND CONFINEMENT OF INDIVIDUALS AS STATE PRISONERS.

Proceeding for placing persons under restraint as State Prisoners.

1. *First.*—When any of the considerations stated in the preamble of this Regulation may seem to the Governor in Council to require that an individual should be placed under restraint, without any immediate view to ulterior proceedings of a judicial nature, it shall be lawful for the Governor in Council, *provided always that, with reference to the individual, the measure shall not be in breach of British law*, [3] to cause such individual to be apprehended in such manner as the Governor in Council may deem fit, and, when apprehended,

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[1] Bom. Reg. XXV of 1827 was declared, by the Laws Local Extent Act, 1874, s. 5, to be in force in the whole of the Bombay Presidency, except as regards the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act, 1874, to be in force in the Province of Sindh, and in Aden, in the villages belonging to the following Mehwassi Chiefs:—

(1) the Parvi of Kathi,
(2) the Parvi of Nal,
(3) the Parvi of Singpur,
(4) the Walwi of Gaohalli,
(5) the Wassawa of Chikhli, and
(6) the Parvi of Nawalpur.

[2] Words repealed by Act XII of 1873 are omitted.

[3] So much of s. 1, clause *first*, as provides that, with reference to the individual, the apprehension and confinement therein referred to shall not be in breach of British law, was repealed by Act III of 1858, except so far as the said provision applies to European British subjects.

to be delivered over to any officer in whose custody it may be deemed expedient that he shall be placed, with a warrant of commitment to such officer's address.

Form and authority of warrant.

Second.—The warrant of commitment shall be in the from specified in Appendix A, and shall be sufficient authority for the detention of any State prisoner in any fortress, jail or other place within the zilas subordinate to Bombay.

Allowance for support of State prisoner.

2. The Governor in Council shall fix such allowance for the support of the State prisoner as may seem to him expedient in reference to the prisoner's habits and rank in society, and shall specify at the same time through whose means it is to be paid and how it is to be applied.

Report to Government as to conduct, etc., of prisoner.

3. Every officer in whose custody any state prisoner may be placed shall, on the 1st of January and 1st of July of each year, submit a report to the Governor in Council, through the Secretary to Government in the Political Department, on the conduct, the health and the comfort of such State-prisoner, in order that the Governor in Council may determine whether the orders for his detention shall continue in force or shall be modified.

4. *First.*—[*Powers of Judge of Circuit.*] *Repealed by Act XII of 1873.*

Prisoner in custody of officer other than District Magistrate by whom to be visited.

Second.—When any State prisoner is placed in the custody of any public officer not being a [*a*] District Magistrate, the Governor in Council shall instruct either the [*a*] District Magistrate, [*b*] or any other public officer, not being the person in whose custody the prisoner may be placed, to visit such prisoner at stated periods, and to submit a report to Government regarding the health and treatment of such prisoner.

Report to Government as to coufinement, etc., of prisoner.

5. *First.*—Every officer in whose custody any State prisoner may be placed shall, as soon after taking such prisoner into his custody as may be practicable, report to the Governor in Council whether the degree of confinement to which he may be subjected appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family, according to their rank in life.

Representations of prisoner to be submitted.

Second.—The officer in whose custody any State prisoner may be placed is to forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the Governor in Council.

6. [*Persons already confined as State Prisoners.*] *Repealed by Act XII of 1876.*

[*a*] "District Magistrate" was substituted for "Magistrate" by Bom. Act III of 1886, s. 2.

[*b*] Words repealed by Act XII of 1873 are omitted.

CHAPTER II.

RULES FOR THE ATTACHMENT OF LANDS FOR REASONS OF STATE, AND FOR REMOVING SUCH ATTACHMENT.

Attachment of estates by order of Government without decision of Court

7. Whenever the Governor in Council, for reasons of the nature of those specified in the preamble to this Regulation, shall judge it necessary to attach the estates or land of any zamindar, jagirdar, taluqdar or other person without any previous decision of a Court of Justice, or other judicial proceeding, the grounds on which the resolution of Government may have been adopted, and such other information connected with the case as may appear essential shall be communicated, under the hand of one of the Secretaries to Government, to the Judge and the District Magistrate or other civil authorities of the district in which the lands or estates may be situated.

Management of attached lands.

8. *First.*—The lands or estates which may be temporarily attached shall be held under the management of the officers of Government in the Revenue Department, and the collections shall be made and adjusted on the same principles, if consistent with the rights of others, as had been followed by the proprietor: provided, however, that any change may be introduced which the proprietor may desire, and which may not infringe on private rights, nor appear objectionable to the Collector; and annual accounts of the management of the lands attached shall be furnished to the proprietor.

Attached lands how saleable in execution. Income applicable to satisfaction of decrees.

Second.—Such lands or estates, while so under attachment, shall not be liable to be sold by process of law, or otherwise, without the mutual consent of Government and the proprietor; but the annual income or any portion of it may, if Government shall so direct, be applicable to the satisfaction of decrees of the Civil Court.

Rules as to cases where Government orders release from attachment.

9. Whenever the Governor in Council shall be of opinion that the circumstances which rendered the attachment of such estate necessary have ceased to operate, and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue-authorities will be directed to release the estate from attachment, to adjust the accounts of the collections during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estates which may have accumulated during the attachment.

APPENDIX A.

TO THE (*here insert the officer's designation*)

WHEREAS the Governor in Council, for good and sufficient reasons, has resolved that (*here insert the State prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby ordered, in pursuance of that resolution, to receive the person above-named into your custody, and to deal with him in conformity to the orders of the Governor in Council and the provisions of Regulation XXV, A. D. 1827.

By order of the Governor in Council.

(*Signed*) *A. B.*,

Secretary to Government

BOMBAY CASTLE:

——*day of*——*18*——.

THE
SUMMARY SETTLEMENT ACT, 1863
OTHERWISE CALLED
Exemptions from Land-revenue (No. I) Act, 1863
Bom. Act No. II of 1863.

[*9th April, 1863.*

An Act to facilitate the adjustment of unsettled claims to exemption from the payment of Government land revenue, and to regulate the succession to, and transfer of, lands wholly or partially exempt from the payment of such revenue in those parts of the Bombay Presidency which are subject to the operation of Act XI of 1852 of the Legislative Council of India.

Preamble.

WHEREAS it has been deemed expedient to provide for the final adjustment, summarily, of unsettled claims to exemption from the payment of land-revenue, and to fix the conditions which shall secure, in certain cases, the recognition of titles to such exemption with respect to succession and transfer in those districts of the Bombay Presidency to which the operation of Act XI of 1852 of the Legislative Council of India extends ; It is hereby enacted as follows :—

Power to authorize and guarantee continuance in perpetuity of land to revenue-free holders on terms and conditions agreed to.

1. *Clause 1st.*—When the holders of lands in any of the said districts (except as is excepted in clause second of this section), held either wholly or partially exempt from the payment of Government land-revenue, whose title to exemption has not yet been formally adjudicated, shall have consented to submit to the terms and conditions hereinafter described, in preference to being obliged to prove their title to the exemption enjoyed by them, it shall be lawful for the Governor in Council to finally authorize and guarantee the continuance, in perpetuity, of the said land to the said holders, their heirs and assigns, upon the said terms and subject to the said conditions.

Exceptions.

Clause 2nd.—The excepted cases to which the authority of adjustment and guarantee, vested in the Governor in Council by this provision, shall not extend, are the cases of lands held as follows :—

1st. lands held under treaty :

2nd, lands granted or held as jagirs or saranjams, or on similar political tenure.

3rd, lands held for service.

4th, lands already formally adjudicated to be not continuable hereditary.

Summary Settlement —The British Government granted by a Sanad some villages in the Taluqs of Chikodi and Manowlee as "Inam Dharmadaya" to one *B* to be enjoyed from son to grandson &c., from generation to generation. Afterwards the British Government ceded the Talukas of Chikodi and Manowllo to the Maharaja of Kolhapur. In 1821 the Maharajah granted some more villages in the said Talukas to *B*. In 1826, a treaty was concluded between the British Government and the Maharaja and one of the articles of that treaty provided that

the Maharaja of Kolhapur promised to continue to *B* his lands and rights, and the British Government guaranteed enjoyment of those villages to the grantee for life. The Maharaja did not keep his promise not to molest *B* and the British Government made a further treaty in 1827 with the Maharaja, which provided that the latter should give back to the former the same Talukas in the same state in which he received them; and that as the Maharaja had never ceased to annoy and distress *B* by seizing his villages and other property, it was thought necessary to extend the guarantee of the British Government to *B*'s descendants and Maharaja accordingly engaged never to molest them. On the introduction of the summary Settlement in 1863 the Government was of opinion that no *prima facie* case had been made out for excluding *B*'s lands from the benefit of the summary Settlement on the ground of there being held on political tenure, and therefore the summary settlement was applied to his lands with his consent. On the question whether the lands so granted were excepted from the provisions of this Act, it was *held* that the lands in question were not held under a treaty at the time of summary Settlement and as the grant was described in the Sanad as Dharmadaya Inam, and there was nothing to show that it was a jaghir or held under political tenure, the application of the Summary Settlement to these lands was valid and legal (*Vasudeo Harihar Pandit, In re,* 45 Bom. 463).

Such lands (subject to enactments in section 3) to be heritable and transferable property of holders and continued in perpetuity, subject to payment to Government of nazrana and quit-rent.

2. When the Governor in Council shall have finally authorized and guaranteed the continuance, in perpetuity, to the holders, their heirs and assigans, of lands wholly or partially exempt from the ordinary payment of annual land-revenue, whose title to exemption has not already been formally adjudicated and who have dispensed with an inquiry into such title, the said lands shall (subject to the enactments contained in section 3 [1] * * *) be the heritable and transferable property of the said holders, their heirs and assigns, without restriction, as to adoption, collateral succession or transfer; and such lands shall thenceforth be continued, in perpetuity, subject to an annual payment to Government. Such payment shall consist of—

1st, a fixed annual payment as nazrana, in commutation of all claims of Government in respect of succession and transfer, and shall be calculated at the rate of one anna for each rupee of assessment;

2nd, of a quit-rent equal to one-fourth of the assessment.

The said assessment shall be ascertainable under the following rules:—

Rules for ascertaining amount of assessment.

Rule 1.—The assessment of lands other than those specified in Rule 2 shall, with respect to lands which have already been assessed by the revenue-survey, now in progress, be the assessment already imposed upon those lands by that revenue-survey, and with respect to lands which have not yet been assessed by that revenue-survey shall be such assessment as shall be agreed on by the Collector or settling officer and the owner or holder of the lands which shall be final;

1. The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

and, in failure of their agreement, it shall be the existing rental of the lands until the revenue-survey now in progress shall have placed a new assessment thereon, after which the assessment so placed by the said revenue-survey shall be understood to be the assessment.

And it shall be lawful for the duly authorized officers of Government employed in the said revenue-survey to enter upon all lands not heretofore assessed by such revenue-survey for the purpose of fixing and making an assessment thereof, provided no arrangement can be otherwise arrived at by the Collector and the owner or holder, as above provided, to ascertain the fair rental of the lands.

Rule 2.—The assessment of lands of such an exceptional character as not to be assessable under the revenue-survey rules shall be in the discretion of the revenue-officers of Government, which discretion shall be guided, so far as may be, by the rate at which similar land in the same district belonging to Government is let, due regard being had by the said revenue-officers to all equitable considerations affecting such lands.

Shares of the revenues of villages (such as amals) shall be assessed for the purposes of this Act at the value thereof, calculated at the average shown by such accounts of actual realizations by the holders as are forthcoming for the ten years immediately preceding the promulgation of these rules.

Rule 3.—Lands for which a judi, salami or other quit-rent or land-tax under whatever denomination, is already paid to Government, instead of being liable to only one-fourth of the assessment, shall in addition to the annual amount of such judi, salami, quit-rent or other tax aforesaid, be liable to a further annual quit-rent, equal to one-fourth of the sum by which the annual or average annual amount of such judi, salami or other quit-rent or tax aforesaid may fall short of the assessment.

Rule 4.—Quit-rent and annual nazrana imposed under this section (section 2) and the rules thereunto annexed shall be fixed in perpetuity, and shall not be liable to increase or decrease on any new assessment, save so far as is above in rule 1 of this section (section 2) provided to the contrary, in the case of lands which have not been already assessed by the revenue-survey now in progress.

Rule 5.—The whole of the exempt lands found in the possession of each holder shall be continued according to the provisions of this section (section 2) and the rules thereunto annexed, and subject to the enactments contained in section 3.

Adjustment, so far as right of Government to levy nazrana and quit-rent, binding on holder and rightful owner, and assigns.

3 Any adjustment made by the Governor in Council with the holder of land held wholly or partially exempt from the payment of land-revenue, in accordance with section 2 * * *[1] and the rules annexed to the said section, shall, so far as the right of Government to levy the nazrana and the annual quit-rent mentioned in the said section is concerned, not only be binding upon such holder, his heirs and assigans, but also on the rightful owner, his heirs and assigns, whosoever such rightful owner may be :

1. The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886).

Savings of rights and remedies of rightful owner, his heirs and assigns.

Provided always that the said rightful owner, his heirs and assigns, shall not, by this Act or anything therein contained, be deprived of any rights or remedies [1] * * * * to which he or they would be entitled against the said holder, his heirs or assigns for the recovery of the said lands or any part thereof if this Act had not been passed ;

and in the event of the rightful owner, his heirs or assigns recovering the said lands or any part thereof, from the said holder, his heirs or assigns, any declaration, guarantee or adjustment made by the Governor in Council under, or in accordance with, sections 1 and 2 * * *[2] and the rules annexed to the said section 2 with respect to the said lands while the same were in the possession of the said holder, shall accrue to the benefit of the said rightful owner, his heirs and assigns.

Such lands, so far as rights of Government are concerned, to be recognized as heritable and transferable property of actual and legal successors by inheritanee and heirs by adoption.

4. Lands held partially or wholly exempt from the payment of land-revenue, and already formally adjudicated to be so continuable hereditarily in perpetuity, may, at the option of the holder, be henceforth recognized, so far as the rights of Government are concerned, as the heritable and also the transferable property, not only of the actual descendants of the person to whose descendants inheritance may have been limited by the terms of the said adjudication, but also of all his legal successors by inheritance, including heirs by collateral successions and heirs by adoption, and their assigns ;

and thereafter the right of Government or its officers to question the title to possession, or to exemption from the payment of land-revenue, of any holder of the said land already so adjudicated to be heritable in perpetuity on the ground that he does not belong to the family to which title is restricted by the adjudication, is hereby abrogated ;

Lands adjudicated to be heritable to be held subject to payment of additional nazrana.

and, in any case of recognition, as in this section aforesaid, lands already adjudicated to be heritable, and to which such recognition applies, are henceforth to be held subject to the payment to Government of an annual nazrana calculated at the rate of one anna for each rupee of the assessment of the land, ascertainable as provided in the rules of section 2 * * *[2] which nazrana is to be in addition to the parital assessment (if any) ordered by the terms of the formal adjudication under which the land has already been declared to be continuable :

Proviso.

Provided, however, that the assent of the holder of all lands adjudicated as aforesaid to the acceptance of such recognition and the payment of such nazrana as in this section as aforesaid shall be assumed, unless such holders shall, within three (3) [3]* months from the date on which this Act comes into operation, decline to accept such recognition as aforesaid by a notice given in writing to the Collector of the district.

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1 The words "either at law or in equity" were repealed by the Repealing Act 1876 (12 of 1876).

2 The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

3 The word "calendar" was repealed by *ibid.*

Sharakati inam.—The plaintiff was the Inamdar of a village held as a sharakati inam. This village comprised two survey numbers described as waste pasture land. Plaintiff sued the Secretary of State for declaration that these numbers were the properties of the plaintiff and not liable to a contribution to Government in respect of the income of these lands. There was a settlement with regard to this inam village after the decision of the Inam Commissioner. The Inam Commissioner decreed that only the jahagir ammal of the mauja calculated at 55-11-0 per cent. of the net revenue of the village, after deducting the rights of hakdars and ancient inamdars and authorized village expenses, to be continued in inam, and that the remaining ammals now held by the claimant were to be resumed as khalsa.. A sanad was issued under ss. 4 and 16-B of this Act in 1893. The first condition of the sanad was that "the said holders.....shall pay to the same a fixed sum of Rs. 22-14-0 as nazarana in addition to any judi or other tax heretofore payable." It was not shown that these survey numbers were held by the plaintiff otherwise than as inamdar. They were entered as "Government waste" and in the record-of-rights these lands were not entered in the name of the plaintiff but were described as forming part of Kuran. According to the decision of the Inam Commissioner, the plaintiff was entitled to Rs. 55-11-0 per cent. of the revenue of the village and the Government were entitled to the remaining Rs. 44-5-0 per cent. *Held*, that plaintiff's rights to the two survey numbers are restricted to his rights as Inamdar. The decision of the Inam Commissioner was final. The Sanad was issued under this section, and the amount of judi mentioned as being payable to Government was not a fixed amount. The decision of the Inam Commissioner was not in any way modified by the sanad which had been granted to the plaintiff in the year 1863 and the plaintiff was not entitled to exclude Government from participation in the income of these numbers (*Gangadhar Balwant v. Collector of Nasik*, 29 Bom. L. R. 909).

Provisions in respect of amount of nazrana when it exceeds ten rupees.

5. *Clause 1st.*—When the amount of the annual nazrana payable for any holding in accordance with section 2 or section 4 * * *[1] respectively exceeds the sum of ten rupees, it shall be at the option of the holder of the land on account of which the said nazrana is declared payable, if he be not merely a mortagagee, to elect within two months after service of a notice explaining the purport and effect of the rules contained in this section (section 5), which service shall be made in the same manner as is hereinafter provided for the service of the notice described in section 11 * * *[1] that in lieu of the land being made subject to the payment of such annual nazrana an occasional nazrana shall be payable at each change of possession thereof, or of any part thereof, by inheritance or transfer, the amount of which nazrana shall be—

Occasional nazrana.

(*a*) on every succession by inheritance, a nazrana equal to one year's assessment of the wholly or partially exempt lands which are the subject of such succession :

(*b*) on every transfer of lands wholly or partially exempt from the payment of land-revenue, a nazrana equal to two years' assessment of the land transferred.

1 The words "of this Act" were repealed by the Bombay General Clauses Act, 1886, (Bom. Act 3 of 1886). Schedule B.

The assessment shall be, in each case, ascertainable under the rules annexed to section 2 * * *;

Proviso.

Provided that, in the event of more than one succession or transfer occurring within twelve months, such occasional nazrana [1][on] succession or transfer shall not be leviabe more than once:

Proviso.

Provided also that it shall be at the option of the holder of the land to pay such occasional nazrana in one sum or by annual instalments not exceeding one-fourth of the whole nazrana per annum.

Occasional nazrana from whom to be levied.

Clause 2nd.—When, at the election of the holder, lands wholly or partially exempt from the payment of land-revenue shall have been made liable to occasional nazrana leviable under this section (section 5), instead of to an annual nazrana of one anna in each rupee of the assessment as provided by sections 2 and 4 * * *, the occasional nazrana shall be levied from each person obtaining possession of the land to which it is subject, whether by inheritance or transfer;

Person obtaining possession to give notice to Collector, etc.

and it shall be the duty of that person, within the period of one [2]* month after obtaining possession as aforesaid, to give notice in writing thereof to the Collector or other chief revenue-officer of the [3]* * * district in which the said lands are situate; and, in default of such notice, the person so obtaining possession shall forfeit, in addition to the nazrana leviable on the occasion, a sum equal to the amount thereof.

Holder of land paying occasional nazrana to give notice to Collector, etc., of transfer.

Clause 3rd.—It shall also be the duty of the holder of any land made subject under this section to the payment of occasional nazrana instead of to an annual nazrana of one anna in each rupee of the assessment, who shall transfer the same or any part thereof, to give to the Collector or chief revenue-officer of the * * *[3] district in which the lands so transferred are situate, notice in writing of such transfer, and of the nature and extent thereof, and of the person or persons to whom the same is made, within one [2]* month after such transfer has been made; and, in default of such notice, the person or persons so transferring as aforesaid shall forfeit a sum equal to the amount of the nazrana leviable on the occasion from the person to whom the transfer shall have been made.

Holders asserting right to exemption may claim trial of, and adjudication upon, their title according to Act XI of 1852.

6. *Claese 1st.*—When lands are held wholly or partially exempt from the payment of land-revenue, upon the title to which exemption there has not been any formal adjudication, the holders asserting a right to such exemption shall be at liberty, on the conditions hereinafter described, to claim a trial of, and adjudication upon, their title, according to Act XI of 1852, so far as the same is not altered, modified or supersed by, or inconsistent with, the provisions of this Act.

1 This word was substituted for the word "or" by fhe Amending Act, 1895 (16 of 1395).

2 The word "calender" was repealed by Bom. Act III of 1886.

3 The wordes "Collectorate or" were repealed by *ibid.*

S. 3.

Clause 2nd.—In the event of the title to such exemption being upon such inquiry demanded as last aforesaid duly established, the land shall not be heritable in any other manner, or to any further extent than the same may, on such inquiry as last aforesaid, be adjudged to be heritable; nor shall any adoption be recognised in any Civil Court [1]* * * or by any officer of Government, as creative of, or continuing, a title to claim from Government any exemption from assessment or any other privilege on account of the said lands; and no nazrana shall be received on account of Government from the holders of such lands.

Effect of exemption being established.

And whensoever the same lands or any part thereof, either by operation of law, or by devolution, assignment, gift, sale (whether such sale be judicial, public or private), devise, transfer deed or other instrument, or otherwise howsoever, pass to any person, not an heir by actual descent from the person to whose heirs the lands shall be declared heritable, or in default of such declaration, from the person who may establish his title to exemption as last aforesaid, then the said lands, or such part thereof as may have so passed to any person other than the said actual descendants, shall forthwith become and be liable to payment of annual land-revenue at the full assessment.

Clause 3rd.—In the event, upon such inquiry as aforesaid, of there being a failure by the holders to establish title to exemption from payment of land-revenue, the lands to which he has failed to establish such title shall forthwith become and be liable to payment of annual revenue at the full assessment.

Effect to exemption not being established.

7. *Clause 1st.*—When the holders of land, held wholly or partially exempt from the payment of land-revenue, demand a trial and adjudication of their title under the provisions of section 6 * *[2], they shall be required to furnish satisfactory security for the payment of the assessment of the land, in case of their failure to prove the title to exemption asserted by them; and, in default of their furnishing such satisfactory security, the full assessment of the land which is to be the subject of inquiry shall be levied pending the adjudication.

When holders demand trial and adjudication, security to be furnished.

Clause 2nd.—If the inquiry result in the establishment of the asserted title, the holder, or, in the event of his decease, his heir who succeeds to possession of the said land, shall be entitled to a refund of any assessment levied under the provisions of this section, pending such inquiry as aforesaid and to interest thereon at the rate of five per cent. per annum.

Refund of assessment with interest, if holder prove title.

Clause 3rd.—If the result of the inquiry be that the holder fail to prove his title, the full amount of land-revenue assessable on the lands from the date of the holder's demand for trial shall be levied from the said holder and his security, or either, any

Full amount of land-revenue to be paid, if holder fail to prove title.

1 The words "or Court of Law or Equity" were repealed by the Repealing Act, 1876 (12 of 1876).

2 The words "of this Act" were repealed by the Bombay General Act, 1886 (Bom. Act 3 of 1886), Schedule B.

sums levied pending adjudication as aforesaid being taken in account of the same.

Lands held on behalf of religious or charitable institutions.

8. *Clause 1st.*—Lands held wholly or partially exempt from the payment of land-revenue on behalf of religious or charitable institutions shall, if already formally adjudicated to be permanently so continuable, be so continued wholly or partially exempt from such payment of land-revenue as aforesaid, according to the terms of the adjudication.

Clause 2nd.—Lands held on behalf of religious or charitable institutions, either wholly or partially exempt from the payment of land-revenue, shall, if not already formally adjudicated to be permanently so continuable, be declared to be so wholly or partially exempt from such payment of land-revenue as aforesaid ; subject, however, to the payment of annual quit-rent equal to one-fourth of the assessment, which shall be ascertainable under the rules annexed to section 2 *[1].

Clause 3rd.—It is, however, hereby declared that lands held on behalf of religious or charitable institutions wholly or partially exempt from the payment of land-revenue, shall not be transferable from such institutions either by assignment, sale (whether such sale be judicial, public or private), gift, devise or otherwise howsoever, and no nazrana shall be leviable on account of such lands.

Clause 4th.—If the holders, managers or trustees of such lands shall refuse to accept the terms provided by clause 2 of this section, and shall demand a trial and adjudication of the title by which the land is held wholly or partially exempt from land-revenue, they shall be entitled to the same, on the conditions described in section 7 and subject to the liabilities provided in section 6 * *[1].

Power to invest officers with authority of Inam Commissioners and their assistants.

9. It shall be lawful for the Governor in Council to appoint officers to carry out the inquiries provided for in this Act in the districts in which Act XI of 1852 has the force of law, and to invest any officer so appointed with the authority conferred by the above Act on Inam Commissioners and Assistant Inam Commissioners.

Burden of proof in cases of inquiries under section 6

10. Whensoever any person, or persons, holding lands wholly or partially exempt from the payment of land-revenue, upon the title to which exemption there has not been any formal adjudication, shall (whether such alleged title be founded on grant or prescription, or on any other ground whatsoever) demand an inquiry under section 6 * *[1] into such title, the burden of proof of such title shall, in every instance, lie and be cast exclusively upon the person or persons holding, or claiming to hold, such lands so wholly or partially exempt from the payment of land-revenue as aforesaid, notwithstanding any existing usage, law, Regulation, Act or Statute in anywise to the contrary;

and it shall not be lawful for any Civil Court * * * *[2] to place the burden of proof upon Government, or upon the officer or

1. The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

2 The words "or Court of Law or Equity" were repealed by the Repealing Act, 1876 (12 of 1876).

officers representing Government, of a right to levy the ordinary land revenue upon the lands the subject of any such inquiry as aforesaid, and it shall in every instance be presumed, until the contrary is distinctly proved, that Government has the right io levy such ordinary land-revenue upon the lands the subject of any such inquiry as aforesaid.

It is, however, hereby further provided that nothing in this section contained shall disentitle Government, or its duly authorized officers, to produce and give evidence in rebuttal or disproof of the alleged title to exemption aforesaid, if it seem to Government, or its duly authorized officers, desirable or necessary to produce and give such evidence.

Collector or other officer may serve notice on holder of lands, asking whether or not he demands inquiry under section 6.

11. *Clause 1st.*—It shall be lawful for the Collector of each [1]* * district, or for any other officer of Government duly authorized in that behalf, whensoever such Collector or such other officer shall have reason to believe that lands are held wholly or partially exempt from payment of land-revenue, and that there has not been any formal adjudication upon the title to such exemption, to serve, or to cause to be served, a notice in writing, upon the holder of such lands, calling upon him to state whether or not he demands an inquiry under section 6 * * *[2] into such alleged title to exemption as aforesaid, instead of accepting and abiding by the terms described in section 2 * * *[3].

Language and form of notice.

Clause 2nd.—The notice shall be in the prevailing language of the [1]* * * district in which the lands are situate, and shall explain the nature of the alternatives offered on the part of Government.

On whom to be served.

Clause 3rd.—It shall be served upon the person holding, or registered in the Government land-registers as holding, the lands wholly or partially exempt from the land-revenue as aforesaid, if he be resident within the limits of the [4][district].

Service on non-resident persons.

Clause 4th.—If such persons as last aforesaid be not resident within the [5][district], the notice shall be served upon any person acting for the aforesaid in respect of the lands.

Service when several persons hold lands jointly.

Clause 5th.—When more persons than one hold jointly lands wholly or partially exempt from land-revenue, service of notice upon any one of them shall in every case be sufficient.

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1 The words "Collectorate or" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), *infra*.

2 The words "of this Act" were repealed by *ibid.*

3 The words "of the same" were repealed by *ibid.*

4 This word was substituted for the word "Collectorate" by the Amending Act, 1895 (16 of 1895).

5 This word was substituted for the word "Collectorate" by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

Clause 6th.—If the holder be known to reside in another [1][district] of the Bombay Presidency, and if there be no person acting for him in the [1][district] in which the lands are situate, the notice shall be sent to the Collector of such other [1][district] and served or caused to be served by him.

Service when holder known to reside in another district.

Clause 7th.—If there be not any person acting for the holder, and if he cannot be found, the notice shall be served upon some one of the actual occupants of the land (if any), and a copy of such notice shall be posted in the office of the chief native revenue-officer of the district, and in the chauri or most public place in the village where the lands are situate.

When no person acts for holder and holder cannot be found.

Clause 8th.—In the event of any dispute arising as to the sufficiency of the service of any notice or the notices under this section, the matter so in dispute shall be inquired into by the Collector of the district or other officer appointed for the purpose by the Governor in Council, and the decision of the Collector or such other officer as aforesaid shall be final, and not open to appeal or question in any Civil Court [2]* * * or elsewhere.

Inquiry when sufficiency of service of notice disputed.

Clause 9th.—If within two [3]* months after the service of such notice in manner aforesaid, the person holding the lands wholly or partially exempt from revenue as aforesaid, or his legally constituted agent shall not give an answer in writing to such notice, stating clearly in such answer that he demands an inquiry into the title to such exemption as aforesaid, he shall be deemed to have finally dispensed with such inquiry, and the lands, if held as aforesaid by an individual or individuals, shall be dealt with under sections 1 and 2 * *[4] and the rules annexed to said section 2, and, if held on behalf of religious or charitable institutions, shall be dealt with under clause 2 of section 8 * *[4].

Holder making no answer for two months, deemed to have dispensed with inquiry.

But, if no holder or owner can be discovered, the land shall be fully assessed to the public revenue, and shall continue to be so assessed unless some person shall, within the law of limitations, appear and prove his title to it.

If no holder or owner discovered, land to be fully assessed.

Clause 10th.—In the event of any dispute arising as to the sufficiency of any such answer as last aforesaid, or as to its meaning, or as to its having been given within the time required by this Act, the matter so in dispute shall be inquired into by the Collector or other officer appointed for the purpose by the Governor in

Inquiry when sufficiency of answer to notice disputed.

1 This word was substituted for the word "Collectorrate" by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

2 The words "or Court of Law or Equity" were repealed by the Repealing Act, 1876 (12 of 1876).

3 The word "calendar" was repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886).

4 The words "of this Act" were repealed by *ibid.*

Council, and the decision of the Collector or such other officer as aforesaid shall be final, and not open to appeal or question in any Civil Court * * *[1] or elsewhere.

After answer demanding inquiry, security to be taken.

Clause 11th.—Whensoever an answer in writing is given by any holder or his agent demanding an inquiry under section 6 or clause 4 of section 8 [2]* * * the Collector or other officer to whom such answer has been given shall take the security required in such cases by section 7 * * *[2], or, in default of the same being furnished, shall take such steps as shall be necessary for levying the full assessment of the land as required by the said section, and shall refer the holder's claim to the officer appointed by Government for the trial of such matters, who shall, with reasonable regard to the public convenience, and to the convenience of all persons interested or to be engaged in conducting such enquiry, fix a time at which it shall be proceeded with.

Claim to be referred to officer.
Time to be fixed.

Claimant allowed benefit of evidence to be found in Government records in custody of such public officer.

Clause 12th.—Any claimant demanding an inquiry into his title shall be allowed the benefit or any evidence to be found in the records of the present or any former Government, in custody of such public officer as is authorized by the British Government to have charge or custody of the same, and such public officer shall be bound to search for and to produce the same on application made to him.

12 [*Validation of prior notices, orders and settlements.*] *Rep. Act XVI of 1895.*

Appeal from proceedings of officers making adjustment to be made to Governor in Council.

13. When any adjustment of a claim or claims to total or partial exemption from land-revenue has been made by the Governor in Council, or any duly authorized officer of Government, under the second, fifth or eight sections [2]* * * [3]* * * * * * *, any appeal from or against the proceedings, orders or acts of the officers of Government engaged in making any such adjustment shall be made to the Governor in Council, or to such officer or officers as may be appointed by the Governor in Council to take cognizance of such appeals, and shall not be recognizable by any other authority.

14. [*Bar of suits against Government officers.*] *Rep. Act X of 1876.*

Quit-rents, nazranas, etc., how levied.

15. All quit-rents, nazranas, succession duties, transfer duties and forfeitures, payable under this Act, shall be levied in the manner in which ordinary land-revenue is now recoverable, and the claim of

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1 The words "or Court of Law or Equity" were repealed by the Repealing Act, 1876 (12 of 1876).

2 The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886).

3 The words "it shall not be competent for any Civil Court or Court of Law or Equity to question such adjustment; so far as the right of Government to levy from the holder or holders of the lands for the time being, the nazrana and the annual quit-rents mentioned in the said second, fifth, and eighth sections, or any of them, is concerned" were repealed by the Bombay Revenue Jurisdiction Act, 1876 (10 of 1876).

Government to such quit-rents and nazranas, and to all forfeitures provided by this Act, shall have precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment, decree, execution or attachment or otherwise howsoever, against the lands, or the holder or holders thereof.

16. (*A*) [*Number and gender.*] *Rep. Bom. Act III of 1886.*

Interpretation-clause.

(*B*) the word "lands" shall, for the purposes of this Act, be understood to include villages, portions of villages, shares of the revenues thereof, and landed estate of every description ;

(*C*) "political tenure" is tenure created from, or dependent upon, political considerations, the existence of which shall be determined by the Government :

(*D*) the phrase "lands held for service" shall include lands specially granted, or held or continued, nominally for the performance of service, whether that service be actually performed or not, and lands granted, held or continued, partly in consideration of past service, and partly for the performance of prospective service, but shall not include lands granted in consideration of past service only ; and it is to be understood that Government shall be competent to determine any question that may arise in giving effect to this Act, as to whether or not any lands are lands held for service :

(*E*) formal adjudication shall be held to mean final adjudication under any Regulation of the Bombay Government, or under Act XI of 1852, in cases to which the same were applicable, and in other cases final adjudication after inquiry by the British Government or some authorized officer thereof :

(*F*) for the purposes of this Act the word "holder" shall be taken to signify the person who, by himself, his tenants, sub-tenants or agents, is in possession of the land held wholly or partially exempt from landrevenue assessment, and shall include a mortgagee in possession as aforesaid :

(*G*) the word "transfer" shall, for the purposes of this Act, be taken to mean the permanent alienation of land by assignment, gift, sale, deed or other instrument, or otherwise howsoever, and also mortgage of the same under which possession shall have passed or is to pass to the mortgagee.

Inam.—The mere use of wide expressions such as the grant of land "for ever" or "from generation to generation" does not prevent the grant being one of saranjam. Nor again is the use of the word "inam" instead of "saranjam" conclusive. It is for Govt. to determine in a particular case whether a grant is one of saranjam only (*Sayajirao Gaikwar v. Madhavrao Raghunathrao*, 53 Bom. 123).

Inam Dharmadaya.—Where the grant made was *Inam Dharmadaya* and was to be hereditary, it was *held* that the signification of such a grant is that it was made on grounds of religion and political grounds. The mere fact that in occasional correspondence the grant is referred to as "*jagir*" or "*saranjam*" *i.e.*, political, cannot derogate from the effect of the language of the grant itself. The question whether the tenure was political was one which was for determination by the Government under the provisions of the interpretation of this section and that, by treating the title as one to which the Act applied, the Govt. must determine that the tenure was not political (*The Maharaja of Kolhapur v. Shri Bala Maharaj*, 48 Bom. 1).

THE SUMMARY SETTLEMENT ACT, 1863
Bom. Act No. VII of 1863.

[*2nd July 1863.*

An Act for the summary settlement of claims to exemption from the payment of Government land-revenue, and for regulating the terms upon which such exemption shall be recognized in future, in those parts of the Bombay Presidency which are not subject to the operation of Act XI of 1852 of the Council of India.

Preamble.

WHEREAS in districts which are not subject to the operation of Act XI of 1852 it is expedient to provide, with certain exceptions, for the summary settlement of all claims to hold land, wholly or partially exempt from payment of land-revenue, and for regulating the terms on which such exemption shall be recognized in future so as to preclude all doubt in regard to the relative rights of Government and the holders of such lands, and further to make provision for the exceptions aforesaid; It is hereby enacted:—

Land granted to a mosque.—Certain land which was granted to a mosque was continued at the time of the Survey Settlement in 1879 on payment to Government of an annual quit-rent, under a Sanad which ran as follows:—" * * * By Act VII of 1863 of the Bombay Legislative Council * * * is hereby declared that the said land, subject (in addition of Salami or other payments which may have hitherto been levied) to the payment to Government of an annual quit-rent of Rs. 17-8-0 (seventeen and annas eight only) shall be continued for ever by the British Government as the endowment property of the jumma Musjid at Amod * * * without increase of the said quit-rent, but on the condition that the managers thereof shall continue loyal and faithful subjects of the British Government." Nearly sixty years before suit, the land was alienated (it was assumed, unlawfully) by the manager of the mosque to a stranger, from whom it was purchased by the plaintiff in 1906. Since 1912, the Government levied full assessment on the land. The plaintiff having sued to recover back the amount of the extra assessment levied from him, it was *held* that the provisions of this Act, which must be taken to govern the settlement in question, and the terms of the Sanad pointed to the conclusion that the condition that the land must continue to be the property of the mosque in order that the holder for the time being might have the benefit of the exemption from assessment allowed by the Sanad could not be implied; and that the Government did not get any right under the Sanad to levy the full assessment even when the property ceased to be the endowment property otherwise than by a lawful alienation (*Shankarlal v. Secretary of State*, 21 Bom. L. R. 668; 43 Bom. 583).

1. [*Repeal.*] *Rep. Act XII of 1873.*

Power to authorize and guarantee continuance, in perpetuity, of land in certain districts to holders on terms and conditions agreed to.

2. *Clause 1st.*—When the holders of lands in any of the said districts (except as is excepted in clause 2 of this section), held either wholly or partially exempt from the payment of Government land-revenue, shall consent to the terms and conditions hereinafter described, in preference to being obliged to prove their title to the exemption enjoyed by them, it shall be lawful for the Governor in Council to finally autho-

rize and gurantee by sanad the continuance, in perpetuity, of the said land to the said holders, their heirs and assigns upon the said terms, and subject to the said conditions.

Clause 2nd.—The excepted cases to which the authority of adjustment and guarantee vested in the Governor in Council by this provision shall not extend are as follows :—

1st.—lands held under treaty :

2nd.—lands granted or held as saranjam, or on a similar political tenure :

3rd.—lands held for service :

4th.—lands already formally adjudicated to be not continuable hereditarily.

Future tenure of lands included in exceptions.

Clause 3rd.—1st.—Lands held under treaty shall continue to be held according to the terms of such treaty.

2nd.—Lands granted or held as saranjam, or on similar political tenure, shall be resumable or continuable in such manner, and on such terms, as Government, on political considerations, may, from time to time, see fit to determine.

3rd.—Lands held for service shall be resumable or continuable under such general rules as Government may think proper, from time to time, to lay down.

4th.—Lands already formally adjudicated to be not continuable hereditarily shall continue to be held according to the decision passed in each case.

Clause 4th.—[*Rep Act X of 1876*].

"**Lands held for service means lands declared by Government,** under section 32 (*d*) to be so held, though the plaintiff may deny that the lands in respect of which he sues are service lands. The laying down of general rules by Government as to resumption of service lands under Art, 3, cl. 3, is not a condittion precedent to their protection from suits and actions in respect of such land (*Premshankar v. Government of Bombay*, 8 Bom. H. C. R, A. C. J. 195).

The issue of a sanad so seriously affects the title or, at any rate, the enjoyment of the property, as to give to the real owner a right to sue for a declaration of title against a person whose name has been erroneously entered in the sanad even though the real owner may be in undisturbed possession of the property (*Kaka v. Hussnalli*, P. J. 1880, p. 60).

Lands exempt from official obligation.—Lands with respect to which a summary settlement under this Act has been effected are wholly exempt from official obligation (*Radhabai v. Anantrav*, 9 Bom. 198 ; *Vasanji v. Lalla*, 9 Bom. 285).

Validity of Sanad.—What is contemplated under this section is the issue of a sanad as the final authorization of the settlement, and where there has been such an issue, the mere fact that there are no signatures of the inamdars on the sanad does not affect the fact that sanads have been issued and have been acted upon (*Secretary of State v. Indoorai Bhaurai*, 50 Bom. 698).

Saramjam.—The Saramjamdar under a Saramjam held on terms of the nature mentioned in rule 10 of Schedule B to Act II of 1882 or cl. 3 (2) of this

section has not an absolute estate (*Madhavrao v. Imam Bapu*, 50 Bom. 195). (45 Bom. 694 dissented from).

Lands to which Act does not apply.

3. This Act shall not apply to lands which, in villages held on taluqdari, bhagdari, narwadari, khoti or other similar tenure, may have been partially or wholly alienated by the present or former holders of the said villages or by any one of them; and, in the event of the management of such villages being at any time resumed by Government, all land so alienated shall revert to Government unaffected by the acts of the holders or any of them, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals.

4, 5. [*Commutation of cesses &c., and of occasional assessments.*] *Rep. (locally) Bom. Act V of 1879.*

Lands continued under section 2, clause 1, to be heritable and transferable property of holders, subject to fixed annual payment to Government.

6. When the Governor in Council shall, under clause 1 of section 2, finally auhorize and guarantee the continuance, in perpetuity, to the holders, their heirs and assigns, of land wholly or partially exempt from the ordinary payment of annual land revenue, the said lands shall (subject to the enactments contained in section 7 * * * [1] be the heritable and transferable property of the said holders, their heirs and assigns without restriction as to adoption, collateral succession or transfer; and such lands shall thenceforth be continued in perpetuity, subject to a fixed annual payment to Government, calculated at the rate to two annas for each rupee of the assessment, which assessment shall be ascertainable under the following rules:

Rule for ascertaining amount of assessment.

Rule 1.—The assessment of lands other than those specified in rule 2 shall, with respect to lands which have rlready been assessed by the revenue-survey now in progress, be the assessment already imposed upon those lands by that revenue-survey, and, with respect to lands which have not yet been assessed by that revenue-survey, shall be such asessment as shall be agreed on by the Collector or settling officer and the owner or holder of the lands, which shall be final: and, in failure of their agreement, it shall be the existing rental of the lands until the reveune-survey now in progress shall have placed a new assessment thereon, after which the assessment so placed by the said revenue-survey shall be understood to be the assessment.

And it shall be lawful for the duly authorized officers of Government employed in the said revenue-survey to enter upon all lands not heretofore assessed by such revenue-survey, for the purpose of fixing and making such assessment thereof.

Rule 2nd.—The assessment of lands of such an exeptional character as not to be assessable under the revenue-survey rules shall be in the discretion of the Revenue officers of Government, which discretion shall be guided, so far as may be, by the rate at which similar land in the same district belonging to Government is let, due regard being had by the said Revenue-officers to all equitable considerations affecting such lands.

1 The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886). Schedule B.

Shares of the revenues of villages (such as amals) shall be assessed for the purposes of this Act at the value thereof, calculated at the average shown by such accounts of actual realizations by the holders as are forthcoming for the ten years immediately preceding the promulgation of these rules.

Rule 3rd.—Lands for which a judi, salami or other quit-rent or land-tax, under whatever denomination, is already paid to Government or may be payable to Government under the sections last preceding instead of being liable to only one-eighth of the assessment, shall, in addition to the annual amount of such judi, salami, quit-rent or other tax aforesaid, be liable to a further annual quit-rent equal to one-eighth of the sum by which the annual or average annual amount of such judi, salami or other quit-rent or tax aforesaid may fall short of the assesement.

Rule 4.—Quit-rent imposed under this section (section 6) shall be fixed in perpetuity, and shall not be liable to increase or decrease on any new assessment, save in so far as is above in rule 1 of this section (section 6) provided to the contrary, in the case of lands which have not been already assessed by the revenue-survey now in progress.

Rule 5 —The whole of the exempt lands found in the possession of each holder, even if in excess of the original alienation, shall be continued according to the provisions of the section (section 6) and the rules thereunto annexed, and subject to the enactments contained in section 7.

Settlement under section 6, as regards right to levy annual quit-rent binding on rightful owner, as well as landholder.

7. Any settlement made by the Governor in Council with the holder of land held wholly or partially exempt from the payment of land-revenue in accordance with section 6 * * * [a] and the rules annexed to the said section, shall, so far as the right of Government to levy the annual quit-rent mentioned in the said section is concerned, not only be binding upon such holder, his heirs and assigns, but also on the rightful owner, his heirs and assigns, whosoever such rightful owner may be:

Saving of rights and remedies of rightful owner, his heirs and assigns, against holders, his heirs or assigns.

Provided always that the said rightful owner, his heirs and assigns, shall not by this Act, or anything therein contained, be deprived of any rights or remedies [b] * * to which he or they would be entitled against the said holder, his heirs or assigns, for the recovery of the said lands or any part thereof, if this Act had not been passed; and in the event of the rightful owner. his heirs or assigns, recovering the said lands or any part thereof, from the said holder, his heirs or assigns, any declaration, guarantee or settlement made by the Governor in Council under or in accordance with sections 2 and 6 * * * [a], and the rules annexed to the said section 6, with respect to the said lands, while the same were in the possession of the said holder, shall accrue to the benefit of the said rightful owner, his heirs and assigns.

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[a] The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

[b] The words "either at law or in equity" were repealed by the Repealing Act, 1876 (12 of 1876).

Payment by jagirdar.—The plaintiff was the jagirdar of a village in which the defendant held certain land as inamdar on the annual payment of a certain quit-rent. The plaintiff's jaghir was, in point of time, subsequent to the defendant's inam. Ever since the time of the jaghir, the ancestors of the defendant (and after them the defendant himself) paid the quit-rent to the ancesters of the plaintiff, and after them, to the plaintiff himself. In 1869 the summary settlement was introduced into the village under this Act. Under s. 9 of this Act, a notice was served upon the plaintiff by the Collector in respect of the village, and he accepted the settlement provided in ss. 2 and 6 of this Act. Government, accordingly, granted the village to him at the summary settlement of two annnas in the rupee of the full assessment. No notice was served upon the defendant under this Act, nor did the plaintiff inform the defendant of the notice which the plaintiff had received in respect of the village. The certificate issued by the Collector to the plaintiff, previously to the grant of the sanad regarding the settlement, contained the following passage:—"Before the villages (Vesu and Sanya) were granted in jaghir, lands were held by peta-inamdars over which the jaghirdar has no right. They are entered in the sanad only for the purpose of receiving the settlement and paying it over to the Sarkar." In 1877 the plaintiff sued the defendent for the amount of three years' summary settlement which he (plaintiff) had paid to Government on account of the defendant's land. *Held*, that the defendant was not liable to pay, whether regarded as an independant inamdar holding directly under Government or as a tenant of the plaintiff (*Kamaludin Husen Khan v. Partap Mota*, 6 Bom. 244).

Under the Bombay Summary Settlement Act (Bombay Act VII of 1863), a settlement in respect of the village of Mankol was effected in 1864 between the Government and the plaintiffs, who were the inamdars, and a sanad was granted to the plaintiffs, under the terms of which a certain yearly quit-rent was payable by them to Government in respect of the said village. At the time of the settlement the plaintiffs believed that they were the superior holders of all the lands in the village, including certain wanta lands. It subsequently appeared, however, that the wanta lands were the property of certain girassias, who were in possession as owners, and that the plaintiffs were not the holders of these lands within the meaning of s. 32 of Bombay Act VII of 1863. The Government, however, required the plaintiffs to pay the entire quit-rent of the village for the Samvat years 1939-1940, as fixed by the Sanad. The plaintiffs paid under protect and brought this suit to recover the amount (Rs. 400-12-6) paid in respect of the wanta lands. *Held*, that the plaintiffs were entitled to a refund of the quit-rent paid in respect of the wanta lands. A settlement under Bombay Act VII of 1863 is an agreement effected by proposal and acceptance (see s. 2), and is subject to the ordinary rules applicable to contracts. Here both parties entered into the settlement in the belief that the plaintiffs were the superior holders of all the lands in the village. There was therefore a common mistake as to a matter of fact which both parties must have regarded at the time as essential to the agreement, it being made so by the Act itself under which they assumed to contract. Such a mistake under s. 20 of the Contract Act (IX of 1872) renders the agreement void. The settlement as to the wanta lands might be treated as distinct from that which applied to the remaining lands of the village, the former being void, and the plaintiffs being therefore entitled to a refund of the quit-rent paid in respect of such

lands under s. 65 of the Contract Act. A sanad issued under Bombay Act VII of 1863 merely declares what by s. 6 of the Act is stated to be the effect of the settlement to which both the Government and the holders of the land have consented; but it is by virtue of the settlement itself as provided by the Act that Government are entitled to demand payment of such rent (*Secretary of State for India v. Sheth Jeshinghbai Hathisang*, 17 Bom. 407).

Revocation of Sanad.—Where a sanad by way of summary settlement of land revenue has been granted by Government under this Act, Government cannot reform or set it aside without the assent of all parties interested therein. To do so would be an assumption by Government of the function of a Civil Court. A Civil Court cannot, on the ground that Goverment has, by mistake, granted such a sanad to a person not the owner of the land, reform or set aside the sanad. This section renders the quit-rent, fixed by the Sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent, fixed by the sanad, payable to Government; and such grantee will be declared to have taken the Sanad as a trustee for the rightful owner. *Quære*: Whether a Civil Court can give relief either by reforming or cancelling such sanads against mistakes, other than those relating to ownership, which may be found to exist in the Sanads (*Dalsang Bhausang v. Collector of Kaira*, 4 Bom. 367.)

Bar of suit.—Where certain temple lands in the possession of the temple servants (defendants) were described as their private property (jat-inam) in a Sanad issued by Government in 1865 under the provisions of this Act, it was held that under the proviso to this section the Sanad granted to the defendants [the temple servants] did not negative the right of the plaintiff to establish if he could, that the lands were really Devasthan lands and not the private property of the defendants (*Vithal Dhondji Deeli v. Suryaji Ramchandra Naik*, 24 Bom. L. R. 902).

Cause of action.—The temple lands in the possession of the temple servants were recorded in the Sanad under this section as their private lands [jat-inam] and one of the servants alienated some portion of the lands in 1903 but the vendee did not take possession till 1916. Plaintiff sued on behalf of the managing Committee of Gaukars for a declaration that the lands belongad to the Devasthan. *Held*, that the cause of action arose within the meaning of art. 120 only when the defendant attempted to alienate the lands and not by the mere grant of Sanad. But the article did not apply in the case as plaintiff claimed possession (*Ibid*).

On proof of adjudication of title, holder exempt from quit-rent and from further inquiry into title.

8. Whenever a holder of alienated lands, on being called upon, under the rules to be hereinafter enacted, to declare if he consents to the quit-rent described in section 6, shall plead that his title has already been formally adjudicated, then on proof of such adjudication, and provided the case do not fall under case 4 of clause 2, section 2, the holder shall be exempt both from liability to the said quit-rent and from any further inquiry into title:

Provided, however, that, if the said holder, for the purpose of enlarging the scope of the former adjudication, or for other reason, shall apply to have his holding brought under the settlement described in

the second and following sections [1] * * he shall be permitted to do so: and the lands shall thenceforth be held with all the privileges conferred by the said settlement and subject to all its conditions as if no previous adjudication had been made.

Collector may serve notice on holder calling on him to state whether he is willing to accept settlement or demands formal inquiry into title.

9. *Clause 1st.*—In order to ascertain whether a holder of lands, wholly or partially exempt from payment of land revenue, desires to accept the settlement described in sections 6 and 7 * * 1, it shall be lawful for the Collector of each 2 * * * district, or for any other officer duly authorized by him, to serve or to cause to be served a notice in writing upon the holder of such lands, calling upon him to state whether he is willing to accept and abide by the settlement aforesaid, or whether he demands formal inquiry into his title.

Language and form of notice.

Clause 2nd.—The notice shall be in the prevailing language of the 2 * * * district in which the lands are situate and shall explain the nature of the alternatives offered on the part of Government.

on whom to be served.

Clause 3rd.—It shall be served upon the person holding, or registered in the Government land-registers as holding, the lands wholly or partially exempt from the land-revenue as aforesaid, if he be resident within the limits of the [3] [district].

Service when persons not resident within district.

Clause 4th.—If such persons as last aforesaid be not resident within the [3] [district] the notice shall be served upon any person acting for the aforesaid in respect of the lands.

Service when several persons hold lands jointly.

Clause 5th.—When more persons than one hold jointly lands wholly or partially exempt from land-revenue, service of notice upon any one of them shall in every case be sufficient.

Service when holder known to reside in other district.

Clause 6th.—If the holder to be known to reside in another [3] [district] of the Bombay Presidency, and if there be no person acting for him in the [3] [district] in which the lands are situate, the notice shall be sent to the Collector of such other [3][district] and served or caused to be served by him.

Service when no person acts for holder who cannot be found.

Clause 7th.—If there be not any person acting for the holder, and if he cannot be found, the notice shall be served upon some one of the actual occupants of the land (if any) and a copy of such notice shall be posted in the office of the Collector and of the chief Revenue-officer of the taluqa or other sub-division of the [3] [district] and in the chauri or most public place, in the village where the lands are situate.

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1 The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

2 The words "collectorate or" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886).

3 The word "district" was substituted for the word "collectorate" by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886).

Clause 8th.—If within six [a] * * * months after the service of such notice in manner aforesaid the person holding the lands wholly or partially exempt from revenue as aforesaid, or his legally constituted agent, shall not give an answer in writing to such notice, stating clearly in such answer that he declines the settlement, and demands an inquiry into the title to such exemption as aforesaid, he shall be deemed to have finally dispensed with such inquiry and the lands shall be dealt with under sections 2 and 6 [b] * * * and the rules annexed to said section 6.

Holder making no answer for six months, deemed to have dispensed with inquiry.

If no holder or owner can be discovered, the land shall be fully assessed to the public revenue, and shall continue to be so assessed unless some person shall, within the period allowed by the law of limitations, appear and prove his title to it.

If no holder or owner discovered, land to be fully assessed.

Clause 9th.—In the event of any dispute arising as to the sufficiency of the service of any notice or notices under this section, or of any such reply as last aforesaid, or as to its meaning, or as to its having been given within the time required by this Act, the matter so in dispute shall be inquired into by the officer appointed under section 12, and the decision of such officer as aforesaid shall be final, and not open to appeal or question in any Civil Court [c] * * * or elsewhere,

When sufficiency of service of notice or of reply thereto disputed.

Except that in any case in which the notice has been served by the officer making an inquiry under this section, an appeal against his decision as to the sufficiency of such notice shall lie within thirty days to the [d] * * * Commissioner [d] * * * whose decision shall be final.

10. *Clause 1st.*—In the evient of the holder upon whom notice has been served as last aforesaid claiming inquiry, such inquiry shall be conducted under the rules and according to the principles hereinafter enacted.

Conduct of inquiry, when claimed.

Clause 2nd.—The establishment of a title to exemption shall not preclude the levy of full assessment on all land ascertained to be held in excess of that to which a title is established, and such excess shall forthwith be fully assessed.

Land held in excess of that to which title is established to be fully assessed.

Clause 3rd.—In the event, upon such inquiry as aforesaid, of there being a failure by the holder to establish a title to exemption from payment of land-revenue, the lands, to which he has failed to

Effect of exemption not being established.

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[a] The word "calender" was repealed by the Bombay General Clauses Act, 1986 (Bom. Act 3 of 1886) Sch. B.

[b] Vide note No. 1 on s. 7. ante.

[c] The words "or Court of Law or Equity" were repealed by the Repealing Act, 1876 (12 of 1876).

[d] The word "Revenue" before "Commissioner" and the words "of the Division" after "Commissioner" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886).

establish such title shall forthwith become and be liable to payment of annual revenue at the full assessment.

When holders demand trial and adjudication, deposits to be made and security given.

11. *Clause 1st.*—When the holders of lands, held wholly or partially exempt from the payment of land-revenue, demand a trial and adjudication of their title under the provisions of section 10 [*a*] * * *, they shall be required to deposit forthwith in the Collector's treasury, or the tresury of the taluqa in which the lands are situated, a sum equal to one-eighth part of the annual assessment of the land, ascertainable according to rules 1 and 2 of section 6 [*a*] * * * and thereafter to continue to pay annually an eighth of the said assessment as it becomes due from the date of such demand for trial until the date of such adjudication, and to furnish satisfactory security for the payment of the remaining seven-eighths thereof, in case of their failure to prove the title to exemption asserted by them, and, in default of their making such deposits and furnishing such satisfactory security, the full assessment of the land, which is to be the subject of inquiry, shall be levied, pending the adjudication.

Refund of deposits, and assessment, with interest, if holder prove title.

Clause 2nd.—If the inquiry result in the establishment of the asserted title, the holder, or, in the event of his decease, his heir who succeeds to possession of the said land, shall be entitled to a refund of all deposits made and assessment levied under the provisions of this section pending such inquiry as aforesaid, and to interest thereon at the rate of five per cent. per annum.

Full amount of land-revenue levied if holder fail to prove title.

Clause 3rd.—If the result of the inquiry be that the holder fail to prove his title, the full amount of land-revenue assessable on the lands from the date of the holder's demand for trial shall be levied from the said holder and his security, or from either of them, any sums deposited or levied pending adjudication as aforesaid being taken in account of the same.

Inquiry by whom to be held.

12. When an inquiry is claimed under the provisions of section 10 * * * [*a*], such inquiry shall be held before the Collector * * * [*b*]or, when specially authorized by Government on that behalf, by any Assistant or Deputy Collector.

Service lands.—Successive members of a Hindu family held the office of Desai under native rulers from the 17th century, and from time to time received grants of villages. The services of the Desais as revenue collectors were not required under British rule. In 1862, after an investigation, the lands were summarily settled in the Desai upon payment of a quit-rent. Settlements so made were expressly validated by this section. In 1906 the last Desai died with out coparceners, having disposed of the lands by will:—*Held*, that the High Court rightly held that the lands were alienable and passed under the will (*Sundrabai v. Collector of Belgaon*, 21 Bom. L. R. 1148).

[*a*] Vide note 1 on s. 7 ante.

[*b*] The words "or Sub-Collector" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886).

13. When any claimant shall demand an inquiry as aforesaid-he shall, within two months of notifying his intention to that effect, furnish the deposit and security required in such cases by section 11 * * * [a], and forward to the office of the Collector of the district a written statement, setting forth in detail the grounds on which the claim to exemption is founded, accompanied by copies of the original documents (if any) which he wishes to produce in support of the claim, and a list of such other evidence, whether written or oral, as he may desire to have exhibited, and no further evidence beyond such documents and witnessess as may be specifically named in the said statement or its accompaniments shall be admitted in support of such claim without reason assigned to the satisfaction of the trying authority.

Steps to be taken by claimant demanding inquiry.

Clause 2nd.—If any claimant shall fail, within the time specified, to comply with the requirements of clause 1 of this section, except from unavoidable causes, to be proved to the satisfaction of the Collector of the district, his claim shall be finally disallowed, and his land shall be fully assessed forthwith.

On failure to comply with requirements of Clause 2, claim to be disallowed.

Clause 3rd.—On receipt of the said statement and accompaniments, the Collector shall file the papers for trial before himself or forward them for trial to any officer duly authorised under the section last preceding to hold such inquiry; and the trying officer shall, with reasonable regard to the public convenience and that of all persons interested, fix a time at which the trial shall be proceeded with.

Collector to file papers for trial by himself, or forward them to other officer.

Time of trial to be fixed

Due notice of the date fixed shall be given to the claimant, who shall be invited to appear in person or by duly constituted agent, with all original documents, on the day appointed for hearing.

Notice thereof to claimant.

14. Whensoever any claimant demands inquiry as aforesaid, the burden of proof of title shall, in every instance, lie and be cast exclusively upon the claimant, and it shall not be lawful for any Civil Court * * * [1] to place the burden of proof upon Government, or upon the officer or officers representing Government, of a right to levy the ordinary land-revenue upon the lands the subject of any such inquiry as aforesaid;

Burden of Proof of title on claimant demanding inquiry.

and it shall in every instance be presumed, until the contrary is distinctly proved, that Government has the right to levy such ordinary land-revenue upon the lands the subject of any such inquiry as aforesaid.

It is, however, hereby further provided that nothing in this section contained shall disentitle Government or its duly authorised officers to produce and give evidence in rebuttal or disproof of the alleged title to exemption aforesaid, if it seem to Government or its duly authorised officers desirable or necessary to produce and give such evidence.

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[a] Vide note 1 on s. 7 ante.

[1] Vide note 1 on s. 7 *ante*.

15. Any claimant demanding an inquiry into his title shall be allowed the benefit of any evidence to be found in the records of the present or any former Government, in custody of such public officer as is authorised by the British Government to have charge of the same, and such public officer shall be bound to search for, and to produce the same on application made to him.

Claimant allowed benefit of evidence in Government records in custody of public officer.

16. The trying authority shall not be bound to admit any sanad as evidence in support of a claim to exemption, which shall not bear an endorsement as having been registered by a Collector before the expiration of one year from the date on which [1] section 42 of Regulation XVII of the Bombay Code of 1827 cam into force, *i. e.*, the first September of that year.

Trying authority not bound to admit in evidence certain sunnads.

Decision of Government that land was personal inam not binding on Civil Court.—Where in a suit by a plaintiff to recover a share in certain land which he had purchased in execution of a decree against the defendant, the defendant pleaded that the land was the endowment of Musjid and not liable for his private debts and the Lower Appellate Court found that as Government had decided that the land was not held for service but was the personal Inam of the defendant, *held*, that after the decision of Government that it was not held for service within the meaning of those words in section 1, and which was binding on every one under section 16, it still remained to be determined whether the lands were the personal Inam of the defendant or held for the service of the mosque as to which the decision of the Government was not binding on the Civil Court (*Shaikh Husein v. Ramji*, P. J. 1893, p. 328).

17. *Clause 1st.*—For the conduct of the inquiry, the rules of the [2] Code of Civil Procedure in regard to the service of summons on, and the attendance and examination of, witnesses, whether called by the claimant or on the part of Government, shall be followed, except in so far as may otherwise be specified in this Act;

Code of Civil procedure applied to service of summons on, and attendance and examination of, witnesses.

and the office of the Collector or other trying authority shall, for the purpose of this inquiry, be constituted a Court of civil judicature as contemplated by the said Code.

Office of Collector a Civil Court.

18. The Collector or other trying authority shall keep a record of his proceedings in the language generally spoken in the zila.

Language of record of proceedings.

He shall also record in English his decision, with a full statement of the grounds on which it is passed; and a translation of such decision and statement shall, at the close of the inquiry, be given to the claimant or party attending on his behalf.

Translation of decision to be given to claimant.

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[1] Sec. 42 of Bom. Reg. 17 of 1827 was repealed by s. 1 of this Act.

[2] See now the Code of Civil Procedure (Act V of 1908.)

Clause 2nd.—Except in regard to the translation last aforesaid, and to the statement with accompaniments described in section 13, clause 1, the provissons of [1] [the Court-fees Act, 1870], shall be held applicable to all petitions or other papers presented by or on behalf of the claimant, and the cost of all stamps so required shall be borne wholly by the said claimant.

Court fees Act applied.

19. *Clause 1st.*—If the decision of the Collector or trying authority be in favour of the continuance of the exemption or any portion thereof, such exemption shall be admitted in terms of the decision, which shall be final.

Decision in favour of continuance of exemption to be final.

Clause 2nd.—If the decision be against the right of the claimant to the total or partial exemption claimed, the claimant shall be at liberty to appeal to the Zila Court within ninety days from the date of that decision: provided that the annual value of the exemption decided against be rupees fifty or upwards and that proceedings under section 10, clause 3, shall not in any case be stayed pending the result of such appeal.

Appeal by claimant from adverse decision.

Clause 3rd.—If the result of the appeal be in favour of the claim, the amount which may have been levied under section 10, clause 3, shall be refunded.

Refund if appeal succeed.

Clause 4th.—If any evidence, oral or documentary, not produced before the Collector or trying authority, be admitted in appeal without the claimant showing sufficient cause why such evidence was not previously produced, and proving that such cause was assigned to the Collector, or adducing good reason for its not having been so assigned, the said claimant shall forfeit, even if the appeal be successful, all sums which may have been levied from him under section 10.

Forfeiture by claimant producing in appeal new evidence not produced at original trial.

Clause 5th.—The provisions of [1] [the Court-fees Act, 1870], shall be applicable to all proceedings under appeal.

Court-fees Act applied.

Clause 6th.—The decision of the Collector or trying authority shall not be liable to be set aside on appeal on account of want of form or on any other technical ground.

Bar to setting aside Collector's decision.

20. *Clause 1st.*—When exemption is claimed under a sanad or other writing granted by the present or any former Government, or by any of their officers possessing authority to grant the same, exemption shall be admitted in terms of the grant, unless evidence be forthcoming to show that the terms of such grant did not take effect or were subsequently modified, cancelled or revoked by competent authority.

When exemption claimed under sanad etc., may be admitted in terms of grant.

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[1] Substituted for the words "the Stamp Act" by the Repealing and Amending Act, 1895 (16 of 1895).

Clause 2nd.—The public officers specified in the schedule are recognized to have possessed authority under former Governments to grant or revoke sanads or other writings exempting land either wholly or partially from the payment of land revenue.

Officers recognized as authorised to grant or revoke sanads, etc.

Admission of claims to exemption in virtue of prescription.

21. Claims to exemption from payment of land-revenue, in virtue of prescription, shall be admitted under the following circumstances:—

Clause 1st.—When land situated in districts ceded by or conquered from the Peshwa after 1803 is proved to have been held by any person, his heirs or others deriving right from him, wholly or partially exempt from payment of land-revenue, under a tenure recognized by the custom of the country, for sixty years in succession next preceding the date of this Act; or when land situated in any other district is proved to have been held in like manner for thirty years as aforesaid.

Clause 2nd.—Provided, however, that, whenever exemption has been enjoyed under a sanad or other writing, no title by prescription shall be admitted unless the full period required under the last preceding clause shall have lapsed subsequent to the expiry of the title under the sanad or writing aforesaid.

Clause 3rd.—And that in no case shall a title to prescription be admitted in respect to Government lands alienated since the British Government obtained possession of the country, and without its permission.

Clause 4th.—And further, that the exemption during the period of sixty and thirty years, respectively, as detailed in clause 1 of this section, be proved to have been enjoyed in strict conformity with the conditions of the recognised tenure under which it is claimed.

Conditions on which admitted prescriptive title to continue to be recognized.

22. A prescriptive title admitted under the preceding section shall continue to be recognized only in conformity with the conditions of the tenure under which the exemption has been hitherto enjoyed.

Prescriptive title when not admitted.

23. A prescriptive title under section 21 shall not be admitted in respect to any land held for service, or on a tenure implying an obligation of service, whether such service be performed or not.

Sanad, etc., prescriptive of enjoyment not sufficient title in so far as exemption annulled by order issued by present or former Government, etc.

24. *Clause 1st.*—A sanad or other writing under section 20, of prescriptive enjoyment under a recognized tenure as described in section 21, shall not be considered a sufficient title, in so far as the exemption has been wholly or partially, annulled by an order issued by the present or any former Government, or by any public officer under a former Government of full lands sufficient authority to grant deeds exempting lands from the payment of public revenue, or so far as the land has been assessed under an order, not subsequently realled, issued by any of the said public officers and such assessment has been realized.

Deed or enjoyment under recognised tenure when not sufficient title.

Clause 2nd.—Nor shall such a deed or writing, or such enjoyment under a recognized tenure, be considered as a sufficient title, if the land has been subsequently assessed for the period of twelve (12) ysars like other ladd of the same description enjoying no

exemption, and the assessment has been realized but without prejudice to any suit filed in support of the title to exemption before the completion of the said period.

Title when affected only to extent of assessment made and realized.

Clause 3rd.—And, where the assessment so levied for twelve (12) years has not been to the extent of that imposed on land of the same description enjoying no exemption, such assessment shall effect the title only to the extent of the assessment so made and realized.

Adoptions when not admitted.

25. Adoptions unrecognized by the present or former Government or by one of their public officers possessed of competent authority shall be admitted in any cases in which a claim to exemption is founded on a grant limiting succession to lineal descent.

Application of sections 20 to 25.

26. The provisions of sections 20 to 25 shall be of general application in all cases in which inquiry may have to be made, and shall not be confined to cases in which inquiry may have been demanded under section 10 * * * [1].

27. [*Pending proceedings.*] *Rep. Act XII of 1873.*

Appeal from proceedings of officers making settlement.

28. When any settlement of a claim or claims to total or partial exemption from land-revenue has been made by the Governor in Council, or any duly authorised officer of Government under this Act, * * *[*a*], any appeal from or against the proceedings, orders or acts of the officers of Government engaged in making any such settlement shall be made to the Governor in Council or to such officer or officers as may be appointed by the Governor in Council to take cognizance of such appeals, and shall not be cognizable by any other authority.

Jurisdiction-Settlement.—If lands are included by mistake, a Court can question a settlement. Sec. 28 Bombay Act VII of 1863 excludes any questions arising between Government and the holders (*Shet Jesangbhai v. The Secretary of State for India in Council*, P. J. 1889, p. 82).

29. [*Bar of suits against Government officers.*] *Rep. Act X of 1876.*

Quit-rents how levied.

30. All quit-rents payable under this Act shall be levied in the manner in which ordinary land-revenue is recoverable, and the claim of Government to such quite-rents shall have precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment, decree, execution or attachment, or otherwise, howsoever against the lands or the holder or holders thereof.

Power to enter landt to measure or assess same.

31. Whenever it shall be necessary either to measure or to assess any lands in order to give effect to any of the provisions of this Act, it shall be lawful for the Collector or officer duly authorised by him to enter upon the same at any time and from time to time for the purpose of making an aseessment or assements thereof.

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[1] Vide note 1 on s. 7 *ante*.

[*a*] The words repealed by the Bombay Revenue Jurisdiction Act, 1876 (10 of 1876) are omitted.

Interpretation clause.

32. (A.) [*Number and gender.*] *Rep. Bom. Act III of 1886.*

(B) the word "lands" shall, for the purposes of this Act, be understood to include villages, portions of villages, shares of the revenues thereof, and landed estate of every description:

(C) "political tenure" is tenure created from, or dependent upon, political considerations, the existence of which shall be determined by the Government:

(D) the phrase "lands held for service" shall include lands specially granted, or held or continued, nominally for the performance of service, whether that service be actually performed or not, and lands granted, held or continued, partly in consideration of past service and partly for the performance of prospective service, but shall not include lands granted in consideration of past service only; and it is to be understood that Government shall be competent to determine any question that may arise in giving effect to this Act as to whether or not any lands are lands held for service:

(E) formal adjudication" shall be held to mean final adjudication under any regulation of the Bombay Government, or final decision by the British Government or some authorized officer thereof:

(F) for the purposes of this Act, the word "holder" shall be taken to signify the person who, by himself, his tenants, sub-tenants or agents, is in possession of the land held wholly or partially exempt from land-revenue assessment, and shall include a mortgagee in possession as aforesaid. The committee, manager or trustee of any temple, who may be in possession of such lands, shall be considered the holder thereof:

(G) the word "transfer" shall, for the purposes of this Act, be taken to mean the permanennt alienation of land by assignment, gift, sale, deed or other instrument, or otherwise howsoever, and also mortgage of the same under which possession shall have passed or is to pass to the mortgagee.

Toda gira haq does not come within the meaning of the word "lands" as it is not revenue derivable by Government from the lands of a village (*Collector of Surat v. The Heiress of Kuarabai*, 2 B. H. C. R. 236).

Payment of haq in respect of majumdari watan.—The payment of a haq in respect of majumdari watan, though charged on villages is not "a share of the revenues thereof" within the meaning of this section and therefore a suit to recover majumdari watans resumed by Government is cognizable by the Civil Courts (*Government of Bombay v. Damodar Parmanandas*, 5 Bom. H. C. R. 202).

Inam.—The mere use of wide expressions such as the grant of land "for ever" or "from generation to generation" does not prevent the grant being one of saranjam. Nor again is the use of the word "inam" instead of "saranjam" condusive. It is for Government to determine in a particular case whether a grant is one of saranjam only (*Sayajirao Gaikwar of Baroda v. Madhavrao Raghunathrao Dhavle*, 50 Bom. 12).

SCHEDULE.

(SEE SECTION XX, CLAUSE 2ND.)

List of officers, who, under former Governments, had power to confer grants exempting lands wholly or partially from the payment of public revenue

UNDER THE EMPERORS OF DELHI.

Subadars of Provinces.

IN THE TERRITORIES THAT WERE SUBJECT TO THE PESHWA

THE Peshawa.

All officers holding the mootalaki seal.

All sar-subahadars in their districts.

All superior local functionaries acting directly under the Peshwa, without the intervention of any superior authority, if the deeds bear date prior to 1803.

The Gaikwar considered as a sarsubadar in the Peshwa's territories to the north of the Maihee, during the period that he held them in farm.

IN THE TERRITORIES THAT WERE SUBJECT TO THE GAIKWAR.

The Gaikwar.

All officers holding the motalaki seal.

IN THE TERRITORIES THAT WERE SUBJECT TO SCINDIA.

Scindia.

His officers holding the mutalaki seal.

IN THE TERRITORIES THAT WERE SUBJECT TO HOLKAR.

Holkar.

His officers holding the mootalaki seal.

IN THE TERRITORIES THAT WERE SUBJECT TO THE NIZAM.

The Nizam.

IN THE DISTRICTS THAT WERE SUBJECT TO THEM.

The Nawab of Surat.

The Nawab of Broach.

THE TODA GIRAS ALLOWANCES ACT

Bombay Act No. VII of 1887

[*28th April, 1888.*

An Act to declare and amend the Law relating to Toda Giras Allowances.

WHEREAS it is expedient to declare and amend the law relating to toda giras allowances ; It is enacted as follows :—

Short title.

1. This Act may be called the Toda Giras Allowances Act, 1887.

"Toda giras allowance" defined.

2. In this Act, "toda giras allownce" means a cash payment made periodically to any person on the part of Government, or by or on the part of a holder of alienated land, under the name of *giras, wol, tora giras or toda giras.*

Toda giras allowances to be held hereditarily in male descent,

3. Every toda giras allowance is continuable hereditarily to the lineal male heirs in male descent of the first recipient thereof under British rule :

Provided that, on failure of such heirs, the allowance, or some portion thereof, shall, whenever the Governor in Council has already so directed, or shall hereafter so direct, be continuable hereditarily to the lineal male heirs in male descent of a brother of the first recipient of such allowance under British rule.

Devolution of the allowance.—Every todagiras allowance is continuable hereditarily to the lineal male heirs in male descent of the first recipient thereof and not to the near eldest male heir. The devolution of such haks is not governed by the rule of primogeniture and any person who wishes to prove that the family is governed by the rule of primogeniture must discharge the burden of showing that the ordinary provisions of law are not applicable to the case (*Dolat singh v. Joravarsigh,* 33 Bom. L. R. 783).

Mortgage, etc., of toda giras allowance.

4. No mortgage, charge or alienation of a toda giras allowance, or of any part thereof, or of any interest therein, by any recipient of the same, shall be valid as to any time beyond such recipient's natural life.

Exemption of toda giras allowances from attachment and sale in execution of decrees.

5. No toda giras allowance shall be liable to attachment or sale in execution of a decree :

Provided that any money due or likely to become due to a judgment-debtor on account of a toda giras allowance may be attached in execution of the decree against him, but such attachment shall not affect any money which becomes due on account of such allowance after such judgment-debtor's death.

Toda Giras allowance.—The words "money likely to become due" must be restricted to case where, for instance, during the life-time of the judgment-debtor, a sum of money is directed by the Collector to be paid to him on account of a *toda giras* allowance not immediately but on a date subsequent to the date of the order of direction, and the judgment-debtor dies before that date, and to other cases of a similar character. Under what circumstances money is likely to become due on account of a *toda giras* allowance is a question which cannot be answered exhaustively and must depend on the facts of each case as it arises (*Amarsang v. Jethalal,* 10 Bom. L. R. 1201).

Saving of toda giras allowances already alienated.

6. (1) Nothing in this Act applies to a toda giras allowance which has already been alienated—

(*a*) if the instrument purporting or operating to effect such alienation has before the date on which this Act comes into force been registered under any law for the time being in force relating to the registration of documents ; or

(*b*) if the said instrument, not being compulsorily registrable, and not having been registered under any such law as aforesaid, has been executed before the date on which this Act comes into force, and is presented for inspection, together with a copy thereof for record, at any time within six months after the said date, to the Collector of the district in which such allowance is payable ; or

(*c*) if when such alienation has not been effected by an instrument, proof thereof is produced within the period and to the Collector aforesaid.

Collector how to proceed in respect of alienations notified to him under clauses (b) and (c).

(2) When any instrument is presented to a Collector under clause (*b*), he shall, before returning the same, endorse thereon, under his signature and official seal, the date of such presentation. When proof of an alienation is produced before a Collector under clause (*c*), he shall give to the alienee a certificate, under his signature and official seal, that the toda giras allowance so alienated is not subject to the provisions of this Act.

THE
Bombay (District) Tobacco Act, 1933.

Bombay Act No. II of 1933.

[*27th March 1933*

(As amended by the Bombay (District) Tobacco (Amendment) Act, II of 1935).

An Act for the imposition and levy of fees on the sale of tobacco in the Presidency of Bombay excluding the City of Bombay.

WHEREAS it is expedient to impose and levy licence fees on the sale of tobacco in the Presidency of Bombay excluding the City of Bombay; And whereas the previous sanction of the Governor General required by section 80A (3) of the Government of India Act and the previous sanction of the Governor required by section 80C of the said Act have been obtained for the passing of this Act; It is hereby enacted as follows:—

1. *Short title and extent.*—(1) This Act may be called the Bombay (District) Tobacco Act, 1933.

(2) It extends to the whole of the Presidency of Bombay except the City of Bombay and such area as Government may, by notification published in the *Bombay Government Gazette*, exclude.

(3) It shall come into force from the 1st day of April 1933 and shall remain in force for a period of [1] *"four" years.

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

[2] "(1A) 'Broker' means an agent whose ordinary course of business is to negotiate and make contracts for the sale and purchase of tobacco;"

(1) "Collector" includes any officer appointed under section 5 to exercise the powers and perform the duties of a Collector under this Act;

(2) "Commissioner" means an officer appointed under section 3 to be a Commissioner for the purposes of this Act;

(3) "Grower" means a person who by himself or by members of his household or by his servants, agents or tenants grows tobacco;

(4) "Hawker" means a person who goes from place to place or from house to house carrying or exposing for sale, tobacco or exposing samples of tobacco to be afterwards delivered;

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[1]* The word "four" was substituted for the original word "two" by the Bom. Amending Act, II of 1935.

[2] Clause (1A) was inserted by the Amending Act, II of 1935.

(5) "Holder" means a holder of a licence ;

(6) "Licence" means a licence for the sale of tobacco granted under section 7 ;

(7) "Magistrate" means a magistrate of the first or second class or a magistrate of the third class specially authorised in this behalf by the District Magistrate ;

(8) "Prescribed" means prescribed by rules ;

(9) "Retail sale" means a sale other than a wholesale sale ;

(10) "Rule" means a rule made under section 27 ;

(11) "Tobacco" includes bidis, cigarettes and cigars, the leaf, stalks and steam of the tobacco plant and any preparation or mixture of tobacco ;

(12) "Tobacco Officer" means the Commissioner, a Collector or any other officer or person lawfully appointed or invested with powers under section 5 ;

(13) "Tobacco revenue" means revenue derived or derivable from any fee, fine (other than a fine imposed by a court of law) or confiscation imposed or ordered and all sums accruing to Government, under the provisions of this Act ; and

(14) "Wholesale sale" means a sale of tobacco to traders in that commodity for the purpose of trade.

3. *Appointment and duties of Commissioner.*—(1) Government may, by notification in the *Bombay Government Gazette*, appoint for the whole or for any part of the Presidency of Bombay in which this Act shall be in force, an officer to be the Commissioner ;

(2) The Commissioner shall, subject to the control of Government, superintend the administration of the Tobacco Department and the collection of tobacco revenue.

4. *Collectors charged with carrying out the Act.*—Subject to the control and direction of the Commissioner and the orders of Government, the Collectors are charged with the collection of tobacco revenue and with the carrying out of the provisions of this Act.

5. *Appointment of special Collectors and other tobacco officers.*—(1) Government may, by notification in the *Bombay Government Gazette*, appoint any person other than the Collector of Land-revenue to exercise, in any district or place, all the powers and perform all the duties conferred and imposed by this Act on a Collector, subject to such control, if any, in addition to that of the Commissioner and of Government, as Government may from time to time direct.

(2) The Commissioner may, subject to the general or special orders of Government, appoint any person to be a tobacco Officer and assign to him such powers and duties under this Act, as he may deem fit.

(3) Government, or subject to such orders as aforesaid, the Commissioner may invest any officer or person with such powers and impose upon him such duties under this Act, as Government or the Commissioner, as the case may be, may deem fit and any such officer shall thereup on exercise the said powers and discharge the said duties in addition to the powers and duties incident to his principal office.

Sub-section (3).—Assistant and Deputy Collectors, Mamlatdars, Mukhtiarkars and Mahalkaris are invested with the powers of a Collector to grant licenses for the sale of tobacco (B. G. G., 1933, Pt. I, p. 1381).

All the Collectors in the Bombay Presidency (including Sind) are invested with the power to grant licenses for the sale of tobacco for areas beyond their respective jurisdiction (B. G. G., 1933, Pt. I, p. 1381).

6. *Prohibition of sale of tobacco without licence.*—No person shall sell or expose for sale any tobacco [1] "or carry on business as a broker" [1] except under and in accordance with the terms and conditions of a licence granted under section 7.

Provided that a grower of tobacco may, without licence, sell tobacco (other than bidis, cigarettes, cigars and any preparation or mixture of tobacco) grown by him.

Explanation.—The supply of tobacco by clubs to their members on payment of any price, fee or subscription is a sale within the meaning of this section.

7. *Grant of licences.*—Every licence for the sale of tobacco whether wholesale, retail or by a hawker [2] "or for carrying on business as a broker" [2] shall be granted annually or for any less period by the Collector in the manner prescribed by Government on payment of fees, subject to the maxima specified in the schedule hereto annexed.

(2) Such licences shall be in such form and subject to such conditions and restrictions as Government may prescribe.

Note.—This section relates to the grant of a licence. A licence granted under this section shall be in the form and contain particulars prescribed by Government by rules. The fees payable for a licence shall be in accordance with the scale prescribed by Government subject to the maxima specified in the schedule.

8. *Suspension or revocation of licenses.*—(1) Subject to such conditions as may be prescribed by Government, the authority granting any licence may suspend or cancel the licence,

(*a*) if any fee payable under the licence is not duly paid; or

(*b*) if there be any breach of any of the conditions of the licence or of any other licence previously granted to the holder either by the holder or his servant or any one acting on behalf of the holder with his express or implied permission.

[1—1] These words were inserted by the Amending Act, II of 1935.

[2—2] These words were inserted by the Amending Act, II of 1935.

(2) The holder shall not be entitled to any compensation for the cancellation or suspension of a license under sub-section (1) nor to refund of any fee paid or deposit made in respect thereof.

(3) Where a licence is cancelled or suspended under sub-section (1) the balance of the fee payable under the licence may be recovered from the holder or his surety in the same manner as tobacco revenue.

Note —This section relates to the suspension and revocation of licence. Sub-section (2) makes it clear that the holder of the licence which has been suspended or revoked shall not be entitled to any compensation for any loss suffered by him in consequence of such suspension or revocation.

9. *Issue of warrants.*—(1) The Commissioner or Collector or any other Tobacco Officer duly empowered in this behalf or a Magistrate may issue a warrant,—

(*a*) for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act, or

(*b*) for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe that any tobacoo is sold or is exposed for sale contrary to the provisions of this Act.

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a Police Officer or by a Tobacco Officer duly empowered in this behalf or if the officer issuing the warrant deems fit, by any other person.

10. *Power of entry, search, seizure and detention.*—The Collector or any other Tobacco Officer duly empowered in this behalf may—

(*a*) enter and search, at any time, by day or by night, any building, vessel, vehicle or any place in which he has reason to believe that any tobacoo liable to confiscation under this Act is kept or concealed :

(*b*) seize any tobacco or any other aricle which he has reason to believe is liable to confiscation under this Act ; and

(*c*) detain and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act.

Note.—This section relates to the power of officers to enter and search any place where contraband tobacco may be suspected to be and to seize the same. Abkari Officers are invested with similar powers under section 36 of the Bombay Abkari Act, 1878.

11. *Searches how made.*—All searches made under section 10 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

12. *Procedure for arrest without warrant.*—The provisions of section 61 of the Code of Criminal Procedure, 1898, shall apply to all arrests without warrant made under section 10.

13. *Officers bound to assist.*—All village officers, all village servants useful to Government, and all officers of the departments of Excise, Police and Revenue shall be bound—

(*a*) to give immediate information to a Tobacco Officer of the commission of any offence, or of the intention or preparation to commit any offence punishable under this Act which may come to their knowledge ;

(*b*) to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to belive is about to be committed ; and

(*c*) to assist any Tobacco Officer in carrying out the provisions of this Act.

14. *Tobacco Officer to have powers of investigation.*—(1) Every Tobacco Officer not below such rank as Government may determine, shall, within the area for which he is appointed, hav power to investigate all offences punishable under this Act.

(2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence :

Provided that—

(*a*) if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspecion to justify the forwarding of an accused to a Magistrate, or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear if and when so required before a Magistrate and shall make a full report of the case to his official superior and be guided by the order which he shall receive on such report ;

(*b*) the powers of a Tobacco Officer empowered under this section shall be subject to such further modifications or restrictions as Government may determine.

15. *Offences under the Act to be bailable.*—(1) All offences punishable under this Act shall be bailable.

(2) Any Tobacco Officer empowered under section 14 to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, to any person arrested without warrant for an offence punishable under this Act.

Note—This section provides that all offences under this Act shall be bailable and a Tabacco Officer will have power to grant bail.

16. *Articles seized.*—When anything has been seized by a Tobacco Officer exercising powers under section 14 such officer, after such inquiry as may be necessary—

(*a*) if it appears that such thing is required as evidence in the case of any person arrested, shall forward the thing to the Magistrate to whom such person is forwarded or for his appearance befor whom bail has been taken ;

(*b*) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send the thing with a report of the particulars of the seizure to his superior officer, if any ;

(*c*) if no offence appears to have been committed, shall return the thing to the person from whose possession it was taken and shall report to his superior officer, if any, accordingly.

17. *Penalty for contravention of this Act.*—Whoever in contravetion of this Act or of any rule or order made under this Act or of any terms or conditions of a licence sells or exposes for sale tobacco [1] "or carries on business as a broker," [1] shall be punishable on conviction with a fine not exceeding two hundred rupees.

Note.—This section provides a penalty for an offence for sale of tobacco in contravention of the provisions of this Act, the rules made thereunder or the terms of a licence granted under this Act. The maximum penalty provided is a fine of Rs. 200.

18. *Penalty for vexatious search or arrest.*—Any Tobacco Officer or other person who, without reasonable ground of suspicion, enters or searches, or causes to be searched, any building, vessel or place, or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person, shall, on conviction, be punishable for every such offence, with fine which may extend to two hundred rupees.

19. *Penalty for vexatious delay in forwarding an arrested person to a Magistrate.*—Any Tobacco Officer or other person who vexatiously and unnecessarily delays forwarding to a Magistrate any person arrested under this Act and not released by him on bail shall on conviction be punishable with fine which may extend to fifty rupees.

20. *Consfiscation.*—Whenever an offence under this Act has been committed, all tobacco in respect of which the offence has been committed and every box, receptacle, package or covering in which such tobacco is contained, shall be liable to confiscation.

21. *Procedure in confiscation.*—(1) When in any case tried by a Magistrate the Magistrate decides that anything is liable to confiscation under the foregoing section, he may, after hearing the person, if any, claiming any right thereto and the evidence, if any,

[1—1] These words were inserted by the Amending Act, II of 1935.

which he produces in suport of his claim, order confiscation or may give the owner option to pay such fine as the Magistrate deems fit in lieu of confiscation:

(2) When an offence under this Act has been committed and the offender is not known or cannot be found or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector, who may order confiscation.

Provided that no such order shall be made before the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim.

22. *Compounding offences.*—(1) The Commissioner or any Collector or any other Tobacco Officer specially empowered by Government in this behalf may accept from any person whose licence is liable to be cancelled or suspended under section 8 or who is reasonably suspected of having committed an offence under section 17 a sum of money in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be,and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by such officer.

(2) On the payment by such person of such money or value or both, as the case may be, to such officer, such person if in custody shall be set at liberty and the property seized shall be released and if criminal proceedings shall have been instituted against such person, the composition shall be held to amount to an acquittal and in no case shall any further proceedings be taken against such person or property with reference to the same facts.

Note —This section is based on section 55A of the Bombay Abkari Act, 1878, and gives power to Tobacco Officers to compound any offence under this Act.

23. *Cognizance of offences.*—(1) No Magistrate shall take cognizance of any offence punishable under this Act,—

(i) except upon the complaint or report of the Commissioner, or a Collector or any other Tobacco Officer empowered in this behalf or of an Excise or Police Officer, or

(ii) except upon his own knowledge or suspicion.

(2) Except with the sanction of Government, no Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed.

Note.—This section provides how the cognizance of an offence under this Act can be taken by a Magistrate.

24. *Protection of persons acting in good faith and limitation of suits and prosecutions.*—(1) No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or the rules.

(2) No suit shall be instituted against Government and no prosecution or suit shall lie against any Tobacco Officer in respect of anything done, or alleged to have been done, in pursuance of this Act, unless the suit or prosecution has been instituted within four months from the date of the act complained of.

25. *Recovery of tobacco revenue, etc.*—The following moneys, namely :—

(*a*) all tobacco revenue,

(*b*) any loss that may accrue in consequence of the suspension or cancellation of a licence,

may be recovered from the person primarily liable to pay the same or from his surety (if any) as arrears of land revenue.

Note—This section provides that all sums due under the Act shall be recoverable as arrerrs of land revenue.

26. *Appeals and revision.*—(1) Any person aggrieved by any order under this Act may appeal—

(*a*) to the Collector, if such order was passed by a Tobacco Officer other than the Collector or Commissioner,

(*b*) to the Commissioner, if such order was passed by the Collector, and

(*c*) to Government, if such order was passed by the Commissioner except on an appeal under clause (*b*).

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) Government, [The Commissioner, or the Collector] may call for and examine the record of any order of the proceedings of any subordinate Tobacco Officer for the purpose of satisfying themselves "[or himself, as the case may be,] as to the legality and propriety of any order passed and as to the regularity of the proceedings of such officer. If in any case it shall appear to Government, the Commissioner or the Collector that any order or proceedings so called for should be modified, annulled or reversed, they or he may pass such order as they or he may deem fit.

Note—This section is printed as amended by the Amending Act, II of 1935, and provides for appeals from and revision of orders passed under this Act.

27. *Power of the Government to make rules.*—(1) Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(*a*) under section 5, regulating the powers and duties to be exercised and performed by Tobacco Officers and the assignment of such powers and duties ;

(*b*) under section 7, prescribing the manner in which the fees are to be charged, the form of and the conditions and restrictions on which, licences shall be granted ;

(*c*) under section 8, prescribing the conditions on which licenses may be suspended or cancelled ;

(*d*) *Repealed.*

(3) Rules made under this section shall be subject to previous publication.

(4) Rules made under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by a resolution of the said Council and such rule shall, after notification in the *Bombay Government Gazette*, be deemed to have been modified or rescinded accordingly :

Provided that when, in the opinion of Government, such modification or recission is likely to defeat or frustrate any of the purposes of this Act, Government may, by notification in the *Bombay Government Gazette*, declare that the modification or rescission shall have no effect and thereupon the rule shall remain in force as if it had not been modified or rescinded.

28. *Delegation of powers.*—The powers conferred on the Commissioner under this Act may, *["with the exception of the powers under sub-section (3) of section 26"] subject to the general or special orders of Government, be delegated by the Commissioner in whole or in part, to the Collectors or to any subordinate officer.

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* These words were inserted by the Amending Act II of 1935, s. 9.

SCHEDULE.

(SECTION 7.)

Licence Fees.

* "Wholesale—Fixed Rate		Rs. 15.
Retail or Hawker—		
(1) In any case where the aggregate price realised from sales in any year does not exceed Rs. 200		Rs. 2.
(2) In any other case	A fee calculated at the rate of Re. 1 per cent. on the aggregate price realised from sales in any year.	
* Broker		Rs. 2."

Note.—Nothing in this Act shall be deemed in any way to affect the validity, conditions or restrictions of a licence granted before the 31st day of March 1935, or any rights or liabilities acquired or incurred thereunder. (*Vide section 11 of the Bombay (District) Tobacco (Amendment) Act, II of 1935.*

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* These entries were substituted for the original entries relating to "Wholesale," "Retail" and "Hawker" by the Amending Act, II of 1935.

TOLLS ON ROADS AND BRIDGES ACT, 1875

Bom. Act No. III of 1875.

[*28th December 1875.*

An Act for enabling Government to levy Tolls on Public Roads and Bridges in the Presidency of Bombay.

Preamble.

WHEREAS tolls have been levied in the Presidency of Bombay in accordance with Act XV of 1864, since the 30th day of July, 1864, but doubts have arisen whether the said Act has been formally extended to the said Presidency; and whereas it is expedient to remove the said doubts and to consolidate in one Act the provisions for the levy of tolls upon Public Roads and Bridges in the said Presidency; It is enacted as follows:—

Repeal of Act VIII of 1851.

1. Act VIII of 1851 is hereby repealed in so far as it affects the Presidency of Bombay.

2. [*Act XV of 1854 deemed to have been extended to Bombay Presidency from 30th July 1864*] *Rep. Act XVI of 1895.*

Rates of tolls to be levied.

3. The Governor in Council may cause such rates of tolls, not exceeding the rates mentioned in the Schedule annexed to this Act, to be levied upon any road or bridge which has been or shall hereafter be made or repaired at the expense of the Government or from funds collected under the provisions of Bombay Act III of 1869, or other funds levied under the authority and subject to the general control of Government, and may place the collection of such tolls under the management of such persons as may appear to him proper; and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the Land Revenue.....*

"Persons" defined.

Clause 2nd.—The word "persons" in this section shall be deemed to include Local Fund Committees established under the Bombay Local Boards Act II of 1923.

Procedure in case of non-payment of tolls.

4. In case of non-payment of any such toll on demand, the officers appointed to collect the same may in the first place seize any part of the burden or load of the carriage or animal on which the toll is chargeable, of sufficient value to defray the toll, or, in the event of the burden or load being insufficient, such carriage or animal; and, if any toll remains undischarged for 24 hours, with the cost arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll and all expenses occasioned by such non-payment, seizure and sale, and cause any balance that may remain to be returned on demand to the owner of the property; and the said officer on receipt of the property shall forthwith issue a notice, that at noon of the next day, exclusive of Sunday or any close holiday,

* The words repealed by the Bombay Amending Act (XV of 1895) are omitted.

he will sell the property by auction: Provided that if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized.

Exemptions from Toll.

5. No tolls shall be paid for the passage*.....of Police Officers on duty, or of any person or property in their custody. And it shall further be lawful fer His Excellency the Governor in Council, by notification in the Government Gazette, to grant and define other exemptions from payment of the tolls levied under this Act.

Police officers bound to assist toll collectors.

6. All Police Officers shall be bound to assist the toll collectors, when required, in the execution of this Act, and for that purpose shall have the same power which they have in the exercise of their ordinary police duties.

Penalty for demading illegal Tolls.

7. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or bridge, or for passing through any bazar situated thereon, and also every person who shall unlawfully and extortionately demand or take any other or higher toll than the lawful toll, or under colour of this Act seize or sell any property, knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be liable, on conviction before a magistrate, to imprisonment.....* for any term not exceeding six months.....* or to fine not exceeding Rs. 200, any part of which fine may be awarded by the Magistrate to the person aggrieved, but this remedy shall not be deemed to bar or affect his right to have redress by suit in the Civil Court of the District.

Table of tolls to be put up at Gate or Station.

8. A table of the tolls authorized to be taken at any toll gate or station, legibly written or printed in English words and figures, and also in those of the vernacular language of the district, to which shall be annexed, written or printed in like manner, a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll, shall be furnished by Government to the collector of tolls, and the same shall by him be kept in a conspicuous place near such gate or station.

Collectors of tolls may compound for tolls

9. Any person entrusted with the management of the collection of tolls under this Act may in his discretion compound for any period, not exceeding one year, with any person for a certain sum to be paid by such person for himself or for any vehicle or animal kept by him, in lieu of the rates of tolls specified in the Schedule to this Act.

Power of Government to lease the levy of tolls.

[*]10. It shall be lawful for the Government to lease the levy of tolls at such rates not exceeding the rates mentioned in the schedule annexed to this Act, upon any public road or bridge by public auction or

* The words repealed by Act II of 1909 are omitted.

[*] Ss. 10 and 11 were inserted by Bom. Act V of 1881.

private contract from year to year or for a longer period not exceeding seven years on such terms and conditions as the Government may deem desirable: provided that the lessee shall give security for the due fulfilment of such conditions, and that all sums payable under the terms and conditions of the lease shall be recoverable as a demand for the land revenue under tha law for the time being in force so far as applicable.

Acts of Lessee or his Agent.

[*]11. When the tolls on any public road have been duly leased, the lessee, and every person employed by the lessee as his agent for collecting the tolls, shall be deemed to be persons appointed to collect tolls under this Act, and shall exercise all the powers and be subject to all the responsibilities attaching to persons appointed to collect tolls under this Act.

12. [*Application of tolls*] *Rep. Bom. Act 1 of 1884.*

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[*] Vide note under section 10.

SCHEDULE

On every four-wheeled carriage on springs	1	0	0
On every two-wheeled carriage on springs	0	8	0
On every ekka or hackery on springs	0	2	0
On every cart and hackery not on springs drawn by 8 bullocks, buffaloes, horses, ponies, asses or mules, if laden	1	0	0
Ditto if not laden	0	8	0
On every cart and hackery not on springs drawn by 6 bullocks, buffaloes, horses, ponies, asses or mules if laden	0	12	0
Ditto if not laden	0	6	0
On every cart and hackery not on springs drawn by 4 bullocks, buffaloes, horses, ponies, asses or mules, if laden	0	8	0
Ditto if not laden	0	4	0
On every cart and hackery not on springs drawn by 2 bullocks, buffaloes, horses, ponies, asses or mules, if laden	0	4	0
Ditto if not laden	0	2	0
Buffaloes, or bullocks, per head, if laden	0	1	0
Ditto ditto if not laden	0	0	6
On every elephant	1	8	0
On every camel, if laden	0	4	0
Ditto if not laden	0	2	0
On every horse, if laden or ridden	0	1	6
Ditto unladen or led	0	0	9
On every pony or mule, if laden or ridden	0	0	9
Ditto unladen or led	0	0	6
On every ass, if laden or ridden	0	0	6
Ditto unladen or led	0	0	3
On every sheep or goat, or pig	0	0	1
On every palanquin, dooly, palna or tonjon, with 8 bearers	1	0	0
Ditto ditto ditto with 6 bearers	0	12	0
Ditto ditto ditto with 4 bearers	0	8	0
On every foot passenger with the special sanction of Government on bridges or hill roads	0	0	3

Explanation I.—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

Explanation II.—No second toll shall be levied on the same carriage or animal returning on the same day.

THE BOMBAY TOWN PLANNING ACT, 1915

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The Bombay Town Planning Act, 1915

BOMBAY ACT No. I of 1915

[*6th March 1915.*

(*As modified upto 1st Septmeber, 1936*)

An Act to provide for the making and execution of town planning schemes.

WHEREAS it is expedient that the development of certain areas should be regulated with the general object of securing proper sanitary conditions, amenity and convenience to the persons living in such areas and in neighbouring areas ;

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 this Act ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title and extent.*—(1) This Act may be called the Bombay Town Planning Act, 1915.

(2) It shall extend in the first instance to the Island of Salsette, but the Governor in Council may by notification in the *Bombay Government Gazette*, direct that it shall extend in whole or in part to any part of the Bombay Presidency :

Provided that this Act shall not be extended in whole or in part to the City of Bombay or any part thereof except on the previous application of the Municipal Corporation of the City of Bombay in this behalf to the Governor in Council, such application having been previously assented to by a majority of the whole of the Municipal Corporation.

2. *Interpretation clause.*—In this Act, unless there is anything repugnant in the subject or context :—

(*a*) "local authority" means a Municipality or, where there is no Municipality, a committee aponinted for a notified area under the provisions of Chapter XIV of the Bombay District Municipal Act, 1901, as modified by this Act ;

(*b*) " prescribed " means prescribed by rules made under this Act ;

(*c*) " owner " includes an owner in severalty, in common or joint; and includes also an occupant as defined in clause (16) of section 3 of the Bombay Land Revenue Code, 1879 ;

(*d*) "plot" means a continuous portion of land held in one ownership, other than land used, alloted or reserved for any public or municipal purpose :

(*e*) "reconstituted plot" means a plot which is in any way altered by the making of a town planning scheme otherwise than by the severance of land used, allotted or reserved for any public or municipal purpose.

Explanation.—"Altered" includes alteration of ownership.

(*f*) " scheme " includes a plan relating to a town planning scheme.

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* See new section 83A of the Government of India Act, V & VI Geo. 5, c. 61.

3. *Contents of planning scheme.*—A town planning scheme may make provision for any of the following matters:—

(*a*) the construction, diversion, alteration and stopping up of streets, roads and communications;

(*b*) the construction, alteration and removal of buildings, bridges and other structures;

(*c*) the plotting out of land as building-sites whether such land is intended to be used for building purposes in the immediate future or not:

(*d*) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets and public purposes of all kinds;

(*e*) drainage inclusive of sewerage and of surface drainage and sewage disposal;

(*f*) lighting;

(*g*) water supply;

(*h*) the preservation of objects of historical interest or natural beauty and of buildings actually used for religious purposes or regarded by the public with special religious veneration;

(*i*) the imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the number, height and character of buildings allowed in specified areas and the purposes to which buildings or specified areas may or may not be appropriated:

(*j*) the suspension, so far as may be necessary for the proper carrying out of the scheme, of any rule having the force of law, bye-law, Act or other provision, [*a*] which is in force in the area included in the scheme;

[*b*]Provided that it shall not be lawful to suspend in any such area any Act of Parliament or, without the sanction of the Governor General, any Act of the Governor General in Council;

(*k*) Such other matter not inconsistent with the objects of this Act as may be prescribed.

4. *Disputed ownership.*—(1) Where there is a disputed claim as to the ownership of any piece of land included in an area in respect of which any of the provisions of this Act are to be applied and any entry in the record-of-rights or mutation register relevant to such disputed claim is inaccurate or inconclusive, an enquiry may be held by such officer as the Governor in Council in the City of Bombay or the Commissioner elsewhere may appoint for the purpose of deciding who shall be deemed to be the owner for the purposes of this Act.

(2) Such decision shall not be subject to appeal but it shall not operate as a bar to a regular suit.

(3) Such decision shall, in the event of a Civil Court passing a decree which is inconsistent therewith, be corrected, modified or rescinded in accordance with such decree as soon as practicable after such decree has been brought to the notice of the local authority either by the Civil Court or by some person affected by such decree.

[*a*] Words repealed by Bom. II of 1919, s. 3 and sche. II have been omitted.

[*b*] This proviso was inserted by Bom. II of 1919, s. 2, and sch. I part II.

5. *Right of entry.*—For the purpose of the preparation, making, or execution of any town planning scheme any person authorized by the local authority or any public servant or person duly appointed or authorized under this Act may, after giving such notice as may be prescribed to the owner, occupier or other person interested in any land, enter upon, survey and mark out such land and do all acts necessary for such purpose.

6. *Powers of local authority to borrow money and to make and execute a town planning scheme.*—(1) A local authority as defined in this Act shall be deemed to be a local authority as defined in the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of a town planning scheme shall be deemed to be a work which such local authority is legally authorized to carry out.

(2) Any expenses incurred by local authority under this Act or any town planning scheme made thereunder may be defrayed out of its funds.

7. *Notified areas.*—Notwithstanding anything contained in sub-section (3) of section 187 of the Bombay District Municipal Act, 1901, the Governor in Council may declare any specified area, for which it is proposed to make a town planning scheme, to be a notified area.

CHAPTER II.

DECLARATION OF INTENION TO MAKE A SCHEME, AND PREPARATION OF DRAFT SCHEME.

8. *Land in respect of which a town planning scheme may be made.*—(1) A town planning scheme may be made in accordance with the provisions of this Act in respect of any land which is in course of development or is likely to be used for buiding purposes.

(2) Where it appears to the Governor in Council that a piece of land already built upon, or a piece of land not likely to be used for building purposes, is so situated with respect to any land which is in course of development or likely to be used for building purposes that it ought to be included in any town planning scheme intended to be made with respect to the last-mentioned land, the Governor in Council may sanction the making of a scheme including such piece of land as aforesaid, and providing for the demolition or alteration of any building thereon so far as may be necessary for carrying the scheme into effect.

(3) The expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not, and the decision of the Governor in Council as to whether land is likely to be used for building purposes or not shall be final.

9. *Powers of a local authority to resolve on a declaration of intention to make a scheme and of the Governor in Council to sanction such declaration.*—(1) The local authority having jurisdiction over any such land as is referred to in section 8 may by resolution declare its intention to

make a town planning scheme in respect of the whole or any part of such land and of any land which is in the vicinity of such land but which is not included in any other municipal or notified area, provided that for the making of such scheme the sanction of the Governor in Council shall be necessary.

(2) Within twenty-one days from the date of such declaration (hereinafter referred to as a declaration of intention to make a scheme), the local authority shall despatch a copy thereof for publication in the *Bombay Government Gazette* and shall publish it in the prescribed manner and shall apply to the Governor in Council for sanction for the making of such scheme.

(3) With its application for such sanction the local authority shall send to the Governor in Council a plan showing the area which it proposes to include in the town planning scheme and the surrounding lands.

(4) A copy of such plan shall be open to the inspection of the public at all reasonable hours at the head office of the local authority.

(5) If within one month from the date of such publication in the *Bombay Government Gazette* any person likely to be affected by such scheme communicates in writing to the Governor in Council any objection or suggestion relating to such scheme the Governor in Council shall consider such objection or suggestion.

(6) After receiving such application and after making such inquiry as he may think fit, the Governor in Council may, by notification in the *Bombay Government Gazette*, either sanction the making of such scheme with or without modifications and subject to such conditions as he may think fit to impose, or he may by a similar notification refuse to give sanction.

10. *Preparation and publication of draft scheme.*—(1) Within twelve months from the date of the notification sanctioning the making of a town planning scheme the local authority shall in consultation with the owners prepare, and publish in the prescribed manner, a draft scheme for the area in respect of which sanction has been given.

(2) If such publication is not made by the local authority within twelve months from the date of such notification, the Governor in Council in the City of Bombay or the Commissioner elsewhere may in consultation with thd owners prepare, and publish in the prescribed manner, a draft scheme for the area in respect of which sanction has been given within a further period of nine months.

(3) *Lapsing of sanction.*—If such publication is not made by the Governor in Council or the Commissioner, as the case may be, within the further period specified in sub-section (2), the sanction of the Governor in Council for the making of such town planning scheme shall lapse, and until a period of three years has elapsed from the date of such sanction it shall not be competent to the local authority to apply for fresh sanction for the making of any town planning scheme for the same area or for any part of it.

11. *Contents of draft scheme.*—The draft scheme shall contain the following particulars:—

(*a*) the area, ownership and tenure of each original plot ;

(*b*) the land allotted or reserved under clause (*d*) of section 3, with a general indication of the uses to which such land is to be put ;

(*c*) the extent to which it is proposed to alter the boundaries of original plots ;

(*d*) an estimate of the net cost of the scheme to be borne by the local authority ;

(*e*) a full description of all details of the scheme under such clauses of section 3 as may be applicable ; and

(*f*) any other prescribed particulars.

12. *Reconstituted plots.*—(1) In the draft scheme the size and shape of every reconstituted plot shall be so determined as to render it, so far as may be, suitable for building purposes.

(2) In order to render original plots more suitable for building purposes the draft scheme may contain proposals—

(*a*) to form a reconstituted plot by the alteration of the boundaries of an original plot,

(*b*) to provide with the consent of the owners that two or more original plots each of which is held in ownership in severalty or in joint ownership shall hereafter, with or without alteration of boundaries, be held in ownership in common as a reconstituted plot,

(*c*) to allot a plot to any owner dispossessed of land in furtherance of the scheme, and

(*d*) to transfer the ownership of a plot from one person to another.

13. *Objections to the draft scheme to be considered.*—If within one month from the date of publication of the draft scheme any person affected by such scheme communicates in writing to the local authority any objection relating to such scheme the local authority shall consider such objection and may, at any time before submitting the draft scheme to the Governor in Council as hereinafter provided, modify such scheme as it thinks fit.

14. *Power of the Govenor in Council to sanction a draft scheme.*—(1) The local authority shall then submit the draft secheme with any modifications which it may have made therein together with the objections which may have been communicated to it to the Governor in Council and shall at the same time apply for his sanction.

(2) After receiving such application and after making such inquiry as he may think fit, the Governor in Council may, by notification in the *Bombay Government Gazette*, either sanction such scheme with or without modifications and subject to such conditions as he may think fit to impose, or he may by a similar notification refuse to give sanction.

(3) If the Governor in Council sanctions such scheme, he shall in such notification state at what place and time the draft scheme shall be open to the inspection of the public.:

15. *Restrictions after declaration.*—(1) When a local authority has published a declaration of intention to make a scheme—

(*a*) no person shall within the area included in the scheme erect or proceed with any building or work [*a*] or remove, pull down, or alter any building or part of a building or remove any earth, stone or material [*a*] unless such person has applied for and obtained the necessary permission which shall be contained in a commencement certificate granted by the local authority in the form prescibed ;

[*a*—*a*] These words were inserted by Bom. XIII of 1920, s. 2 (*a*).

(*b*) the local authority on receipt of such application shall at once furnish the applicant with a written acknowledgment of its receipt, and after enquiry may either grant or refuse such certificate or grant it subject to such conditions as may be consistent with the scheme; but if the local authority communicates no decision to the applicant within three months from the date of such acknowledgment he shall be deemed to have been granted such certificate ;

(*c*) if in the opinion of the local authority any person contravenes the provisions contained in clause (*a*) or clause (*b*), the local authority after making enquiry in the prescribed manner may by notice in writing direct such person to stop any work in progress ;

(*d*) any expenses incurred by the local authority under clause (*c*) shall be a sum due to the local authority under this Act from the person in default ;

[*b*] (*e*) any diminution in the value of an original plot occasioned by any contravention of clause (*a*) or clause (*b*) shall, notwithstanding anything contained in section 16, 17, or 19 be taken into account in fixing the market value of such plot.

(2) No person shall be entitled to compensation in respect of any damage, loss or injury resulting from any action taken by the local authority under the provisions of this section or section 43, except in respect of a building or work begun or a contract entered into before the date on which the local authority published a declaration of intention to make a scheme, and only in so far as such building or work has proceeded at the time of the publication of the declaration of intention to make a scheme.

(3) The restrictions imposed by this section shall cease to operate in the event of the Governor in Council refusing to sanction the making of a town planning scheme, or in the event of the sanction of the Governor in Council for the making of such scheme lapsing, or in the event of the Governor in Council refusing to sanction the draft scheme.

CHAPTER III

FINANCE

16. *Costs of the scheme.*—(1) The costs of a town planning scheme shall include—

(*a*) all sums payable by the local authority under the provisions of this Act which are not specifically excluded from the costs of the scheme ;

(*b*) all sums spent or estimated to be spent by the local authority in the making and in the execution of the scheme ;

(*c*) all legal expenses of the local authority incurred in the making and in the execution of the scheme; and

(*d*) any amount by which the total of the values of the original plots exceeds the total of the values of the plots incuded in the final scheme, each of such plots being estimated at its market value at the

[*b*] This clause was added by Bom XIII of 1920, 2 (*b*).

date of the declaration of intention to make a scheme with all the buildings and works thereon at that date and without reference to improvements contemplated in the scheme other than improvements due to the alteration of its boundaries.

(2) If in any case the total of the values of the plots included in the final scheme exceeds the total of the values of the original plots, each of such plots being estimated in the manner provided in clause (*d*) of sub-section (1), then the amount of such excess shall be deducted in arriving at the cost of the scheme, as defined in sub-section (1).

17. *Calculation of increment.*—[*a*] For the purposes of this Act the increment shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme the market value of a plot included in the final scheme estimated on the assumption that the scheme has been completed would exceed at the same date the market value of the same plot estimated without reference to improvements contemplated in the scheme;

Provided that in estimating such values the value of buildings or other works erected or in the course of erection on such plot shall not be taken into consideration.

18. *Contribution towards the costs of the scheme.*—(1) The costs of the scheme shall be met wholly or in part by a contribution to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Tribunal of Arbitration:

Provided that—

(*i*) no such contribution shall exceed half the increment estimated by the Tribunal of Arbitration to accrue in respect of such plot; and

(*ii*) where a plot is subject to a mortgage with possession or to a lease, the Tribunal of Arbitration shall determine in what proportion the mortgagee or lessee on the one hand and the mortgagor or lessor on the other hand shall pay such contribution.

Owner primarily liable for contribution.—(2) The owner of each plot included in the final scheme shall be primarily liable for the payment of the contribution leviable in respect of such plot.

19. *Certain amount to be added to or deducted from the contribution leviable from a person.*—The amount by which the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person shall be deducted from or added to, as the case may be, the contributions leviable from such person, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme and without reference to improvements contemplated in the scheme other than improvements due to the alteration of its boundaries.

20. *Transfer of right from original to reconstituted, plot or extinction of such right.*—Any right in an original plot which in the opinion of the arbitrator is capable of being transferred wholly or in part, with-

[*a*] This paragraph was substituted for the original paragraph by Bom. XIII of 1920, s. 3.

out prejudice to the making of a town planning scheme, to a reconstituted plot shall be so transferred and any right in an original plot which in the opinion of the arbirrator is not capable of being so transferred shall be extinguished :

Provided that an agricultural lease shall not be transferred from an original plot to a reconstituted plot without the consent of all the parties to such lease.

21. *Compensation in respect of property or right injuriously affected by scheme.*—The owner of any property or right which is injuriously affected by the making of a town planning scheme shall, if he makes a claim before the arbitrator within the prescribed time, be entitled to obtain compensation in respect thereof from the local authority or from any person benefited or partly from the local authority and partly from such person, as the Tribunal of arbitration may in each case determine :

Provided that the value of such property or right shall be held to be its market value at the date of the declaration of intention to make a scheme without reference to improvements contemplated in the scheme.

22. *Exclusion or limitation of compensation in certain cases*—(1) Where property or a private right of any sort is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be paid in respect thereof if or in so far as the provisions are such as would have been enforceable without compensation under any rule having the force of law, bye-law or Act in force at the time.

(2) Property or a private right of any sort shall not be deemed to be injuriously affected by reason of any provisions inserted in a town planning scheme, which, with a view to securing the amenity of the area included in such scheme or any part thereof, impose any conditions and restrictions in regard to any of the matters specified in clause (1) of section 3.

23. *Provision for case in which amount payable to owner exceeds amount due from him.*—If the owner of an original plot is not provided with a plot in the final scheme, or if the contribution to be levied from him under section 18 is less than the total amount to be deducted therefrom under any of the provisions of this Act, the net amount of his loss shall be payable to him by the local authority in cash, or in such other way as may be agreed upon by the parties.

24. *Provision for case in which value of developed plot is less than amount payable by owner.*-(1) If from any cause the total amount which would be due to the local authority under the provisions of this Act from the owner of a plot to be included in the final scheme exceeds the value of such plot estimated on the assumption that the scheme has been completed, the arbitrator shall, at the request of the local authority, direct the owner of such plot to make payment to the local authority of the amount of such excess.

(2) If such owner fails to make such payment within the prescribed period, the arbitrator shall, if the local authority so requests, acquire the original plot of such defaulter and apportion the compensation among the owner and other persons interested in the plot on

payment by the local authority of the value of such plot estimated at its market value at the date of the declaration of intention to make a scheme and without reference to improvements contemplated in the scheme; and thereupon the plot included in the final scheme shall vest absolutely in the local authority, free from all encumbrances but subject to the provisions of this Act :

Provided that the payment made by the local authority on account of the value of the original plot shall not be included in the costs of the scheme.

25. *Payment by adjustment of account.*—All payments due to be made to any person by the local authority under this Act shall, as far as possible, be made by an adjustment in such person's account with the local authority in respect of the plot concerned or of any other plot in which he has an interest and failing such adjustment shall be paid in cash or in such other way as may be agreed upon by the parties.

26. *Payment of net amount due to local authority.*—(1) The net amount payable under the provisions of this Act by the owner of a plot included in the final scheme may at the option of the contributor be paid in one sum or in such instalments including charges for interests as shall be fixed by the local authority with the sanction of the Governor in Council in the City of Bombay or the Commissioner elsewhere.

(2) Where more than one plot included in the final scheme is in the same ownership the net amount payable by such owner under the provisions of this Act shall be distributed over his several plots in proportion to the increment which is estimated to accrue in respect of each plot unless the owner and the local authority agree to a different method of distribution.

27. *Power of local authority to make agreements.*—(1) A local authority shall be competent to make any agreement with any person in respect of any matter which is to be provided for in a town planning scheme, subject to the power of the Governor in Council to modify or disallow such agreement, and, unless it is otherwise expressly provided therein, such agreement shall take effect on and after the day on which the town planning scheme comes into force.

(2) Such agreement shall not in any way affect the duties of the arbitrator or of the Tribunal of Arbitration as described in Chapter IV or the rights of third parties, but it shall be binding on the parties to the agreement notwithstanding any decision that may be passed by the arbitrator or by the Tribunal of Arbitration :

Provided that if the agreement be modified by Government, either party shall have the option of avoiding it if he so elects.

28. *Recovery of arrears.*—Any sum due to the local authority under this Act which is not paid on the day when it becomes due shall be recovered by the Collector, according to law and under the rules for the time being in force for the recovery of arrears of land revenue, on application being made to him by the local authorty.

CHAPTER IV.

THE ARBITRATOR AND THE TRIBUNAL OF ARBITRATION.

29. *Appointment of arbitrator.*—After a draft scheme has been sanctioned the Governor in Council shall appoint an arbitrator with sufficient establishment whose duties shall be as hereinafter provided.

30. *Duties of the arbitrator.*—In accordance with the prescribed procedure the arbitrator shall—

(1) after notice given by him in the prescribed manner define and, where it is in his opinion necessary, demarcate the areas allotted to, or reserved for, the local authority, and the reconstituted plots ;

(2) after notice given by him in the prescribed manner determine, in a case in which a reconstituted plot is to be allotted to persons in ownership in common, the shares of such persons ;

(3) fix the difference between the total of the values of the original plots and the total of the values of the plots included in the final scheme, in accordance with the provisions contained in clause (*d*) of sub-section (1) of section 16 ;

(4) estimate the increment to accrue in respect of each plot included in the final scheme, in accordance with the provisions contained in section 17 ;

(5) calculate the proportion in which the increment of the plots included in the final scheme shall be liable to contribution to the costs of the scheme, in accordance with the provisions contained in section 18;

(6) calculate the contribution to be levied on each plot included in the final scheme ;

(7) determine the amount to be deducted from or added to, as the case may be, the contributions leviable from a person, in accordance with the provisions contained in section 19 ;

(8) provide for the total or partial transfer of any right in an original plot to a reconstituted plot or provide for the extinction of any right in original plot, in accordance with the provisions contained in section 20 ;

(9) estimate in reference to claims made before him, after notice given by him in the prescribed manner, the compensation to be paid to the owner of any property or right injuriously affected by the making of a town planning scheme, in accordance with the provisions contained in section 21 and subject to the provisions contained in section 22 ;

(10) draw up in the prescribed form the final scheme in accordance with the draft scheme :

provided that—

(i) he may make variations from the draft scheme ,

(ii) any variation estimated by him to involve an increase of ten per centum in the costs of the scheme as described in section 16 shall require the sanction of the Governor in Council :

Provided further that he shall make no substantial variation without the consent of the local authority and without hearing any objections that may be raised by the owners concerned ; and that in the case of any substantial variation made by him the owners concerned shall have the right of appeal to the Governor in Council.

31. *Certain decisions of the arbitrator shall be final*.—Except in matters arising out of clauses (4), (5), (6) and (9) of section 30, and subject to the provisos contained in clause (10) of section 30, every decision of the arbitrator shall be final and conclusive and binding on all persons.

32. *Aribitrator shall make proposals in certain matters*.—In matters arising out of clauses (4), (5), (6) and (9) of section 30, the arbitrator shall estimate or calculate what is required by such clauses to be estimated or calculated and shall forthwith make proposals on all such matters to the President of the Tribunal of Arbitration for the decision of such Tribunal.

33. *Constitution of the Tribunal of Arbitration*.—(1) The Tribunal of Arbitration shall consist of a President and two Assessors.

(2) The President shall, in the City of Bombay, be a person who holds or has held office as a Judge of the High Court of Judicature, to be appointed by the Chief Justice, in the district of Karachi, be such Additional Judicial Commissioner as may be appointed by the Judicial Commissioner, and elsewhere the District Judge.

(3) One of the Assessors shall be an impartial person to be appointed, in the City of Bombay, by such person who holds or has held office as a Judge of the High Court, in the District of Karachi, by such additional Judicial Commissioner, and elsewhere by the District Judge.

(4) The other assessor shall be the arbitrator.

(5) The President and the assessors shall be appointed members of the Tribunal of Arbitration for such period as may be required by such Tribunal to decide in connection with a particular town planning scheme all matters arising out of clauses (4), (5), (6) and (9) of section 30.

(6) The Governor in Council may, if he thinks fit, remove for inability or misconduct or any other good and sufficient reason the Assessor appointed under sub-section (3) or the arbitrator.

(7) If any member of the Tribunal of Arbitration is removed or dies or refuses or neglects to act or becomes incapable of acting, the authority who appointed such member shall appoint forthwith a fit person to take the place of such member.

34. *Place where the Tribunal may sit*.—The Tribunal of Arbitration may sit either at the head-quarters of the President or at any other place, within the local limits of his jurisdiction, which he may consider convenient for the decision of any matter before such Tribunal.

35. *Right to appear by recognised agent*.—Every party to any proceeding before the Tribunal of Arbitration shall be entitled to appear either in person or by his recognised agent.

36. *Decision of questions of law and procedure and other questions*.—All questions of law and procedure shall be decided by the President. All other questions shall be decided by the President and the two Assessors or by the majority of them.

37. *Powers of the Tribunal to decide matters finally*.—(1) After making such enquiry as the President may think fit the Tribunal of Arbritration may accept, modify, vary, or reject the proposals of the

arbitrator and shall decide all matters arising out of clauses (4), (5), (6) and (9) of section 30.

(2) Every decision of the Tribunal of Arbitration shall be final and conclusive and binding on all persons.

38. *Tribanal not a Court.*—Nothing contained in this Act shall be deemed to constitute the Tribunal of Arbitration to be a Court.

39. *Remuneration of arbitrator and assessor and payment of incidental expenses of Tribunal.*—(1) The arbitrator, the President of the Tribunal of Arbitration, and the Assessor shall, save where they are salaried officers of Government, be entitled to such remuneration, either by way of monthly salary or by way of fees or partly in one way and partly in the other, as the Governor in Council may from time to time determine.

(2) The salary of an arbitrator, a President of the Tribunal of Arbitration or an Assessor who is a salaried officer of Government, and any remuneration payable under sub-section (1) and all expenses incidental to the working of the Tribunal of Arbitration shall, unless the Governor in Council otherwise determines, be defrayed out of the funds of the local authority and shall be added to the costs of the scheme.

40. *Final scheme.*—(1) After the Tribunal of Arbitration has decided all matters arising out of clauses (4), (5), (6) and (9) of section 30, the arbitrator shall forward the final scheme through the local authority to the Governor in Council, who, on sanctioning the same, shall publish a notification relating thereto in the *Bombay Government Gazette* and in any other way which may be prescribed.

(2) In such notification it shall be stated where the final scheme is open to the inspection of the public and the price at which copies may be obtained, and a date not earlier than one month after the publication of such notification shall be fixed as the date on which all liabilities created by the scheme shall take effect and the final scheme shall come into force.

(3) On and after the date fixed in such notification a town planning scheme shall have effect as if it were enacted in this Act.

41. *Effect of final scheme.*—On the day on which the final scheme comes into force—

(*a*) all lands required by the local authoriy shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances;

(*b*) all rights in original plots which have been reconstituted shall determine and the reconstituted plots shall become subject to the rights settled by the arbitrator.

42. *Power of local authority to evict summarily.*—On and after the day on which the final scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the final scheme may, in accordance with the prescribed procedure, be summarily evicted by the local authority.

43. (1) *Power to enforce scheme.*—On and after the day on which the final scheme comes into force the local authority may after giving the prescribed notice and in accordance with the provisions of the scheme—

(*a*) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the

scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with ;

(*b*) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the local authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by a local authority under this section may be recovered from the persons in default in the manner herein before provided for the recovery of sums due to the local authority under the provisions of this Act.

(3) If any question arises as to whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, that question shall be referred to the Governor in Council in the City of Bombay or the Commissioner elsewhere, and his decision shall be final and conclusive and binding on all persons.

44. *Power to compel attendance of witnesses.*—For the purposes of this Act an officer appointed under sub-section (1) of section 4, an arbitrator or a Tribunal of Arbitration may summon and enforce the attendance of witnesses including the parties interested or any of them and compel them to give evidence and compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

CHAPTER V.

MISCELLANEOUS.

45. *Joint town planning scheme.*—(1) When two or more local authorities are of opinion that the interests of contiguous areas within their respetive jurisdictions can best be served by the making of a joint town planning scheme, and the Governor in Council agrees with such opinion, a joint Town Planning Board shall be constituted.

(2) Such Board shall consist of representatives of each of the several local authorities and of persons nominated by the Governor in Council in such proportion as may be prescribed.

(3) The representatives of the several local authorities shall be elected in the prescribed manner on dates appointed by the Governor in Council in the City of Bombay and by the Commissioner elsewnere.

(4) Such Board, when duly constituted, shall make a declaration of intention to make a joint town planning scheme in respect of the contiguous areas in the manner provided in section 9 and thereafter the procedure shall follow all the provisions of this Act and such Board shall have all the powers and be liable to all the duties of a local authority under the provisions of this Act.

(5) The draft joint town planning scheme shall specify the parts of the scheme to be executed by the several local authorities in the several contiguous areas and the several parts of the scheme shall, when notified in the final scheme, have effect in the several contiguous areas as if they were separate schemes ;

Provided that any part of joint town planning scheme may be executed jointly by two or more local authorities.

*45-A. *Vesting of property and rights of local authority ceasing to exist or ceasing to have jurisdiction.*—When any local authority ceases to exist or ceases to have jurisdiction over any area included in a town planning scheme the property and rights vested in such local authority under this Act shall, subject to all charges and liabilites affecting the same, vest in such other local authority or authorities as the Governor in Council may, with the consent of such authority or authorities, by notication in the *Bombay Government Gazette* direct; and such local authority or each one of such local authorities shall have all the powers under this Act in respect of such scheme or such part of a scheme as comes within its jurisdiction which the local authority ceasing to exist or ceasing to have jurisdiction had.

46. *Power to vary or revoke a town planning scheme.*—(1) A town planning scheme may at any time be varied or revoked by a subsequent scheme prepared, published and sanctioned in accordance with this Act.

(2) The Governor in Council, on the application of the local authority or of any person appearing to him to be interested, may at any time by notification in the *Bombay Government Gazette*, revoke a town planning scheme if he thinks that under the special circumstances of the case the scheme should be so revoked.

47. *Compensation which final scheme is varied or revoked.*—If at any time after the day on which the final scheme has come into force such scheme is varied or revoked, any person who has incurred expenditure for the purpose of complying with such scheme shall be entitled to receive compensation from the local authority, in so far as any such expenditure is rendered abortive by reason of the variation or revocation of such scheme.

48. *Governor in Council may himself or through any person exercise power or perform duty conferred or imposed on a local authority*—If in the opinion of the Governor in Council any local authority is not competent to exercise or perform, or neglects or fails to exercise or perform, any power conferred or duly imposed upon it under any of the provisions of this Act, the Governor in Council, or any person or persons appointed in this behalf by the Governor in Council, may exercise such power or perform such duty.

49. *Bar of legal proceedings.*—No suit or other legal proceeding shall be maintained in respect of the exercise of any discretion conferred by this Act or against any public servant or person duly appointed or authorised under this Act in respect of anything in good faith done or purporting to be done under the provisions thereof or the rules made thereunder.

50. *Registration of document, plan or map in connection with a final scheme is not required.*—(1) Nothing in the Indian Registration Act, 1908, shall be deemed to require the registration of any document, plan or map prepared, made or sanctioned in connection with a final scheme which has come into force and which has not been revoked.

* This section was inserted by Bom VI of 1920, s. 2.

(2) All such documents, plans and maps shall, for the purposes of sections 48 and 49 of the Indian Registration Act, 1908, be deemed to have been and to be registered in accordance with the provisions of that Act:

Provided that documents, plans and maps relating to the sanctioned scheme shall be accessible to the public in the manner prescribed.

51. *Land needed for purpose of town planning scheme may be compulsorily acquired.*—Land needed for the purpose of a town planning scheme shall be deemed to be land needed for a public purpose, within the meaning of the Land Acquisition Act, 1894.

52. *Rules.*—(1) The Governor in Council may make rules consistent with the provisions of this Act to provide for all matters not specifically enacted therein.

(2) In particular and without prejudice to the generality of the foregoing power such rules shall be made to determine the following matters:—

(*a*) the procedure to be followed by the officer appointed to hold an enquiry for the purpose of deciding a disputed claim as to ownership under section 4;

(*b*) the notice to be given under section 5;

(*c*) the manner of publication of a declaration of intention to make a scheme under sub-section (2) of section 9;

(*d*) the manner of publication of a draft scheme under section 10;

(*e*) the further particulars to be prescribed for inclusion in the draft scheme under clause (*f*) of section 11;

(*f*) the form of the commencement certificate to be granted by a local authority under clause (*a*) of sub-section (1) of section 15 and the conditions, if any, to be included therein;

(*g*) the procedure to be followed by a local authority in making an enquiry under clause (*c*) of sub-section (1) of section 15;

(*h*) the time to be allowed for making a claim to compensation under section 21;

(*i*) the period within which payment is to be made to the local authority under section 24;

(*j*) the procedure to be prescribed under section 30 and the notices to be given under sub-sections (1), (2) and (9) of that section;

(*k*) the form in which the arbitrator is to draw up the final scheme under sub-section (10) of section 30;

(*l*) the way in which the [*a*] Governor in Council[*a*] is to publish a notification relating to the final scheme under sub-section (1) of section 40;

(*m*) the procedure to be followed by the local authority in summarily evicting a person under section 42;

(*n*) the notice to be given by the local authority before it takes action under section 43;

[*a*—*a*] These words were substituted for the original words by Bom. XIII of 1920, s. 4.

(*o*) the proportion of elected and nominated persons on a Joint Planning Board under sub-section (2) of section 45;

(*p*) the manner of election of representatives of the several local authorities under sub-section (3) of section 45;

(*q*) the manner in which documents, plans and maps shall be made accessible to the public under the proviso to section 50;

(*r*) the procedure to be adopted for securing co-operation on the part of the local authority with the owners or persons interested in land proposed to be included in a town planning scheme at every stage of the proceedings by means of conferences and such other means as may be expedient;

(*s*) the procedure to be followed by an arbitrator appointed under this Act;

(*t*) the procedure tb be followed by a Tribunal of Arbitration under this Act;

(*u*) the procedure to be followed generally in carrying out the provisions and objects of this Act;

(*v*) the extent to which the proceedings of local authorities under this Act shall be regulated by any municipal or local law applicable to such authorities.

(3) The power to make rules under this Act shall be subject to the condition of previous publication.

RULES

under the Bom. Town Planning Act, 1915

(As amended by several notifications issued from time to time up to 1st September, 1936.)

No. 3772.—In exercise of the powers conferred by section 52 of the Bombay Town Planning Act, 1915 (Bom. I of 1915), the Governor in Council is pleased to make the following rules, namely :—

1. In these rules unless there is anything repugnant in the subject or context,

(*a*) words or expressions which are defined in the Bombay Town Planning Act, 1915, shall have the same meaning as in that Act, and

(*b*) "Section", "sub-section" and "clause" shall mean, respectively, a section, sub-section or clause of that Act.

2. (1) The officer holding an enquiry into disputed ownership under section 4 shall, as such enquiry proceeds, record a minute of the proceedings in his own hand embracing the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same.

(2) Such enquiry shall be in public and seven days' notice of the enquiry shall be given to the parties to the dispute.

3. Previous to entry under section 5 into any building or upon any enclosed court or garden attached to a dwelling house twenty-four

hours' notice in writing shall be given to the owner or occupier thereof, unless the owner or occupier has given his consent to such entry.

4. Local authority's declaration of intention to make a scheme shall include a statement that if within one month from the date of publication in the *Bombay Government Gazette* any person likely to be affected by such scheme communicates in writing to the Governor in Council any objection or suggestion relating to such scheme the Governor in Council will consider such objection or suggestion.

5. A local authority in addition to publishing a declaration of intention to prepare a town planning scheme in the *Bombay Government Gazette*, shall further publish the declaration by means of an advertisement in one or more Vernacular newspapers circulating within the jurisdiction of the local authority, and by posting copies of the advertisement in prominent places in or near the area proposed to be included in the scheme and at the office of the local authority. The advertisement shall contain the local authority's resolution making such declaration and shall intimate that the plan of the area proposed to be included in the scheme is open for public inspection at the head office of the local authority during office hours.

6. (1) The local authority shall call one or more meetings of persons known to have rights in land or buildings in the area included in a proposed draft scheme and of other persons known to be affected by the scheme, provided that tenants whose leases expire within a year of the date of the local authority's declaration of intention to make a scheme need not be called. Due notice of such meetings shall be given in the area subject to the jurisdiction of the local authority and shall be sent by post to all persons believed to have an interest in the lands included in the scheme, when their addresses are known to the local authority, and also to any Government Department, or public body concerned. Such meetings shall be held as soon as may be convenient after the Governor in Council has sanctioned the making of a scheme, and unless there is good reason to the contrary on the land included in the draft scheme.

(2) At such meetings the proposed draft scheme shall be generally described and explained, and a minute of each meeting shall be kept.

(3) Where the number of persons likely to be affected by the scheme is large, the local authority should where possible promote the formation of one or more committees of representatives of such persons. In some cases it may be found advisable to appoint a member of the local authority to be chairman of each committee. Use should be made of such committees for the purpose of explaining the scheme to land-owners, and for the purpose of discussion and consultation during the cousre of the preparation of a draft scheme under section 10.

(4) Before the final adoption of a draft scheme, all objections shall be carefully considered, and the proposed scheme shall, with due regard to the interests of the public, be modified so as to meet as far as is possible the wishes of persons interested.

(5) The publication of a draft scheme under section 10 of the Act shall be by means of an advertisement in the *Bombay Government Gazette*, and in one or more vernacular newspapers circulating within the jurisdiction of the local authority, and by posting copies of the

advertisement in prominent places in or near the area comprised in the scheme and at the office of the local authority. The advertisement shall state the fact of a draft scheme having been prepared and the limits of the area comprised in the scheme and shall intimate that a copy of the scheme is open for public inspection at the head office of the local authority during office hours. It shall also recite section 13 of the Act. The date of publichtion referred to in section 13 means the date on which the *Bombay Government Gazette* containing the advertisement is published.

7. A draft scheme shall contain in addition to the particulars specified in clauses (*a*) to (*e*) of section 11, the following particulars, namely :—

(*i*) A map on a scale not smaller than one inch to the mile showing the area included in the scheme and the country within at least 2 miles of that area on every side. Such map shall show in particular all existing roads and lands proposed to be reserved or allotted for roads in the scheme and all existing and proposed means of communication of every kind.

(*ii*) A plan on a scale not smaller than 200 feet to the inch showing the original plots with identification numbers and all existing buildings.

(*iii*) A plan on a scale not smaller than 200 feet to the inch showing both the original plots and the manner in which it is proposed to alter the boundaries of original plots.

(*iv*) A plan on a scale not smaller than 200 feet to the inch showing the boundaries of plots as it is proposed that they will appear after the final scheme is executed such plots being numbered serially. This plan shall illustrate as far as possible, by means of colours, letters, and explantory notes, or in some other convenient manner, all such provisions of the scheme as may properly be illustrated in a plan. It shall also show such levels or contours as may be necessary for a proper understanding of the scheme.

(*v*) A re-distribution and valuation statement in Form A showing the estimated amounts to be paid to or by each of the owners included in the scheme.

(*vi*) A copy of the estimates of all works contemplated in the scheme and a statement of the dates on which it is anticipated that the respective works will be completed. The approximation of dates must be correct to within six months and the local authority shall be bound by these dates in the case of owners whose contributions are affected thereby.

(*vii*) A statement in form B explaining the finance of the scheme as estimated.

8. In submitting to the Governor in Council under sub-section (1) of section 14 a draft scheme or a modified draft scheme, with objections, as the case may be, the local authority shall submit also—

(*i*) copies of the minutes of meetings held under rule 6 and particulars regarding any representative committees appointed under that rule ;

(*ii*) particulars of the steps taken to consult owners in the preparation of the draft scheme under section 10 (1); and

(*iii*) particulars of the manner in which the draft scheme has been published under rule 6 (5).

The draft scheme and the papers referred to in this rule shall be submitted in duplicate.

9. A commencement certificate under clause (*a*) of sub-section (1) of section 15 shall be in Form C.

10. (1) A local authority, for the purpose of the enquiry referred to in clause (*c*) of sub-section (1) of section 15, shall serve a notice upon such person calling upon him to show cause why he should not be directed to stop the work in progress and fixing a date not earlier than seven days from the date of service of the notice, for the hearing of the case.

(2) The local authority, if it considers it expedient to do so, may appoint a committee of not less than 3 of its members to hear such cases.

(3) Any representation which may be made by the person served with the notice in person or by recognized agent on the day appointed or which may be received in writing by such day, shall be duly considered. A minute shall be kept of the proceedings by the presiding officer and the reasons for the decision shall be stated. The decision shall be signed by the persons passing it.

11. In the City of Bombay or the district of Karachi when an arbitrator has been appointed, the authority authorized by section 33 (2) to appoint the president of the tribunal of arbitration shall be forthwith requested to make such appointment and to communicate the name of the person appointed to Government.

12. The appointment of an arbitrator for a town planning scheme or of a president of a tribunal of arbitration shall be notified in the *Bombay Government Gazette*, and shall be communicated to the local authority concerned. The local authority shall, immediately on receiving from Government information of the appointment, post up at the office of the local authority and in some prominent place within the area of the jurisdiction of the local authority a copy of the Government Notification appointing the arbitrator or the President, and shall give in the copy their addresses.

13. The local authority shall render all reasonable assistance to the arbitrator and shall allow him to examine freely all papers, documents, and plans connected with the scheme.

14. *Procedure of the arbitrator*—

(1) Before commencing the preparation of the final scheme the arbitrator shall give notice of the date on which he will commence his duties. Such notice shall be advertised in one or more vernacular newspapers circulating within the jurisdiction of the local authority and shall be posted in prominent places at or near the area comprised in the scheme and at the arbitrator's office.

(2) After the date fixed in the abovementioned notice the arbitrator shall continue to carry on his duties as far as possible on all ordinary working days and during ordinary working hours.

(3) Special notice of at least twenty-four hours shall be served upon the persons interested in each plot or particular comprised in the scheme, before the arbitrator proceeds to deal in detail with the por-

tion of the scheme relating thereto. The notice shall also be posted at the arbitrator's office. Such notice shall be given in the cases mentioned in sub-sections (1), (2) and (9) of sectione 30 and in any other cases where any persons have not been sufficiently informed that any matter affecting them is to be considered.

(4) The arbitrator shall give all persons affected by any particular of the scheme sufficient opportunity of stating their views and shall not pass any decision till he has duly considered their representations, if any.

(5) The proceedings shall not be conducted with the formalities of judicial proceedings, but whenever there are conflicting claims or any difference of opinion with regard to any portion of the scheme the arbitrator shall record a brief minute in his own hand setting out the points at issue and the necessary particulars, and shall pass a clear decision with the reasons therefor. All such minutes shall be appended to the scheme.

(6) The Arbitrator shall record and enter in the scheme every decision passed by him under sub-sections (1), (2), (3), (7) and (8) of section 30. The calculations and estimates required by sub-sections (4), (5), (6) and (9) of section 30 shall be fully set out and clearly recorded.

(7) The final scheme drawn up by the Arbitrator shall contain the particulars specified in rule 7.

(8) The component parts of the scheme shall be so arranged that they may be readily referred to in connection with the map and plans.

14-A. The Head of the Town Planning and Valuation Department in respect of all town planning schemes in the Presidency of Bombay may in accordance with the final scheme drawn up by the arbitrator under section 30 and rule 14, issue a certificate in Form D specifying the area and boundaries of a reconstituted plot, the nature of the tenure of, and of the owner's title to such a plot and the name of the person to whom the plot has been allotted under the final scheme.

15. The time within which the owner of any property or right which is injuriously affected by the making of a town planning scheme shall be entitled under section 21 to make a claim before an arbitrator shall be two months from the date of the *Bombay Government Gazette*, in which the appointment of the arbitrator is notified.

16. The period to be prescribed under sub-section (2) of section 24 shall be one month from the date on which the owner is directed by the arbitrator under sub-section (1) of section 24 to make payment.

17. The president of the tribunal shall, within one month of the date on which he receives from the arbitrator the proposals referred in section 32, appoint an impartial person as assessor under section 33, and shall report the name of the person appointed to Government. The fact that the tribunal has been constituted and the personnel constituting it shall be notified in the *Bombay Government Gazette* communicated to the local authority concerned, and notified by the local authority in the manner prescribed in rule 12. The impartial person to be appointed as assessor shall, whenever possible, be a non-official.

18. *Procedure of the Tribunal of Arbitration*—

(1) No business shall be transacted by the Tribunal unless all the members are present.

(2) Where any member of the Tribunal ceases to act under sub-section (7) of section 33, the Tribunal shall proceed with any business in hand as soon as a new member is appointed and it shall not be necessary to transact any business *de novo* by reason of such change in the constitution of the Tribunal.

(3) The Tribunal shall record their reasons in wrting in any case where the proposals of the arbitrator under clauses (4), (5), (6) and (9) of section 30 are modified, varied or rejected by them.

(4) Before each part of a scheme is taken into consideration the tribunal shall give such notice as they deem sufficient to the parties interested in such part.

(5) The Tribunal shall meet and adjourn as they think proper with due regard to the despatch of business.

19. The publication by the Governor in Council under section 40 of a notification relating to the final scheme forwarded by the arbitrator shall be by means of an advertisement in one or more vernacular newspapers circulating within the jurisdiction of the local authority concerned, and by posting copies of the advertisement in or near the area included in the scheme and at the office of the local authority.

20. When a scheme is sanctioned by the Governor in Council under sub section (1) of section 40, the arbitrator shall without delay forward a copy of the scheme to the Superintendent of Land Records in order that the survey records may le corrected.

21. (1) The local authority shall proceed as follows against any persons liable to be summarily evicted under section 42. The local authority shall in the first instance serve a notice upon such person requiring him within such time as may appear reasonable after receipt of the said notice to vacate the land, and, if such person fails to comply with the notice, the local authority shall depute an officer or servant to remove him.

(2) If such person resists or obstructs the officer, or, after eviction, re-occupies the land, the local authority shall prosecute him under section 188 of the Indian Penal Code.

22. A local authority before removing, pulling down, or altering any building or other work under clause (*a*) of sub-section (1) of section 43 shall give not less than seven days' notice of its intention to do so to the owner or occupier, if any, of such building or other work.

23. A local authority before executing any work under clause (*b*) of sub-section (1) of section 43 shall give not less than seven days' notice of its intention to do so to the person whose duty it is to execute the work.

24. (1) Documents, plans and maps relating to a sactioned scheme made by a local authority shall be open for public inspection at the head office of the local authority at any time during the office hours of the local authority for a period of six months from the date of the *Bombay Government Gazette* in which the sanction was published.

(2) All final town planning schemes shall, on the expiry of the period mentioned in sub-rule (1), be lodged with the Town Planning and Valuation Department of the Consulting Surveyor to Government.

25. All notices required to be served upon any person under these rules shall unless otherwise provided be served as nearly as may be in the manner laid down in the Code of Civil Procedure, 1908, for the service of a summons on a defendant.

26. The proceedings of local authorities under the Bombay Town Planning Act, 1915, shall be regulated by the municipal or local law applicable to such authorities so far as may be consistent with the provisions of that Act and these rules.

FORM A.
(Rules 7 and 14)
TOWN PLANNING SCHEME No.
Redistribution and Valuation Statement.

Serial No.	Name of owner.	ORIGINAL PLOT					FINAL PLOT						Demand from (+) or by (—) owner under section 19. Column 9b *minus* column 6b.	Increment (section 17). Column 10a *minus* column 9a.	Contribution (section 18) per cent. of column 12.	Addition to (+) or deduction from (—) contribution, to be made under other sections.	Net Demand from (+) or by (—) owner being the addition of columns 11, 13, 14.	Remarks.
		Tenure.	Number.	Area in square yards.*	Value in Rupees		Number.	Area in square yards.	Value in Rupees.									
									Undeveloped.		Devoloped.							
					Without reference to value of structures.	Inclusive of structures.			Without reference to value of structures.	Inclusive of structures.	Without reference to value of structures	Inclusive of structures.						
1	2	3	4	5	6a	6b	7	8	9a	9b	10a	10b	11	12	13	14	15	16
													Rs	Rs	Rs	Rs	Rs	
												Total						

*Instead of a square yard, a guntha or other suitable unit may be taken as the unit of area.

FORM B.

(Rule 7)

Finance of Town Planning Scheme No.
of the

(Name of local authority.)

Date Rs.

Expenses under section 3 (*a*), (*b*), (*e*), (*f*) and (*g*)

Other expenses*—

Expenses shown in the redistribution and valuation statement (total of Col. 11 of Form A)

Cost of publication under section 9 (2) and under section 10 (1) (Rules 5 and 6) ...

Compensation under section 15 (2) ...

Legal expenses under section 16 (*c*) ...

Compensation under section 21 ...

Cost of demarcation, salaries of arbitrator and Tribunal of Arbitration and their staff and other expenses under section 39 (2) ...

(*a*) Total ...

Total of increments (Col. 12 of Form A) Rs.

Proportion of increment to be contributed by each holder (section 18) per cent.

(*b*) Total of the contributions under section 18, Rs.

Net cost of scheme to local authority [(*a*—(*b*)] *Rs.*

*In detail (sections or authority to be quoted).

NOTE.—The sign (—) before an item of expense indicates that the amount is payable to the local authority.

Particulars should be inserted showing how the net cost of the scheme to the local authority is proposed to be met.

FORM C.

(Rule 9)

COMMENCEMENT CERTIFICATE.

Permission is hereby granted, under section 15 of the Bombay Town Planning Act, 1915 (Bombay I of 1915).

to§

to†

on the following conditions, *viz.*,

§ Name of person.

† Description of work.

FORM D.

BOMBAY TOWN PLANNING ACT, 1915.

Certificate of Tenure and Title

Town Planning Scheme ‡ No.

[Sanctioned under Government Notification, General Department, No. , dated the 19 and published at page of *Bombay Government Gazette* dated]

Final Plot No. Area A. G. or Sq. Yds.

Reputed owner Mr.

Present occupant holding the land on years lease since *Date* Mr. §

Sketch of Final Plot No.

(Here enter the sketch.)

Tenure.—Ordinary Rayatwari or Inam or any other as the case may be with reference to original plots. (If there are different tenures for different portions of the whole plot these will be shown separately on the plan being divided by a thick chain line).

Title.—(Here describe the nature of the owner's title as found by the Arbitrator or special Officer appointed under section 4 of the said Act.)

Rights.—(If the owner of the plot has any special rights transferred to his final plot from the original plot or any new rights given to him under the scheme these may be entered here.)

Disabilities.—(Rights of any other owner or person over this plot such as mortgage or easement, etc., may be entered here)

Note.—(1) The above plot shall be held subject to all the restrictions and regulations specified in the above Town Planning Scheme as finally sanctioned and published by Government under Notification No. , dated , and as regards *assessment* subject to the provisions of the Bombay Land Revenue Code, 1879, and of the rules and orders from time to time issued thereunder.

(2) No buildings or excavations or any other alterations shall be carried out in the above plot except with special written permission of the local authority having jurisdiction over the area at the time and in accordance with the provisions of the said scheme.

(3) The holder of this certificate may apply to the Collector to have the amount and nature of the assessment and the period of guarantee shown on the certificate. The Collector's endorsement shall declare that non-agricultural assessment is, except in the case of inam land, liable to revision should the land be appropriated to any non-agricultural use—section 48 of the Bombay Land Revenue Code, 1879.

(4) Any other special regulation in respect of the above plot.

This certificate is granted under rule 14A of the rules under the Bombay Town Planning Act, 1915, as a *prima facie* proof of the tenure and title of the owner above named and shall be valid unless declared otherwise by a decree from a Civil Court within the period of limitation from the date hereof, by and under the hand and seal of the Consulting Surveyor to Government this day of One thousand nine hundred and A. D.

Consulting Surveyor to Government.

‡ Enter name of place.

§ This should only be entered if the land is held on a building lease for a period of at least 30 years.

The Town Planning Scheme

Town Planning Scheme

[Under the Bombay Town Planning Act, 1915].

Whereas the Governor in Council has been pleased to sanction the above scheme under section 40 (1) of the Bombay Town Planning Act, 1915, and whereas a notification relating to such sanction has been published under No. , General Department, dated , at page of Part I of *Bombay Government Gazette*, dated , and since under section 40 (2) of the said Act all liabilities created by the said scheme shall come into force from the date notified by Government in their above notification :

(1) You are hereby called upon, *to pay into this office the sum of Rs. , due from you under the scheme, on or before the said date, *to be present at this office on the said date to receive the sum of Rs. due to you under the scheme. A copy of the scheme can be obtained at the Government Central Press for Rs. or can be seen at the Municipal Office on week days during office hours until the of 19 .

(2) Your attention is also invited to the undermentioned provisions of sections 41 and 42 of the Town Planning Act :--

Section 41.—On the day on which the final scheme shall come into force—

(*a*) all lands required by the Local Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Local Authority free from all encumbrances ;

(*b*) all rights in original plots which have been reconstituted shall determine and the reconstituted plots shall become subject to the rights settled by the Arbitrator.

Section 42.—On and after the day on which the final scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the final scheme may, in accordance with the prescribed procedure, be summarily evicted by the Local Authority.

President or Chief Officer,

Dated 19 .

Municipality.

To

Note.—Strike out the words not required.

THE BOMBAY
Trade Disputes Conciliation Act, 1934

[*9th October 1934.*

An Act to make further provision for the prevention and settlement of trade disputes by conciliation and for certain other purposes.

WHEREAS it is expedient to make further provision for the prevention and settlement of trade disputes by conciliation and for certain other purposes hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act and the previous sanction of the Governor required by section 80C of the said Act have been obtained for the passing of this Act;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Trade Disputes Conciliation Act, 1934.

Extent, commencement and application.

2. (1) Section 1 and this section extend to the whole of the Bombay Presidency. The remaining provisions of this Act extend to the City of Bombay and the Bombay Suburban District and the Governor in Council may further, by notification in the *Bombay Government Gazette*, direct that the said provisions shall extend to such other area as may be specified in the notification.

(2) Section 1 and this section shall come into force at once. The Governor in Council may, by notification in the *Bombay Government Gazette*, direct that the remaining provisions of this Act shall come into force in any area to which the said provisions extend or may have been extended under sub-section (1), on such date as may be specified in the notification.

(3) This Act shall apply, in the first instance, to the textile trade or industry. The Governor in Council may, by notification in the *Bombay Government Gazette*, direct that the provisions of this Act shall apply to such other trade or industry and in such area as may be specified in the notification.

Definitions.

3. In this Act, unless there is anything repugnant to the subject or context,—

(*a*) "Commissioner of Labour" means the officer appointed for the time being to be the Commissioner of Labour ;

(*b*) "Conciliator" includes the Chief Conciliator or a Special or Assistant Conciliator appointed under this Act ;

(*c*) "Conciliation proceeding" means a proceeding held by a conciliator under this Act ;

(*d*) "Delegate" means a person appointed under section 9 to represent a party to a trade dispute in a conciliation proceeding and includes the Labour Officer acting as a delegate to represent workmen in such proceeding ;

(*e*) "employer" includes any body of persons, whether incorporated or not and any managing agent of an employer ;

(*f*) "Labour Officer" means an officer appointed to perform the duties of a Labour Officer under this Act ;

(*g*) "prescribed" means prescribed by rules made under this Act,

(*h*) "trade dispute" means any dispute or difference between employers and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person ;

(*i*) words and expressions not defined in this Act, but defined in the Trade Disputes Act, 1929, shall have the meaning assigned to them in that Act.

Appointment of Conciliators.

4. (1) The Commissioner of Labour shall be the ex-officio Chief Conciliator.

(2) The Governor in Council may, by notification in the *Bombay Government Gazette*, appoint any person to be a Special Conciliator for such area as may be specified in the said notification.

(3) The Governor in Council may, by notification in the *Bombay Government Gazette*, appoint any person to be an Assistant Conciliator for such area as may be specified in the said notification.

Labour Officer.

5. (1) The Governor in Council may, by notification in the *Bombay Government Gazette*, appoint any person to be a Labour Officer for such area as may be specified in the said notification.

(2) The Labour Officer shall exercise the powers conferred and perform the duties imposed on him by or under this Act. It shall be the duty of the Labour Officer to watch the interests of workmen with a view to promote harmonious relations between employers and workmen and to take steps to represent the grievances of workmen to employers for the purpose of obtaining their redress.

(3) For the purpose of exercising such powers and performing such duties, the Labour Officer may, after giving reasonable notice, enter any place used for the purpose of any trade or industry to which this Act applies and shall be entitled to inspect and call for documents, relevant to the grievances of workmen, in the possession of any employer or workman, as the Labour Officer deems necessary. The Labour Officer may, for the same purpose, enter after giving reasonable notice any premises provided by an employer for the purpose of residence of his workmen.

(4) All particulars contained in or information obtained from any document inspected or called for under sub-section (3) shall, if the person in whose possession the document was so requires, be treated as confidential.

Jurisdiction of Conciliators.

6. (1) The Chief Conciliator shall exercise powers and perform duties under this Act throughout the Presidency except in the area for which a Special Conciliator has been appointed under this Act.

(2) An Assistant Conciliator shall be subordinate to, and shall exercise such powers and perform such duties as may be delegated to him by, the Chief Conciliator or Special Conciliator, as the case may be.

Application or report for settlement of trade disputes.

7. If any trade dispute exists or is apprehended,—

(a) either or both parties to the dispute may apply, whether separately or conjointly, or

(b) the Labour Officer may make a report,

to the Conciliator for a settlement of the dispute.

Conciliator to give notice to parties.

8. (1) If the Conciliator,

(a) in any area for which a Labour Officer is appointed, on receipt of an application or report under section 7, or

(b) elsewhere, on receipt of an application under section 7 or upon his own knowledge or information,

is satisfied that a trade dispute exists or is apprehended, he may cause notice to be given to the parties to the dispute to appear before him at such time and place as may be specified in the notice.

A copy of such notice shall be sent to the Labour Officer.

(2) Notice to the parties shall require them to appoint, within such time as may be specified in the notice, delegates to represent them in the conciliation proceeding.

(3) Notice under this section shall be in the prescribed form and shall be served in the prescribed manner.

Delegates.

9. (1) On receipt of notice under section 8, the parties to a trade dispute shall within the time specified in the notice or within such time as may be fixed by the Conciliator in this behalf appoint delegates in such manner as the Conciliator may direct :

Provided that when a party to the dispute is a single individual, such party may appoint himself as a delegate :

Provided further that the Labour Officer may be appointed as a delegate on behalf of the workmen.

(2) The number of delegates appointed by a party to a trade dispute shall not exceed three :

Provided that when, in the opinion of the Conciliator, such party to the dispute is divided into two or more groups, the Conciliator may allow each of such groups to appoint separate delegates not exceeding three :

Provided, further, that the total number of delegates appointed by all the groups forming the party shall not exceed twelve.

(3) If an employer who is a party to a trade dispute has failed or refused to appoint any delegate within the time specified in the notice or within such further time as may be fixed by the Conciliator, such employer shall, on conviction, be punishable with fine which may extend to Rs. 100 and with further fine which may extend to Rs. 100 for every day on which such failure or refusal continues after the date of the first conviction.

Explanation.—Where such employer is a company registered under the Indian Companies Act, 1913, employer shall mean the managing agent or managing director of such company or any other officer of the company authorised to represent such company in the prescribed manner.

(4) No criminal court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under sub-section (3).

(5) No criminal court shall take cognizance of any offence under sub-section (3) except with the previous sanction of the Governor in Council.

(6) Where workmen who are parties to a trade dispute have failed or refused to appoint any delegate within the time specified in the notice or within such further time as may fixed by the Conciliator, the Labour Officer shall act as the delegate on behalf on such workmen.

Disqualification from being a delegate.

10. (1) A person shall be disqualified from being appointed or acting as a delegate, if such person—

(*a*) is less than twenty-one years of age ; or

(*b*) is an uncertificated bankrupt or an undischarged insolvent.

(2) A person shall be disqualified from acting as a delegate, if such person is not, in the opinion of the conciliator, after the conciliation proceedings have started, a fit and proper person to be a delegate.

(3) The decision of the Chief Conciliator or the Special Conciliator, as the case may be, that a person is disqualified from being appointed or acting as a delegate shall be final.

Conciliation proceeding.

11. (1) On the date specified in the notice under sub-section (1) of section 8 or on such other date as may be fixed by the Conciliator on his motion or at the request of any of the parties to a trade dispute, the Conciliator shall hold the conciliation proceeding in the prescribed manner.

(2) A party to such trade dispute shall be represented in a conciliation proceeding by delegates. The Labour Officer, even if not appointed or acting as delegate, shall be entitled to be present at such proceeding.

(3) It shall be the duty of the Conciliator to endeavour to bring about a settlement of the trade dispute and for this purpose the Conciliator shall inquire into the dispute, and all matters affecting the merits thereof and the right settlement thereof and in so doing may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute and may adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to agree upon the terms of the settlement.

Procedure and powers of conciliator in conciliation proceeding.

12. (1) A Conciliator shall, subject to the provisions of this Act, follow in a conciliation proceeding such procedure as may be prescribed.

(2) For the purpose of holding a conciliation proceeding, the Conciliator shall have the same powers as are vested in courts under the Code of Civil Procedure, 1908, in trying a suit in respect of the following matters, viz. :—

(*a*) summoning and enforcing the attendance of any person and examining him on oath ;

(*b*) compelling the production of documents and material objects ; and

(*c*) issuing commissions for the examination of witnesses ;

and shall have such further powers as may be prescribed.

Note.—For the powers for the matters mentioned in cls. (*a*), (*b*) and (*c*) of sub-section (2), see Orders V, XVI and XXVI of Schedule I of the Code of Civil Procedure, 1908.

(3) If a party to a trade dispute giving any information or producing any document in a conciliation proceeding makes a request in writing to the Conciliator that such information or the contents of such document may be treated as confidential, the Conciliator shall direct that such information or document be treated as confidential.

(4) The Conciliator may, if he thinks fit, permit the information or contents of the document in respect of which a request has been made under sub-section (3) to be disclosed to the other party to the trade dispute:

Provided that the Conciliator shall not permit such information or the contents of such document to be so disclosed to the other party to the trade dispute, if it is shown to his satisfaction that such disclosure is likely to affect the interests of the party making the request under sub-section (3) adversely in any matter not connected with the settlement of the said dispute.

(5) Save as provided in sub-section (4), the Conciliator or any person present at or concerned in the conciliation proceeding shall not disclose any information or the contents of any document directed to be treated as confidential under sub-section (3), without the consent in writing of the party making the request under the said sub-section.

(6) Nothing in this section shall apply to the disclosure of any information or the contents of any document for the purpose of a prosecution for an offence under section 14 or under the Indian Penal Code.

Settlement and Report.

13. (1) If a settlement of a trade dispute is arrived at in a conciliation proceeding, a memorandum of such proceeding and settlement shall be drawn up in the prescribed form by the Conciliator and signed by the delegates. The Conciliator shall send a report of such settlement together with a copy of the memorandum to the Governor in Council.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible, after the close of the conciliation proceeding, send a full report regarding the trade dispute to the Governor in Council, setting forth the particulars of the proceeding and the steps taken by him for the purpose of ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be made.

(3) Notwithstanding anything contained in sub section (1) or (2), any information or contents of any document shall not be included in the memorandum of proceedings, settlement or report drawn up or made under sub-section (1) or (2), if such information or the contents of such document is not permitted by the Conciliator to be disclosed under sub-section (4) of section 12.

(4) The record of the conciliation proceeding held and settlement made under this section shall be maintained in the prescribed manner.

Penalty for disclosing confidential information.

14. (1) If the Conciliator or any person present at or concerned in a conciliation proceeding wilfully discloses any information or contents of any document in contravention of section 12, he shall, on complaint made by the party who made the request under sub-section (4) of section 12, be punishable with fine which may extend to one thousand rupees.

(2) No criminal court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this section.

(3) No criminal court shall take cognizance of any offence under this section except with the previous sanction of the Governor in Council.

Exemption of documents from stamp duty, court fee and registration fees.

15. Any application, document or other instrument made or produced in the course of any proceeding under this Act shall be exempt from stamp duty, court fee or registration fee payable under any law for the time being in force.

Penalty.

16. If any person instigates or incites others not to take part in a conciliation proceeding, or otherwise obstructs or instigates or incites others to obstruct a Conciliator in the discharge of his duties under this Act or molests or abets the molestation of others, with intent to prevent them from taking part in a conciliation proceeding, such person shall, on conviction, be punishable with imprisonment of either description which may extend to six months or with fine or with both.

Explanation.—For the purpose of this section, a person is said to molest any person who

(*a*) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or persistently follows him from place to place, or interferes with any property owned or used by him, or deprives him of or hinders him in the use thereof, or

(*b*) loiters or does any similar act at or near the place where a conciliation proceeding is held, in such a way and with intent that any person may thereby be deterred from entering or approaching such place.

Power of entry.

17. It shall be lawful for a Conciliator at any time and from time to time when necessary for the purposes of exercising the powers conferred and performing the duties imposed by or under this Act to enter any premises used for the purpose of any trade or industry to which this Act applies.

Conciliator and Labour Officer to be public servants.

18. A Conciliator and a Labour Officer shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Protection to persons acting in good faith.

19. No suit or proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Rules.

20. (1) The Governor in Council may make rules not inconsistent with the provisions of this Act for the purpose of carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(*a*) prescribing the powers and duties of the Labour Officer ;

(*b*) prescribing the powers and duties which may be delegated to Assistant Conciliators ;

(*c*) prescribing the form and manner in which notice shall be given under section 8 ;

(*d*) prescribing the manner in which the officer of a company shall be authorised to represent the company under section 9 ;

(*e*) regulating the procedure in which a conciliation proceeding shall be held under section 11 ;

(*f*) determining the scale of fees at which witnesses shall be paid for appearance in a conciliation proceeding under section 11 ;

(*g*) specifying the powers which may be exercised by the Conciliator for the purpose of a conciliation proceeding under section 11 ;

(*h*) prescribing the form in which and the particulars which shall be mentioned in the memorandum of a settlement under section 13 ;

(*i*) prescribing the manner in which the record of a conciliation proceeding and settlement shall be maintained under section 13 ; and

(*j*) providing for any other matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Governor in Council, necessary for giving effect to the provisions of this Act.

(3) The rules made under this section shall be subject to the condition of previous publication in the *Bombay Government Gazette.*

(4) Rules made under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified and rescinded by a resolution of the said Council and such rule shall after notification in the *Bombay Government Gazette* be deemed to have been modified or rescinded accordingly :

Provided that when in the opinion of the Governor in Council such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the Governor in Council may by notification in the *Bombay Government Gazette* declare that the modification or rescission shall have no effect and thereupon the rules shall remain in force as if they had not been modified or rescinded.

Saving of the provisions of the Trate Disputes Act, 1929.

21. Nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and no conciliation proceeding shall be held relating to any matter or trade dispute which is referred to and is pending before, the Court of Inquiry or Board of Conciliation under the said Act.

The Bombay Trade Disputes Conciliation Rules, 1934[1]

No. .—In exercise of the powers conferred by section 20 of the Bombay Trade Disputes Counciliation Act, 1934 (Bom. IX of 1934) the Governor in Council is pleased to make the following rules for the purpose of giving effect to the provisions of the said Act :—

PRELIMINARY

1. *Short title.*—These rules may be called the Bombay Trade Disputes Conciliation Rules, 1934.

2. *Difinitions.*—In these rules, unless there is anything repugnant in the subject or context,

(*a*) "Act" means the Bombay Trade Disputes Conciliation Act, 1934.

(*b*) "Section" means a section of the Act.

3. *Form and manner of giving notice under section 8.*—The notice under section 8 shall be given in Form A appended to these rules and shall be served in the following manner :—

(*a*) Where a registered company is a party to a trade dispute, the notice shall be sent to the managing agent or the managing director of the company at the registered office of the company :

Provided that when such company has, before the issue of the notice, intimated in writing to the Chief Conciliator that the notice under this section should be served on some other officer in British India of such company, the notice shall be sent to such officer at such address as may be specified in the intimation.

(*b*) Where members of a registered trade union are a party to a trade dispute, the notice shall be sent to the registered office of the trade union.

(*c*) Where an owner, manager or occupier of an industrial establishment is a party to a trade dispute the notice shall be sent by registered post addressed to him at such establishment.

(*d*) Where workmen who are not members of a registered trade union, and who have not made an application under clause (*a*) of section 7, are a party to a trade dispute, the notice shall be served on the Labour Officer, who shall communicate its contents to the workmen in such manner as seems best to him in the circumstances of each case.

(*e*) Except in cases provided in clauses (*a*) to (*d*), notice shall be sent by registered post to the address given by a party to a trade dispute in his application under clause (*a*) of section 7.

4. *Intimation of authorisation of an Officer by a Company.*—(*a*) Where an employer is a company registered under the Indian Companies Act, 1913, the managing agent or the managing director of such company may give written intimation to the Chief Conciliator that the company has authorised some other officer of the company residing in British India to represent it for the purposes of sub-section (3) of section 9.

(*b*) Such intimation shall contain the name, address and occupation of the officer authorised to represent the company.

[1] These draft rules were published under Notification No. 340-34, dated 8th November 1934 by the Governor in Council (Political and Reforms Department).

(c) Such intimation shall be given to the Chief Conciliator at any time not later than twenty-four hours after notice under section 8 is given to such employer.

5. *Expenses of witnesses.*—(1) Expenses reasonably incurred by any person summoned to give evidence or produce a document before the Conciliator may be allowed by the Conciliator to such person according to the scale prescribed for witnesses summoned to give evidence in the Court of the Presidency Small Causes, Bombay.

(2) Any party to a trade dispute applying for the issue of a summons to any person required to give evidence or produce document before the conciliator shall, within a period to be fixed by the Conciliator and before a summons is issued, deposit with the Conciliator such sum of money as would, in the opinion of the Conciliator, be sufficient for the purpose of defraying the expenses of the person summoned.

(3) The expenses allowed in the case of a person summoned by the Conciliator on his own motion or at the request of the Labour Officer shall be borne by Government.

6. *Manner of maintaining record of conciliation proceedings and settlement.*—The records of conciliation proceedings shall be maintained in Form B appended to these rules.

FORM A.

(*See* rule 3.)

Form of Notice to be given under section 8 of the Bombay Trade Disputes Conciliation Act, 1934.

Whereas under section 7 of the Bombay Trade Disputes Conciliation Act, 1934 an application has been made by / the Labour Officer has made a report to the Conciliator, for the settlement of a trade dispute in

And whereas I am satisfied that the dispute exists or is apprehended in

I hereby call upon you under the powers vested in me under sub-sections (1) and (2 of section 8 of the said Act, to appoint within days of the receipt of this notice delegates not exceeding in number to appear before me on your behalf to take part in the conciliation proceeding which will commence on the

day of at

(Signed)

Conciliator.

Dated

FORM B.

(*See* rule 6.)

Form in which record of conciliation proceedings shall be maintained

Reference No.

1. Name or names of firm or firms in which the strike or lock-out occurred or was apprehended

2. Names of parties and names of delegates, if any

3. Date of the first day on which the workmen were absent from work through strike or lock-out

4. Total number of persons employed in the firm or firms in which the strike or lock-out occurred or was apprehended

5. Number of persons involved in the dispute:
Directly
Indirectly

6. Cause or object of dispute

7. Date when the strike or lock-out ended

8. Result of the dispute

9. A brief description of the steps taken to bring about a settlement, giving the names of any organizations or persons assisting to bring about the settlement

10. Method by which settlement was brought about

Note.—Where an agreement in writing has been arrived at between the parties to the disputes, a copy of the agreement should be attached to the record.

Signature or signatures of officer or officers concerned with the settlement of the dispute.

N. B.—The draft Bombay Trade Disputes Conciliation Rules, 1934, have been confirmed by Notification No. 340-34 of the Political and Reforms Department, dated 12th January 1935.

THE

Bombay University Act

Bom. Act No. IV of 1928.

(As amended by Bom. Acts XII of 1923, XIII of 1929 and XV and XX of 1930).

[*2nd August 1928.*

AN ACT TO AMEND THE LAW RELATING TO THE UNIVERSITY OF BOMBAY.

WHEREAS by Act XXII of 1857 a University was established and incorporated at Bombay.

And whereas the law rlating to the said university was amended by the Indian Universities Act, 1904;

And whereas it is necessary to reconstitute the said University to enable it to provide greater facilities for higher education and to conduct post-graduate teaching and research in all branches of learning, including technology, while continuing to exercise due control over the teaching given by colleges affiliated to it from time to time; And whereas the previous sanction of the Governor-General required by section 80A (3) and the previous sanction of the Governor required by section 80C of the Government of India Act have been obtained for the passing of this Act; It is hereby enacted as as follows :—

CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called the Bombay University Act, 1928.

Commencement.

2. This section and sections 1 and 44 shall come into operation at once. The rest of the Act shall come into opeartion on such date as Government may, by notification [1] in the *Bombay Government Gazette*, appoint in this behalf.

Interpretation.

3. In this Act, unless there is anything rupugnunt in the subject or context—

(*a*) "College" means an affiliated college;

(*b*) "Fellow" means an *ex-officio* Fellow or an ordinary Fellow of the University appointed under the provisions of this Act but does not include an Honorary Fellow;

(*c*) "Head Master" means the head of a High School registered by the University;

(*d*) "Prescribed" means prescribed by the Act or by any Statutes, Ordinances or Regulations made thereunder;

(*e*) "Principal" means the head of a collge;

(*f*) "Registered Graduate" menns a graduate registered under the provisions of this Act or of the Indian Universities Act, 1904;

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[1] Sections 3 to 43 and 45 to 52 came into operation on 24th January 1929 (*vide* Government Notification in the Educational Department, No. 3132, dated the 23rd January 1929, published in the *Bombay Government Gazette*, 1929, Part I., P. 132).

(*g*) "Statutes," "Ordinances" and "Regulations" mean respectively the Statutes, Ordinances and Regulations of the University made or deemed to have been made under this Act and for the time being in force;

(*h*) "Teacher" means such Professor, Reader, Lecturer and person giving instruction in any college as may be declared by the Statutes to be a teacher;

(*i*) "University means the Univeraity of Bombay as reconstituted under this Act;

(*j*) "Universty Department" means any collegiate institution or post-graduate or research department maintained by the University;

(*k*) "University Professor" means a person appointed as such by the University; and

(*l*) "University Teacher" means a person appointed by the University to give instruction on its behalf.

CHAPTER II.—THE UNIVERSITY.

Incorporation and powers of the University.

4. (1) The University shall be and shall be deemed to have been incorporated for the purpose (among others) of making provision for the instruction of students, with power to appoint University Professors and University teachers, to hold and manage educational endowments, to erect, equip and maintain University laboratories and museums, to make regulations relating to the residence and conduct of students to lay down courses of instruction for the various examinations, to guide the teaching in colleges, to inspect colleges and to take measures to ensure that proper standards of teaching are maintained in them, to hold examinations, to confer degrees, to undertake post-graduate teaching and to promote research, and to do all acts, not inconsistent with this Act, which tend to the promotion of study and research.

(2) The Chancellor, Vice-Chancellor, the Rector (if any), the Fellows and all persons who may hereafter become or be appointed or elected to be Chancellor, Vice-Chancellor, Rector or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor, Rector or Fellows, are hereby constituted and declared to be one Body Corporate by the name of the University of Bombay; and such Body Corporate shall, by such name, have perpetual succession and a common seal, and by such name shall sue and be sued.

(3) The University shall be competent to acquire and hold property, both moveable and immoveable, to lease, sell or otherwise transfer any moveable or immoveable property which may have become vested in or been acquired by it for the purposes of the University and to contract and do all other things necessary for the purposes of this Act.

Territorial Limits of the University.

[1] 4A. The territorial limits within which the powers conferred upon the University by this Act shall be exercised shall comprise the whole of the Bombay Presidency (excluding Aden) and such Indian States

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[1] Section 4A was inserted by Bom. Act XX of 1930. s. 2.

and other territories as may, from time to time, be notified in this behalf by the Local Government in the *Bombay Government Gazette.*

Inspection of the University.

5. (1) The Chancellor shall have the right to make an inspection or to cause an inspection to be made by such person or persons, as he may direct, of the University, of any institutions associated with the University and of any work conducted or done by the University, and to make an enquiry or to cause an enquiry to be made in like manner in respect of any matter connected with the University. The Chancellor shall in every case give notice to the Senate of his intention to make an inspection or enquiry or to cause an inspection or enquiry to be made, and the Senate shall be entitled to be represented thereat.

(2) The Chancellor may, after such inspection or enquiry, by order in writing, cancel any decision of the University or any authority thereof in respect of any matter which is not in conformity with this Act and the Statutes, Ordinances and Regulations;

Provided that, before making any such order, he shall call upon the Senate to show cause why such an order should not be made, and if any cause is shown within a reasonable time, he shall consider the same.

Religious and other tests.

6. No person shall be excluded from membership of any of the authorities of the University or from admission to any degree or course of study on the sole ground of sex, race, creed or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever relating to religious belief or profession in order to entitle him to be admitted thereto as a teacher or student or to hold any office therein or to graduate thereat or to enjoy or exercise any privileges thereof except where in respect of any particular benefaction accepted by the University such test is made a condition thereof.

Authorities of the University.

7. The following shall be the authorities of the University :—

(1) The Senate,
(2) The Faculties,
(3) The Syndicate,
(4) The Academic Council,
(5) The Board of Post-graduate Studies,
(6) Such other bodies as the Senate may declare by Statutes to be authorities of the University.

CHAPTER III.—THE SENATE. ITS POWERS, CONSTITUTION AND DUTIES.

Constitution of the Senate.

8. The Senat shall consist of the Fellows of the University (*ex-officio* and ordinary).

The Chancellor.

9. (1) The Governor of Bomby, for the time being, shall be the Chancellor of the University. He shall, by virtue of his office, be the head of the University and the President of the Senate and shall, when present, preside at meetings of the Senate and at any convocation of the University.

(2) The Chancellor shall exercise such powers as may be conferred on him under the provisions of this Act.

The Vice-Chancellor.

10. The Chancellor shall appoint a Vice-Chancellor who shall, save as herein otherwise provided, hold office for two years, and shall be eligible for reappointment.

Powers of the Vice-Chancellor.

11. The Vice-Chancellor shall be responsible for the proper administration of the University and shall

(*a*) in the absence of the Chancellor, preside at the convocation and meetings of the Senate ;

(*b*) convene the Senate ;

(*c*) preside when present at the meetings of the Syndicate and exercise such other powers as may be conferred on him by this Act, the Statutes, Ordinances and Regulations.

The Rector.

12. (1) The Senate may create the office of the Rector by a statute to be framed by a majority of at least there-fourths of the whole number of Fellows.

(2) The Rector shall be a wholetime salaried officer of the University. He shall, subject to the approval of the Government, be appointed by the Senate and shall have rank and precedence next after the Chancellor and the Vice-Chancellor.

(3) The Senate may, subject to the provisions of this Act, frame Statutes prescribing the manner of appointment of the Rector, the salary and conditions of his office and his powers and duties.

Fellows.

13. (1) The Fellows of the University shall be-

I. Ex-officio.

(A) (*i*) The Chancellor,

(*ii*) The Vice,Chancellor,

(*iii*) The Rector (if any),

(*iv*) The Registrar of the University,

(B) (*i*) The Chief Justice of Bombay,

(*ii*) The Minister of Education, Bombay,

(*iii*) The Director of Public Instruction, Bombay,

(*iv*) The Surgeon General with the Government of Bombay,

(*v*) The Director of Agriculture, Bombay,

(*vi*) The Secretary to the Government of Bombay, Public Works Department,

(*vii*) Vice-Chancellors of other Universities, if any, established by law in the Bombay Presidency, and holders of such other offices as are prescribed by Statutes : provided that the number of such Fellows shall not exceed five.

(C) All heads of University Departments.

II. *Ordinary.*

(A) Elected as prescribed below :—

(*i*) By one electorate of principals of colleges entitled to send up students for degree examination from among themselves as under :— 13

[1] (*a*) Principals of arts colleges as follows :—

(1) one principal elected by separate elections to represent the principals of arts colleges in each group as hereinafter defined. ...5

(2) three principals elected by a separate election to represent principals of arts colleges in all the groups as hereinafter defined ...3

(*b*) Principals of colleges of pure science 1
(*c*) Principals of colleges of medicine 1
(*d*) Principals of colleges of agriculture 1
(*e*) Principals of colleges of engineering 1
(*f*) Principals of colleges of law 1

(*ii*) By university teachers and teachers including principals from among themselves 20

(*iii*) One by head masters of schools in each group from among themselves 5

(*iv*) By public associations or bodies in British India as under:—15

(*a*) Municipal Corporation of the City of Bombay 1
(*b*) Indian Merchants' Chamber 1
(*c*) Chamber of Commerce. 1
(*d*) Millowners' Association, Bombay 1
(*e*) Millowners' Association, Amedabad 1
(*f*) [2]Municipal Boroughs of the Gujarat Group 1
(*g*) [2]Municipal Boroughs of the Deccan Group 1
(*h*) [2]Municipal Boroughs of the Karnatak Group 1
(*i*) [2]Municipal Boroughs of the Konkan Group (except Bombay City) 1
(*j*) [2]Municipal Borough of the Sind Group [3]and the Karachi Municipality 1
(*k*) District local boards of the Gujarat Group 1
(*l*) District local boards of the Deccan Group 1
(*m*) District local boards of the Karnatak Group 1
(*n*) District local boards of the Konkan Group 1
(*o*) District local boards of the Sind Group 1
(*v*) By registered graduates 25
(*vi*) By the Faculties 10

(*vii*) By the Legislative Council of the Governor of Bombay, of whom one shall be the representative of the University on the Council if he is not already a member of the Senate ... 5

[4]Provided that,—

(1) every person elected under any of the entries (*i*) (*ii*) and (*iii*) [5]or "under any of the clauses (*a*), (*b*), (*c*), (*d*) and (*e*) of entry (*iv*)"[5] shall hold the office of a Fellow only so long as he occupies the office or comes under the designation which entitled him to be so elected; and

(2) the Fellows representing the Legislative Council of the Governor of Bombay shall hold office for the duration of the Legislative

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[1] This entry was substituted by Bom. Act XV of 1930, s. 2.

[2-2] The words "Municipal Boroughs" were substituted for the words "City Municipalities" by Bom. Act XIII of 1929, s. 2.

[3] These words were inserted by Bom. Act XIII of 1929, s. 2.

[4] This proviso was added by Bom. Act XV of 1930, s. 2.

[5-5] These words were inserted by the City of Bombay Municipal and the Bombay University (Amendment) Act (Bom. Act X of 1936), s. 3.

Council electing them and thereafter up to the date on which new Fellows are elected by next Council.

[1]"(3) The Councillor of the Municipal Corporation of the City of Bombay elected by fellows shall not be eligible to be elected as a fellow by the said body."[1]

Explanation (1).—For the purposes of this section [2] * * * the Bombay Presidency (excluding Aden) shall be divided into the following groups :—

Name of Group		Territorial extent of the group.
1. Gujarat Group	...	Ahmedabad, Surat, Punch Mahals, Kaira and Broach districts.
2. Konkan group	...	The City of Bombay and the Nasik, Thana, Bombay Suburban, Ratnagiri and Kolaba districts.
3. Deccan group	...	Poona, Satara, Solapur, Ahmednagar, West Khandesh and East Khandesh districts.
4. Karnatak group	...	Belgrum, Dharwar, Bijapur and Kanara districts
5. Sind	...	Province of Sind.

The Senate shall, by statute, determine to which of the groups abovementioned schools and colleges in Indian States [3]and other territories within the territorial limits of the University [3] shall be attached.

Explanation (2).—The [4] * * municipalities and district local boards mentioned in sub-clauses (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*) and (*o*) are free to elect a person, who need not be a member of the city municipality or a district local board, to represent them on the senate.

(B) Nominated by the Chancellor 40

(C) Donors to, or for the purposes of, the University of money or property to the value of not less than one lakh of rupees, if willing to serve, to be subject to the provisions of sections 14, 15 and 17 Fellows for life.

(D) One nominee of each of the bodies giving a donation to, or for the purposes of, the University of money or property to the value of not less than one lakh of rupees: Provided that the right of making any such nomination and, subject also to the provisions of sections 14, 15, 16 and 17, the tenure of any such nominee shall not extend beyond a period of twenty years from the date of the acceptance by the University of any such donation.

Explanation.—For the purposes of this section the value of any property offered as a donation to the University shall mean the market value of such property on the date of acceptance of the donation by the Senate.

(2) If in the case of any election the question is raised whether any person is or is not a Principal or a University Professor or University teacher or Head-Master or a teacher the question shall be decided by the Vice-Chancellor.

Office vacated by leaving India.

14. (1) If any person being Chancellor, Vice-Chancellor, or Fellow of the said University shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

[1-1] The third proviso was inserted by Bom. Act X of 1936, s. 3.

[2] The words "the Schools and Colleges in" were omitted by Bom. Act XIII of 1929, s. 2.

[3-3] These words were inserted by Bom. Act XX of 1930, s. 3.

[4] The word "City" was omitted by Bom. Act XIII of 1929, s. 2

(2) If the Vice-Chancellor is temporarily absent from India the Chancellor may appoint another person to act as Vice-Chancellor during the absence of the absent Vice-Chancellor.

Vacating of office.

15. (1) Any ordinary Fellow may, by letter addressed to the Chancellor, resign his office and on the acceptace of the resignation the office shall become vacant.

(2) If for a period of twelve consecutive months any ordinary Fellow except a Fellow for life, has not attened a meeting of the Senate, other than a convocation, the Chancellor may declare his office to be vacant.

[1](3) Any person who holds any office in the University by virtue of his being a Fellow, shall cease to hold such office on his ceasing to be a Fellow.

Terms of office of ordinary Fellows.

16. (1) The ordinary Fellows shall, save as herein otherwise provided hold office for five years.

(2) An Ordinary Fellow who has vacated his office may, subject to the provisions of this Act, be elected or nominated to be an Ordinary Fellow.

The appointment of a Fellow may be cancelled.

17. The Local Goverment may, on the recommendation of the Senate supported by at least two-thirds of the whole number of fellows, cancel the appointment of any person appointed or elected a Fellow of the University. As soon as such order is notified in the *Bombay Government Gazette*, the person so appointed or elected shall cease to be a Fellow; and he shall not be eligible for re-appointment or re-election until the disqualification has been removed by the local government by a notification in the *Bombay Government Gazette.*

Powers of the Senate.

18. (1) The Senate shall be the supreme governing body of the University and shall exercise all powers and perform all duties conferred or imposed on it by or under this Act as well as all powers of the University not provided for in this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, the Senate may—

(*a*) save as provided in section 44 make, amend, or repeal Statute and accept, reject or refer back but not amend draft Statutes submitted by the Syndicate;

(*b*) subject to the provisions of this Act consider and cancel or refer back but not amend ordinances of the Syndicate, and regualations of the Academic Council;

(*c*) consider and pass resolutions on the Annual Report, Accounts and Estimates;

(*d*) consider the Annual Financial Statement placed before it by the Syndicate and pass it with such modifications as the Senate may think fit;

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[1] This sub-section was inserted by Bom. Act XV of 1930, s. 3.

(*e*) make provision for the physical [1]* * * training of students;

[2](*ee*) make grants from the funds of the University towards the maintenance of any University Corps established for the University under the Indian Territorial Force Act, 1920;

(*f*) institute and maintain professorships and other teaching posts, University Departments and hostels, found scholarships and prizes, and encourage the pursuit of learning by other means;

(*g*) grant and confer degrees;

(*h*) elect office-bearers and authorities provided in this Act and Statutes;

(*i*) accept donations and endowments, and, if the interests of the University so require, give up any donation or endowment it has accepted;

(*j*) consider and decide appeals in cases where such appeal is provided for in the Statutes;

(*k*) delegate any of its powers to such authority or authorities as it may deem fit; and

(*l*) generally do all such other acts and things as may be necessary or desirable to further the objects of the University.

CHAPTER IV.—FACULTIES.

Faculties.

19. (1) The University shall include such Faculties as are constituted by the Senate by Statutes from time to time.

(2) The Senate shall frame Statutes prescribing the constitution of each Faculty.

(3) A fellow may be assigned, on the recommendation of the Syndicate, to one or more Faculties.

(4) The Syndicate shall frame Ordinances governing the conduct of business of each Faculty and the appointment by each Faculty of its Chairman (to be called the Dean).

(5) The Senate may empower any Faculty to co-opt as members to serve on Boards of Studies controlled by it, persons who possess special knowledge of the subjects of study represented by the Faculty, but who are not Fellows, in such manner and for such period as may be prescribed by the Syndicate by ordinance:

Provided that the number of persons so co-opted by any Faculty shall not exceed half the number of fellows assigned to that Faculty.

CHAPTER V.—THE SYNDICATE.

The Syndicate.

20. (1) The executive government of the University shall be vested in the Syndicate constituted as follows from among the fellows:

(*a*) the Vice-Chancellow;

(*b*) the Rector, if any;

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[1] The words "and military" were omitted by Bom. Act XII of 1928, s. 2.

[2] This clause was inserted by Bom. Act XII of 1928, s. 2.

(*c*) the Director of Public Instruction, Bombay;

[*a*](*d*) seven persons elected by the members of the Academic Council from among themselves as follows :—

(*i*) one to represent each Faculty by separate elections; and

(*ii*) the remaining, if any, to represent the Academic Council generally.

(*e*) nine persons to be elected by the Senate from among the Fellows who are neither Principals, University Professors, University Teachers, Teachers nor Head Masters.

(2) Every member of the Syndicate shall hold office for three years, or until he ceases to be a Fellow, whichever period is shorter.

(3) The Senate shall frame Statutes prescribing the manner of election of elected members of the Syndicate and the conditions governing their term of office.

(4) If in the case of any election the question is raised whether any person is or is not a Principal or a University Professor or a University Teacher or teacher or head master, the question shall be decided by the Vice-Chancellor.

Powers and duties of the Syndicate.

21. The Syndicate shall have power—

(*a*) to direct the form, custody and use of the common seal of the University;

(*b*) subject to the powers conferred by this Act on the Senate, the Vice-Chancellor and the Rector (if any), to regulate and determine all matters concerning the University in accordance with the provisions of this Act, the Statutes and the Ordinances;

(*c*) to accept, reject, return to the Academic Council for reconsideration, but not amend regulations framed by the Academic Council;

(*d*) to frame the budget of the University for the consideration of the Senate;

(*e*) to administer the funds and property of the University;

(*f*) save as otherwise provided by this Act or the Statutes, to appoint on the recommendation of a committee of selection if any as required by the Act or Statutes the officers (other than the Chancellor, the Vice-Chancellor and the Rector), University Professors, University Teachers and servants of the University, to define their duties and the conditions of their service, and to provide for the filling of temporary vacancies in their posts;

(*g*) to accept, subject to the direction of the Senate, transfer of any moveable or immoveable property on behalf of the University;

(*h*) to arrange for and direct the inspection of colleges and hostels, and to issue instructions for maintaining the efficiency of the Colleges, and in case of disregard of such instructions, to recommend modification of the conditions of affiliation and to take such other steps as it deems proper;

(*i*) to call for reports, returns and other information from the Colleges;

[*a*] New clause (*d*) was substituted for the original clause (*d*) by Bom. XV of 1930, s. 4.

(*j*) to appoint examiners and to make ordinances for the conduct of University examinations;

(*k*) to publish the results of the University examinations and other tests;

(*l*) to control the University library and to appoint a library committee: provided that at least half the members of the Committee shall be appointed from the Academic Council;

(*m*) to provide for buildings, premises, furniture, apparatus and other means needed for carrying on the work of the University;

(*n*) to enter into, vary, carry out, and cancel contracts on behalf of the University in the exercise or performance of the powers and duties assigned to it by the Act and the Statutes;

(*o*) to make, amend and cancel ordinances;

(*p*) to fix, demand and receive such fees for the degrees to be conferred by it and upon admission into the University and for continuance therein and for other purposes of a like nature as may be prescribed by Statutes;

(*q*) to make provision for post-graduate instruction and research; and

(*r*) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes:

Provided that the Syndicate shall not arrive at any decision in regard to matters referred to in clauses [*a*](*h*) and (*j*) without invitting and receiving a report thereon from the Academic Council.

CHAPTER VI.—The Academic Council.

Constitution of the Academic Council.

22. The Academic Council shall consist of the following members, all of whom need not be Fellows:—

(*i*) The Rector, if any, otherwise the Vice-Chancellor.....the Chairman;

(*ii*) Deans of Faculties;

(*iii*) such number of representatives not exceeding five of the University Professors and whole-time University teachers, as may be determined by Statute;

(*iv*) two head masters to be elected by the Senate from among the Fellows;

(*v*) twenty representatives of the Boards of Studies or groups of Boards of allied Studies as may be determined by Statute; and

(*vi*) five persons elected by the Senate from among Fellows.

Election of the Academic Council.

23. (1) The Senate shall frame a Statute prescribing the manner of election of the elected members of the Academic Council, and the conditions governing their term of office.

(2) If in the case of any election the question is raised whether any person is or is not a University Professor or a whole time teacher or head master, the question shall be decided by the Vice-Chancellor.

[*a*] Brackets and letter (*h*) were substituted for the brackets and letter (*b*) by Bom. XV of 1930, s. 5.

Powers of the Academic Council.

24. The Academic Council shall frame regulations as provided in this Act and shall have the following powers :—

(*a*) to regulate teaching and examinations within the University;

(*b*) to determine and maintain the standards of examinations, remaining responsible for the maintenance of such standards ;

(*c*) to make regulations laying down courses of study subject to the approval of the Syndicate ;

(*d*) to propose to the Syndicate the institution of new University teaching appointments, their duties and emoluments ;

(*e*) to propose to the Syndicate schemes for the constitution of University Departments, Faculties and Boards of Studies ;

(*f*) to make regulations for the award of University scholarships and prizes ;

(*g*) to recommend to the Syndicate the names of persons to be appointed examiners ;

(*h*) to make regulations prescribing equivalence of examinations;

(*i*) to arrange for co-ordination of studies and inter-collegiate lectures ;

(*j*) to make regulations prescribing the conditions to be complied with by candidates, not being students of any College for degrees, diplomas, licenses, titles, marks of honour, scolarships and prizes conferred or granted by the University;

(*k*) to exercise such other powers as may be conferred on it by statutes ; and

(*l*) generally to advice the University on all academic matters.

CHAPTER VII.—THE BOARD OF POST-GRADUATE STUDIES.

The Board of Post-graduate Studies.

25. (1) The Board of Post-graduate Studies shall consist of :

(*i*) the Rector, if any, otherwise the Vice-Chancellor ... the Chairman ;

(*ii*) four members appointed by the Syndicate ;

[*a*](*iii*) three members appointed by the Academic Council ;

(*iv*) one University Professor appointed by the Academic Council.

(2) The Board shall subject to the Act, and Statutes, Ordinances and Regulations framed thereunder control and co-ordinate post-graduate teaching and research in the University Departments and the Colleges and shall recommend to the Syndicate what teachers in the Colleges shall be recognised as University teachers for post-graduate instruction and research.

CHAPTER VIII.—OTHER UNIVERSITY BODIES.

Boards of Studies.

26. (1) The Senate may, from time to time, frame Statutes constituting Boards of Studies, defining their functions, and attaching each Board to one or more Faculties.

(2) The Senate may abolish any Board of Study so constituted.

[*a*] New clauses (*iii*) and (*iv*) were substituted for the original clause (*iii*) by Bom. XV of 1930, s. 6.

Other bodies.

27. The Senate may by Statutes constitute and define the functions of such other bodies as it may from time to time deem necessary for the purpose of carrying out the work of the University, and may abolish any of the bodies so constituted.

Committee of Selection.

28. (1) Whenever it is necessary to appoint a whole-time University Professor or University teacher, a Committee of Selection shall be formed.

(2) The members of the Committee shall be :

(*a*) The Vice-Chancellor (Chairman),

(*b*) Four persons having special knowledge of the subject, to be selected as follows :—

(*i*) One, who shall be a member of a Faculty of the University ; ———by the Academic Council.

(*ii*) Three, who shall not be Fellows, Members of Faculties, University Professors, University Teachers, or Teachers———one by the Academic Council, and two by the Syndicate.

(3) The Committee shall investigate the merits of the various candidates, and shall report to the Syndicate the names, arranged in order of merit, of persons, if any, whom it considers to be suitable for the vacant post.

(4) The Syndicate shall make the final selection out of the persons, if any, so recommended.

CHAPTER IX.—DEGREES.

Degrees, diplomas, licenses, titles and marks of honour.

29. The Senate may institute and confer such degrees, and grant such diplomas, licenses, titles and marks of honour in respect of degrees and examinations as may be prescribed by Statutes.

Honorary Degrees.

30. If not less than two-thirds of the members of the Syndicate recommend that an honorary degree be conferred on any person on the ground that he is in their opinion, by reason of eminent position and attainments, a fit and proper person to receive such a degree and where their recommendation is supported by not less than two thirds of the fellows present at a meeting of the Senate and is confirmed by the Chancellor, the Senate may confer on such person the honorary degree so recommended without requiring him to undergo any examination.

Cancellation of degrees and the like and their restoration.

31. (1) Where evidence is laid before the Syandicate showing that any person on whom a degree, diploma, license, title or mark of honour has been conferred by the Senate or who is an Honorary Fellow, has been convicted of what is, in the opinion of the Syndicate, a serious offence, the Syndicate may, after giving the person concerned an opportunity to explain, propose to the Senate that the degree, diploma, license, title or mark of honour or Honorary Fellowship be cancelled, and, if the proposal is accepted by not less than two-thirds of the fellows of the Senate and is confirmed by the Chancellor, the degree, diploma, license, title, mark of honour or Honorary Fellowship shall be cancelled accordingly.

(2) The degree, diploma, license, title or mark of honour may subsequently be restored on good cause shown.

(3) The procedure for the restoration of a degree, diploma, license, title, or mark of honour, shall, as far as is practicable, be as in sub-section (1) of this section.

CHAPTER X.—UNIVERSITY FUND.

University Fund.

32. (1) The fees charged by the Senate shall be carried to one General Fee Fund for the payment of expenses of the University.

(2) Government shall contribute to that fund the sum of Rs. 1,17,000 per annum to be utilized for the recurring expenditure of the University departments.

(3) The accounts of income and expenditure of the University shall, once in every year, be submitted to the Government of Bombay for such examination and audit as the Government may direct.

CHAPTER XI.—STATUTES, ORDINANCES AND REGULATIONS.

Statutes-their scope.

33. (1) The Senate may, from time to time, make Statutes not inconsistent with this Act, for all matters relating to the Unisersity.

(2) In particular, and without prejudice to the generality of the foregoing power, such Statutes may provide for—

(*a*) the declaration of any person to be a teacher under section 3 (*h*);

(*b*) the declaration of other bodies to be authorities of the University as provided in section 7 (6);

(*c*) the manner of election of the elected Fellows and the elected members of the Syndicate, the Academic Council and the Board of Post-Graduate Studies and the term and conditions of their office, the maintenance of a register of registered graduates and the filling up of casual vacancies in the Senate, the Syndicate, the Academic Council and the Board of Post-Graduate Studies;

(*d*) the powers of the Vice-Chancellor;

(*e*) the appointment, conditions of office, powers and duties of the Rector, if any, and the Registrar and of the officers and servants of the University;

(*f*) the prescribing of offices the holders of which shall be ex-officio Fellows under section 13 (1) (B) (*vii*);

(*g*) the constitution, reconstitution or abolition of Faculties;

(*h*) the procedure at meetings of the Senate, the Syndicate, the Academic Council, the Board of Post-Graduate Studies and the Faculties and the quorum of members to be required for the transaction of business;

(*i*) the duties of the Academic Council;

(*j*) the constiution and powers of Boards of Studies; the functions of each such Board, the procedure of such boards and the quorum of members to be required for the transaction of business, and the attaching of each Board to one or more Faculties;

(*k*) the holding and control of the matriculation examination;

[*a*] (*kk*) the conditions to be complied with by schools desiring recognition for the purpose of sending up pupils as candidates for the Matriculation Examination and the conditions to be complied with by candidates for the Matriculation Examination whether sent up by recognised schools or not;

[*a*] Clause (*kk*) was inserted by Bom. XII of 1923, sec. 3.

(*l*) the constitution, powers and duties of the authorities of the University save as provided in this Act ;

(*m*) the institution and conferment of degrees and the granting of diplomas, licenses, titles and marks of honour in respect of degrees and examinations ;

(*n*) the registers of graduates and students to be kept by the University ;

(*o*) the institution of pension or provident fund for the benefit of the officers, teachers and other servants of the University ;

(*p*) all matters which by this Act may be prescribed by the Statutes ; and

(*q*) generally, all matters relating to the University for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Senate, necessary.

Statutes—their framing, amendment, repeal and operation.

34. (1) The Statutes may be amended, repealed, or added to, by Statutes made by the Senate in the manner hereinafter provided.

(2) All Statutes framed by the Senate, from time to time, shall be submitted for sanction to the Chancellor and they shall not come into operation until the Chancellor has accorded his sanction thereto.

(3) The Senate may take into consideration the draft of a Statute either of its own motion or on a proposal by the Syndicate.

(4) The Senate before passing a Statute taken into consideration of its own motion and affecting the powers of duties of any officer or authority of the University shall ascertain and consider the views of the officer or authority concerned and of the Syndicate thereon.

Ordinances—their making and scope.

35. (1) Subject to the provisions of this Act and the Statutes, the Syndicate may frame Ordinances to provide for all or any of the following matters, namely :—

(*a*) the admission of students to the University ;

(*b*) the courses of study to be laid down for all degrees and diplomas of the University :

(*c*) the conditions under which students shall be admitted to the degree or diploma courses and to the examinations of the University, and be eligible for degrees, diplomas, licenses, titles and marks of honour ; and the form of the certificate to be produced by a candidate for examination under section 37 and the conditions on which any such certificate may be granted ;

(*d*) the recognition of colleges and hostels ,

[*a*] (*e*)

(*f*) the residence and conduct of students ;

(*g*) the number, qualifications and conditions of appointment of University Professors and University Teachers ;

(*h*) the fees to be charged for courses of instruction in the University given by University professors and University teachers, for tutorial and supplementary instruction given by the University, upon admission into the University and for continuance therein, for admission to the examinations, degrees and diplomas of the University, for the registration of graduates and for other purposes of a like nature ;

(*i*) the conditions of appointment, the mode of appointment and the duties of examiners ;

(*j*) the conduct of examinations ;

[*a*] Clause (e) was repealed by Bom. XII of 1928, s. 4.

(*k*) the conduct of business of each Faculty and the appointment of the Dean of each Faculty;

(*l*) the duties and powers of the Boards and committees to be appointed by the University jointly with any other University or body;

(*m*) the discipline to be enforced in regard to the graduates and under-graduates in so far as they come within the jurisdiction of the University for purposes of study and examination;

(*n*) the extension of University teaching in any suitable centre within the Presidency by means of University Extension Lectures or otherwise;

(*o*) the rules to be observed and enforced by Colleges in respect of transfer of students;

(*p*) the functions of each Faculty;

(*q*) the fee (if any) to be paid for the entry or retention of a name on any register;

(*r*) the inspection of Colleges and the reports, returns and other information to be furnished by Colleges:

(*s*) the registers of students to be kept by Colleges;

(*t*) the appointment and duties of University Professors and University Teachers;

(*u*) the mode of execution of contracts or agreements for or on behalf of the University;

(*v*) generally, all matters which by this Act or by the Statutes, may be provided for by the Ordinances and all matters for which provision is in the opinion of the Syndicate, necessary for the exercise of the powers conferred, or the performance of the duties imposed on the Syndicate by this Act or the Statutes:

Provided that the Syndicate shall not arrive at any decision in regard to matters referred to in clauses (*b*), (*c*), (*d*), (*g*), (*i*), (*j*), (*n*) and (*o*) without inviting and receiving a report thereon from the Academic Council.

(2) All Ordinances made by the Syndicate shall, except as otherwise provided by this Act, have effect from such date as it may direct; but every Ordinance so made shall be laid on the table of the Senate as soon as may be and shall be considered by the Senate at its next meeting. The Senate shall have power, by a resolution passed by a majority of not less than two-thirds of the members present at such meeting, to cancel or refer for reconsideration any such Ordinance.

(3) The Vice-Chancellor shall, on the application of not less than fifty members of the Senate, suspend the operation of any such ordinance until the Senate has considered it as provided in sub-section (2).

Regulations-their making and scope.

36. (1) The Academic Council may make Regulations consistent with this Act and the Statutes and Ordinances to carry out the duties assigned to it thereunder and shall submit them to the Syndicate for approval.

(2) All Regulations when approved shall, except as otherwise provided by this Act, have effect from such date as the Academic Council may direct; but every Regulation so made shall be placed on the table of the Senate as soon as may be, and shall be considered by the Senate at its next meeting. The Senate shall have power, by a resolution passed by a majority of not less than two-thirds of the members present at such meeting, to cancel or refer for reconsideration any such Regulation.

(3) If the Syndicate does not approve of a Regulation the Regulation shall, on a requisition by at least five members of the Syndicate, be referred to the Senate who shall thereupon have all the powers of the Syndicate in this connection. If the Regulation is accepted by the Senate the provisions of sub-section (2) shall not apply to it.

(4) The Vice-Chancellor shall, on the application of not less than fifty members of the Senate, suspend the operation of any such Regulation until the Senate has considered it as provided in sub-section (2) or sub-section (3).

CHAPTER XII—AFFILIATED COLLEGES.

Certificates required of candidates for examination.

37. Save on the recommendation of the Syndicate, by special order of the Senate, and subject to any Statutes and ordinances made in this behalf, no person shall be admitted as a candidate at any University examination other than an examination for matriculation, unless he produces a certificate from a College to the effect that he has completed the course of instruction prescribed.

Existing Colleges.

38. Any College affiliated to the University before the passing of this Act may continue to exercise the rights conferred upon it by such affiliation, save in so far as such rights may be withdrawn, restricted or modified in the exercise of any power conferred by this Act.

Affiliation.

39. (1) A College applying for affiliation to the University shall send a letter of application to the Registrar, and shall satisfy the Syndicate and the Academic Council—

(*a*) that the College is to be under the management of a regularly constituted governing body;

(*b*) that the qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction to be undertaken by the College;

(*c*) that the buildings in which the College is to be located are suitable, and that provision will be made, in conformity with the Statutes and Odinances, for the residence in the College or in lodgings approved by the College, of students not residing with their parents or guardians, and for the supervision and physical welfare of students;

(*d*) that due provision has been or will be made for a library;

(*e*) where affiliation is sought in any branch of experimental science, that arrangements have been or will be made in conformity with the Statutes and Ordinances for imparting instruction in that branch of science in a properly equipped laboratory or museum;

(*f*) that due provision will, so far as circumstances may permit, be made for the residence of the Principal and some members of the teaching staff in or near the College or the place provided for the residence of students;

(*g*) that the financial resources of the College are such as to make due provision for its continued maintenance; and

(*h*) that the College rules fixing the fees (if any) to be paid by the students have not been so framed as to involve such competition with any existing College in the same neighbourhood as would be injurious to the interests of education. The application shall further contain an assurance that after the College is affiliated any transfer-

ence of management and all changes in the teaching staff shall be forthwith reported to the Syndicate.

(2) On receipt of a letter of application under sub-section (1), the Syndicate shall—

(*a*) direct a local inquiry to be made by a competent person authorized by the Syndicate in this behalf;

(*b*) make such further inquiry as may appear to them to be necessary; and

(*c*) report to the Senate on the question whether the application should be granted or refused, either in whole or in part, embodying in such report the results of any inquiry under clauses (*a*) and (*b*). And the Senate shall, after such further inquiry (if any) as may appear to them to be necessary, record their opinion on the matter.

(3) The Registrar shall submit the application and all proceedings, if any, of the academic Council, the Syndicate and Senate relating thereto to the Government, who, after such enquiry as may appear to them necessary, shall grant or refuse the application or any part thereof.

(4) Where the application or any part thereof is granted, the order of the Government shall specify the courses of instruction in respect of which the College is affiliated; and, where the application or any part thereof is refused, the grounds of such refusal shall be stated.

(5) An application under sub-section (1) may be withdrawn at any time before an order is made under sub-section (2).

Extension of affiliation.

40. Where a College desires to add to the courses of instruction in respect of which it is affiliated the procedure prescribed by section 39 shall, so far as may be, be followed.

Inspection of Colleges and reports.

41. (1) Every College affiliated to the University, whether before or after the commencement of this Act, shall furnish such reports, returns and other information as the Syndicate, after consulting the Academic Council, may require to enable it to judge of the efficiency of the College.

(2) The Syndicate shall cause every such College to be inspected from time to time by one or more competent persons authorized by the Syndicate in this behalf.

(3) The Syndicate may call upon any College so inspected to take, within a specified period, such action as may appear to them to be necessary in respect of any of the matters referred to in sub-section (1) of section 39.

Disaffiliation.

42. (1) A member of the Syndicate who intends to move that the rights conferred on any College by affiliation be withdrawn in whole or in part, or modified, shall give notice of his motion and shall state in writing the grounds on which the motion is made.

(2) Before taking the said motion into consideration, the Syndicate shall send a copy of the notice and written statement mentioned in sub-section (1) to the Principal concerned, together with an intimation that any representation in writing submitted within a period

specified in such intimation on behalf of the College will be considered by the Syndicate :

Provided that the period so specified may, if necessary, be extended by the Syndicate.

(3) On receipt of the representation or on expiration of the period referred to in sub-section (2), the Syndicate, after considering the notice of motion, statement and representation and after such inspection by any competent person authorized by the Syndicate in this behalf, and such further inquiry as may appear to them to be necessary, and after consulting the Academic Council, shall make a report to the Senate.

(4) On receipt of the report under sub-section (3), the Senate shall, after such further inquiry (if any) as may appear to them to be necessary, record their opinion in the matter.

(5) The Registrar shall submit the proposal and all proceedings, if any, of the Academic Council, the Syndicate and Senate relating thereto to the Government, who, after such further inquiry (if any) as may appear to them to be necessary, shall make such order as the circumstances may, in their opinion, require.

(6) Where by an order made under sub-section (5) the rights conferred by affiliation are withdrawn, in whole or in part, or modified the grounds for such withdrawal or modification shall be stated in the order.

CHAPTER XIII.—HONORARY FELLOWS.

Honorary Fellows.

43. (1) The Chancellor may nominate any person to be an Honorary Fellow for life, who is eminent for his attainments in any branch of learning, or is an eminent benefactor of the University, or is distinguished for services rendered to the cause of education generally.

(2) Notwithstanding anything contained in this Act, any person appointed to be an Honorary Fellow under section 13 of the Indian Universities Act, 1904, shall continue to be an Honorary Fellow for life, and shall be deemed to have been so appointed under this Act.

(3) A person shall not be debarred from appointment as fellow, member of the Syndicate, member of the Academic Council or other office under this Act, merely on the ground of being an Honorary Fellow.

CHAPTER XIV.—TRANSITORY PROVISIONS.

Syndicate first to make the Statutes, Ordinances and Regulations.

44. (1) Notwithstanding anything contained in this Act, the first Statutes, Ordinances and Regulations under this Act shall be framed by the Syndicate constituted under the Acts repealed by this Act (in this section referred to as "the present Syndicate") within such time before the date of coming into operation of this Act as Government may fix in this behalf, and on approval by the Chancellor, shall be deemed to have been duly made under this Act.

(2) If the present Syndicate fails to frame the Statutes, Ordinances and Regulations referred to in sub-section (1) within the time therein mentioned, Government may frame such Statutes, Ordinances and Regulations, and the Statutes, Ordinances and Regulations so framed shall be deemed to have been made under this Act.

(3) Till the Senate is constituted as provided in this Act, the Senate and other University bodies constituted under the Acts repeal-

ed by this Act and existing on the date on which this Act comes into operation and all officers of the University shall continue in office.

(4) Until the various University bodies other than the Senate are duly constituted under this Act, all their duties (except that of framing statutes, ordinances and regulations) shall be performed by one or more committees appointed by the Chancellor who shall also frame rules for the proper working of those Committees.

(5) If any difficulty arises as to the first constitution or reconstitution of any authority of the University after the commencement of this Act, or otherwise in first giving effect to the provisions of this Act, Government, as occasion may require, may by order do anything which appears to them necessary for the purpose of removing the difficulty.

Elected and nominated Fellows to retire by rotation.

45. (1) The Vice-Chancellor shall, after the Senate is constituted under this Act, divide by lot the first fellows elected, and nominated under Part II (A) and (B) of sub-section (1) of section 13 into five equal groups, as far as possible, under each of the said heads, the order of the groups being also determined by lot.

(2) Subject to the other provisions of this Act the fellows in the first, second, third, fourth and fifth of the said groups shall hold office for one, two, three, four or five years respectively.

(3) Fellows who have vacated their office under this section shall be eligible for re-election, and re-nomination.

[*a*] (4) Nothing contained in sub-sections (1), (2) and (3) shall apply or shall be deemed to have applied in the case of Fellows elected by the Legislative Council of the Governor of Bombay under entry (*vii*) under the heading II—Ordinary (A) in sub-section (1) of section 13.

Elected members of the Syndicate to retire by rotation.

46. (1) The Vice-Chancellor shall, after the Syndicate is constituted under this Act, divide the members of the Syndicate elected under clauses (*d*) and (*e*) of sub-section (1) of section 20 into three equal groups, as far as possible under each of the heads, the order of the groups being also determined by lot.

(2) Subject to the other provisions of this Act, the members of the Syndicate in the first, second and third of the said groups shall hold office for one, two or three years respectively.

(3) Members of the Syndicate who have vacated their office under this section shall be eligible for re-election.

CHAPTER XV.—GENERAL.

Interpretation in case of doubt.

47. (1) If any question arises regarding the interpretation of any provision of this Act or of any statute, ordinance or regulation, or as to whether any person has been duly elected or appointed as, or is entitled to be a member of any authority or other body of the University, the matter may be referred to the Chancellor, and shall be so referred if ten fellows so require. The Chancellor shall, after taking

[*a*] This sub-section was inserted by Bom. XV of 1930 s. 7.

such advice as he deems necessary, decide the question, and his decision shall be final.

(2) Nothing in this section shall be deemed to affect in any way the existing jurisdiction of the High Court of Bombay.

Elections to be by proportional representation.

48. Every election to any authority of the University under this Act shall be made according to the system of proportional representation by means of the single transferable vote in such manner as may be prescribed by Statutes.

Proceedings not invalidated by vacancy.

49. No act or proceeding of any authority or other body of the University shall be invalid by reason only of any vacancy in the body doing or passing it or by reason of any want of qualification by or invalidity in the election or appointment of any *de facto* member of the body whether present or absent.

Pension or Provident Fund.

50. The University shall establish for the benefit of its officers, teachers and other servants such pension or provident fund as it may deem fit in such manner and subject to such conditions as may be prescribed by the Senate by Statutes.

Passing of property and rights to the University as reconstituted.

51. All property, all rights of whatever kind used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by, or for the University of Bombay as constituted under the Acts repealed by this Act as well as all liabilities legally subsisting against the said University shall pass to the University as constituted under this Act.

Repeal.

52. The enactments specified in the Schedule shall be repealed to the extent specified in the fourth column thereof:

Provided that—

(*a*) this repeal shall not affect the validity of anything already done under any enactment hereby repealed; and

(*b*) the appointments of the registrar and all other officers and servants of the University, and of Examiners, validly made under the Acts hereby repealed and subsisting on the date on which this Act comes into operation, shall be deemed to have been validly made under and for the purposes of this Act, and the Registrar and such officers, servants and examiners shall continue to hold office and to act, subject to the conditions governing the tenure of their office or employment, except in so far as such conditions may be altered by competent authority.

SCHEDULE—(*Enactments Repealed.*)

THE VACCINATION (DISTRICT) ACT

(Bom. Act No. 1 of 1892)

[*11th August, 1892.*

An Act to prohibit the practice of inoculation and to make the vaccination of Children in certain portions of the Bombay Presidency compulsory.

WHEREAS it is expedient to prohibit the practice of inoculation and to make compulsory the vaccination of children in certain portions of the Presidency of Bombay, and to remove doubts as to the legality of compulsory vaccination in the case of convicts and others confined in criminal jails, reformatories and lunatic asylums in the said presidency: It is enacted as follows:—

Preliminary

Short title.

1. This Act may be cited as the Bombay District Vaccination Act, 1892.

Extent and commencement.

2. (1) Section 33 extends to the whole of the Presidency of Bombay, and shall come into force at once.

(2) The rest of the Act—

(*a*) extends to the whole of the Presidency of Bombay, except—
the city of Bombay, and
the town of Karachi; and

(*b*) shall come into force in each local area within its extent on such day as the Governor in Council by notification in the Bombay Government Gazette may direct.

(3) Every such notification shall specify the local area to which it relates—

(*a*) by name if such area is a territorial sub-division or area with a specific name and defined limits, or,

(*b*) by defining its limits in any other case.

(4) Except when an epidemic of small-pox exists or is apprehended, notice of the intention of Government to introduce the Act as aforesaid on a date specified shall be given in the Bombay Government Gazette at least one month before such notification is issued, and Government shall receive and consider such suggestions and objections as may be submitted to Government by persons interested, not later than a week before the date specified as aforesaid.

Power to suspend or withdraw Act.

3. The Governor in Council may at any time by notification withdraw the Act from operation, or, for such period as he deems fit, suspend its operation, in any local area in which it may have been brought into force under section 2, sub-section (2), or in any part of such area.

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

(*a*) "parent" means, in the case of a legitimate child, the father or the mother and, in the case of an illegitimate child, the mother only:

"guardian" means any person to whom the care, nurture or custody of any child falls by law or by natural right or recognised usage, or who has accepted or assumed the care, nurture or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf:

(*c*) "public vaccinator" means any vaccinator appointed under this Act, and includes any deputy duly authorized to act for such public vaccinator:

(*d*) "medical practitioner" means any person duly qualified by a diploma, degree or license to practise in medicine or surgery or specially licensed by the Governor in Council to practise vaccination and grant certificates under the provisions of this Act:

(*e*) "unprotected child" means a child who has not been protected from small-pox by having been successfully vaccinated, or who has not been certified under section 12 to have already had small-pox or to be insusceptible of vaccination:

(*f*) "animal-lymph" means vaccine taken from the calf of a cow or buffalo:

(*g*) "vaccination-area" means a local area in which the Governor in Council has by notification declared this Act to be, and the Act is, in force:

(*h*) "vaccination-circle" or "circle" means one of the circles into which a vaccinotion-area is sub-divided under this Act:

(*i*) "Sanitary Commissioner" means the Sanitary Commissioner for the Presidency of Bombay or any officer whom the Governor in Council from time to time directs to exercise or perform all or any of the powers or duties of a Sanitary Commissioner under this Act:

(*j*) "Registrar of births" means any officer or other person whose duty it is,—

(1) under any law for the time being in force other than the Briths, Deaths and Marriages Registration Act, 1886, or

(2) under any bye-law or rule having the force of law,

to register births:

(*k*) "register" and "registration" refer to registration in pursuance of any such law, bye-law or rule as aforesaid.

Establishment.

Vvccination circles.

5. (1) Subject to such rules and orders as may from time to time be made by Government, every vaccination-area shall, with the concurrence of the Commissioner, be divided by the Sanitary Commissioner into such and so many circles for the performance of vaccination, as he shall from time to time deem fit.

Appointment of public vaccinators and vaccine-stations.

(2) The Sanitary Commissioner shall appoint a public vaccinator for each vaccination-circle, and shall, with the concurrence of the Commissioner, appoint such places in each such circle, as he shall from time to time deem fit, to be stations for the performance of vaccination. Such stations shall be called public vaccine-stations.

Public vaccinators how removable.

(3) Every public vaccinator shall be removeable from office by the Sanitary Commissioner.

(4) The limits of the vaccination-circles made, and the positions of the public vaccine-stations fixed, under sub-sections (1) and (2), and the days and hours of the public vaccinator's attendance at each station, shall be published from time to time in such manner as shall be directed in rules to be framed under section 32.

Limits of circles and hours of attendance how to be notified.

6. Every public vaccinator, unless specially permitted by the Sanitary Commissoner to reside elsewhere, shall reside within the circle for which he is appointed, and shall cause his name, with the addition of the words "Public Vaccinator for the vaccination-circle of * *," to be posted up in English and in the vernacular of the district in some conspicuous place on or near the outer door of his dwelling-house, and of every public vaccine-station in his circle.

Public vaccinator to live within his circle.

7. No person shall be appointed a public vaccinator, or act as a deputy for a public vaccinator, who shall not possess a certificate of qualification signed by the Sanitary Commissioner.

Qualifications of public vaccinator.

8. (1) In each vaccination-area a Superintendent of Vaccination shall be appointed by Government, and, subject to the orders of the Sanitary Commissioner, shall have a general control over all the proceedings of the public vaccinators within that area, and shall perform such duties, in addition to those prescribed by this Act, as shall be required by Government.

Superintendent of Vaccination.

(2) Each Superintendent shall have, if necessary, one or more assistants as Government may from time to time direct.

Assistant Superintendents.

Vaccination.

9. (1) Subject to the provision contained in clause (*a*) of sub-section (3), section 14, it shall be the duty of the parent, or, in the case of a child in the care of a guardian, of the guardian of every child such as is mentioned in sub-section (2), within the period prescribed in respect thereof, in the said sub-section, to take it or cause it to be taken to a public vaccinator to be vaccinated, or to cause it to be vaccinated by a public vaccinator or by some medical practitioner.

Duty of parent or guardian of children within limits of vaccination-area.

(2) The duty imposed by sub-section (1) shall be performed in the undermentioned cases within the periods hereinbelow respectively specified, that is to say—

Within what period to be performed:

in the case of—

(*a*) a child born within the limits of a vaccination-area—within twelve months after its birth;

In case of child born within vaccination-area.

(*b*) an unprotected child brought to reside, whether temporarily or permanently, within the said limits,—

In case of unprotected child brought within vaccination-area,

(*i*) if the child is less than nine months old—within twelve months after its birth;

(*ii*) if the child is nine months or more than nine months, but less than fourteen years old—within three months of its being brought within the said limits ;

in case or child living within vaccination-area when Act comes into force therein.

(*c*) an unprotected child living within the said limits at the date when this Act comes into force therein,—

(*i*) if the child at such date is more than six months, but less than fourteen years old—within six months from the date of the Act coming into force in such area ;

(*ii*) if the child at such date is less than six months old—within twelve months from the date of its birth.

Public vaccinator bound to vaccinate all children brought to him.

(3) The public vaccinator to whom any such child, or to whom any child under the age of fourteen years, is brought for vaccination, is hereby required, with all reasonable despatch, subject to the conditions hereinafter mentioned, to vaccinate the child.

Inspection.

10. (1) At an appointed hour upon the same day in the following week after vaccination shall have been performed by a public vaccinator or a medical practitioner, or on any earlier or later day, if the public vaccinator or medical practitioner so desires, the parent or guardian shall again take the child, or cause it to be taken, to the public vaccinator or to the medical practitioner by whom the operation was performed, that he may inspect it and ascertain the result of the operation.

Re-vaccination.

(2) In the event of the vaccination being wholly or partly unsuccessful, such parent or guardian shall, if the public vaccinator or medical practitioner so direct, cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

If child be unfit for vaccination, certificate in form A to be given.

11. (1) If any public vaccinator or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule A, or to the like effect, that the child is then in a state unfit for vaccination.

Certificate to remain in force for two months, but shall be renewable.

(2) The said certificate shall remain in force for two months only, but shall be renewable for successive periods of two months, until a public vaccinator or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given, in the form of Schedule C, according to the provisions of section 13, if warranted by the result.

When successive postponement certificates are to be granted.

(3) At or before the end of each successive period the parent or guardian shall take, or cause the child to be taken, to some public vaccinator or medical practitioner, who shall then examine the child and give a fresh certificate according to the said Form A, so long as he deems requisite under the circumstances of the case.

Provisions for giving certificates of insusceptibility to successful vaccination.

12. If any public vaccinator or medical practitioner shall find that a child whom he has three times unsuccessfuly vaccinated is insusceptible of successful vaccination, or that a child brought to him for vaccination has already had small-pox, he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule B, or to the like effect, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

Provision for giving certificates of successful vaccination.

13. Every public vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child, and shall have ascertained that the same has been successful, shall deliver to the parent or guardian of such child a certificate, according to the form of Schedule C, or to the like effect, certifying that the said child has been successfully vaccinated.

Vaccination must ordinarily be performed with that kind of lymph which the parent or guardian of the child may require.

14. (1) Fxcept as is in sub-section (2) otherwise provided, the vgccination of a child under the provisions of this Act must, as the parent or guardian of the child may require, be performed with animal-lymph or with lymph taken from a human being.

(2) It shall at any time be lawful for the Governor in Council, on its being shown to his satisfaction that animal-lymph is not procurable in any vaccination-area without dangerous delay, to direct, by notification in the Bombay Government Gaztte,—

(*a*) that, during such period as he may deem fit to appoint, the vaccination of children within such vaccination-area may, without the assent of the parents or guardians of such children, be performed with lymph taken from a human being;

(*b*) that the public vaccinator or medical practitioner to whom, at any time during the said period, a vaccinated child is brought under the provisions of section 10 for inspection, may, if he see fit, take from such child lymph for the performance of other vaccinations in such manner as shall not be injurious to such child.

(3) The operation of any such notification shall be subject to the following provisos, namely:—

(*a*) that if the period prescribed by section 9 for the vaccination of an unprotected child will expire while such notification is in force, the parent or guardian of such child may give written notice to a public vaccinator, before the expiry of the said period, of his desire to arrange privately for the effectual vaccination of the child in conformity with the provisions of this Act, and thereupon the public vaccinator shall for the said purpose allow an extension of the said period for such times, not exceeding one month, as he deems reasonable;

(*b*) that lymph shall not be taken from any child who does not appear to be in good health and free from taint of a disease transmissible by vaccination, or whose parents are known to the public vaccinator or medical practitioner to have suffered or to be suffering from phthisis, leprosy or syphilis.

(4) Whenever the Governor in Council shall publish such a notification as aforesaid, he shall also frame and notify such regulations for the administration of the provisions thereby brought into force as shall appear necessary, in order to prevent the application of the said provisions from being attended with oppression or needless offence. These regulations shall include such rules as to the sources from which lymph is to be obtained, and the means by which it is to be preserved pure, as shall appear necessary, in order to satisfy reasonable scruples on the part of persons to be voccinated or the parents or guardians of such persons.

No fee to be charged for vaccination at a public vaccine station or for certificates.

15. (1) No fee or remuneration shall be charged by any public vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine-station.

Proviso.

(2) But it shall be lawful for a public vaccinator to accept, for vaccinating a shild, by request of the parent or guardian, elsewhere than at a public vaccine-station, a fee not exceeding such maximum as the Governor in Council may, by rule or order in this behalf, prescribe.

Registration.

Registrar of births to give notice of the requirement of vaccination.

16. On the registration in a vaccination-area of the birth of any child, the Registrar of births shall deliver to the person giving information of such birth a printed notice in the form of Schedule D, or to the like effect, and such notice shall have attached thereto the several forms of certificates prescribed by this Act.

Duplicates of all certificates to be transmitted to Registrar.

17. Every public vaccinator or medical practitioner who gives to any parent or guardian a certificate in any of the forms of Schedules A, B and C shall, if possible, ascertain whether the birth of the child to which the certificate relates has been registered in any place situate within a vaccination-area or in the city of Bombay, or in the town of Karachi. If he ascertains that it has been so registered he shall, within twenty-one days of giving the certificate, transmit a duplicate thereof to the Registrar of births of the said place; in every other case he shall, within the said period, transmit a duplicate of the said certificate to the Registrar of births (if any) of the place in which the child was vaccinated or presented for vaccination.

Registrar to keep a vaccination notice and certificate book;

18. Every Registrar of births in a vaccination area shall keep a book, in such form as may from time to time be prescibed under section 30, in which he shall enter minutes of the notices of vaccination given by him as herein required, and shall also register the duplicates of certificates transmitted to him as herein provided.

also a duplicate register of births, with entries concerning vaccination;

19. He shall also prepare and keep a duplicate of any register of births which it is his duty to keep, with such columns added thereto as shall from time to time be prescribed under section 30, in which he shall record the date of every duplicate certificate, in the form of Schedule B or Schedule C, received by him con-

cerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated, or is insusceptible of vaccination, or has already had small-pox, as the case may be.

also a registsr of postponed vaccinations.

20. He shall also keep a register of postponed vaccinations in the form of Schedule E, in which he shall record the name of every child concerning whom he receives a duplicate certificate in the form of Schedule A, together with the date of such duplicate certificate, and of each such successive duplicate certificate, if he receives more than one, and shall show the number and year of the entry, if any, in the Register of births in which such child's birth has been registered.

Transmission of returns to Superintendent.

21. Every Registrar of births in a vaccination-area shall transmit, on the first of every month, to the Superintendent of Vaccination a return, in such form as may from time to time be prescribed under section 30, of all cases in which duplicate certificates have not been duly received by him in pursuance of the provisions of this Act during the last preceding month.

Prosecutions and Offences.

22. Whoever—

Penalty for inoculating.

(*a*) produces, or attempts to produce in any person, by inoculation with variolous matter or by wilful exposure to variolous matter or to anything impregnated therewith, or who wilfully by any other means produces the disease of small-pox in any person, or

for entering a vaccination-area after inoculation.

(*b*) being above the age of fourteen years and having been inoculated with small-pox in a place in which this Act is not for the time being in force, shall afterwards enter a vaccination-area before the expiration of forty days from the date of such inoculation, or without a certificate from a medical practitioner that such person is no longer likely to cause contagion, or

for bringing person inoculated into such area.

(*c*) having the charge, custody or control of any person so inoculated, shall, within such period or without such certificate as aforesaid, knowingly bring such person into, or permit such person to enter, a vaccination-area,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Magistrate may make an order for the vaccination of any unprotected child under fourteen years.

23. (1) If a Superintendent of Vaccination shall give information in writing to a Magistrate that he has reason to believe that any child within a vaccination area, under the age of fourteen years, is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him, and, if the Magistrate shall find, after such examination as he shall deem necessary, that the child is an unprotected child, he may make an order directing such child to be vaccinated within a certain time not exceeding two months,

(2) If, at the expiration of such time, the child shall not have been vaccinated, or shall not be shown to be then unfit to be vaccinated or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show to the Magistrate some reasonable ground for his omission to carry the order into effect, be punished with fine, which may extend to fifty rupees :

Penalty for disobedience of such order.

(3) Provided that, if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may order the informant to pay to such person such sum of money as he shall consider a fair compensation for his expenses and loss of time in attending before the Magistrate.

Proviso for costs to person improperly summoned.

24. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Penalty for not producing child.

Penalty for neglect to take child to be vaccinated.

25. Whoever, in contravention of this Act—

(*a*) neglects, without reasonable excuse, to take, or cause a child to be taken to be vaccinated, or after vaccination to be inspected, or

(*b*) at any time, during the period for which any notification made under section 14 is in force, prevents any public vaccinator from taking lymph from any child whom he has vaccinated, or

(*c*) neglects to fill up, sign and give to the parent or guardian of any child any certificate which such parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of births,

shall be punished for each such offence with fine which may extend to fifty rupees.

26. Whoever wilfully signs, or makes or procures the signing or making of a false certificate or duplicate cetificate under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for making or signing false certificate.

27. If any public vaccinator accepts, or obtains, or agrees to accept, or attempts to obtain, from any person any fee, or remuneration, contrary to the provisions of section 15, he shall be deemed to have committed an offence punishable under section 161 of the Indian Penal Code.

Penalty for accepting illegal fee or remuneration.

28. All offences under this Act shall be cognizable by a magistrate of the first or second class, but no complaint of any such offence shall be entertained unless the prosecution be instituted by order of, or under authority from, a Magistrate of a district or of a sub-division or of a superintendent of Vaccination.

Cognizance of offences under this Act.

Prosecution for neglect.

29. In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from a Registrar of births, or any other officer, of the requirements of the law in this respect; but if the defendant produce any certificate under s. 12 or 13, or the duplicate of the register of births or the register of postponed vaccinations kept by any registrar of births as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except in regard to the certificate according to the form of Schedule A, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

Supplemental

Books and forms.

30. The Sanitary Commissioner shall frame and provide appropriate books and forms for the use of the public vaccinators, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act, and he shall also transmit to the Registrars of births such books and forms as are required by them under the provisions of this Act.

Annual return to be made of the number of children vaccinated, etc.

31. It shall be the duty of every Registrar of births in a vaccination area to show in any annual general abstract of births prepared by him the number of children successfully vaccinated, the number whose vaccination has been postponed, and the number certified to be insusceptible of successful vaccination during the year.

Sanitary Commissioner to make rules.

32. The Sanitary Commissioner may, with the sanction of the Governor in Council, from time to time make rules or issue orders consistent with this Act—

(*a*) providing for the appointment of deputies of public vaccinators when necessary;

(*b*) determining the qualifications to be required of public vaccinators or their deputies, and regulating the grant of certificates of qualification under section 7;

(*c*) for the guidance of public vaccinators and others in all other matters connected with the working of this Act.

All such rules or orders shall be published in the Bombay Government Gazette.

Vaccination of convicts and others in jails, etc.

33. (1) Subject to such rules as the Inspector-General of Prisons with the sanction of Government may make in this behalf, and to such exemptions as Government may from time to time, by either a general or a special order authorize, the operation of vaccination shall be performed on every person confined in any of the cases hereinafter mentioned whatever the age or sex of such person may be, and whether such person consent to undergo such operation or not; that is to say, in the case of every person in respect of whom—

(*a*) imprisonment for more than one month or transportation has been awarded as part of the substantive sentence of a Criminal Court, or

(*b*) a Criminal Court has directed imprisonment, in default of payment of fine for a term which, if the fine be not sooner paid, will exceed one month, or

(*c*) a Court has directed imprisonment for failure to give security for good behaviour for a term which, if security be not sooner given, will exceed one month, or

(*d*) an order has been passed by Government under either section 466 or section 471 of the Criminal Procedure Code, 1882, for his confinement as a lunatic.

(2) [*Rep. Act XVI of 1895.*]

SCHEDULE A.

(*See section 11.*)

I, the undersigned, hereby certify that, in my opinion, , the child of , resident at , in the vaccination-area of , is not now in a fit and proper state to be vaccinated, and I do hereby postpone the vaccination for the period of two months from this date.

Dated this day of 18 .

(*Signature of Medical Practitioner or Public Vaccinator.*)

SCHEDULE B.

(*See section 12.*)

(FORM OF CERTIFICATE WHERE CHILD IS INSUSCEPTIBLE OF SMALL-POX.)

I, the undersigned, hereby certify that I have three times unsuccessfully vaccinated , the child of , residing at , in the vaccination-area of , and I am of opinion that the said child is insusceptible of successful vaccination.

Dated this day of 18 .

(*Signature of Medical Practioner or Public Vaccinator.*)

(*Form of Certificate where child has already had small-pox.*)

I, the undersigned, hereby certify that I have examined , the child of , residing at , in the vaccination-area of , and that I am of opinion that the said child has already had small-pox.

Dated this day of 18 .

(*Signature of Medical Practitioner or Public Vaccinator.*)

SCHEDULE C.

(*See section 13.*)

I, the undessigned, hereby certify that , the child of , age , resident at , in the vaccination-area of , has been successfully vaccinated by me.

Dated this day of 18 .

(*Signature of Medical Practitioner or Public Vccinator.*)

SCHEDULE D.

(*See section 16.*)

To

[*Here insert the name of the parent, guardian or other person who gives information of child's birth.*]

Take notice that the child of whose birth has this day been registered, must be vaccinated under the provisions of the Bombaa District Vaccination Act, 1891, within twelve months from the date of its birth, under a penalty of fifty rupees.

The public vaccine-station nearest to the house in which the child was born is at .

The days and hours for vaccination at that station are as follows :—

(*Here insert the days and hours when the public vaccinator is in attendance.*)

On your taking, or causing the child to be taken, to the public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine-station in the vaccination-area on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

You should be careful to have one of the annexed forms of certificates filled in by the public vaccinator, or, if you employ a private medical practitioner to vaccinate the child by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a public vaccinator free of charge.

Dated the of 18 .

Registrar of Births.

SCHEDULE E.

(*See section 20.*)

REGISTER OF POSTPONED VACCINATIONS FOR THE VACCINATION AREA OF

Consecutive Number.	Name of Child	Birth.		Date of Certificate of Postponement.	Signature of Registrar.
		Year	Number of entry in Register.		

THE WAGERS (Amendment) ACT, 1865

Bom. Act No. III of 1865.

An Act to amend Act XXI of 1848 (for avoiding Wagers)

Preamble.

1. WHEREAS it is expedient, so far as regards the Presidency of Bombay, to amend Act XXI of 1848 (*for avoiding wagers*); It is enacted as follows :—

Contracts declared null and void.

1. All contracts, whether by speaking, writing or otherwise, knowingly made to further or assist the entering into, effecting or carrying out agreements by way of gaming or wagering, and all contracts by way of security or guarantee for the performance of such agreements or contracts, shall be null and void; and no suit shall be allowed in any Court of Justice for recovering any sum of money paid or payable in respect of any such contract or contracts, or any such agreement or agreements as aforesaid.

No suit allowed on such contracts.

Notes.—This Act is still in force, and has not been repealed by the Contract Act [22 Bom. 899, following 9 Bom. 358].

A contract for forward delivery wherein neither party intends to give or take delivery and differences only are to be paid or received according to the market rate on the due date, and which is settled by a cross-contract is a wagering contract within this section though not under s. 30 of the Contract Act [*Jivachand v. Laxinarayan*, 49 Bom. 639].

If the contract between *Pakka adatias* and their constituents is a contract of employment, such a contract can never by its nature come within the definition of a wagering contract and the *Pakka adatia* must win unless the constituents bring the contract within the provisions of this Act (*Manilal v. Radhakisan*, 45 Bom. 386).

Nor for commission or brokerage, etc., in respect of agreements by way of gaming or wagering.

2. No suit shall be allowed in any Court of Justice for recovering any commission, brokerage, fee or reward in respect of the knowingly effecting or carrying out, or of the knowingly aiding in effecting or in carrying out, or otherwise claimed or claimable in respect of, any such agreement by way of gaming or wagering or any such contract as aforesaid, whether the plaintiff in such suit be or be not a party to such lastmentioned agreement or contract, or for recovering any sum of money knowingly paid or payable on account of any persons by way of commission, brokerage, fee or reward in respect of any such agreement by way of gaming or wagering or contract as aforesaid.

Payments for which guardian and personal representative not to be allowed credit.

3. No guardian, executor, administrator, heir or personal representative of any deceased person shall be entitled to or allowed credit in his accounts for or in respect of any payment by him on behalf of such deceased person (or in the case of a guardian, on behalf of any minor), in respect of any such agreement or agreements as are mentioned in section 1 of Act XXI of 1848 or in respect of any such contract or contracts, commission, brokerage, fee or reward, or money paid or payable in respect thereof as are respectively mentioned in the first and second sections of this Act.

4, 5. *Repealed Acts III of 1886 and XVI of 1895.*

THE
Bom. Village Panchayats Act, 1933

Bombay Act No. VI of 1933

[*12th June 1933.*

An Act to amend and consolidate the law relating to the constitution of Village Panchayats.

WHEREAS it is expedient to amend and consolidate the law relating to the constitution of village panchayats, with a view to fostering their growth and of increasing their utility in the further development of local self-government in rural areas and in the administration of civil and criminal justice; and whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act and of the Governor required under section 80C of the said Act have been obtained for the passing of this Act : It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Bombay Village Panchayats Act, 1933.

Law prior to this Act.—The law relating to the village panchayats was the Bombay Village Panchayats Act (Bom. Act IX of 1920) passed in 1920. The whole of that Act is repealed by s. 115 of this Act.

Extent.

2. It extends to the whole of the Presidency of Bombay, except the City of Bombay.

Extent of Act.—This Act applies to the whole of the Presidency of Bombay except the City of Bombay, while the old Act was applicable to the whole of the Bombay Presidency.

Definitions.

3. In this Act, unless there is anything repugnant in the subject for context—

(1) "by-laws" means by-laws made by the district local board under section 109 ;

(2) "case" means, with reference to any judicial proceeding, a criminal proceeding in respect of any offence triable by a village bench;

(3) "Chairman" means the chairman of a village bench, appointed under sub-section (4) of section 37 ;

(4) "district local board", used with reference to any local area, means a district local board established under the Bombay Local Boards Act, 1923, for the district in which such local area is situated ;

(5) "holder" means a holder of an alienated revenue village and includes a Khot, a talukdar, a sharakatdar and in Sindh a jagirdar or a zamindar ;

(6) "offence" means any act or omission made punishable by any law for the time being in force ;

(7) "panchayat" means a panchayat established under this Act ;

(8) "prescribed" means prescribed by rules ;

(9) "revenue village" means any local area which is recognised as a village in revenue accounts ;

(10) "rules" means rules made by Government under section 108 ;

(11) "sarpanch" means a sarpanch elected under section 14 ;

(12) "school-board" means a school-board constituted under section 3 of the Bombay Primary Education Act, 1923 ;

(13) "suit" means a civil suit triable by a village bench under this Act ;

(14) "tax" means a tax, cess, rate, or other impost leviable under this Act ;

(15) the expression "the term of a panchayat" means the period for which the elected members thereof shall hold office under section 11 ;

(16) "village" means any local area declared to be a village under section 4 ;

(17) "village bench" means a bench constituted under sub-section (1) of section 37 for the purpose of the trial of suits and cases.

Judicial proceeding—"Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken (Or. P. C., s. 4 (*m*)).

CHAPTER II.

ESTABLISHMENT AND CONSTITUTION OF PANCHAYATS.

Declaration of village.

4. On a written application made—

(*i*) by the district local board with previous notice to the Collector,

(*ii*) by the Collector with previous notice to the district local board, or

(*iii*) by not less than twenty adult residents of any local area, the Commissoner may, after making such inquiry as may be prescribed, by notification in the *Bombay Government Gazette*, declare the local area in respect of which the application has been made to be a village, or to cease to be village or declare that any area is included in or excluded from a village :

Provided that if there be a holder of any revenue village in any such area and if any such holder objects to a declaration being made including any such revenue village in any such area, the Commissioner shall not make a declaration with respect to such revenue village, but shall refer the objection of such holder to Government and thereupon Government after taking the objection into consideration shall, by notification in the *Bombay Government Gazette*, declare that such revenue village shall or shall not be included in the village.

Establishment of panchayats.

5. In every village declared to be such under section 4, there shall be a panchayat.

Constitution of panchayats.

6. (1) A panchayat shall consist of the following members, namely :—

(*a*) such elected members, not being less than five or more than eleven in number, as the Collector after consultation with the district local board may determine;

Provided that when among such elected members there is not a member of any class of persons residing in the village, which in the opinion of the Collector, by reason of its numbers or for any other reason, should in the public interest be represented on the panchayat, the Collector shall nominate a member of such class qualified and willing to be so nominated a member of the panchayat:

Provided further that the number of members nominated by the Collector under the first proviso shall not exceed two.

(*b*) an officiating patel in the following order of preference :—

(i) the senior officiating revenue patel if there be more than one officiating revenue patel in the village, or

(ii) the officiating revenue patel, if there be not more than one officiating revenue patel in the village, or

(iii) the officiating Patel, if there be no separate officiating revenue patel in the village.

For the purposes of clause (*b*), an officiating patel includes a village officer appointed under section 3 of the Sindh Village Officers Act, 1881.

(c) The holder of any revenue village and when there are more than one revenue villages in the village as defined under the Act the holder of any such revenue village, and when there are more than one holder of any such revenue village, the principal among such holders, nominated by the Collector. If any such holder is unable or unwilling to serve, the Collector shall nominate a representative of such holder whom the Collector may approve.

(2) The decision of the Collector as to who is the senior officiating revenue patel or the principal holder or the representative of the holder shall be final.

(3) Where the Collector in consultation with the district local board determines that the number of elected members of a panchayat shall exceed five, failure to elect more than five such members shall not affect the constitution of a panchayat.

Note—This section provides for the constitution of a panchayat.

Election.

7. (1) The election of elected members to a panchayat shall be held on such date as the Collector may appoint in this behalf.

(2) All adult persons who ordinarily reside in the village and all adult persons who own in the village a house assessed to house tax or land assessed to cess under section 93 of the Bombay Local Boards Act, 1923, shall be entitled to vote at the election.

Such election shall be conducted in the prescribed manner.

(3) The Collector shall, after such enquiry as he considers necessary, decide in any case of dispute or doubt, who is qualified to vote at such election.

Sub-section (2).—All adult persons who own in the village land assessed to a cess under s. 93 of the Bombay Local Boards Act, 1923, are entitled to vote at the election of the panchayat, whether they ordinarily reside in the village or not.

Disqualifications.

8. No person may be elected or nominated a member of a panchayat, or continue as such who—

(*a*) is under 21 years of age, or

(*b*) does not ordinarily reside in the village, or

(*c*) has been sentenced by a criminal court to imprisonment or whipping for an offence punishable with imprisonment for a term exceedidg six months, or to transportation, or has been ordered to furnish security for good behaviour under the Code of Criminal Procedure, 1898, such sentence or order not having been subsequently reversed or remitted, so long as such sentence has not expired or so long as such order is in force, unless he shall have by an order which Government is hereby empowered to make, been relieved from the disqualification arising on account of such sentence or order, or

(*d*) has been adjudged by a competent court to be of unsound mind, or

(*e*) has been adjudicated an insolvent and has not obtained his discharge, or

(*f*) has been removed from office under section 21 and five years have not elapsed from the date of such removal, unless he shall have by an order which the district local board after the expiry of one year from the date of such removal is hereby empowered to make, been relieved from the disqualification arising on account of such removal from office, or

(*g*) holds any salaried office or place of profit in the gift or disposal of the panchayat, while holding such office or place, or

(*h*) has directly or indirectly any share or interest in any contract with, by or on behalf of the panchayat while owning such share or interest :

Provided that in cases (*g*) and (*h*) the disqualification may be removed by an order of the Commissioner in this behalf.

Explanation.—A person shall not, by reason of being a shareholder in, or a member of, any incorporated or registered company or a co-operative society registered under the Co-oprative Societies Act, 1912, or the Bombay Co-operative Societies Act, 1925, be held to be interested in any contract entered into between the company or co-operative society and the panchayat.

Disqualification-Contract.—A contract with a corporation though not under seal will disqualify (*R. v. Francis*, 18 Q. B. 526). A person is interested in a contract if he takes an assignment of it by way of security even before its election (*Hunnings v, Williamson*, 11 Q. B. D. 533 quoted in Aiyangar's Municipal Corporations, p. 45).

An interest in a contract must be a pecuniary, or, at least, a material interest, but it need not be a pecuniary advantage (*Ibid*).

Collector to declare election invalid.

9. (1) If the Collector, after such enquiry as he considers necessary, is satisfied that any member has been elected in contravention of the provisions of section 8, or that any corrupt practice or irregularity has been committed in connection with such election, and that such illegality, corrupt practice or irregularity has materially affected the result of the election, the Collector may declare the election of such member to be invalid, and such declaration shall be final ;

Provided that when the Collector is satisfied that a corrupt practice has been committed by a member, the Collector shall, whether such corrupt practice has or has not materially affected the result of the election, declare the election of such member to be invalid and such declaration shall be final.

(2) A person shall be deemed to have committed a corrupt practice–

(*a*) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury, to any person, or

(*b*) who gives, procures, or abets the giving of a vote in the name of a voter who is not the person giving such vote.

Explanation 1.—A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.—"A promise of individual profit"—

(*i*) does not include a promise to vote for or against any particular measure which may come before a panchayat for consideration, but

(*ii*) subject thereto includes a promise for the benefit of the person himself or any person in whom he is interested.

Note.—Under this section it is left to the option of the Collector to set aside an election if, in his opinion, any corrupt practice, illegality or irregularity which may have been made during the election has materially affected the result of such election.

Fresh election, if election invalid.

10. If the Collector declares the election of any member invalid under section 9, a fresh election for the vacancy so caused shall be held in accordance with the provisions of this Act.

Term of office of elected members.

11. (1) The elected members of a panchayat shall, save as otherwise provided in this Act hold office for a term of three years.

(2) The Collector may, by order in writing, for reasons recorded therein, extend the said term for a period not exceeding one year. Any such order shall be notified in such manner as the Collector may approve.

Note.—This section provides for the term of office of the elected members of a panchayat.

Commencement of term of office.

12. (1) The term of office of the elected or nominated members shall be deemed to commence on the date of the first meeting after the election or nomination of such members, as the case may be.

(2) The term of office of the outgoing members shall be deemed to extend to and expire with the day before such meeting.

(3) The term of office of an *ex-officio* member of a panchayat shall continue so long as he holds office in virtue of which he is such a member.

(4) The term of office of a member nominated under clause (*c*) of sub-section (1) of section 6 shall be co-extensive with the term of office of an elected member.

Resignation of members.

13. Any elected or nominated member may resign his office by giving notice in writing to that effect to the sarpanch and such resignation shall take effect from the date of its receipt by the sarpanch.

Election of sarpanch and deputy sarpanch.

14. (1) Every panchayat shall be presided over by a sarpanch who shall be elected by the members from among their own number. The panchayat shall also elect one of its members to be deputy sarpanch.

(2) A sarpanch and members holding office in a panchayat established under the Bombay Village Panchayats Act, 1920, and continued under section 115 shall be deemed to have been elected under this section and shall continue to hold their respective offices until a new panchayat is constituted under the provisions of this Act.

Note.—This section provides for the election of a sarpanch and a deputy sarpanch.

Term of office of sarpanch and deputy sarpanch.

15. Save as otherwise provided in this Act, a sarpanch or deputy sarpanch shall hold office for a period of one year, but shall be eligible for re-election :

Provided that the term of office of such sarpanch and deputy sarpanch shall be deemed to extend to and expire with the day previous to that on which their successors respectively are elected or on the date on which the term of the pachayat expires, whichever is earlier :

Provided further that if the term of the panchayat is due to expire within six months after the expiry of the term of office of sarpanch or deputy sarpanch, the sarpanch or deputy sarpanch, as the case may be, shall continue to hold office until the date on which the term of the panchyat expires.

Note.—This section provides for the period for which a sarpanch and a deputy sarpanch are to hold their respective offices. It is provided that neither of them will vacate his office till his successor is appointed and takes charge or until the expiry of the term of the panchayat, whichever is earlier.

Sarpanch to carry on current duties until his successor is appointed.

16. After the expiry of his term of office, the sarpanch shall continue to carry on the current duties of his office until such time as a new sarpanch shall have been elected and shall have taken over charge.

Note.—This section provides that, after the expiry of the term of his office or of the panchayat, the retiring sarpanch shall continue to carry on the current administrative duties of his office.

Election of sarpanch on establishment of panchayat, etc.

17. (1) On the establishment of a panchayat for the first time under this Act, or on its reconstitution or establishment under section 102 or 103, a meeting shall be called by the president of the district local board who shall himself preside or appoint a person who is not a member of the panchayat to preside over the meeting. The president of the district local board or the person so appointed shall preside at such meeting but shall have no right to vote and the meeting shall then proceed to elect the sarpanch. In the case of an equality of votes the result of the election of the sarpanch

shall be decided by lot to be drawn by the person presiding at the meeting in such manner as he may determine.

(2) On the expiry of the term of a panchayat, or on the expiry of the period of one year for which a sarpanch ordinarily holds office as provided in section 15, the sarpanch shall convene a meeting of the panchayat for the election of a new sarpanch. He shall preside at such meeting, but shall not vote thereat unless he is a member of the panchayat at that time. In the case of an equality of votes, the result of the election shall be decided by lot to be drawn by the presiding sarpanch in such manner as he may determine:

Provided that when no meeting for the election of a sarpanch has been called by the retiring sarpanch within thirty days from the date of expiry of either of the aforsaid periods, the president of the district local board shall proceed to convene a meeting of the panchayat in the manner described in sub-section (1) and a new sarpanch shall be elected accordingly.

Note--This section provides for the section of a sarpanch, on the establishment of a panchayat or on the re-establishment after supersession or on the expiry of the term of the panchayat, or on expiry of the term of his own office.

Resigation by sarpanch or deputy sarpanch.

18. The deputy sarpanch may resign his office by giving notice in writing to the sarpanch.

The sarpanch may resign his office by giving notice in writing to the president of the district local board.

Such resignations shall take effect from the date of their acceptance.

Time and place of sitting of panchayat and procedure at meetings.

19. The time and place of sitting and the procedure at a meeting of the panchayat shall be in accordance with by-laws.

Executive of panchayat.

20. The executive power for the purpose of carrying out the provisions of this Act and the resolutions passed by a panchayat vests in the sarpanch who shall be directly responsible for the due fulfilment of the duties imposed upon the panchayat by or under this Act. In the absence of the sarpanch, the powers and duties of the sarpanch shall, save as may be otherwise prescribed by by-laws, be exercised and performed by the deputy sarpanch.

Note—This section provides that the surpanch will be the principal executive officer of the panchayat, and will be responsible for the carrying out of the resolutions passed by a panchayat.

Removal from office.

21. The district local board may, after giving due notice to the panchayat and after such enquiry as it thinks fit, remove from office with the previous sanction of the Collector any member, or any sarpanch or deputy sarpanch who, in its opinion, is unfit to be a member or sarpanch or deputy sarpanch, as the case may be, or is persistently remiss in the discharge of his duties. A sarpanch or deputy sarpanch so removed may, at the discretion of the district local board, and subject to the like sanction also be removed from the panchayat unless he is an *ex-officio* member of the panchayat. The panchayat may, with the previous sanction of the president of the district local board, and

after due notice and inquiry remove the secretary of a panchayat from office for similar reasons.

Note.—This section refers to the power of the District Local Board to remove a sarpach, deputy sarpanch, a member or a secretary of a panchayat.

Leave of absence.

22. (1) Any elected or nominated member of a panchayat who, during his term of office,

(*a*) is absent for more than four consecutive months from the village unless leave not exceeding six months, so to absent himself, has been granted by the panchayat ; or

(*b*) absents himself for six consecutive months from the meetings of the panchayat without the leave of the said panchayat,

shall cease to be a member and his office shall become vacant.

(2) Any dispute as to whether a vacancy has or has not occured under this section shall be referred for decision to the Collector whose decision shall be final.

Note.—This section provides for the grant of leave to members of a panchayat by the panchayat.

Filling up of vacancies.

23. (1) Any vacancy of which notice shall have been given to the Collector in the prescribed manner due to the disablement, death, resignation, disqualification, absence without leave or removal of a sarpanch or a deputy sarpanch, or an elected or nominated member, shall be filled, by the election of a sarpanch or deputy sarpanch or the election or nomination of a member, who shall hold office so long only as the sarpanch, deputy sarpanch or member, in whose place he has been elected or nominated would have held office if the vacancy had not occurred.

(2) The meeting for the election of a sarpanch under sub-section (1) shall be convened by the president of the district local board in the manner described in sub-section (1) of section 17.

Note.—This section provides for the notice to the Collector of any vacancy that may arise due to disablement, death, resignation, etc. of a sarpanch or a deputy sarpanch or elected or nominated member.

Vacancy not to affect proceedings of panchayat.

24. During any vacancy in the panchayat, the continuing members may act as if no vacancy had occurred.

Temporary provision pending establishment of panchayats under this Act

25. Notwithstanding anything contained in this Act, the village fund shall, until such date as Government may notify in the *Bombay Government Gazette*, be administered, so far as may be, under the provisions of this Act by the panchayats constituted under the Bombay Village Panchayats Act, 1920, which panchayats shall be deemed to have been established under this Act.

CHAPTER III.

ADMINISTRATIVE POWERS AND DUTIES.

Administrative powers and duties of panchayats.

26. (*1*) It shall be the duty of a panchayat, so far as the village funds at its disposal will allow subject to the general control of the district local board, to make reasonable provision within the village in regard to the following matters, namely :—

(*a*) the supply of water for domestic use ;

(*b*) the cleansing of the public roads, drains, bunds, tanks and wells (other than tanks and wells used for irrigation) and other public places or works ;

(*c*) the construction, maintenance and repair of public roads, drains, bunds and bridges :

Provided that, if the roads, drains, bunds and bridges vest in any other public authority such works shall not be undertaken without the consent of such authority ;

(*d*) sanitation, conservancy, and the prevention and abatement of nuisances ;

(*e*) the preservation and improvement of the public health ;

(*f*) the maintenance and regulation of the use of public buildings, grazing lands, forest lands (including lands assigned under section 28 of the Indian Forest Act, 1927), tanks and wells (other than tanks and wells used for irrigation), vesting in or under the control of the panchayat ;

(*g*) the lighting of the village ;

(*h*) control of fairs, bazars, slaughter-houses and cart-stands ; and

(*i*) provision and maintenance of burning and burial grounds.

(2) A panchayat may also make provision for carriyng out within the village any other work or measure which is likely to promote the health, safety, education, comfort, convenience or social or economic well-being of the inhabitants of the village.

(3) A panchayat may, with the previous sanction of the district local board, also make provision for carrying out outside the village any work of the nature specified in sub-sections (1) and (2).

Sub-section (1) :—Sub-section (1) refers to the obligatory duties of the panchayat.

Sub-section (2) :—Sub-section (2) deals with the discretionary duties of the panchayats, and the carrying out of any work calculated to promote the educational, social or economic well-bring of the inhabitants of the village forms part of their discretionary duties.

Powers of district local board to transfer maintenance of institutions and execution of other works.

27. The district local board may, at any time, with the consent of the panchayat, transfer to such panchayat the management of any institution or the execution of any work not provided for in section 26, and it shall thereupon be lawful for such panchayat to undertake the management of such institution or the execution of such work :

Provided that in every such case the funds necessary for such management or execution shall be placed at the disposal of the panchayat by the district local board.

Note.—This section enables a district local board to transfer certain institutions to a panchayat for management.

Other duties.

28. (1) The panchayat shall,—

(*i*) subject to the regulations made by the local authority under the Bombay Primary Education Act, 1923, supervise the village school and carry out such repairs as may be necessary for the maintenance and upkeep of the same ; and

(*ii*) subject to by-laws to be made by the district local board in this behalf,—

(*a*) supervise the labour employed by local boards on works within the village;

(*b*) supervise repairs to dharamsalas;

(*c*) manage and maintain cattlepounds; and

(*d*) execute such works as are entrusted to it by the district local board; and

(*iii*) subject to such conditions as Government may impose and with the consent of the panchayat concerned, perform such other administrative duties including the distribution of irrigation water as may be assigned to it by Government by notification in the *Bombay Government Gazette*, after consultation with the district local board.

(2) The regulations to be made by the local authority shall be made within six months from the passing of this Act. If no such regulations are made within the said period, Government may make rules for the purpose.

(3) A panchayat shall not be bound to carry out repairs to a village school under clause (*i*) of sub-section (1) unless sufficient funds have been placed at the disposal of the panchayat by the local authority or the School Board, as the case may be, or to perform the duties specified in clause (*ii*) of sub-section (1) unless sufficient funds have been placed at the disposal of the panchayat by the district local board.

Note.—This section relates to other duties of a panchayat, regarding the management of village schools, supervision of cattle-pounds, the distribution of irrigation water and minor works which may be undertaken by the district local board in the village.

CHAPMER IV.

INCORPORATION OF VILLAGE PANCHAYAT; ITS PROPERTY AND FUND

Incorporation of village panchayat.

29. Every panchayat shall be a body corporate by the name of "the village panchayat of ," and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire and hold property, both moveable and immoveable, whether within or without the limits of the village over which it has authority, to lease, sell or otherwise transfer moveable or immoveable property which may become vested in or be acquired by it, and to contract and do all other things necessary for the purposes of this Act:

Provided that no lease of immoveable property (other than property referred to in sub-section (1) of section 30) for a term exceeding seven years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer shall have been made with the previous sanction of the Collector.

Notes.—This section empowers a panchayat to acquire, hold and transfer moveable and immoveable property vesting in it. There was no such provision in the repealed Panchayats Act of 1920.

"Seal".—"It is a general rule that a corporation must contract by its common seal, but where the observance of this rule would occasion great inconvenience or tend to defeat the very purpose of the business, it is not observed" (*Wharton's Law Lexicon*).

Suits by or against corporation.—See the Code of Civil Procedure, 1908, 1st Schedule, Order XXX.

Property of panchayat.

30. (1) It shall be competent to a local board from time to time to direct that any property vesting in such local board shall vest in a panchayat:

Provided that no lease, sale or other transfer of any such property shall be valid without the previous sanction of such local board.

(2) Every work constructed by a panchayat out of the village fund shall vest in such panchayat.

Village fund.

31. (1) There shall be in each village a fund, which shall be called the village fund.

(2) The following shall form part of, or be paid into, the village fund, namely:—

(*a*) the amount which may be allotted to the village fund by Government under the provisions of section 191 of the Bombay District Municipal Act, 1901;

(*b*) the proceeds of any tax or fee imposed under section 89;

(*c*) all fines and sums ordered to be paid as compensation realised under sections 45 and 46;

(*d*) all other sums ordered by a court to be placed to the credit of the village fund;

(*e*) the sale-proceeds, except in so far as any person is entitled to the whole or a portion thereof, of all dust, dirt, dung or refuse (including the dead bodies of animals) collected by the village servants;

(*f*) sums contributed to the village fund by Government or a district local board;

(*g*) all sums received by way of loans from Government or the district local board or by way of gift;

(*h*) such other sums as may be assigned to the village fund by any general or special order of Government;

(*i*) the income or proceeds of any property vesting in the panchayat; and

(*j*) fees levied for the institution of suits and cases under section 59.

Note.—This section provides for the constitution of the village fund, which will be under the control and management of the panchayat.

Section 191 of the Bom. District Municipal Act.—Section 191 of the Bom. District Municipal Act (III of 1901) runs as follows:—

"When by reason of any order of cancellation under the last foregoing section any area ceases to be notified, the unexpended proceeds of any taxes levied therein under s. 188 shall be applied for the benefit of the inhabitants of the said area as the Governor in Council may think fit."

Application of village fund.

32. All property vested in the panchayat under this Act, and all funds received by it in accordance with the provisions of this Act, and all sums accruing to it under the provisions of any law for the time being in force shall be applied subject to the provisions and for the purposes of this Act and all such funds and sums shall be kept in such custody as may be prescribed.

Note.—This section provides that the village fund shall be applied for the purposes of the Act and shall be kept in such custody as may be prescribed by Government under rules made in this behalf.

CHAPTER V.

ESTABLISHMENT AND ACCOUNTS.

Appointment of secretary.

33. Every panchayat shall appoint a secretary. Such appointment shall be subject to the approval of the standing Committee of the district local board.

Note.—This section relates to the appointment of a secretary by a village panchayat subject to the approval of the standing committee of the district local board.

Schedule of servants.

34. Subject to the provisions of section 98, a panchayat shall determine and submit for information to the district local board a schedule of the number and salaries of its servants required for carrying out the duties imposed upon the panchayat by or under this Act.

Appointment of servants.

35. (1) The sarpanch shall appoint the servants of the panchayat and pay their salaries from the village fund at his disposal. He may also, in cases of emergency, engage such temporary servants as he may deem necessary. The sarpanch may, from time to time, by a written order fine, suspend or dismiss any servant appointed by him.

(2) An appeal shall lie against an order passed under sub-section (1) to the panchayat.

Note.—This section authorizes the sarpanch to appoint servants and pay their salaries from the village fund.

Budget and accounts. Panchayat to convenue a meeting of residents of village.

36. (1) A panchayat shall determine annually and shall submit to the district local board, on or before such date and in such form as may be prescribed by Government, a statement of—

(*a*) the opening balance and estimated income of the panchayat for the following year ;

(*b*) the expenditure proposed on establishment and the discharge of the duties specified in sub-section (1) of section 26 ;

(*c*) the expenditure proposed under sub-section (2) of section 26 and sub-section (1) of section 28.

(2) The district local board shall, within three months from the date of the receipt of such statement, either approve the same or direct that the proposed expenditure on any of the duties specified in sections 26 and 28 shall be increased or decreased :

Provided that the district local board shall not have power to direct that the total proposed expenditure shall exceed the estimated income of the village fund for the following year and the opening balance.

(3) A panchayat shall maintain its accounts in such form as may be prescribed by Government and submit to the district local board annual returns thereof on or before such date and in such form as may be prescribed by Government.

(4) A panchayat shall convene in a manner and at a time prescribed a meeting of all adult residents of the village and shall place before the meeting the last statement of accounts together with a report on the administration of the preceding year and the programme of work proposed for the year following.

Note.—This section relates to the preparation of budgets and keeping of accounts and makes provision for rules prescribing the registers and returns in which the accounts of the village funds shall be kept and annual returns thereof submitted to the district local board.

CHAPTER VI.

CONSTITUTION AND POWERS OF VILLAGE BENCHES

Note—This chapter relates to the judicial powers of Village Benches and the object of its provisions is to make certain suits and offences cognizable by the Village Bench.

Power of Government to constitute village benches to try suits and cases.

37. (1) Government may, by notification in the *Bombay Government Gazette*, from such date as may be appointed in this behalf, declare that in any village where a panchayat has been established, a village bench shall be constituted to exercise in accordance with rules all or any of the judicial powers which may be conferred on a village bench under this Act.

(2) Such village bench shall consist of five or seven members as may be appointed by the Collector. When the village bench consists of five members, three members, and when the village bench consists of seven members, five members, shall be appointed by the Collector in the manner prescribed from among the members of the panchayat. The remaining members shall be appointed by the Collector in the manner prescribed from among persons not being persons in the service of Government or of any local authority who may or may not be members of the panchayat :

Provided that if there be a holder of any revenue village within the limits of the village in which a village bench is to be constituted, the Collector shall appoint the holder of such revenue village a member of such village bench. When there are more than one such holder in any such village, the Collector shall appoint the principal among such holders the member of the bench. If any such holder is unable or unwilling to serve on the bench, the Collector shall appoint a representative of such holder whom the Collector may approve.

The decision of the Collector as to who is the prinicipal holder or a representative of the holder is final.

(3) In appointing the members of a village bench the Collector shall have due regard to a just and proper representation upon the

village bench of all classes of persons residing in a village who are in a minority.

(4) The chairman of the village bench shall be appointed by the Collector from among the members of the bench.

Note.—This section provides that Government may authorise particular Village Benches to have the judicial powers provided in this Act from such date as they think proper.

Saving of pending proceedings.

38. Every suit or case of the nature specified in section 39 or 41, pending in any court and cognizable by a village bench empowered under section 37 and all proceedings arising from and incidental to any such suit or case shall be tried, heard and determined by such court or any other court having jurisdiction to try, hear and determine the same, as if this Act had not been passed.

Note.—This section provides that pending proceedings in other Courts will not be affected by the provisions of this Act.

Suits triable by vilage bench.

39. (1) Save as otherwise provided in section 40, the village bench shall have power to try the following suits, namely :—

(*a*) suits for money due on contracts, not affecting any interest in immoveable property ;

(*b*) suits for the recovery of moveable property or for the value of such property ;

(*c*) suits for compensation for wrongfully taking and injuring moveable property ;

where the amount or value of the claim does not exceed twenty-five rupees.

(2) With the written consent of both the parties, recorded in the presence of the village bench, suits of the nature described in sub-section (1), but the value of which does not exceed one hundred rupees, shall be triable by such village bench.

(3) Government may, by notification in the *Bombay Government Gazette*, direct that any village bench may try any suit of the nature described in sub-section (1), up to such value as may be specified in the notification not exceeding one hundred rupees.

Note.—This section enumerates suits which will be cognizable by a Village Bench.

Suits not triable by village bench.

40. No suit shall be brought before any village bench—

(*i*) on a balance of partnership account ;

(*ii*) for a share or part of a share under any intestacy, or for a legacy or part of a legacy under a will ;

(*iii*) by or against the Secretary of State for India in Council or any local authority or an officer or servant of Government or a member, officer or servant of a local authority in his official capacity ;

(*iv*) by or against a minor or a person of unsound mind ; and

(*v*) on account of any dispute or matter in respect of which any suit or application would be cognizable by a revenue court.

Note.—This section enumerates suits which will not be cognizable by a Village Bench.

Offences cognizable by village benches.

41. (1) The following offences as well as abetments of or attempts to commit such offences shall be cognizable by village benches, namely :—

(a) Under the Indian Penal Code—

	Section
Voluntarily causing hurt	323
Assault or use of criminal force otherwise than on grave and sudden provocation	352
Assault or use of criminal force on grave and sudden provocation	358
Theft, where the value of the property stolen does not exceed Rs. 10	379
Mischief, when the loss or damage caused does not exceed Rs. 10 in value	426
Intentional insult, with intent to provoke a breach of the peace :	504

Provided that no offence of theft shall be cognizable by any village bench, unless an accused person has been either apprehended or recognised and named.

(b) Under the Cattle Trespass Act, 1871—

Forcibly opposing the seizure of cattle or rescuing the same. 24

(c) Breaches of by-laws made punishable under this Act.

(2) Government may, by notification in the *Bombay Government Gazette*, empower any village bench to take cognizance of any or all of the following offences under the Indian Penal Code, as well as abetments of, or attempts to, commit (any) such offences, namely :—

	Section
Negligently doing any act known to be likely to spread the infection of any disease dangerous to life	269
Fouling the water of a public spring or reservoir	277
Causing danger, obstruction or injury to any public way ...	283
Theft, where the value of the property stolen does not exceed Rs. 20	379
Mischief, when the loss or damage caused does not exceed Rs. 20 in value	426
Criminal trespass	447
House trespass	448
Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property	461
Adultery	497
Enticing or taking away, or detaining with criminal intent a married woman	498

Notes.—This section specifies certain offences which will be triable by a village Bench.

Voluntarily causing hurt—Section 321 of the Indian Penal Code defines 'voluntarily causing hurt'.

A prosecution under section 323 of the Indian Penal Code does not abate by reason of the death of the person injured (*Muhammad Ibrahim v. Shaik Dawood*, 44 Mad. 417).

Assault.—The term "assault" is defined in section 351 of the Indian Penal Code.

Criminal force.—'Criminal force' is defined in section 350 of the Indian Penal Code.

Assault or use of criminal force on grave and sudden provocation.—"Whoever assaults or uses criminal force to any person on grave and sudden provocation by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both." (*Indian Penal Code, section 358*)

Note.—This section provides for mild punishment if the assault or criminal force is the result of grave and sudden provocation.

Theft.—The term 'theft' is defined in section 378 of the Indian Penal Code.

Ingredients—In order to constitute 'theft' five things are necessary:—

(*a*) dishonest intention to take property ;

(*b*) the property must be moveable ;

(*c*) it should be taken out of the possession of another person ;

(*d*) it should be taken without the consent of that person ; and

(*e*) there must be some removal of the property in order to accomplish the taking of it.

Mischief.—The term 'mischief' is defined in the Indian Penal Code, s. 425.

Note—Where the accused was found catching fish in a public river, the right of fishing in which was let out by Government to another, but no fencing was put up to shut up the fish in any manner, it was *held* that the offence was not committed (*Bhagiram v. Abar Dome*, 15 Cal. 388).

Intentional insult, with intent to provoke a breach of peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both (*Indian Penal Code*, section 504).

Negligent act likely to spread infection of disease dangerous to life.—Whoever unwillingly or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both (*I, P, C.*, section 269).

Small-pox.—Where a mother refused to allow her daughter suffering from small-pox to be removed to a hospital in accordance with an order made by a District Magistrate unless she accompanied her, it was *held* that she had committed no unlawful or negligent act within the meaning of the section.

Fouling the water of a public spring or reservoir—"Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may

extend to three months or with fine which may extend to five hundred rupees, or with both" (I. P. C., section 277).

The words 'corrupts' or 'fouls' mean some act which physically defiles or fouls the water. Hence the act of a woman of a lower caste taking water from a public cistern does not amount to corrupting or fouling (*Bhagi*, 2 Bom. L. R. 1078). Bathing, however, in a tank amounts to foul the drinking water (*Muthian*, 1 Weir 229).

Causing danger, obstruction or injury to any public way—"Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way..... shall be punished with fine which may extend to two hundred rupees (*I. P. C. section 283*).

Criminal trespass.—The term 'criminal trespass' is defined by section 441 of the I. P. C.

Intent.—Criminal trespass depends on the intention of the offender and not upon the nature of the act (*Rshana*, 5 Lah. 29).

Property.—'Property' means immovable corporal and not incorporal property such as a right of fishery (*Charu Nayiah*, 2 Cal. 354).

Possession.—Possession must be actual possession of some person other than the alleged trespasser (*Foujdar*, P. R. 28 of 1878).

House trespass.—Section 442 of the Indian Penal Code defines 'house trespass' thus :—"Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house trespass.'

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Building.—A cattle enclosure, which was merely a piece of ground enclosed on one side by a wall and on the other three sides by a thornhedge, was *held* to be not a building (*Kohmi*, P. R. No. 24 of 1914).

Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.—(Section 461 of the Indian Penal Code)—"Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Adultery.—'Adultery' is defined in section 497 of the Indian Penal Code.

Ingredients.—For an offence under section 497 of the Indian Penal Code the following three things are necessary :—

(1) Sexual intercourse by a man with a woman who and whom he knows or has reason to believe to be the wife of another man.

(2) Such sexual intercourse must be without the consent or connivance of the husband.

(3) Such sexual intercourse must not amount to rape.

Connivance.—'Connivance' is the willing consent of a conjugal offence, or a culpable acquiescence in a course of conduct reasonably likely to lead to the offence being committed.

Enticing or taking away, or detaining, with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both (*Section 498 of the Indian Penal Code*).

Certain persons accused of theft not to be tried by village bench.

42. No village bench shall take cognizance of any offence of theft punishable under section 379 of the Indian Penal Code, in which the accused—

(*a*) has been previously convicted of an offence punishable, under Chapter XII or Chapter XVII of the Indian Penal Code, with imprisonment of either description for a term of three years or upwards;

(*b*) has been previously fined for theft by any panchayat;

(*c*) is a registered member of a criminal tribe under section 4 of the Criminal Tribes Act, 1924; or

(*d*) has been bound over to be of good behaviour in proceedings instituted under section 109 or section 110 of the Code of Criminal Procedure, 1808.

Note.—Sections 42 and 43 provide that habitual offenders in respect of whom punishment greater than that which a village bench is empowered to inflict is deemed necessary should not be triable by a village bench. They also provide that cases in which a public servant is a complainant or accused should not be cognizable by a village bench.

Offences under Chapter XII of I. P. C.—The offences described in Chapter XII of the Indian Penal Code relate to coin and Government stamps.

Offences under Chapter XVII of I. P. C.—Chapter XVII of the Indian Penal Code deals with offences against Property—(1) Theft, (2) extortion, (3) Robbery, (4) Dacoity, (5) Criminal misppropriation of property, (6) Criminal breach of trust, (7) Receiving of stolen property, (8) Cheating, (9) Fraudulent deeds, (10) Mischief and (11) Criminal trespass.

Sections 109 and 110 of the Criminal Procedure Code.—Section 109 of the Code of Criminal Procedure (V of 1898) deals with security for good behaviour from vagrants and suspected persons and section 110 deals with security for good behaviour from habitual offenders.

Offences by or against public servant not cognizable by village bench.

43. No village bench shall take cognizance of any offence specified in section 41 in which either the complainant or the accused is a public servant serving in the district in which the village for which the panchayat is established is situated:

Provided, however, that a village bench shall not be debarred from taking cognizance of an offence for a breach of a by-law, notwithstanding that the complainant in the case is a public servant.

Conviction by village bench not a previous conviction.

44. A conviction by a village bench under this Act shall not be deemed to be a previous conviction for the purposes of section 75 of the Indian Penal Code.

Note.—Section 75 of I. P. C. does not constitute a separate offence, but only imposes a liability to enhanced punishment.

Maximum penalties.

45. (1) The following are the maximum penalties which may be inflicted by a village bench for the offences mentioned in section 41:—

(*a*) Under the Indian Penal Code—

Fine not exceeding Rs. 10 or double the amount of the loss or damage caused up to a limit of Rs. 20 ;

(*b*) Under section 24 of the Cattle Trespass Act, 1871—

Fine not exceeding Rs. 5 ; and

(*c*) for a breach of a by-law made punishable under this Act—

Fine not exceeding Rs. 10 or Re. 1 a day for a continuing breach as provided in sub-section (3) of section 109.

(2) No sentence of imprisonment, whether substantive or in default of fine or of whipping, shall be inflicted by a village bench.

Note.—Sections 45 and 46 provide for the maximum penalties which may be imposed by a Village Bench, or which a particular Village Bench may be empowered to impose.

Power of Government to empower particular village bench to inflict enhanced penalties.

46. Government may empower, by a notification in the *Bombay Government Gazette*, a village bench to inflict the following maximum penalties :—

(*a*) Under the sections of the Indian Penal Code mentioned in section 41—

Fine not exceeding Rs. 20 or double the amount of the damage or loss caused, whichever is greater.

(*b*) Under section 24 of the Cattle Trespass Act, 1871—

Fine not exceeding Rs. 10.

Compensation to complainants.

47. In inflicting any fine under section 45 or section 46, the village bench may direct that the whole or any portion of the fine recovered shall be applied—

(*a*) towards defraying the expenses properly incurred in the case by the complainant, or

(*b*) in giving compensation to a person for any material loss or damage caused to him by reason of the commission of the offence.

Note.—This section empowers a village Bench to compensate a person out of the amount of fine imposed under the Act.

Compensation to accused for false or frivolous case.

48. If a village bench is satisfied, after enquiry, that a case brought before it is false, frivolous or vexatious, such village bench may order the complainant to pay the accused such compensation, not exceeding Rs. 5, as it thinks fit.

Note—This section also empowers a Village Bench to grant compensation to an accused for a frivolous, vexatious or false complaint.

Youthful offenders.

49. Instead of passing any sentence, a village bench may discharge, after due admonition, a youthful offender who, in the opinion of such village bench, is, at the time of conviction of the offence, under the age of sixteen years.

Note.—This section empowers a Village Bench to release a youthful offender under 16 years with due admonition, without inflicting any sentence on him.

Members interested not to sit on village bench.

50. No member of a village bench who is a party to, or has any interest in, any suit or case shall sit on the village bench while it is trying such suit or case.

Any dispute as to whether a member of a village bench is a party to or interested in a suit or case shall, on a written application of a party to such suit or case, be referred to the Collector or such officer as he may authorise in this behalf for decision. The decision of the Collector or such officer shall be final.

Note—This section provides that a person who is interested in any suit or case shall not sit in a Village Bench when it is trying that proceeding.

Res judicata and pending suits and cases.

51. (1) No village bench shall try any suit or issue in respect of any matter which is pending for decision in, or has been heard and decided by, a court of competent jurisdiction in a previously instituted suit between the same parties or those under whom they claim.

(2) Where an accused person has been tried for any offence, no village bench shall take cognizance of such offence or, on the same facts, of any other offence of which the accused might have been charged or convicted.

Note.—This section provides that a Village Bench shall not try any proceeding in which the question at issue has been already decided in a Court or is pending for decision before a Court.

Suits to include whole claim.

52. Every suit instituted before a village bench shall include the whole of the claim which the plaintiff is entitled to make in respect of the matter in dispute but he may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the village bench.

If a plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Note.—This section is based on Order II, Rule 2, of the Civil Procedure Code, and provides that every claim before a Village Bench shall include the whole of the claim which the plaintiff is entitled to make

Limitation for suits and cases.

53. (1) No suit shall be entertained by a village bench after the expiration of one year from the time when the right to sue first accrued.

(2) No case shall be cognizable by a village bench after the expiration of one month from the date on which the offence was committed.

Note.—This section prescribes special periods of limitation within which a suit or a criminal complaint is to be filed before a Village Bench.

Village bench before which suits to be instituted.

54. Every suit under this Act shall be instituted before the village bench of the village in which the defendant or each of the defendants, where there are more than one, resides at the time of the institution of the suit, irrespective of the place where the cause of action arose.

Note.—This section provides that a suit will be filed before the Village Bench of a village of which the defendant or, if there are more than one defendants, each of them is resident.

Village bench before which cases to be instituted.

55. Every case under this Act shall be instituted before the village bench of the village in which the offence was committed.

Note.—This section provides for the jurisdiction of a Village Bench in Criminal cases. It provides that a Village Bench is competent to take cognizance of a criminal proceeding which relates to an offence committed within the limits of the village.

Return of complaints.

56. Any Magistrate upon receiving a complaint of facts constituting an offence cognizable by a village bench shall, unless reason to the contrary be shown to the satisfaction of the Magistrate, return the complaint for presentation to the village bench having jurisdiction to try the same.

Note.—This section provides that the magistrate receiving a complaint cognizable by a Village Bench has to send it to the Village Bench for trial.

Bar of jurisdiction of courts in suits and cases.

57. Notwithstanding anything contained in any law for the time being in force, no court, subject to the provisions of section 56, shall entertain any suit specified in section 39 or take cognizance of any offence specified in section 41, unless and until the District Judge or the Collector has passed an order in writing under section 77 or 87.

Note.—This section is very important and bars the jurisdiction of Courts to take cognizance of Civil or Criminal proceedings which are cognizable by a Village Bench under this Act.

Bom. Act VIII of 1867, sec. 14, not to apply to village which has village bench.

58. Notwithstanding anything contained in the Bombay Village Police Act, 1867, the provisions of section 14 of the said Act shall not apply to any village in which a village bench shall have been constituted under sub-section (1) of section 37.

Note.—Under s. 14 of the Bombay Village Police Act, 1867, a police patel *ex-officio* exercises certain judicial powers which it will no longer be necessary for him to exercise in case a Village Bench is constituted in the village. It is, therefore, provided that the provisions of section 14 of the said Act shall not apply to any village in which a Village Bench shall have been constituted under sub-section (1) of s. 37.

CHAPTER VII.

PROCEDURE OF PANCHAYATS IN SUITS AND CASES.

This Chapter (sections 59–79) relates to the procedure which is to be followed by a Village Bench for trying civil or criminal cases. It is intended that the procedure to be followed should be summary and expenditious. The elaborate procedure which is ordinarily followed in courts is not suitable for such a tribunal as a Village Bench.

Suits and cases : how instituted.

59. Any person who wishes to institute a suit or case under this Act before a village bench shall make an application orally or in writing to the Chairman or during his absence from the village to

such other member of the village bench as the Chairman may appoint in this behalf and shall at the same time pay the prescribed fees.

Note—This section provides that on the institution of a civil or criminal proceeding, a fee shall be levied.

Substance of application to be recorded.

60. The substance of the application shall be recorded without delay in the prescribed register and the signature or thumb-impression of the applicant shall be taken on the register and the register shall be signed by the Chairman or, in his absence, by any member authorised under section 59.

Note.—Sections 60 to 62 provide for the steps to be taken on the institution of proceedings. It is provided that the substance of the petition shall be recorded in the register.

Plaintiff or complainant to attend next sitting of village bench.

61. Every suit or case instituted in accordance with the provisions of section 59 shall be brought before the village bench at its next sitting and the plaintiff or complainant, as the case may be, shall, at the time of making the application, be informed of the time and place fixed for such sitting and directed to attend at that time and place.

Summons to be issued to defendant or accused

62. The village bench after hearing the application, shall cause a written summons in the prescribed form to be served on the defendant or accused, as the case may be, requiring him to attend and produce his evidence at such time and place as may be stated in the summons and shall, at the same time, direct the plaintiff or complainant to attend and produce his evidence at such time and place:

Provided that the village bench may for reasons to be recorded, after hearing the application and examining the plaintiff or complainant, refuse to issue a summons and dismiss the suit or complaint.

Summons by whom served.

63. Such summons shall ordinarily be caused to be served by the patel or village headman. Where there are two patels in a village, one of whom is a revenue patel and the other a police patel, the summons shall ordinarily be served by the revenue patel if it relates to a suit and by the police patel if it relates to a case:

Provided, however, that a village bench may cause the summons to be served through any other person.

Note.—Sections 63 to 65 provide for the service of summons of the parties in proceedings before a Village Bench.

Mode of service of summons.

64. The summons shall be in duplicate, signed by the presiding member of the village bench and shall, as far as possible, be served personally on the defendent or accused, as the case may be, whose signature or thumb-impression shall be taken in token of service. If the defendant or accused cannot be found and the village bench is satisfied that he is evading service or if he refuses to take the summons, the village bench may order service to be made on an adult male member of his family residing with him, or by affixing a copy thereof upon some conspicuous part of the house in which he ordinarily resides.

65. If a defendant or accused is, at the time of the issue of the summons, outside the village of the panchayat, the summons may be forwarded by the village bench to the Collector or to any officer not below the rank of a mamlatdar, who may be authorised by the Collector in this behalf, and the Collector or such officer shall cause the summons to be served as if it were a summons from his own court.

Mode of service outside village.

66. (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance before a village bench in any suit.

Exemption of certain persons from appearance in suits.

(2) Persons exempted from personal appearance in any court under section 133 of the Code of Civil Procedure, 1908, shall also be exempt from personal appearance before a village bench in any suit.

Note.—This section provides that women and certain persons of high rank shall be exempt from personal appearance before a Village Bench.

Persons exempted under s. 133 of the Code of Civil Procedure from personal appearance in Civil Courts.—The following is the list of persons exempted under s. 133 of the Code of Civil Procedure from personal appearance in Civil Courts in the Bombay Presidency including Sind :—

(1) Shriman Goswami Shri Madhusudanlalji Vrijraiji, Gosainji Maharaj of Ahmedabad ; (2) Acharya Shri Vasudevprasad Purshottamprasad, Acharya of Swami Narayan of Ahmedabad ; (3) Mir Muzaffar Hosain khan, Political Pensioner of Surat ; (4) Sayadna Taher Sayfuddian, High Priest (Mullaji) of Bohras of Surat ; (5) Shriman Goswami Shri 108 Goverdhan Lalji, Maharaja Tikayat of Nathdwara of Nathdwara, Merwar; (6) Shrimant Pratapsinh alias Bhau Saheb Bhonsle, 1st class Sardar of Satara ; (7) Shriman Niranjan Jagadguru, High Priest of the Lingayat Community of Gadag and Danbal; (8) The Mahant of the Gadi of Sadh Bela, (9) The Chief of Anndh, 1st class Sardar; (10) Maharaj of the Mota Mandir of Surat; (11) Head of the Branch of the Surat Nawab's family; (12) High Priests of the Ligayat community of Murdargi; (13) The Chief of Phaltan; (14) Raja of Dharampur; (15) Her Highness Shri Akkasaheb Maharaj, Maharani of Dewas (Senior) of Kolhapur; (16) Shrimati Tarabai Ranisaheb of Satara; (17) Shri Purnanand Saraswati Swami, Swami of the Goud Saraswat Brahmins or Shenvi Community of Kavale and Khanapur in Balgaum District (*Vide* B. G. G., 1933, Pt. I, p. 111).

Any person of whatever position and respectability he may be, is not entitled to exemption under s. 133 of the C. P. Code in the absence of a special notification by Government, even if it is derogatory to his dignity to appear in Court as a witness (*Arunachellam Chettiar v. Vellaya*, 28 M. L. J. 410).

The rule should be impartially enforced that any person of whatever rank or position or holiness who seeks the Court's assistance to protect his rights must be subject to the rules of the Court as unreservedly as the humblest of litigants (*Panachand v. Manohar Lal*, 20 Bom. L. R. 1., s. c. 42 Bom. 136).

Cases in which Court may issue commission to examine witness.—Any Court may in any suit issue a commission for the examination

on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under the Code of Civil Procedure from attending the court or who is from sickness or infirmity unable to attend it (*Order 26, r. 1, of the Code of Civil Procedure*). A commission can only be issued in the cases specified in rule 1 and rules 4 and 5 of Order 26 of the C. P. Code, and in no other case (*Panachand v. Manohar*, 42 Bom. 136). Therefore, a commission should not be issued for the examination of the head of a *Mutt*, though it may be alleged by him that it is derogatory to a person in his position to appear personally in Court as a witness. But where the other side applies to the Court to summon the head of a *muitt*, as a witness for him, the Court may, if it thinks that the application is vexatious, refuse the application and allow the head of the *mutt* to be examined on commission (*Veerbadram v. Nataraja*, 28 Mad. 28).

Persons exempted from attending the Court.—Amongst those so exempted are women, who, according to the custom and manners of the country ought not to be compelled to appear in public (see s. 132 of the C. P. Code). Such women ought to be examined on commission, even though they may have appeared in public before (*Mohesh Chunder v Manick Lall*, 35 Cal. 650) and though an allegation of immorality is made against them (*Binodini v. Kala Chund* 5 C. W. N. cc × × × ii).

Arbitration.—It is competent to the Court to issue a commission for the examination of witnesses, though the matters in difference in the suit have been referred to arbitration under Schedule II of the Code of Civil Procedure (*Rahiabai v. Rahimabai*, 7 Bom. L. R. 560).

Appeal.—No appeal lies from an order directing the issue of a commission, as such an order is not a "judgment" within the meaning of cl. 15 of the Letters Patent (*Miya Mahomed v. Zorabai*, 11 Bom. L. R. 241).

Issue of summons to witnesses.

67. (1) A village bench may, if it considers the evidence of, or the production of a document by, any person necessary in a suit or case, issue a summons to such person to compel him to attend or to produce or cause the production of such document, and such person shall be bound to comply with the directions contained in the summons. Such summons shall be in the form and served in the manner as hereinbefore provided.

(2) A village bench may refuse to summon a witness or to enforce a summons already issued against a witness where, in its opinion, the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which in the cirumstances, would be unreasonable.

(3) No village bench shall enforce the attendance of any person living outside the village to give evidence, or to produce a document, unless such sum of money is deposited with the village bench as appears to the village bench to be sufficient to defray his reasonable expenses and if in the opinion of the Collector or officer empowered under section 65, as the case may be, the attendance of any such person is not necessary for the proper adjudication of the suit or case, such Collector or officer shall return the summons to the village bench with his endorsement accordingly.

(4) No village bench shall compel any person to give evidence or to disclose any communication which such person cannot be permitted to give or compelled to disclose under the provisions of the Indian Evidence Act, 1872, or under any other law for the time being in force.

Provisions of the Indian Evidence Act.—For the provisions of the Indian Evidence Act, 1872, under which a person cannot be permitted to give or compelled to disclose evidence, *vide* ss. 121, 122, 124, 125, 126, 127, 129 and 130 of that Act.

Pleaders, etc., excluded from appearance.

68. No pleader, vakil, or mukhtyar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any suit or case before a village bench or in any inquiry under section 87:

Provided that any party to any such suit or case may be permitted, on reasonable cause being shown to the satisfaction of the village bench, or the District Judge or Collector to employ any relation, servant, dependant, or friend who is not and who has not previously been a pleader, vakil, or mukhtyar or an advocate or attorney of a High Court, to appear either conjointly with or in lieu of such party.

When a relation, servant, dependant, or friend appears in lieu of a party, he shall be furnished by such party with a written authority defining the extent to which he is empowered to act.

Note.—This section provides that no legal practitioner will be allowed to appear before a village bench.

Written authority.—In the original Bill the words were "power of attorney." The Select Committee substituted the words "written authority."

Decision of suit or case on facts ascertained.

69. (1) It shall be the duty of a village bench to ascertain the facts of a suit or case before it after holding an inquiry in accordance with the provisions of this Act and the rules.

(2) Nothing in any enactment relating to evidence or procedure shall in any way affect the powers of a village bench to hold such inquiry.

(3) After holding such inquiry, a village bench may pass such decree or order, with or without prescribed fees subject to the provisions of this Act, as may in its opinion seem just and equitable.

Decision of the village bench.

70. The decision of the village bench shall be in accordance with the opinion of the members of the village bench who are present at the sitting or of the majority of such members. If the members are equally divided, the person presiding shall have a second or casting vote.

Adjournment.

71. The village bench may, from time to time, adjourn the hearing of any suit or case:

Provided that such adjournment is, in its opinion, unavoidable or necessary, to a just and equitable decision of the suit or case.

Disposal of suits and cases in absence of party concerned.

72. (1) If the plaintiff or complainant fails to appear, after having been informed of the time and place fixed for the hearing, the village bench may hear and decide the suit or case in his absence.

(2) The village bench may hear and decide a suit or case in the absence of the defendant or the accused, if a summons has been served upon him in the manner hereinbefore prescribed, or if he has been informed of the time and place fixed for hearing :

Provided that no sentence shall be passed by a village bench on any accused, unless he has appeared, either in person or by a representative, before the village bench and the substance of his statement has been recorded in the prescribed register.

(3) If, after the service of summons upon him, any accused fails to appear, either in person or by a representative, the village bench may apply to the District Magistrate or to any officer not below the rank of a second class magistrate authorized by the District Magistrate in this behalf, and such District Magistrate or officer shall compel the accused to appear in person or by his representative before the village bench as if he were a court trying the case.

(4) Where an accused person has, under sub-section (3), been compelled to appear before the village bench, the village bench shall forthwith take his statement, and thereafter his attendance at the hearing of the case shall not be compulsory.

Note.—This section relates to the decision in civil proeeedings in the absence of the defendant.

Compromise.

73. Notwithstanding anything contained in this Act or in any other law for the time being in force, a village bench may decide any suit or case within its jurisdiction in accordance with any settlement, compromise or oath agreed to by the parties.

Note.—This section relates to the power of a village bench to pass decrees in terms of the settlement or compromise arrived at by the parties.

Death of parties.

74. When any party to a suit dies before a decree has been passed, the suit shall abate, but a fresh suit may be brought on the same cause of action, and the period during which the suit was pending shall be excluded in computing the period of limitation prescribed under section 53 for the fresh suit.

Village bench not to revise or alter its decision.

75. (1) Except as provided in sub-section (2), a village bench shall not have power to cancel, revise or alter any decree or order passed by it.

(2) On application made within one month from the date of the decree or order of a village bench, the village bench may, for reasons to be recorded in writing, restore any suit which has been dismissed for default, or in which an *ex-parte* decree has been passed against the defendant.

Note.—This section provides that the viilage bench has no power to alter, cancel or revise its own decision except in cases which have been decided *ex parte* and in which in the interests of justice the village bench is satisfied that they should be restored to file.

Interest and instalments.

76. In suits for money, a village bench may, in its discretion, direct payment of interest on the sum decreed, at a rate not exceeding six per cent. per annum, from the date of the decree until the date of payment and of any fees which may be prescribed.

When a village bench decrees the payment of a sum of money in a suit, it may direct that it be paid by instalments, without interest, or with interest not exceeding the above rate.

Reference by vilage bench to Collector.

77. (1) When any village bench is of opinion that any suit or case before it is of such a nature, or of such intricacy or importance that it ought to be tried by a court, it shall stay proceedings and refer the suit to the District Judge or any officer not below the rank of Subordinate Judge who may be authorised by the District Judge in that behalf or the case to the Collector or any officer not below the rank of mamlatdar who may be authorised by the Collector in this behalf, for his orders.

(2) If the District Judge or Collector or such authorised officer is of the opinion that the suit or case is of such nature, intricacy or importance that it ought not to be tried by the village bench, he shall pass orders directing the plaintiff or complainant to the civil or criminal court, as the case may be, competent to take cognizance of such suit or case.

(3) If the District Judge or Collector or the authorised officer is of opinion that the suit or case is not of such nature, intricacy or importance that it ought to be tried by a Court, he shall return the suit or case to the village bench, which made the reference, for disposal.

Village bench's decrees and orders not to be questioned.

78. Except as provided in section 87, no decree or order of a village bench shall be called in question in any court on the ground that it was passed without jurisdiction.

Note—This section provides that a village bench's decrees or orders will not be called in question on the ground that they were passed without jurisdiction except in the manner provided in s. 87.

Finality of decrees and orders.

79. Every decree or order passed by a village bench in any suit or case under this Act shall be final, and, save as provided in section 87, shall not be subject to any appeal, revision or review.

Note.—This section is very important and provides that the decree or order of a village bench will be final and will not be subject to any appeal or revision either by superior authority or by any court except in the manner provided in section 87.

CHAPTER VIII

EXECUTION

Note.—Chapter VIII (section 80 to 88) relates to execution of decrees and orders passed by a village bench.

Satisfaction or adjustment of decree to be recorded.

80. If, on the application of a decree-holder or judgment-debtor, the village bench, after enquiry, finds that the decree has been satisfied or adjusted, wholly or in part, the village bench shall record the fact in the prescribed register.

Execution through Collector.

81. (1) If, after a period of one month from the date of a decree, the decree remains unsatisfied or unadjusted, in whole or in part, the decree-holder may, within one year of the date of the decree, apply to the village bench for execution.

(2) On such application for execution, the village bench shall certify to the Collector that the decree remains unsatisfied or undjusted, in whole or in part, and on receipt of such certification the Collector shall, provided that the village bench shall have certified to the Collector within one year from the date of the application for execution,-

(*a*) if the decree is for money, proceed to recover it as if it were an arrear of land revenue ; or

(*b*) if the decree is for any specific moveable property, cause the decree to be executed as if it were a decree of a civil court, and in so acting may exercise all the powers of a civil court.

Note.—This section provides that, in the case of a decree which has remained unsatisfied or unadjusted, the decree-holder may apply to the Village Bench for execution, and the Village Bench thereupon will forward the decree for execution to the Collector. The Collector, on the receipt of such a decree, may execute it by recovering the amount due as an arrear of land revenue or by executing it in the manner in which a Civil Court would have executed it, provided that the decree is sent to him within one year of the date of the application for execution (*Statement of Objects and Reasons*).

Execution of instalment decree through Collector.

82 (1) If, after a period of one month from the date fixed for the payment of any instalment of a sum of money decreed by a village bench under section 76, an instalment or any portion thereof remains unpaid, the decree-holder may, within one year of the date when it fell due, apply for execution to the village bench.

(2) On such application for execution, the village bench shall certify to the Collector that the instalment or a portion thereof still remains unpaid, and on receipt of such certification the Collector shall, provided the village bench shall have certified to the Collector within one year from the date of the application for execution, proceed to recover the amount of the instalment so remaining unpaid as if it were an arrear of land revenue.

Note.—This section provides for the execution of an instalment decree.

Satisfaction of decree or instalment after certificate.

83. If, after the issue of the certificate to the Collector under section 81 or 82, but before the decree has been executed through the Collector, the decree or the instalment is fully satisfied and satisfication is recorded under section 80, the village bench shall forthwith certify such satisfaction to the Collector who shall thereupon stay the execution procedings. All sums of money realised by execution through the Collector shall, after satisfaction of the decree, be refunded to the judgment-debtor.

Fine and compensation when payable.

84. (1) Every sum ordered to be paid as compensation and every fine imposed under sections 45, 46, 47 and 48 by a village bench shall be payable at once :

Provided that the village bench may allow any person ordered by it to pay compensation or fine to pay the same within such time, not exceeding fifteen days, as it may think proper and on such terms as to security as it shall seem to the village bench necessary to impose.

(2) If the amount of fine or compensation remains unpaid for fifteen days from the date of the order, the village bench shall recover the same by distraint and sale of the defaulter's moveable property.

Mode of recovery.

(3) If the amount of fine or compensation is not fully recovered, the village bench shall certify accordingly to the Collector, and on receipt of such certification the Collector shall, provided the panchayat shall have certified to the Collector within a period of one year from the date when the amount became recoverable by the village bench under sub-section (2), proceed to recover it as if it were an arrear of land revenue and shall remit the amount so recovered to the village bench.

Note.—This section provides for the manner in which fine or compensation ordered by a Village Bench to be paid should be recovered. It is provided that such amount will be recovered by the distraint and sale of the defaulter's moveable property, and if any balance remains, it will be recovered through the Collector as an arrear of land revenue.

85. As soon as the amount of fine or compensation referred to in section 84 is realised by the village bench whether directly or through the Collector, the amount so realised shall be entered in the prescribed register, and shall be credited by the village bench to the village fund.

Fine or compensation, when realised, to be recorded.

86. Any money which has been ordered by the village bench, under section 47 or section 48, to be paid as expenses or compensation, shall be paid by it, out of the amount realised under sections 45 and 46 and the payment so made shall be debited to the village fund.

Payment of compensation out of village fund.

87. (1) The District Judge in any suit and the Collector in any case may, at any time, either of his own motion or on the application of an aggrieved party or on a reference made by a village bench under section 77 by order in writing, cancel the jurisdiction of a village bench or quash any proceedings of a village bench at any stage, or cancel any decree or order passed by a village bench.

District Judge or Collector may cancel jurisdiction or quash proceedings.

(2) When an order has been passed by the District Judge under sub-section (1) in respect of any suit, the plaintiff may institute a fresh suit for the same relief in a civil court, and the period from the date of the institution of the suit before the village bench to the date of such order shall be excluded in computing the period of limitation for the fresh suit.

(3) Where an order has been passed by the Collector under sub-section (1) in respect of any case, proceedings in respect of the same offence may be instituted in the court of a magistrate having jurisdiction.

88. No person shall be arrested or imprisoned in execution of a decree under the provisions of this Act.

Bar to arrest and imprisonment in execution of decree.

CHAPTER IX.

TAXATION AND RECOVERY OF CLAIMS.

Note.—Chapter IX relates to taxation and recovery of claims. The panchayats are empowered to levy a house-tax, a pilgrim tax, or any other tax from the owners or occupiers of houses and lands within the limits of the village. The panchayats are also empowered to levy an octroi.

Levy of taxes and fees by panchayat.

89. (1) Every panchayat shall levy in such manner and at such rates as may be prescribed, such of the taxes or fees specified in sub-section (2) as may be necessary for the proper discharge by the panchayat of its duties under this Act.

(2) Taxes or fees which are leviable by a panchayat under sub-section (1) are:—

(*i*) a tax upon the owners or occupiers of houses and lands within the limits of the village;

(*ii*) a pilgrim tax;

(*iii*) a tax on fairs and festivals;

(*iv*) a tax on sales of goods;

(*v*) octroi;

(*vi*) a tax on marriages, adoptions and feasts;

(*vii*) any other tax which may have been approved by the district local board and sanctioned by Government:

Provided that when such tax is other than a tax specified in Schedule II to the Scheduled Taxes Rules made under clause (*a*) of sub-section (3) of section 80A of the Government of India Act, such tax shall not be levied without previous sanction of the Governor General in Council.

(3) Any person aggrieved by the assessment, levy or imposition of any such tax or fee may appeal to the district local board. The decision of the district local board in the matter shall be final.

(4) Government may suspend the levy or imposition of any tax or fee referred to in sub-section (1) and may at any time rescind such suspention.

Schedule II to the Scheduled Taxes Rules.—The following is Schedule II to the Scheduled Taxes Rules made under cl. (*a*) of sub-section (3) of section 80A of the Government of India Act, referred to in this section:—

SCHEDULE II.

(In this Schedule the word "Tax" includes a cess, rate, duty or fee).

1. A toll
2. A tax on land or land values
3. A tax on buildings
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.
8. A terminal tax on goods imported into, or exported from, a local area, save where such tax is first imposed in a local area in which an octroi was not levied on or before the 6th July 1917.

Amendment to the Bombay Village Panchayats Act, 1933.

Sec. 89.

In sub-section (2) of s. 89, in clause (vii), after the words "and other tax" the words and brackets "(other than a toll on motor vehicles or trailers save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935)" shall be inserted.

(*Vide Sch. II of the Bombay Motor Vehicles Tax Act* (*XXXIV of 1935*).

9. A tax on trades, professions and callings.

10. A tax on private markets.

11. A tax imposed in return for services rendered, such as—

(a) a water rate,

(b) a lighting rate,

(c) a scavenging, sanitary or sewage rate,

(d) a drainge tax,

(e) fees for the use of markets and other public conveniences.

(See Gazette of India, Extraordinary 1920, p. 1151).

Power of district local board to increase taxation of panchayat.

90. (1) If in the opinion of the district local board the regular income of a panchayat falls below what is necessary for the proper discharge of the duties specified in sections 26 and 28, the district local board may require the panchayat to take steps, within six months, to increase its income to such extent as the district local board considers necessary. If the panchayat fails to take adequate steps to increase its income to the required extent, the district local board may require it to levy or increase any of the taxes or fees specified in section 89:

Provided that the district local board shall not compel the panchayat to levy or increase any tax or fee beyond the maximum rate to be prescribed in this behalf.

(2) Any panchayat may appeal to the Commissioner against an order made under sub-section (1) and the Commissioner may stay the execution of such order until he has decided the appeal.

Note.—This section provides that the district local board has the power to require a panchayat to increase its house-tax, if it is of opinion that the income of the panchayat is not sufficient for the proper discharge of its duties. The claim is based on such provisions as section 103 of the Bombay Municipal Boroughs Act.

Recovery of taxes and other dues.

91. (1) When any tax or fee has become due, a panchayat shall with the least practicable delay cause to be presented to the person liable for the payment thereof a bill for the amount due from him, specifying the date on or before which the amount shall be paid.

(2) If any person fails to pay any tax or any other sum due from him to a panchayat under this Act or the rules or by-laws on or before the specified date of payment, the panchayat shall cause a writ of demand to be served on the defaulter.

(3) If the sum for which a writ of demand has been served is not paid within thirty days from the date of such service, the panchayat may levy such sum by distraint and sale of the moveable property of the defaulter.

(4) For every writ of demand issued under sub-section (2) a fee shall be chargeable at such rate as may be prescribed by by-laws.

(5) If a panchayat is unable to recover a tax or other sum due to it as aforesaid, it may furnish to the mamlatdar or mahalkari statement of the arrears due, with a request for the recovery of the same through the village officers, and on receipt of such statement of arrears the mamlatdar or mahalkari may, provided such statement of arrears shall have been furnished by the panchayat to the mamlatdar or

mahalkari within one year from the date specified in the bill presented under sub-section (1), proceed to recover the same as an arrear of land revenue through the village officers. For the recovery of such sums, the village officers shall be remunerated by the panchayat in such manner as may be prescribed by by-laws.

(6) If a panchayat fails to recover any tax, fine or other sum due to it, or neglects to take action under sub-sections (2) and (3) of section 84 or (2) and (3) of this section, the district local board may apply to the Collector to recover the same as an arrear of land revenue :

Provided that no such application shall be made to the Collector after the expiry of one year from the date when the amount became certifiable under sub-section (3) of section 84 or from the date specified in the bill presented under sub-section (1) of this section, as the case may be.

On receipt of such application from the district local board, the Collector may, after holding such enquiry as he thinks fit, proceed to recover the sum as an arrear of land revenue.

Note.—This section provides for the recovery of taxes and other dues by the panchayat. The procedure provided is that the panchayat will first issue a bill, and then in the case of default continues, will proceed to recover the same as aa arrear of land revenue through the village officers. If the panchayat fails to make any recoveries, the disirict local board is given the power to move the Collector for the recovery of the dues.

Collector's power to direct irrecoverable sums to be written off.

92. The Collector may direct—

(*a*) any sum certified by a panchayat and recoverable by him under sections 81, 82 and 84 and sub-section (6) of section 91 ;

(*b*) any arrear of a tax or any other sum due to a panchayat and recoverable, through a mamlatdar or mahalkari under sub-section (5) of section 91 ;

to be written off if, in the opinion of the Collector, such sum or arrears are irrecoverable.

Note.—In this section power is given to the Collector to write off any sums recoverable through him, if in his opinion they are irrecoverable.

CHAPTER X.

FINANCIAL ASSISTANCE TO PANCHAYATS.

Note.—Chapter X relates to the financial assistance to be given to panchayats by the district local board.

Contributions and loans by district local boards.

93. (1) Notwithstanding anything contained in the Bomby Local Boards Act, 1923, the district local board—

(*i*) shall assign to every panchayat within the district not less than one-fifth of the local fund cess realised within the limits of the village, and

(*ii*) may, subject to rules, grant a loan to such panchayats, for the purposes of this Act.

(2) When estimating the balance of the local fund available for expenditure by a taluka local board under the provisions of section 70

(1) of the Bombay Local Boards Act, 1923, there may be deducted from any such balance any sum assigned under clause (*i*) of sub-section (1) by a district local board to a panchayat within the area of such taluka local board.

Note.—This section provides that the district local board shall assign to every panchayat within the district not less than one-fifth of the local fund cess realised within the limits of the village. It also gives power to the district local board to grant loans to panchayats.

CHABTER XI

CONTROL

Note.—Chapter XI relates to the control of panchayats by the district local boards and the Government.

Power to call for proceedings, etc.

94. (1) The Collector or the district local board shall have power—

(*a*) to call for any extract from the proceedings of a panchayat, any book or document in the possession or under the control of a panchayat, and any return, statement, account or report which the Collector or the district local board may think fit to require such panchayat to furnish ; and

(*b*) to require a panchayat to take into consideration—

(*i*) any objection which appears to the Collector or the district local board to exist to the doing of anything which is about to be done or is being done by such panchayat, or

(*ii*) any information which the Collector or the district local board is able to furnish, and which appears to the Collector or the district local board to necessitate the doing of a certain thing by the panchayat,

and to make a written reply to the Collector or the district local board, as the case may be, within a reasonable time, stating its reasons for not desisting from doing or for not doing such things.

(2) All or any of the powers given to the district local board under sub-section (1) may be delegated by it to its president, vice-president, chief officer, public health officer or executive engineer.

Note.—This section gives power to the Collector or the district local board to call for any proceedings or records from the panchayat. It is based on section 124 of the Bombay Local Boards Act.

Delegation of duties, appointment of officers, utilisation of honorary agencies for encouraging the establishment and fostering the growth of panchayats.

95. (1) The district local board may delegate to the President, Vice-President, the Chief Officer, Public Health Officer or any other officer specilly appointed by the district local board in this behalf the duties of encouraging the establishment and fostering the growth of panchayats and of assisting panchayats in the proper exercise of their powers and performance of their duties under this Act.

(2) It shall be competent to the district local board to accept and utilise in an honorary capacity in the performance of any of the duties which may be delegated under sub-section (1) the services of any person who in the opinion of such Board is specially fitted to assist in this behalf.

(3) It shall be competent to Government to appoint an officer to exercise such of the powers and perform such of the duties of a Collector under this Act as Government may prescribe. Such officer shall also perform such other duties and exercise such other powers as Government may prescribe for the purpose of encouraging the establishment and fostering the growth of panchayats: and village benches and of assisting and advising panchayats and village benches in the proper exercise of their powers and performance of their duties under this Act.

Power of entry.

96. The district local board may authorise its president, vice-president, or any of its officers to enter on and inspect, or cause to be entered on and inspected, any immoveable property occupied by any panchayat or any work in progress under its direction.

Note—This section empowers district local boards to author ize its officers or members to enter and inspect any property occupied by the panchayat.

Audit of accounts.

97. The audit of the accounts of a panchayat shall, unless provision is otherwise made by Government in that behalf, be carried out each year by the district local board, and such board shall, within one month of the completion of the audit, forward a copy of the audit note to the Collector.

Note.—This section provides that the accounts of the panchayat shall be audited by the district local board every year.

Reduction of establishment.

98. (1) If, in the opinion of the Collector or the district local board, the number of persons maintained or proposed to be maintained by a panchayat as officers or servants, or the remuneration given or proposed to be given by the panchayat to such person is excessive, the panchayat shall, on the requirement of the Collector or the district local board, as the case may be, rduce such number or remuneration.

(2) If there is a difference between the requirement of the Oollector or of the district local board under sub-section (1), the panchayat shall refer the matter in differnce to the Commissioner whose decision shall be final.

(3) The panchayat may appeal to the Commissioner against any requirement made under sub-section (1), and the decision of the Commissioner in the matter shall be final.

Note.—This section gives a right to the Collector and district local board to require a panchayat to reduce its staff, if the Collector or the district local board finds that the expenditure incurred by it on its staff is extravagant.

Suspension of execution of order,

99. (1) If in the opinion of the Collector, the execution of any order or resolution of a panchayat, or the doing of anything which is about to be done or is being done by or on behalf of a panchayat, is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of the peace, he may, by order in writing, suspend the execution or prohibit the doing thereof.

(2) When the Collector makes an order under sub-section (1), he shall forthwith send to the panchayat affected thereby a copy of the order, with a statement of the reasons for making it.

(3) The Collector shall forthwith submit to the Commissioner a report of every case occurring under this section, and the Commissioner may revise or modify any order made therein and make in respect thereof any other order which the Collector could have made.

Note.—This section empowers the Collector to suspend the execution of an order of a panchayat, if, in his opinion, such order is likely to cause injury or annoyance to the public. This section is based on such provisions as section 125 of the Bombay Local Boards Act and similar provisions in Municipal Acts (*Statement of Objects and Reasons*),

Execution of work in case of emergency.

100. (1) In cases of emergency the Collector may provide for the execution of any work or the doing of any act which a panchayat is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public, and may direct that the expense of executing the work or doing the act shall be forthwith paid by the panchayat.

(2) If the expense is not so paid, the Collector may direct the officer in charge of the treasury in which the village fund is kept to pay such expense, or so much thereof as is possible, from the balance of such fund in his hands.

(3) The Collector shall forthwith report to the Commissioner every case in which he exercises the powers under sub-section (1).

Note.—This section gives power to the Collector to have, in the case of an emergency, any work executed, if, in its opinion, it is necessary to have such work completed for the health or safety of the public. This section is based on section 186 of the Local Boards Act.

Default in performance of duty.

101. (1) If at any time it appears to the district local board that a panchayat has made default in the performance of any duty specified in section 26, it may order the duty to be performed within a specified period, and, if the duty is not performed within the period specified, the district local board may appoint some person to perform it, and direct that the expense of performance shall be paid by the defaulting panchayat, within such period as the district local board may fix.

(2) If the expense is not so paid, the district local board may direct the person in custody of the village fund to pay such expense, or so much thereof as is possible, from the balance of such fund in his hands.

(3) The district local board shall forthwith report to the Commissioner every case occurring under this section and the Commissioner may revise or modify any order made therein and make in respect thereof any other order which the district local board could have made.

Note.—This section empowers a district local board to have any obligatory duty of a panchayat performed at the cost of the panchayat.

Dissolution or supersession of panchayat for default.

102. (1) If, in the opinion of Government, a panchayat exceeds or abuses its powers, or makes persistent default in the performance of the duties imposed on it under section 26 or any other law for the time

being in force, Government may, after consultation with the district local board, by an order in the *Bombay Government Gazette*,

(*i*) dissolve such panchayat, or

(*ii*) supersede such panchayat for the period specified in the order.

(2) When a panchayat is dissolved or superseded, all members of the panchayat shall, from the date specified in the order, vacate their offices as such members.

(3) When a panchayat is dissolved, it shall be reconstituted in the manner provided in this Act.

(4) If a panchayat is superseded—

(*a*) all the powers and duties of the panchayat shall, during the period of supersession, be exercised and performed by such person or persons as Government may, from time to time, appoint in that behalf; and

(*b*) all property vested in the panchayat shall, during the period of supersession, vest in Government; and

(*c*) on the expiry of the period of supersession, the panchayat shall be reconstituted in the manner provided in this Act, and the persons vacating office shall be eligible for re-election or re-nomination.

Note.—This section provides that Government will have power to dissolve or supersede any panchayat, if, in its opinion, it is abusing or exceeding its powers, or is making persistent default in the performance of the duties imposed on it under the Act. This section is based on such provisions as ss. 129, 130 and 131 of the Bombay Local Boards Act (*Statement of Objects and Reasons*).

Dissolution and reconstitution of panchayat on alteration of limits of village.

103. (1) When, during the term of the panchayat the limits of a village are altered, the Commisioner may, by order in writing, dissolve such panchayat and direct a panchayat—

(*i*) to be reconstituted for the village of which the panchayat has been dissolved, or

(*ii*) to be established for a village which has been newly declared.

The members of the panchayat which has been dissolved shall vacate their office from the date specified in the order.

(2) The panchayat reconstituted or established under the provisions of sub-section (1) shall consist of such members, either elected, nominated or appointed in such manner as the Commissioner shall, by order in writing, direct.

The sarparch and deputy sarpanch of the panchayat so reconstituted or established shall be elected in the manner provided in this Act.

(3) The term of the panchayat so reconstituted or established shall be for such period, not exceeding one year, as the Commissioner shall, by order in writing, specify.

(4) On the expiry of the term of the panchayat in accordance with the provisions of sub-section (3), the panchayat shall be constituted the in manner provided by this Act.

Note.—In this section Commissioner is empowered to dissolve a panchayat and reconstitute it in cases in which during the term of its office, the limits of a village are altered.

Vesting of property, etc., of panchayat which has been dissolved in reconstituted or established panchayat.

104. (1) When a panchayat has been dissolved and reconstituted or established under section 103, so much of the village fund and other property vesting in the panchayat which has been dissolved shall vest in, and such portion of the debts and obligations shall be transferred to, the reconstituted or established panchayat, as the Commissioner may by order in writing, direct.

(2) The rights and liabilities of the panchayat which has been dissolved in respect of contracts, agreements and other matters or things arising in or relating to any part of the area subject to the authority of the reconstituted or established panchayat, shall vest in such panchayat.

(3) Any notice, tax, order, licence, permission, rule or by-law made, issued or imposed in respect of any part of the area subject to the authority of the reconstituted or established panchayat shall be deemed to have been made, issued or imposed by or in respect of such panchayat, unless and until it is superseded by any notice, tax, order, licence, permission, rule or by-law made, issued or imposed by or in respect of such panchayat.

Note.—This section makes provision for the transfer of property etc., of a panchayat which has been dissolved in consequence of the alteration of the limits of the village.

Effect of area ceasing to be a village.

105. On any area ceasing to be a village, by virtue of any notification under section 4,—

(*a*) the panchayat shall be dissolved and all members of the panchayat shall vacate office as from the date of the notification :

(*b*) the unexpended balance of the village fund and the property vesting in the panchayat shall vest in the district local board, to be utilised for the benefit of the inhabitants of the area as the district local board may think fit.

Effect of dissolution or supersession of panchayats on village benches and proceedings pending before them.

106. (1) When a panchayat is dissolved or superseded under section 102, 103, or 105, the village bench constituted in the village for which the panchayat was established shall be deemed to have been dissolved and all members of the village bench shall vacate office as from the date of dissolution or supersession as the case may be.

(2) On the dissolution of the village bench under sub-section (1)

(*i*) the provisions of sub-sections (2) and (3) of section 87 shall be deemed to apply in respect of any suits or cases pending before the village bench as if the District Judge or the Collector, as the case may be, had passed an order under sub-section (1) of section 87 quashing such suits or cases ; and

(*ii*) all pending proceedings and applications for the execution of decrees or orders in suits, and for the recovery of fines and compensation in cases shall be transferred to the Court of the Subordinate Judge or the Magistrate, as the case may be, who would have had jurisdiction to try the suit or case if the village bench had not been constituted and such Subordinate Judge or Magistrate, as the case may be, shall deal

with the proceedings or applications as if the suit or case out of which the procedings or applications arose, had been heard and decided by such Subordinate Judge or Magistrate.

Authority of Government.

107. In all matters connected with this Act, Government shall have and exercise the same authority and control over the district local boards as it has and exercises over them under the Bombay Local Boards Act, 1923.

Note.—This section empowers Government to have over district local boards the same authority which it has under the Local Boards Act in respect of any act done by a district local board under this Act.

CHAPTER XII

RULES AND BY-LAWS.

Rules.

108. (1) Government may, by notification in the *Bombay Government Gazette*, make rules—

(*a*) under section 4, regulating the manner in which the Commissioner may hold an inquiry ;

(*b*) under section 6, regulating the manner in which the Collector shall nominate the holder or his representative ;

(*c*) under section 7, prescribing the manner in which the election of members shall be held ;

(*d*) under section 23, regulating the manner in which notice of a vacancy in the office of a sarpanch, deputy sarpanch or members of a panchayat shall be given ;

(*e*) under section 32, prescribing the custody in which all funds received by and all sums accruing to a panchayat shall be kept ;

(*f*) under section 36, prescribing the date of submission and form of annual budgets, returns and accounts and the manner in and the time at which the meeting of the residents of the village shall be convened ;

(*g*) under section 37, prescribing the time and place of sitting of village benches, their constitution for the conduct of trials of suits or cases, the mode of settling differences of opinion which may arise amongst their members regulating the manner in which the Collector shall nominate the holder or his representative on the village bench and any other matter which Government may consider necessary for the proper conduct of proceedings before such benches ;

(*h*) under section 59, prescribing the fees payable on the institution of suits and cases ;

(*i*) under sections 60, 72, 80 and 85, prescribing the particulars to be entered in registers for suits and cases ;

(*j*) under section 62, prescribing the form of summons ;

(*k*) under section 69, regulating the manner in which an inquiry shall be held by a village bench ;

(*l*) under section 76, prescribing the scale of fees which a village bench may direct to be paid in a suit or case ;

(*m*) under section 89, prescribing the rate and the manner in which taxes and fees specified in the section shall be leviable ;

(*n*) under section 90, prescribing the maximum rate for the levy of taxes or fees specified in section 89 ;

(*o*) under sub-section (5) of section 91, prescribing the remuneration of village officers for the recovery of taxes and other sums due to a panchayat and the manner in which such remuneration shall be paid;

(*p*) under section 93, prescribing the terms on which loans may be granted to a panchayat by the district local board;

(*q*) under section 95, prescribing the powers and duties which may be delegated to or exercised or performed by an officer or person appointed; and

(*r*) under sub-sections (3) and (4) of section 112, regulating the delegation by the District Judge or the Collector of the powers therein referred to.

(2) The rules to be made under sub-section (1) shall be subject to the condition of previous publication.

(3) Rules made under sub-section (1) shall be laid upon the table of the Bombay legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by a resolution of the said Council and such rule shall, after notification in the *Bombay Government Gazette*, be deemed to have been modified or rescinded accordingly:

Provided that when, in the opinion of Government, such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, Government may, by notification in the *Bombay Government Gazette*, declare that the modification or rescission shall have no effect and thereupon the rule shall remain in force as if it had not been modified or rescinded.

Note.—This section refers to the rule-making power of Government and section 109 to the power of the local board to make by-laws for the purpose of carrying out the provisions of this Act. It is provided that a breach of any by-law made under s. 109 is punishable with a fine.

Bye-laws.

109. (1) The district local board may, with the previous sanction of the Commissioner, make by-laws generally for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the foregoing provision the district local board may make by-laws—

(*a*) under section 19, prescribing the time and place of the sittings and regulating the procedure at meetings of a panchayat, and fixing a quorum;

(*b*) under section 20, prescribing the powers and duties of a sarpanch which may be exercised and performed by a deputy sarpanch;

(*c*) under section 26—

(*i*) for the purification and protection from pollution of all sources of water used for drinking purposes;

(*ii*) for the prohibition of the removal or use for drinking puroses of any water from any stream, tank, well or other source, where such removal or use causes, or is likely to cause, disease or injury to health and the prevention of such removal or use by the filling in or covering over of such tank or well, or by any other method which may be considered advisable;

(*iii*) for the prohibition of the deposit or storage of manure, refuse or other offensive matter in a manner or in places prejudicial to the public health, comfort or convenience;

(*iv*) for the regulation of offensive callings or trades;

(*v*) for the disposal of corpses by burning or burial;

(*vi*) for the excavation of earth and the filling up of excavations and depressions injurious to health or offensive to the neighbourhood;

(*vii*) for the removal of noxious vegetation;

(*viii*) for the repair and removal of dangerous or ruinous buildings;

(*ix*) for the prevention of the erection of buildings without adequate provisions for ventilation, or the laying out and location of streets;

(*x*) for the control of fairs and bazars, and the regulation of markets, slaughter-houses and cart-stands;

(*xi*) for the inspection and destruction of unfit food and drink exposed for sale; and

(*xii*) for the general regulation of sanitation and conservancy;

(*d*) under section 28, for the supervision of labourers employed by local boards, and of repairs to dharamsalas, the management and maintenance of cattle-pounds, execution of works entrusted by the district local board, distribution of irrigation water and performance of other duties assigned by Government.

(3) Any by-law made under the foregoing sub-sections may provide that a contravention thereof shall be punishable—

(*a*) with a fine, which may extend to Rs. 10, or

(*b*) in the case of a continuing contravention, with a fine, which may extend to Re. 1 per day after conviction for the first contravention, during the period within which such contravention continues.

CHAPTER XIII

MISCELLANEOUS

Liability of members for loss, waste or misapplication.

113. (1) Every member of a panchayat shall be personaly liable for the loss, waste or mispplication of any money or other property of the panchayat, to which he has been a party, or which has been caused or facilitated by his misconduct or gross neglect of his duty as a member,

(2) If, after giving the member concerned a sufficient opportunity for showing cause to the contrary, the Collector is satisfied that the loss, waste or misapplication of any money or other property of the panchayat is a direct consequence of misconduct or gross neglect on his part, the Collector may, by order in writing, direct such member to pay to the panchayat, before a fixed date, the amount required to reimburse it for such loss, waste or misapplication.

(3) If the amount is not so paid, the Collector shall recover it as an arrear of land revenue and credit it to the village fund.

(4) The decision of the Collector shall be final as to the liability of a member under sub-section (2) and as to the amount to be recovered from him.

Bar of action against panchayats, village Benches, etc. and previous notice before institution.

111. (1) No action shall lie against any member, officer, servant or agent of a panchayat or a village bench acting under its direction, in respect of anything done in good faith under this Act or any rule or by-law.

(2) No action shall be brought against any panchayat or village bench, or any member, officer, servant or agent of such panchayat or village bench acting under its direction for anything done or purporting to have been done under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office of the panchayat or village bench, and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.

(3) Every such action shall be commenced within six months after the accrual of the cause of action and not afterwards.

(4) If any panchayat or village bench or person, to whom notice under sub-section (2) is given shall, before an action is brought, tender sufficient amends to the plaintiff and pay into court the amount so tendered, the plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all costs incurred by the defendant after such tender.

Note.—The object of this section is to provide that no suit or legal proceeding shall be aganist a member, servant or agent of a panchayat or a Village Bench acting under its direction, in respect of anything done or purporting to have been done in good faith under this Act; and that no action shall be brought, unless a specific notice is given to such member.

Delegation of powers.

112. (1) Government may, by notification in the *Bombay Government Gazette*, authorise the Commissioner or any officer specially empowered under sub-section (3) of section 95 to exercise in respect of panchayats and village benches any of the powers which may be exercised by Government under this Act.

(2) Government may also, by notification in the *Bombay Government Gazette*, authorise any person to exercise in respect of panchayats any of the powers conferred on a district local board under the provisions of this Act, when such district local board shall have been dissolved or superseded.

(3) Subject to rules made in this behalf, the District Judge may delegate to a Subordinate Judge the powers exercisable by the District Judge in regard to suits under sub-section (1) of section 87 in respect of a village bench in a village within the jurisdiction of the said Subordinate Judge.

(4) Subject to rules made in this behalf, the Collector may delegate to—

(*a*) a Magistrate of the First Class exercising appellate jurisdiction under section 407 of the Criminal Procedure Code the powers exercisable by the Collector in regard to cases under sub-section (1) of section 87 in respect of a village bench in a village within the said jurisdiction of the said Magistrate ;

(b) an officer not below the rank of a Deputy Collector, powers other than the powers under sub-section (1) of section 87 exercisable by the Collector in regard to cases under the provisions of this Act.

Local inquiry and reports by panchayat.

113. It shall be the duty of every panchayat to inquire and report in any of the following cases :—

(a) any case where a magistrate has directed that a previous local investigation be made by a panchayat under section 202 of the Code of Criminal Procedure, 1898, and the words "such other person" in sub-section (1) of the said section shall be deemed to include a panchayat;

(b) any case in which a magistrate making an inquiry under section 488 of the Code of Criminal Procedure, 1898, may require from the panchayat in whose village either the wife or child for whose maintenance the application is made or the husband or parent respectively of such wife or child resides, a report as to the amount of maintenance which, having regard to the circumstances of the parties, should be payable, and such report shall be evidence in such inquiry:

Provided that no member of the panchayat shall be required to attend as a witness touching any matter on which the report is itself evidence, but the magistrate may, in his discretion, call for a further report.

Note—This provision is regarding the duty of a panchayat to make a report on an investigation under s. 202 of the Code of Criminal Procedure or an inquiry under section 488 of the said Code.

Members etc. of panchayats or village benches to be public servants.

114. Every member of a panchayat or village bench and every officer and servant maintained by or employed under a panchayat or village bench shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Note—This section provides that every officer or servant of a panchayat will be public servant within the meaning of s. 21 of the Indian Penal Code.

Repeal and Savings.

115. (1) The Bombay Village Panchayats Act, 1920, is hereby repealed :

Provided that—

(a) such repeal shall not affect the liability of any person to pay any sum due from him under the said Act or the validity or invalidity of anything already done thereunder;

(b) all panchayats established under the Bombay Village Panchayats Act, 1920, and existing immediately before the coming into force of this Act shall be deemed to have been established under this Act;

and the rights and liabilities of any such panchayats shall be vesting in and attached to the panchayat so deemed to have been established;

and any appointment, notification, notice, tax, order, permission, rule or by-law made, issued or imposed in respect of any such panchayat under the Act so repealed shall, so far as is not inconsistent with the provisions of this Act, be deemed to have been made, issued or imposed under the provisions of this Act in respect of the panchayats

so deemed to have been established under this Act, unless and until superseded by any appointment, notification, notice, tax, order, permission, rule or by-law made, issued or imposed under this Act.

(2) During such time as this Act and the rules and by-laws shall be in operation in any village, the enactments mentioned in the Schedule shall, to the extent specified in the third column of the Schedule, cease to have any operation in the said village.

Note.—This section is a saving and repealing section. The Bombay Village Panchayats Act of 1920 is repealed. But all the panchayats established under that Act have been continued as having been established under this Act. Provision has been made to continue any appointments made or orders issued under the old Act.

SCHEDULE.

(*See section 115*)

No. and year of enactment.	Subject of Title.	Extent of repeal.
Bombay Act VII of 1867...	The Bombay District Police Act, 1867.	Section 33 and 34.

THE
Bombay Village Police Act, 1867

(Bom. Act No. VIII of 1867)

[*21st December 1867.*

(*As amended by Acts XII of 1873 and XII of 1876 and by Bom. Acts I of 1876, III of 1886, IV of 1905, III of 1915 and IX of 1925*).

An Act for the regulation of the Village-Police in the Presidency of Bombay.

Preamble.

WHEREAS it is expedient to provide for the regulation of the village-police in the Presidency of Bombay; It is enacted as follows:—

Interpretation clause.

1. The terms [*a*] "District Superintendent" and "Assistant Superintendent of Police," "Police officer" and "District Police," when used in this Act, mean those constituted under the Bombay District Police [*b*] Acts, 1867 and 1890 [*b*].

2. [*Repeal of enactments.*] *Repealed by Act XII of 1873.*

Administration, control and direction of village-Police, in whom vested.

3. The administration of the village police throughout each district shall, under the control and direction of the Commissioner [*c*], be exercised by the Magistrate of the district, who may, with the sanction of the Commissioner [*c*], delegate any portion thereof to any Magistrate with full powers having also revenue charge as an Assistant or Deputy Collector.

Appointment of non-vatandar village servants in talukdari village.—It is primarily a matter of evidence as to whether the village organisation does exclude or does include the appointment of non-vatander village servants, like Pagis, by the District Magistrates of Ahmedabad (*Dolatsing Surajmalji Darbar a. Bawa Bhai*, 22 Bom. L. R. 127).

Pagis.—Plaintiff as Talukdar owned half revenues while the defendants were entitled as *Javitdars* to a half share of the revenues of a village. The District Magistrate called upon the defendants to appoint two pagis for the villages and as they failed, he appointed two *pagis* nominated by the plaintiff. The wages of the *pagis* were paid by the plaintiff alone. *Held*, (1) that the *pagis* were validly appointed by the District Magistrate under this section; and (2) that the pay of the *pagis* was a charge on the revenues of the village and the plaintiff had a right of reinbursement under s. 69 of the Contract Act (*Achal Singh Kesri Singh v. Dolat Singh Surajmalji*, 26 Bom. L. R. 678).

Power to depute to District Superintendent authority over village police officer.

4. It shall be lawful for the Magistrate of a district, with the sanction of the Commissioner [*c*], to depute to the District Superintendent of Police any authority which may be exercised by the Magistrate of a district for the purposes of police over any village police-officer.

[*a*] Words repealed by Bom. Act III of 1886, as amended by Act I of 1891, s. 2 (*a*) (*i*), are omitted.

[*b*—*b*] These words and figures were substituted for the original word and figures by Bom. Act III of 1886 as amended by Bom. Act I of 1891, s. 2 (*a*) (*i*).

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

5. *Clause 1.*—The village police in each village shall be under the charge of such person as the Magistrate of the district shall [a] appoint in writing to be Police-patel, and unless the Commissioner [b], owing to the size of the village or other good cause, see fit to separate the appointments, the Magistrate of the district shall appoint the person conducting the duties of Revenue-patel to the Police-patel.

Village-Police in villages under charge of police patel.

Clause 2.—In making the appointment, the said Magistrate shall have due regard to the provisions [c] in force for regulating the services of hereditary officers, so far as the same may be applicable; but, when the Revenue-patel is not appointed Police-patel, and more persons than one claim by reason of hereditary right to perform the duties, in rotation or otherwise, it shall be lawful for the Magistrate of the district to appoint the most fit from among their number.

Appointment of police-patel.

Clause 3.—In any town or place in which the duties cannot be efficiently performed by one Police-patel, the Magistrate of the district may, with the consent of the Commissioner [b], appoint a sufficient number of Police-patels for the different divisions of the town or place.

Police-patels may be appointed for different divisions of town or place.

6. The police patel shall, subject to the orders of the Magistrate of the district, act under the orders of the Magistrate within whose local jurisdiction his village is situated, whom he shall furnish with any returns or information called for and keep constantly informed as to the state of crime and all matters connected with the village-police, the health and general condition of the community in his village.

Duties of Police patel.

He shall also afford all Police-officers every assistance in his power when called upon by them for assistance in the performance of their duty.

He shall further promptly obey and execute all orders and warrants issued to him by a Magistrate or Police-officer, shall collect and communicate to the District-police intellinence affecting the public peace, shall prevent within the limits of his village the commission of offences and public nuisances, and shall detect and bring offenders therein to justice.

Police Patel not authorized to prevent performance of Tamashas in one's house.—A Police Patel has no authority under this Act to prevent persons from performing 'Tamashas' in their houses, and any such order, if given, is illegal, and disobedience of it is no offence (*Tukaram*, Cr. Rg. 24 of 1886).

Duties of Police Patel under this section are executive.—The duties enumerated in this section are the executive duties of the Police Patel; they are duties imposed upon him quite independently of the authority which he

[a] Words repealed by Bom. Act III of 1915 are omitted.

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

[c] Portion repealed by Act XII of 1876 is omitted.

has given to him under section 14 to try and punish in cases of petty assault and abuse. The authority given to him by section 14 is a judicial and not an executive authority. This section, therefore, does not justify the District Magistrate in stopping the judicial proceeding which is already in progress before the Police Patel (*Dayal Kanji*, 10 Bom. L. R. 630).

Authority over village-servants.

7. The Police-patel shall have authority to require all village servants, in whatever capacity ordinarily employed, to aid him in performing the duties entrusted to him, and it shall be the duty of the village-revenue accountant, whether hereditary or stipendiary, to frame all written returns and proceedings for the Police-patel.

Precautions against robbery, etc.

8. The Police-patel shall dispose of the village-establishment so as to afford the utmost possible security against robbery, breach of the peace and acts injurious to the public and to the village community, and shall report to the Magistrate to whose jurisdiction he is immediately subordinate all instances of misconduct or neglect committed by any member of the said establishment.

Penalties for neglect of duty, etc.

[*a*]9. Any Police-Patel or member of a village-establishment liable to be called on for the performance of Police duties who shall be careless or negligent in the discharge thereof shall be liable to be fined under the order of any Magistrate of the first class to any amount not exceeding the fourth part of the annual emoluments of his office.

If he shall be accused of any violation of duty or breach of rule, or of other misconduct which shall seem to such Magistrate to require a heavier punishment, he may suspend him from office during inquiry into such accusation, and at the close of such inquiry, if the said Magistrate shall consider him guilty of misconduct meriting such punishment, he may suspend him from office for a further period not exceeding six months, or dismiss him: [*b*]Provided that no person of the rank of patel, if he is an officiator under the provisions of the Bombay Hereditary Offices Act, shall be dismissed under this section without the sanction of Government.[*b*]

Failure to report encroachments on the public road.—This section does not impose on the Police Patel the duty of reporting encroachment on the public road by villagers (*Ukha*, 7 B. H. C. R. Or. Ca. 88).

Sanction for prosecution of Police Patel not required.—The provisions of this section, as amended by Bom. Act I of 1876, render police patel removable from his office without the previous sanction of Government; therefore, no sanction is required for his prosecution under section 197 of the Criminal Procedure Code, 1872 (*Bhagwan Devraj*, 4 Bom. 357).

[*a*] This section was substituted for the original section 9 by Bom. I of 1876, s, 2.

[*b*—*b*] These words were substituted for the original words by Bom. III of 1915, Sch. I.

[*b*]**9-A.** Nothing in the last preceding section shall affect the liability of any Police-patel or other member of a village establishment to a criminal prosecution for any offence with which he may be charged.

Liability to criminal prosecution not affected.

Any Magistrate of the first class may suspend any person subjected to any such prosecution pending the inquiry and trial.

Power to suspend during trial.

10. If a crime shall have been committed within the limits of the village, and the perpetrator of the crime has escaped or is not known, the Police-patel shall forward immediate information to the Police-officer in charge of the District Police station within the limits of which his village is situated and shall himself proceed to investigate the matter, obtaining all procurable evidence relating to it which he shall forward to the said officer.

Information to officer in charge of District Police-station when criminal in village has escaped or is not known.

11. *Clause 1.*—If any unnatural or sudden death occur, or any corpse be found, within the bounds of any village, the Police-patel shall forthwith assemble an inquest, to be composed of two or more intelligent persons belonging to the village or neighbourhood, who shall investigate the causes of death and all the circumstances of the case, and make a written report of the same, which the Police-patel shall cause to be forthwith delivered to the Police officer in charge of the District Police-station within the limits of which the village is situated.

Inquest in cases of unnatural or sudden death, or corpse found within village.

Clause 2.—Any person who, on being called upon by the Police-patel to serve as a member of such inquest, shall without justifiable cause refuse or neglect to do so, shall be liable, on conviction before a Magistrate, to punishment not exceeding fifty rupees fine, or in default of payment, to imprisonment for one month.

Punisement for refusing or neglecting to serve on inquest.

Clause 3.—If the results of the inquest afford reason for supposing that death has been unlawfully occasioned, the Police-patel shall give immediate notice to the officer in charge of the District Police station within the limits of which his village is situated, and, if the corpse can be forwarded without the risk of putrefaction by the way, shall at once forward it to the nearest Civil Surgeon or other medical officer appointed by Government to examine corpses under such circumstances, who shall endeavour to ascertain the cause of death.

Corpse when to be forwarded to nearest Civil Surgeon, etc., for examination.

Should the Police-patel be unable to forward the corpse without the risk of putrefaction rendering examination useless or dangerous, he shall nevertheless prevent the burning or burying of such corpse until the Police-Officer in charge of the District Police-station within the limits of which his village is situated, or one of his subordinates deputed by him or a Magistrate, shall have assented thereto.

When burning to be delayed till officer in charge of police-station assents.

[*b*] S. 9A was inserted by Bom. I of 1876, s. 3.

Object of the inquest—The inquest which this section requires must be held forthwith, so that all the circumstances of murder may be reported forthwith to the District police. This law, which imposes on the Police-patel the duty of holding an inquest and arresting the murderers, and empowers him to take evidence on oath, is obviously intended to make justice effectual by means of prompt inquiry in the face of all the villagers, and by delivery of a verdict of men not open to the suspicions of undue zeal often alleged against the District Police. Like any other Coroner's inquest, it saves the innocent from false charges, as people are not likely to bring such charges against an innocent man when they have kept silence at the inquest (*Vesta Jebhan*, Cr. Rg. 8 1895).

Penalty for refusal to serve on inquest.—A refusal to serve on an inquest when called on by a Police-patel specially empowered under s. 15 is not a refusal to obey a lawful order of a Police-patel punishable by the Police-patel himself under s. 15 of the Act (*Ratanlal*, 614).

Medical testimony in case of unnatural death.—The testimony of a medical witness, especially in a case of murder, ought, when he is present, to be taken fully, and not supplemented by reading over his testimony given elsewhere and recording an answer that the earlier testimony is true (*Ratanlal*, 792).

Act not affected by Cr. P. Code.—The ancient village system of police, as regulated by this Act, remains unaffected by Cr. P. Code, except where the latter contains a specific provision (*Ragho Mahadu*, 19 Bom. 612).

12. *Clause 1.*—The Police-patel shall apprehend any person within the limits of his village who he may have reason to believe has committed any serious offence, and shall forward such person, together with all articles likely to be useful as evidence, to the Police-officer in charge of the Police-station within the limits of which his village is situated.

Police-patel to apprehend person he believes has committed serious offence.

Clause 2.—Every person so apprehended shall be forwarded within twenty-four hours to the District Police-station within the limits of which the village is situated.

Person apprehended to be forwarded to Police-station.

Bail to persons sent up by village Police.—The power of the Police to take bail being regulated by the Code of Criminal Procedure, the Court cannot authorize a Police Constable to admit to bail persons sent up to them by Police-patel under the provisions of this Act for any offence, for which bail may be allowed by the Criminal Procedure Code. S. 12, c. 1 of this Act, authorizes Police patel to arrest for "any serious offence" (*Kulladghee Magistrate's letter*, Cr. Rg. 12 of 10th Oct. 1869).

13. *Clause 1.*—The Police-patel, in making any inquiry coming within the scope of his duty, not being a case in which it is competent for him to inflict punishment, shall have authority to call and examine witnesses, and record their evidence on solemn affirmation, and to search for concealed articles, taking care that no search be made in a dwelling-house between sunset and sunrise without urgent occasion.

Power to call and examine witnesses, record evidence and search for concealed articles.

Clause 2.—He shall also have authority, in carrying out any search or any pursuit of supposed criminals, to enter and act within the limits of other villages being bound however to give immediate informa-

Power to enter limits of other villages.

tion to the Police-patel thereof, who shall afford him all the assistance in his power, and be immediately responsible for continuing the search and pursuit.

Power to try and punish for petty assault or abuse.

14. The Police-patel shall have authority to try and, on conviction, to punish with fine not exceeding two rupees and in default of payment thereof with confinement which may extend to twelve hours or with confinement in the village-chavdi for a period not exceeding twenty-four hours, any person charged with committing within the limits of the village petty assault or abuse: provided the charge be laid within two days of the offence having been committed.

Note—This section is printed as amended by Bom. Act IX of 1925, s. 2.

Power of District Magistrates to stay or transfer proceedings.—A District Magistrate has no power to stop the judicial proceedings already in progress for the Police-patel. The authority given to a Police-patel by this section is a judicial and not an executive authority (*Dagal Kanji*, 10 Bom. L. R 630).

Revision-Jurisdiction of High Court—Apart from the power expressly conferred by the Act upon the Magistrate in that connection, the only right of superintendence over the judicial functions of the Police-patel created by this Act, is vested in the High Court by clauses 26 and 27 of the Letters Patent (*Ibid*).

"Assault" definition of.—The word "assault" used in this section is not confined to the definition given in s. 351, I P. C., but means what is colloquially called an assault, viz., any unlawful attack upon the person of another, and includes, therefore, what under the Penal Code would amount to the use of criminal force (*Jagnnath Brijlal Marwadi*, 1 Bom. L. R. 687).

Powers of Police-patel.—Under this section the Police-patel on convicting a person of abuse, has authority to punish him with confinement in the village chawri for a period not exceeding 24 hours; but has no authority to inflict a fine (*Ragho Nansing*, Cr. Rg 11 of 1883).

Interest a bar to exercise of authority.—A Police-patel is disqualified from trying a case in which he is personally interested; since though the Cr. P. C. does not apply to village Police officers, still the principle stated in s. 555 of the Code is based on a general principle of justice (*Ratantal*, 331).

Jurisdiction of Village Patel.—A village Patel has no jurisdiction to hear a complaint against a captain of a steamer for an offence on board the steamer and away from the steamer under this section (*Vasudeo Pundlik Samant*, 21 Bom. L R 274)

The Proceedings before a Police patel under this section and the following section are criminal proceedings (*Chiman Damodar*, 22 Bom. L. R. 898).

Magistrate may issue a commission to Police-patel to try certain offenders.

15. *Clause 1.*—It shall be lawful for the [a] Magistrate of a district to issue a commission to any person exercising the office of a Police-patel, empowering such Police-patel to try any person charged with any of the following offences committed within the limits of the village in which he is Police-patel, that is to say :—

[a] The word "the" was substituted for the original words by Bom. Act III of 1915, Sch I.

mischief or petty theft, when the estimated value of the property stolen, or of damages sustained, does not exceed two rupees ;

resistance or refusal to obey a lawful order issued by such Police-patel personally.

Clause 2.—And it shall be lawful for a Police-patel so empowered to sentence any person convicted before him of any of the above acts to punishment by fine not exceeding rupees five, or confinement in the village-chavdi for a period not exceeding forty-eight hours, the confinement, in cases of resistance or refusal to obey a lawful order, to be awardable only on a failure to pay a fine.

Power of patel to punish.

Power to inflict fine for false complaint.—A Police-potel to whom a commission under this section has been issued cannot inflict a fine on a complainant for making a false complaint (*Maganlal Khemchand*, 20 Bom. L. R. 600).

Power of police-patel to order removal of wood lying on public road.—A Police-patel has, under this Act, no power to order the removal of a piece of wood lying on a public road ; disobedience of such an order, therefore, is no offence under this section (*Dama Ghela, Ratanlal*, 980).

Punishment for disobeying order of police-patel.—If village-Mahars refuse to assist a P. W. D. Officer in measuring a high road, and thus disobey the orders of a police-patel, they are not liable to punishment under cl. 1 of this section (*Dhavlga*, Cr. Rg. 28 of 1899). A police-patel has authority to issue summons to any person, accused of an offence of which he can take cognizance, to appear before him to answer the accusation, and such summons signed by the patel himself is a lawful order issued by him personally within the meaning of cl. 1 of this section, and that refusal to obey such an order would be an offence under this clause under which the patel is empowered to try (*Ratnya Rawaji Chambhar*, Cr. Rg. 25 of 1891) ; but when the offence is one which a Police-patel cannot take cognizance of, refusal to appear in obedience to the patel's order is not punishable under this section (*Venkatesh*, Cr. Rg. 26 of 1891).

Refusal to answer questions put by a Police-patel to an accused person in a criminal proceeding is not "a refusal to obey a lawful order issued by a Police-patel personally" within the meaning of cl. (1) of this section (*Raoji*, Cr. Rg. 30 of 1892, *Jayapa*, 1 Bom. L. R. 435).

A refusal to serve on an inquest when called on by Police-patel specially under this section, is not a refusal to obey a lawful order of a Police-patel punishable by a police-patel himself under this section (*Ramshetti*, Cr. Rg. 35 of 1892).

Refusal to obey order should be deliberate.—Where the evidence showed no more than an omission to obey an order given by a Police-patel personally under this section and did not show a deliberate refusal to obey, a conviction under this section could not be sustained (*Nathu*, Cr. Rg. 49 of 1892).

Verbal order through a messenger is not a lawful order—A verbal order sent through a mesenger by a police-patel, under this section, asking a person to present himself before him to answer an accusation is not a lawful order issued by the Police-patel personaily within the meaning of this section (*Shivoo*, 8 Bom. L. R. 118)

Power of village Police-patel to order imprisonment in default of fine.—A village Police-patel has, under this section, jurisdiction either to impose a fine not exceeding Rs. 5 on a person convicted by him of theft under this section, or to confine him in the village *chawri* for a period not exceeding forty-eight hours, but has no jurisdiction to sentence the accused to confinement in default of payment of fine, section 64 of the Penal Code not being made applicable by the General Clauses Act to proceedings under this section (*Puna*, 6 Bom. L. R. 357).

Power to prohibit, and to punish for—

[*a*]**16.** The Police-patel, when and as long as he shall be empowered under section 15, clause (1), shall also have authority to punish by a fine not exceeding one rupee, or in default of payment, by confinement in the village-chavdi for a period not exceeding twelve hours, any person committing any of the nuisances or disorderly acts below described, and to forbid the continuance or repetition of such nuisances or acts, that is to say :—

beating, etc., animal ;

(1) any person who wantonly or cruelly beats, illuses or tortures any animal :

bathing, washing in or defiling well, etc.;

(2) any person who bathes or washes in, or otherwise defiles or causes to be defiled, any public well, tank or reservoir, so as to render it less fit for any purpose for which it is set apart :

depositing dirt, etc.;

(3) any person who deposits in forbidden places any dirt, filth or rubbish ;

committing nuisance, etc.;

(4) any person who, on any public street, passage or thoroughfare, commits nuisance by easing himself, or who is, from intoxication, riotous, disorderly or incapable of taking care of himself ;

accumulating offensive matter in cess-pools, etc.

(5) any person

who without sufficient cause wilfully allows to accumulate any offiensive matter in cesspools, dung-heaps or the like, so as to cause annoyance to the neighbouring residents or to passengers, or

allowing offensive matter to issue on thoroughfare ;

who without sufficient cause wilfully allows any offensive matter to issue on to any public thoroughfare from any house, factory, stable, privy or the like, or

depositing dead bodies so as to corrupt water for drinking.

who deposits the bodies of dead animals, or refuse or filth of any description, either in channels which in the rainy season feed any tank or reservoir set apart for drinking, or in other places where to deposit such is offensive to the community.

Scope of this section.—This section is a special section expressly confined in its operation to the Police-patels duly empowered under cl. (1) of this section. It does not extend to their official superiors (the Magistrates in charge of the talukas within which they are patels) (*Hanmanta*, Cr. Rg. 6 of 1884).

[*a*] During such time as Part II or Part III of the Bombay Village Sanitation Act, 1889, and the rules made thereunder are in force in any village, cls. 2, 3 and 4 (except the first two and the last thirteen words), and cl. 5 of s.16 of Bom. VIII of 1867 cease to have any operation in such village (*See* Bom.I of 1889,s.3).

Clause (2) does not apply to rivers.—Clause (2) of this section applies to offences regarding public wells, tanks or reservoirs, but not to those regarding rivers (*Punja*, Or. Rg. 27 of 1892).

Clause (4).—To ease oneself close to a public road is not an offence under this Act, unless the act is committed within sight of a public road so as to cause obstruction, annoyance, risk, danger or damage, to residents or passengers (*Bhika, Ratanlal* 161).

Clause (5)—Nuisance outside a house—It is a general principle that the head of the house is responsible for all nuisances which emanate from his house (*Narayan*, Or. Rg. 29 of 1887.)

Milk-bush put in a river for catching fish is not refuse or filth within the meaning of cl. (5) of this section (*Dagdu*, Or. Rg. 30 of 1888).

Proceedings how taken under sections 14, 15 and 16.

17. The proceedings under sections 14, 15 and 16 shall be oral and held in presence of tha parties, and it shall be optional with the complainant to withdraw his complaint at any time before conviction is recorded.

The Police-patel shall record the names of the parties, the finding, sentence or order or the withdrawal of the charge, with the date of proceedings, and shall forward the same to the Magistrate to whom he is immediately subordinate, in such form and through such channel, and at such times, as the Magistrate of the district shall prescribe.

Power to cancel commission issued under section 15.

18. It shall be lawful for the Magistrate of a district[*a*], by an order in writing, to cancel either in whole or in part any commission issued under section 15[*a*].

Unclaimed property.

19. The Police-patel shall take charge of all unclaimed property found within his village, or made over to him under the provisions of the Bombay District Police Act, 1867, and shall forthwith make a report to the Magistrate (*b*) to whom he is subordinate, and act thereafter as he may be directed by the said Magistrate, unless the property be of a description coming within the provisions of the Cattle-trespass Act, 1871[*c*], in which case the Police-patel shall be guided by that enactment.

Prosecution under other Regulations, etc., for offence punishable by Act.

20. Nothing contained in this Act shall be construed to prevent the prosecution of any person under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act:

Provided that no person shall be punished twice for the same offence.

Provision in case of absence, sudden illness, etc., of Police-patel.

21. In case of the Police-patel being unable to attend to his duty, owing to urgent absence from the village, sudden illness or other cause, he shall place a competent kinsman, or failing a competent kinsman some other competent person, in charge of

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[*a*] Words repealed by Bom. III of 1915, Sch. I, are omitted.

[*b*] As to duty of Magistrate in certain cases, *see* Bom. IV of 1890, s. 58.

[*c*] The reference to Act III of 1857 is altered in accordance with Act I of 1871, s. 2,

his office, making an immediate report to the Magistrate to whom he is immediately subordinate; and the person so placed in charge shall, until the receipt of instructions to the contrary, continue to act for the Police-patel in all his duties except those which involve the trial and punishment of offenders.

"District Police-station" defined.

22. The term "District Police-station" in this Act shall include the villages or places within the limits of the charge of a Police-officer in charge of a station.

23. [*Application of Act to Sind.*] *Repealed by Act XII of 1876.*

Short title.

24. This Act may be cited as the Bombay Village Police Act, 1867.

EXTRA NOTES

Under the Bombay Village Police Act, 1867

Duties and responsibilities of the Village Police Patels.

(1) It is the duty of the Police Patel to assist any traveller, whatever his race may be, who from sickness is unfit to continue his journey and especially not to allow the sick traveller to suffer from want of shelter, or food, or of attendance.

(2) On hearing of any such person having arrived at the village or being on the road, or in the fields, in a helpless state of sickness the Police Patel should at once ascertain all the circumstances of the case.

(3) The sick, helpless traveller should be taken to a *dharmashala* or *sarai*, or to other available shelter, and the Police Patel should ensure that he is supplied with necessary food and water, and such other aid as his sickness may require and can be given. He should protect the sick person's property from theft.

(4) The Police Patel should at once send a messenger to inform the friends of the sick man of his condition, if they are in the same taluka, or in any villages not more distant than if they were so. Otherwise he should, without delay, report all the circumstances of the case to the Sub-Inspector or Mamlatdar, who will acquaint the friends with the traveller's state, or, if necessary, will arrange for his removal to hospital or to his home.

(5) If the sickness of the traveller is cholera, he should be accommodated outside the village in a vacant building if there is one procurable, or if there is no such building he should be sheltered as well as possible with a *pal* or tent or booth under a tree, but not near a well or a tank. The Police Patel should arrange also that the sick person has an attendant and that all his wants are supplied.

(6) The *lota* of a person ill with cholera must not be used in drawing water for him from the well or tank. The water he requires must be drawn otherwise and then poured into his own *lota* or cup.

(7) The surface earth of any floor on which a person sick with cholera has lain should be scraped off and buried at a distance from water or houses, in a hole dug for it in the ground, and a hole should be dug for the sick man's vomit or other discharges.

(8) In the absence of the Police Patel, the Revenue Patel should carry out these rules.

(9) The Patel should send to the Mamlatdar a memorandum of expenses incurred, which, if found correct and reasonable, should be paid in the event of there being no friends of the sick man able to defray the charges.

The prompt relief of shipwrecked persons is considered to be part of the duty of Police Patels. They also have discretionary power to incur some small expenditure for the purpose, all the circumstances being at once reported to the nearest taluka officer.

Powers of arrest.—Government do not consider it necessary to define serious offences for which Police Patels may arrest under s. 12 of

Bom. Act VIII of 1867 (Village Police Act). Offences which are not ordinarily serious may become so at certain times and in certain localities.

When a person is arrested by the village police and forwarded under arrest to an officer of the district police, such officer is not authorized to arrest the person in question if the offence alleged does not fall within s. 44 of the Criminal Procedure Code, and, subject to the provisions of s. 57, Criminal Procedure Code, must release him forthwith. It is probable, however, that a Police Patil will rarely make an arrest unless the offence imputed is not only of a cognizable, but also of a serious nature, and, in that case, the conditions of s. 54, Criminal Procedure Code, being fulfilled a fresh arrest must be made by the district police on the analogy of the procedure prescribed in section 59, Criminal Procedure Code (G. R. J. D. No. 5734, of 6-8-1897).

Payment for watching camps.—When village watchmen are employed to watch the camp of any officer by night, except by the wish of the villagers themselves where the custom of village responsibility is still kept up, they should be paid. Even in the latter case, more than a couple of men should rarely be necessary and any in excess of this number should be paid for. The employment of men brought from other villages is an abuse which should be put a stop to.

It is no part of the duty of village police to serve as escort to officers of the district police when moving about and this withdrawal of the village police from their legitimate duties is prohibited.

(*Vide Police Manual, Vol. I, pp, 211-212*).

The Bom. Village Sanitation Act, 1889

Bombay Act No. I of 1889

[*23rd May 1890.*

(*As amended by Bom. Acts III of 1915 and XXV of 1931*)

WHEREAS, for the purpose of improving the sanitary condition of villages in the presidency of Bombay, it is expedient to provide for the constitution of sanitary committees and boards having authority over such villages ; it is enacted as follows :—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as: "The Bombay Village Sanitation Act, 1889."

Extent.

2. It is applicable to the whole of the Presidency of Bombay except the City of Bombay, Aden and its dependencies, Perim, and the scheduled district of the Mehwassi Chiefs villages, as defined in the Scheduled Districts Act, 1874.

Repeal of enactments.

3. During such time as Part II or Part III and the rules made thereunder shall be in force in any village, the enactments mentioned in the schedule shall, to the extent specified in the third column of the schedule, cease to have any operation in the said village.

Definitions.

4. In this Act, unless there be something repugnant in the subject or context :

"village."

(*a*) "village" means the site of a village or town determined for the time being as under section 126 of the Bombay Land Revenue Code, 1879, together with the area included within a distance of a quarter of a mile from any part of such site, in so far as such site or area is not included within a permanent municipal district or a military cantonment ;

"prescribed."

(*b*) "prescribed" means prescribed by a rule made under this Act ;

"chavdi"

(*c*) "chavdi" means, in any village in which there is no chavdi such place as the Collector directs shall be deemed to be the chavdi for the purposes of this Act.

Operation of Parts II, III and IV.

5. (1) Part II shall come into force in any village to which the Collector extends the same, under the power hereinafter conferred upon him in this behalf, from such date as the Collector shall direct, and shall continue in force, when so extended, until the Commissioner directs by notification in the *Bombay Governmsnt Gazette* that it shall cease to have operation in such village, or extends Part III to such village.

(2) Part III shall come into force in any village to which the Commissioner extends the same, under the power hereinafter conferred upon him in this behalf, from such date as is directed in this behalf by the Commissioner, and shall continue in force when so extended, until the Commissioner directs by notification in the *Bombay Government Gazette* that it shall cease to have operation in such village.

(3) Part IV shall have operation, as far as its provisions apply in and in respect of every village in which either Part II or Part III is in force.

Part II how to be extended to a village.

6. (1) Subject to the control of the Commissioner and of Government, the Collector may at any time extend Part II to any village in his district in which Part III is not in force.

(2) For the purpose of extending Part II to any such village, the Collector shall cause to be published by posting up copies thereof in conspicuous places in his own office and in the office of the Mamlatdar and of the Mahalkari within whose taluka or mahal the said village is situate and in the chavdi or some other public building in the said village, a proclamation in the language of the district direcing that, unless a proclamation be thereafter issued by him to the contrary, Part II shall extend to the said village on and from a date to be specified in the proclamation, which shall not be less than two months after that on which the proclamation is posted up in the village and stating that any objection which any inhabitant of the village may desire to make to the said extension will, if submitted to the Collector not later than one month before the said specified date, be received and considered.

(3) If, after considering any objections which may have been made as aforesaid, the Collector shall be of opinion that good cause exists for not extending Part II to the village or for not extending it thereto immediately, he may, by proclamation, published as aforesaid–

(*a*) cancel his previous proclamation ; or

(*b*) suspend the extension of Part II to the said village for a specified period.

(3) If the Collector suspends the extension of Part II to a village for a specified period, he may thereafter, by proclamation, published as aforesaid—

(*c*) at any time abandon the proposed extension ; or

(*d*) from time to time defer the extension for a further specified period.

Part III how to be extended to a village.

7. (1) The Commissioner may at any time extend Part III to any village in any part of the Presidency to which this Act is applicable, whether Part II is at the time in force in such village or not. Such extension to a village where Part II is in force, shall cause Part II to cease to operate therein.

(2) For the purpose of extending Part III to any such village, the Commisioner shall, by notification in the *Bombay Government Gazette*, direct that, unless a notification be thereafter issued by him to the contrary, Part III shall extend to the said village on and from a date to be specified in the notification, which shall not be less than three months from the date of the notification and stating that any objection which any inhabitant of the village may desire to make to the said extension will, if submitted to the Commissioner, or to the the Collector not later than one month before the said specified date, be received and considered.

(3) If, after considering any objections which may have been made as aforesaid, the Commissioner shall be of opinion that good

cause exists for not extending Part III to the village or for not extending it thereto immediately, he may, by notification in the *Bombay Government Gazette*, exercise the like powers with respect to the extension of the said part as the Collector is authorized to exercise, with respect to Part II by sub-sections (3) and (4) of section 6.

(4) Translations in the language of the district of every notification issued by the Commissioner under this section shall be published by the Collector, without delay, in the manner prescribed in sub-section (2) of section 6 for the publication of a proclamation issued by himself.

PART II.—SANITARY COMMITTEES.

Each village to have a Sanitary Committee.

8. (1) There shall be a Sanitary Committee in every village to which this Part is extended. The said committee shall consist of three or more adult house-holders, residents of the village, chosen, with their own consent, by the Collector, of whom the Police Patel shall be one, unless the Collector for reasons recorded in writing in any particular case determines otherwise. For the purpose of aiding him in his choice, the Collector may in his discretion, procure the nomination or election, by the house-holders of the village, of qualified persons, in such mode as he shall deem expedient.

(2) The chairman of the said committee shall be nominated by the Collector.

(3) The chairman and other members of the committee shall hold office for the prescribed period.

Record of Committee's proceedings.

9. The proceedings of the Sanitary Committee shall be recorded in the prescribed manner (or, until rules are made under section 11, in such manner as the Collector by written order directs), by the village accountant or such other person as the Collector appoints in this behalf, and, in the absence of the village accountant or person so appointed, by such other person as the Committee may employ for this purpose; and the said record shall be verified by the signature of the chairman or of some other member of the Committee authorized by the Committee in that behalf, below each day's proceedings.

Magistrates having jurisdiction in the village may take part in Committee's proceedings.

10. Every Magistrate having jurisdiction in the village may take part in the proceedings of the Committee at any meeting thereof at which he is present, and such Magistrate or, if there be more than one, the highest in magisterial rank of such Magistrates, shall for this purpose be deemed to be a member and President of the Committee for the occasion.

Sanitary Committee to make village rules.

11. The Sanitary Committee may from time to time make rules, and repeal or vary the same, with the approval of the Collector—

(*a*) for regulating the terms of office of its members and its proceedings;

(*b*) for determining the manner in which its proceedings shall be recorded;

(*c*) for procuring and preserving for the use of the village an adequate supply of pure potable water;

(*d*) for the cleansing of the streets and open spaces of the village;

(*e*) for preventing accumulations of offensive and noxious matter in the village ;

(*f*) for preventing nuisances and indecent or insanitary acts or omissions in the village ; and

(*g*) generally for giving effect in the village to the purposes of this Act

Provisions concerning the making of rules.

12. (1) For not less than three months before any rule which it is proposed to make under section 11 is to come into force, the Committee shall exhibit a copy thereof at the chavdi or some other public building in the village, and there shall be affixed to such copy a notice that objections thereto made in writing to the Collector not later than one month before the date fixed for their coming into force-which date shall be specified-will be received and considered.

(2) Any objections so made shall be considered by the Collector, in consultation with the Committee. If on such consideration, it shall seem desirable to alter or withdraw the proposed rule, such alteration or withdrawal shall be effected by notice exhibited as aforesaid. If the Collector deems it expedient to suspend the operation of a rule, it may be suspended for a specified period by a notice exhibited as aforesaid, which shall state that objections thereto, made as aforesaid not later than one month before the expiry of the said period, will be received and considered. Any objection so made shall be considered as aforesaid, and, if it then seems desirable to alter or withdraw the rule, the same shall be notified as aforesaid.

(3) Subject to the provisions of sub-section (2), every rule made by the Committee, with the approval of the Collector and notified as aforesaid, shall come into force on the day notified in this behalf.

Prosecution of offenders against the rules.

13. Whenever it shall come to the notice or knowledge of the Sanitary Committee that any person in the village has apparently committed or is accused of having committed a breach of any rule made by the Committee under section 11, such Committee may, by notice in writing, require such person's attendance before the Committee.

Cognizance by the Committee of offences against the rules.

14. (1) All offences against the rules made by the Committee under section 11 shall be cognizable by the Committee.

(2) For the purpose of execising this jurisdiction the Committee shall assemble as often as shall be necessary or as the Magistrate of the district shall direct at the chavdi or some other convenient place within the village or near thereto.

(3) The Committee shall, in the presence of the accused person, or if notwithstanding the service of a notice upon the said person as aforesaid he fails to appear, then in his abence, take evidence as to the alleged offence and any evidence produced by the said person in his defence, and shall thereupon either acquit or convict the accused person and, if he is convicted, may sentence him to such punishment authorized by this Act or by the rules as it thinks reasonable.

Appeals against the Committee's decisions.

15. (1) A person convicted by the Committee may, at any time within ten days after sentence is passed against him, appeal to the Magistrate of the district or other Magistrate vested under the Code of

Criminal Procedure with appellate jurisdiction over the place where the sentence is passed, or to such other Magistrate, not being a member of such Committee, as the Magistrate of the district may, subject to the orders of Government from time to time, appoint in this behalf.

(2) If such person gives notice of his intention to appeal and deposits with an officer appointed by the Magistrate of the district in this behalf the amount of the fine inflicted upon him, execution of the sentence shall be suspended until the lapse of ten days from the date of the sentence, or, if an appeal is made, until it is disposed of. If within ten days no appeal is made, the sum deposited shall be appropriated to payment of the fine inflicted.

(3) The Magistrate who hears the appeal may confirm, reverse or modify the decision of the Sanitary Committee and may pass any order as to punishment which it was competent to the Committee to pass. His order shall be enforced in like manner as one made by the Sanitary Committee.

(4) The said Magistrate may suspend execution of the sentence pending disposal of the appeal when such suspension shall appear to him necessary or expedient, on such terms as shall seem reasonable.

Sanitary Committee may authorize expenditure for necessary works or measures.

16. For the purpose of providing for the village an adequate supply of pure potable water, of cleansing the streets and open spaces thereof, of removing offensive and noxious matter therefrom and for other purposes conducive to the health and comfort of the imhabitants of the village, the Sanitary Committee may utilize, as far as available, the voluntary labour of the village and the services of village servants placed at its command under section 42 ; and when these means are insufficient, may from time to time employ such servants and authorize such expenditure as may be necessary for the purpose aforesaid.

Sanitary Committee may levy a rate on open-air stalls.

17. The Sanitary Committee may levy a rate on open air stalls in the village and the amount so recovered shall form part of the Sanitary Committee fund under section 30D.

Necessary moneys for expenditure may be raised by voluntary subscription or by a rate on the inhabitants.

18. Any sum of money of which the expenditure is authorized by the Sanitary Committee may be raised by voluntary subscription or levied under section 17 or may be recovered by a rate fixed with the approval of the Collector and assessed by the Sanitary Committee on the inhabitants of the village if the same is not available from any other source :

Provided that—

(1) the aggregate amount to be recovered by such rate from the inhabitants of any village in any year shall not except with the permission of the Collector (for reasons to be recorded by him) exceed one-half of the aggregate amount leviable in that year as local fund cess from such village ;

(2) the amount assessed on any inhabitant of such village shall be subject to appeal to the Collector within thirty days of the said inhabitant being notified thereof and the Collector's decision shall be final.

Sanitary Committee to prepare annually a statement of income and expenditure.

18A. The Sanitary Committee shall prepare annually a budget statement showing the estimated income and expenditure for the next year and submit it before the end of January to the Collector for approval. Such budget shall be approved with or without modifications by the Collector before the end of March. The Sanitary Committee may incur expenditure within the budget so approved, but if any further expenditure not included in the budget is required, the previous sanction of the Collector shall be obtained thereto by the Committee.

PART III.—SANITARY BOARDS.

Constitution of Sanitary Boards.

19. (1) There shall be a Sanitary Board in every village to which this Part is extended, or one such board for a group of two or more such villages, as the Collector may direct. Each such board shall consist of such number of members not less than seven as may be determined by the Collector, of whom not less than two-thirds shall be elected : provided that there shall be one elected member for every fifty houses within the area of the Board's authority. The remaining members (to be called "nominfited members") shall be appointed by the Collector and shall ordinarily include police patels.

(2) No person may be a member of the Board who is less than 21 years of age and who does not possess the qualifications of an elector.

(3) Every person, whether male or female, not being less than 18 years of age and being resident within the area which is to be subject to the Board's authority and occupying as owner or part owner or tenant or sub-tenant a building or other immoveable property therein and not otherwise disqualified under the rules made by the Collector in this behalf, shall be entitled to vote at an elction of the Board.

(4) The election shall take place at a meeting to be convened for this purpose by the Mamlatdar on such date and at such time and place within the area concerned as he may fix in this behalf. A notice of such meeting together with a list of persons eligible to vote at it shall be posted at the chavdi at least fifteen days before the date of the election.

(5) The election shall be by show by hands, or, if the Collector so directs, by ballot. All questions relating to procedure for the election and the qualifications of electors shall be decided by the Mamlatdar in accordance with rules made in this behalf and his orders shall be subject to an appeal to the Collector, whose decision shall be final.

(6) The term of office of members of the Board shall be three years, but every member shall be eligible for re-election or re-nomination.

(7) The Board shall elect annually one of themselves to be the president :

Provided that he shall be removeable from office as president for misconduct either by the vote of two-thirds of the whole number of members of the Board, subject to the approval of the Collector, or by the Collector as provided in section 32.

(8) Each meeting of the Board shall be presided over by the president. In the absence of the president a meeting of the Board shall be presided over by such one of the members present as may be chosen by the meeting to be chairman for the occasion.

(9) The procedure at a meeting of the Board shall be in accordance with the rules made by the Collector in this behalf.

Sanitary Board may make rules.

20. The Sanitary Board may from time to time make rules, with the approval of the Collector, and, save as hereinafter provided, shall discharge functions and exercise authority for the area subject to its authority in respect of the same matters, in the same manner, and subject to like provisions, restrictions and conditions as are hereinbefore enacted in the case of a Sanitary Committee.

Appointment of Sanitary Inspector and other officers.

21. (1) The Sanitary Board may, from time to time, with the sanction of the Collector appoint a Sanitary Inspector for any area or any part of the area subject to the authority of the Board and determine his salary. It may also with the like sanction dismiss or suspend him.

(2) Such Sanitary Inspector may be a person employed by the Taluka or District Local Board having authority at the place. He may be employed by or on behalf of two or more Sanitary Boards.

(3) The Sanitary Board may, in addition to the Sanitary Inspector, appoint such other subordinates as shall appear necessary and determine the amount of the salary to be paid to each. It may also dismiss or suspend the said subordinates.

Duties of the Sanitary Inspector.

22. (1) The Sanitary Inspector shall take measures for preventing breaches of the rules in force in the area for which he is appointed, by, from time to time—

(*a*) posting up and otherwise publishing a general admonition respecting the observance of the said rules ; or

(*b*) admonishing any person whom he finds offending against any of the said rules ; or

(*c*) summoning to appear before the Sanitary Board any person who, from his own observation or from reports made to him by his subordinates, he has reason to think should be prosecuted for offending against any of the said rules.

(2) The Sanitary Inspector shall make such reports and be in such relation to the Sanitary Commissioner, consistent with the duties and obligations imposed on him by this Act or arising out of his position as a servant of a Local or Sanitary Board, as Government may prescribe.

Prosecutions at instance of the Board for breaches of rules.

23. The Board may also by notice in writing require the attendance before the Board of any person who is accused of having committed, or who, to the knowledge of the Board, has apparently committed, a breach of any rule made by the Board under section 20.

Cognizance by the Board of offences against the rules.

24. (1) All offences against the rules made by the Board under section 20 shall be cognizable by the Board, who, for the purpose of exercising this jurisdiction shall assemble as often as shall be necessary or as the Magistrate of the district shall direct,

at some convenient place within or near to the area subject to its authority.

(2) The provisions of sub-section (3) of section 14 and of section 15 shall apply, as nearly as may be, to the hearing and decision of cases under this section by a Sanitary Board and to appeals by persons convicted by such Board.

Sanitary Board's orders by whom to be carried out.

25. (1) The orders of every Sanitary Board shall be carried out and its orders and proceedings shall be recorded in the prescribed manner and preserved by such member of the Board or by such officer of the Board or by such other officer as the Collector may from time to time nominate in this behalf.

(2) The person authorised in this behalf shall be bound to keep a true record of the Board's proceedings and orders, under his signature, and truly to prepare all summonses, notices and orders issuing by direction of the Board or of any member thereof in accordance with this Act or with rules made under section 20.

26. (*Repealed by Bom. XXV of 1931, s. 8.*)

Works and buildings which may be provided by a Sanitary Board.

27. Every Sanitary Board may cause to be constructed such works and buildings as shall be necessary for providing for the area subject to its authority or any part thereof—

(*a*) an adequate supply of water ;

(*b*) proper and convenient places for the temporary deposit or final disposal of sweepings, dust, ashes, refuse, rubbish, carcasses of dead animals and other offensive or noxious matter ;

(*c*) means for conveying away or removing the several matters and things specified in clause (*a*).

Sanitary Board may raise funds by voluntary subscription.

28. The Sanitary Board may, by voluntary subscription, raise any sum of money for any of the purposes of the Board under this Act. Such sum shall form part of the Sanitary Board fund under section 30D and shall be expended by the Sanitary Board within the area subject to its authority and for the purposes of this Act.

Purposes for which expenditure is to be incurred by Sanitary Board.

29. Every Sanitary Board shall be bound to provide for, or authorize the expenditure necessary for—

(*a*) paying the salaries of the Sanitary Inspector and other officers, if any, appointed under section 21 ; and

(*b*) providing stationery and other requisites for the use of the Board and of the said Sanitary Inspector and other officers, if any ; and

(*c*) fulfilling any contract entered into by it under sectio 30C, and

(*d*) constructing necessary works and buildings under section 27.

Sanitary Board's ways and means.

30. (1) A debit and credit account shall be kept by the Sanitary Board in such form as may be prescribed by the Collector. To the debit of such account shall be placed all expenditure authorizedly incurred under the provisions of this Act. To its credit shall be placed all sums raised by voluntary subscription under section 23, all sums rea-

lized from any other source for meeting the Board's expenditure, and the net proceeds of any rate assessed as hereinafter provided.

(2) The Board shall also prepare and submit to the district local board annual returns of its accounts on or before such date and in such form as may be prescribed by the Collector.

(3) For the purpose of raising any money required for expenditure by a Sanitary Board under the Act, the Board may, subject to rules made in this behalf by the Collector, fix and assess a rate on the inhabitants of the area or any part of the area subject to its authority :

Provided that—

(1) the aggregate amount to be so recovered in any year from the inhabitants of any area subject to its authority shall not, except with the permission of the Collector (for reasons to be recorded by him), exceed one-half of the aggregate amount leviable in that year as local fund cess from the inhabitants of such area ;

(2) the amount assessed on any inhabitant of such area shall be subject to appeal to the Collector within thirty days of the said inhabitant being notified thereof and the Collector's decision shall be final.

PART IV.—GENERAL PROVISIONS.

Incoporation of Sanitary Committees and Sanitary Boards.

30A. Every Sanitary Committee and every Sanitary Board shall be a body corporate by the name of 'The Sanitary Committee of.....' or 'The Sanitary Board of.....' as the case may be, and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name.

Power to acquire, hold and transfer property.

30B. (1) A Sanitary Committee or a Sanitary Board may acquire and hold property, both moveable and immoveable, whether within or without the limits of the village or villages subject to its authority.

Property vested in Sanitary Committee or Sanitary Board.

(2) All property of the nature hereinafter in this sub-section specified may be transferred to or vested in the Committee or the Board exercising authority in the village in which such porperty is situate, either by the Government or by an officer appointed by the Government in this behalf or by the district or taluka local board to which it belongs or in which it vests ; and on such transfer the said property shall be deemed always to have so vested and shall, together with all other property, of what nature or kind soever acquired by it and every work constructed by it at its own cost, be under the direction, management and control of the said Committee or Board and shall be held and applied by it as a trustee, subject to the provisions and for the purposes of this Act ; that is to say—

(*a*) public markets, slaughter houses, manure and night-soil depots, places used by the public for the purposes of erecting temporary stalls or generally for the purpose of carrying on any trade or business, and all public-buildings of every description ;

(*b*) public streams, springs, pools, tanks, ponds, wells, cisterns, reservoirs, acqueducts, conduits, pipes, pumps and all other water

been furnished by the work abandoned in consequence of such requisition as aforesaid.

Local Boards may call for information in such cases.

(4) For the purpose of obtaining information as to any work intended or in course of construction, to which the provisions of the preceding clause may apply, it shall be lawful for the Taluka or District Local Board to call for such report from the Sanitary Committee or Board, through the Collector, as shall be necessary and reasonable and to cause such inspection and report to be made by any person in its employment, as it shall deem necessary in this behalf, and it shall be the duty of the sanitary Committee or Board concerned to comply with such requisition and to give reasonable aid and furtherance to any inspection ordered as aforesaid.

Certain village servants to be placed under command of Sanitary Committee or Board.

42. Village-servants who hold land, profits of land or other emoluments by way of remuneration, wholly or partly, for services consisting in or connected with cleansing or conservancy may, as to such services, be placed by the Collector, subject to the control of the Commissioner under the command and superintendence of the Sanitary Committee or Board having authority in the place in respect of which the said servies are due and shall be bound to fulfil all reasonable orders of the said Committee or Board under such reasonable penalties as may be provided in any rule made unner this Act.

Determination and recovery of dues of village-servants placed under command of Sanitary Committee or Board.

43. (1) The Collector shall—

(*a*) determine all questions as to the amount of any payment at any time by custom or under any settlement mentioned in section 18, 19 or 20 of the Bombay Hereditary Offices Act due to a village-servant placed under the command of a Sanitary Committee or Board under the last preceding section; and

(*b*) if necessary, cause the amount which he determines to be due or the money value thereof at the market-rate of the time being, if the due is payable in kind, to be recovered on behalf of the village-servant entitled thereto, free of charge, as if the same were an arrear of land-revenue :

(2) Provided that the Collector may decline to cause such recovery to be made on behalf of any servant, if, in his opinion, the duty in respect of which the payment is due has not been duly preformed by such servant.

Collector's functions under this Act may be delegated.

44. Any power conferred or duty imposed by this Act upon the Collector may be delegated by him to an Assistant or Deputy Collector.

Collectors, Magistrates, & other public servants subject to usual control in the exercise of their authority.

45. In the discharge of the duties and the exercise of authority assigned to them by this Act, Collectors, Magistrates and other public servants shall be subject to the like control as in the discharge of their ordinary functions.

Indemnity of persons acting in good faith under this Act.

46. (1) No Magistrate, Collector, president, or member of a Sanitary Committee or Board, or Sanitary Inspector shall be liable to any penalty or to payment of damages for any act by him done in good faith

in pursuance or intended pursuance of any authority or duty conferred or imposed upon him by this Act.

(2) And no public servant or person duly authorized or appointed shall be liable as aforesaid for giving effect in good faith to any order or direction issued with apparent authority by a person empowered in that behalf under this Act or under any rule made hereunder.

SCHEDULE.

(*See* Section 3.)

No. and year of enactment.	Subject or title.	Extent of repeal
Bom. Act VII of 1867.	The Bombay District Police Act, 1867.	Sections 33 and 34.
Bom. Act VIII of 1867.	The Bombay Village Police Act, 1867.	Clauses 2, 3 and 4 (except the first two and the last thirteen words) and 5 of section 16.

his office, making an immediate report to the Magistrate to whom he is immediately subordinate; and the person so placed in charge shall, until the receipt of instructions to the contrary, continue to act for the Police-patel in all his duties except those which involve the trial and punishment of offenders.

"District Police-station" defined.

22. The term "District Police-station" in this Act shall include the villages or places within the limits of the charge of a Police-officer in charge of a station.

23. [*Application of Act to Sind.*] *Repealed by Act XII of 1876.*

Short title.

24. This Act may be cited as the Bombay Village Police Act, 1867.

EXTRA NOTES

Under the Bombay Village Police Act, 1867

Duties and responsibilities of the Village Police Patels.

(1) It is the duty of the Police Patel to assist any traveller, whatever his race may be, who from sickness is unfit to continue his journey and especially not to allow the sick traveller to suffer from want of shelter, or food, or of attendance.

(2) On hearing of any such person having arrived at the village or being on the road, or in the fields, in a helpless state of sickness the Police Patel should at once ascertain all the circumstances of the case.

(3) The sick, helpless traveller should be taken to a *dharmashala* or *sarai*, or to other available shelter, and the Police Patel should ensure that he is supplied with necessary food and water, and such other aid as his sickness may require and can be given. He should protect the sick person's property from theft.

(4) The Police Patel should at once send a messenger to inform the friends of the sick man of his condition, if they are in the same taluka, or in any villages not more distant than if they were so. Otherwise he should, without delay, report all the circumstances of the case to the Sub-Inspector or Mamlatdar, who will acquaint the friends with the traveller's state, or, if necessary, will arrange for his removal to hospital or to his home.

(5) If the sickness of the traveller is cholera, he should be accommodated outside the village in a vacant building if there is one procurable, or if there is no such building he should be sheltered as well as possible with a *pal* or tent or booth under a tree, but not near a well or a tank. The Police Patel should arrange also that the sick person has an attendant and that all his wants are supplied.

(6) The *lota* of a person ill with cholera must not be used in drawing water for him from the well or tank. The water he requires must be drawn otherwise and then poured into his own *lota* or cup.

(7) The surface earth of any floor on which a person sick with cholera has lain should be scraped off and buried at a distance from water or houses, in a hole dug for it in the ground, and a hole should be dug for the sick man's vomit or other discharges.

(8) In the absence of the Police Patel, the Revenue Patel should carry out these rules.

(9) The Patel should send to the Mamlatdar a memorandum of expenses incurred, which, if found correct and reasonable, should be paid in the event of there being no friends of the sick man able to defray the charges.

The prompt relief of shipwrecked persons is considered to be part of the duty of Police Patels. They also have discretionary power to incur some small expenditure for the purpose, all the circumstances being at once reported to the nearest taluka officer.

Powers of arrest.—Government do not consider it necessary to define serious offences for which Police Patels may arrest under s. 12 of

Bom. Act VIII of 1867 (Village Police Act). Offences which are not ordinarily serious may become so at certain times and in certain localities.

When a person is arrested by the village police and forwarded under arrest to an officer of the district police, such officer is not authorized to arrest the person in question if the offence alleged does not fall within s. 44 of the Criminal Procedure Code, and, subject to the provisions of s. 57, Criminal Procedure Code, must release him forthwith. It is probable, however, that a Police Patil will rarely make an arrest unless the offence imputed is not only of a cognizable, but also of a serious nature, and, in that case, the conditions of s. 54, Criminal Procedure Code, being fulfilled a fresh arrest must be made by the district police on the analogy of the procedure prescribed in section 59, Criminal Procedure Code (G. R. J. D. No. 5734, of 6-8-1897).

Payment for watching camps.—When village watchmen are employed to watch the camp of any officer by night, except by the wish of the villagers themselves where the custom of village responsibility is still kept up, they should be paid. Even in the latter case, more than a couple of men should rarely be necessary and any in excess of this number should be paid for. The employment of men brought from other villages is an abuse which should be put a stop to.

It is no part of the duty of village police to serve as escort to officers of the district police when moving about and this withdrawal of the village police from their legitimate duties is prohibited.

(*Vide Police Manual, Vol. I, pp, 211-212*).

The Bom. Village Sanitation Act, 1889

Bombay Act No. I of 1889

[*23rd May 1890.*

(*As amended by Bom. Acts III of 1915 and XXV of 1931*)

WHEREAS, for the purpose of improving the sanitary condition of villages in the presidency of Bombay, it is expedient to provide for the constitution of sanitary committees and boards having authority over such villages ; it is enacted as follows :—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as: "The Bombay Village Sanitation Act, 1889."

Extent.

2. It is applicable to the whole of the Presidency of Bombay except the City of Bombay, Aden and its dependencies, Perim, and the scheduled district of the Mehwassi Chiefs villages, as defined in the Scheduled Districts Act, 1874.

Repeal of enactments.

3. During such time as Part II or Part III and the rules made thereunder shall be in force in any village, the enactments mentioned in the schedule shall, to the extent specified in the third column of the schedule, cease to have any operation in the said village.

Definitions.

4. In this Act, unless there be something repugnant in the subject or context :

"village."

(*a*) "village" means the site of a village or town determined for the time being as under section 126 of the Bombay Land Revenue Code, 1879, together with the area included within a distance of a quarter of a mile from any part of such site, in so far as such site or area is not included within a permanent municipal district or a military cantonment ;

"prescribed."

(*b*) "prescribed" means prescribed by a rule made under this Act ;

"chavdi"

(*c*) "chavdi" means, in any village in which there is no chavdi such place as the Collector directs shall be deemed to be the chavdi for the purposes of this Act.

Operation of Parts II, III and IV.

5. (1) Part II shall come into force in any village to which the Collector extends the same, under the power hereinafter conferred upon him in this behalf, from such date as the Collector shall direct, and shall continue in force, when so extended, until the Commissioner directs by notification in the *Bombay Governmsnt Gazette* that it shall cease to have operation in such village, or extends Part III to such village.

(2) Part III shall come into force in any village to which the Commissioner extends the same, under the power hereinafter conferred upon him in this behalf, from such date as is directed in this behalf by the Commissioner, and shall continue in force when so extended, until the Commissioner directs by notification in the *Bombay Government Gazette* that it shall cease to have operation in such village.

(3) Part IV shall have operation, as far as its provisions apply in and in respect of every village in which either Part II or Part III is in force.

Part II how to be extended to a village.

6. (1) Subject to the control of the Commissioner and of Government, the Collector may at any time extend Part II to any village in his district in which Part III is not in force.

(2) For the purpose of extending Part II to any such village, the Collector shall cause to be published by posting up copies thereof in conspicuous places in his own office and in the office of the Mamlatdar and of the Mahalkari within whose taluka or mahal the said village is situate and in the chavdi or some other public building in the said village, a proclamation in the language of the district direcing that, unless a proclamation be thereafter issued by him to the contrary, Part II shall extend to the said village on and from a date to be specified in the proclamation, which shall not be less than two months after that on which the proclamation is posted up in the village and stating that any objection which any inhabitant of the village may desire to make to the said extension will, if submitted to the Collector not later than one month before the said specified date, be received and considered.

(3) If, after considering any objections which may have been made as aforesaid, the Collector shall be of opinion that good cause exists for not extending Part II to the village or for not extending it thereto immediately, he may, by proclamation, published as aforesaid–

(*a*) cancel his previous proclamation ; or

(*b*) suspend the extension of Part II to the said village for a specified period.

(3) If the Collector suspends the extension of Part II to a village for a specified period, he may thereafter, by proclamation, published as aforesaid—

(*c*) at any time abandon the proposed extension ; or

(*d*) from time to time defer the extension for a further specified period.

Part III how to be extended to a village.

7. (1) The Commissioner may at any time extend Part III to any village in any part of the Presidency to which this Act is applicable, whether Part II is at the time in force in such village or not. Such extension to a village where Part II is in force, shall cause Part II to cease to operate therein.

(2) For the purpose of extending Part III to any such village, the Commisioner shall, by notification in the *Bombay Government Gazette*, direct that, unless a notification be thereafter issued by him to the contrary, Part III shall extend to the said village on and from a date to be specified in the notification, which shall not be less than three months from the date of the notification and stating that any objection which any inhabitant of the village may desire to make to the said extension will, if submitted to the Commissioner, or to the the Collector not later than one month before the said specified date, be received and considered.

(3) If, after considering any objections which may have been made as aforesaid, the Commissioner shall be of opinion that good

cause exists for not extending Part III to the village or for not extending it thereto immediately, he may, by notification in the *Bombay Government Gazette*, exercise the like powers with respect to the extension of the said part as the Collector is authorized to exercise, with respect to Part II by sub-sections (3) and (4) of section 6.

(4) Translations in the language of the district of every notification issued by the Commissioner under this section shall be published by the Collector, without delay, in the manner prescribed in sub-section (2) of section 6 for the publication of a proclamation issued by himself.

PART II.—SANITARY COMMITTEES.

Each village to have a Sanitary Committee.

8. (1) There shall be a Sanitary Committee in every village to which this Part is extended. The said committee shall consist of three or more adult householders, residents of the village, chosen, with their own consent, by the Collector, of whom the Police Patel shall be one, unless the Collector for reasons recorded in writing in any particular case determines otherwise. For the purpose of aiding him in his choice, the Collector may in his discretion, procure the nomination or election, by the house-holders of the village, of qualified persons, in such mode as he shall deem expedient.

(2) The chairman of the said committee shall be nominated by the Collector.

(3) The chairman and other members of the committee shall hold office for the prescribed period.

Record of Committee's proceedings.

9. The proceedings of the Sanitary Committee shall be recorded in the prescribed manner (or, until rules are made under section 11, in such manner as the Collector by written order directs), by the village accountant or such other person as the Collector appoints in this behalf, and, in the absence of the village accountant or person so appointed, by such other person as the Committee may employ for this purpose; and the said record shall be verified by the signature of the chairman or of some other member of the Committee authorized by the Committee in that behalf, below each day's proceedings.

Magistrates having jurisdiction in the village may take part in Committee's proceedings.

10. Every Magistrate having jurisdiction in the village may take part in the proceedings of the Committee at any meeting thereof at which he is present, and such Magistrate or, if there be more than one, the highest in magisterial rank of such Magistrates, shall for this purpose be deemed to be a member and President of the Committee for the occasion.

Sanitary Committee to make village rules.

11. The Sanitary Committee may from time to time make rules, and repeal or vary the same, with the approval of the Collector—

(*a*) for regulating the terms of office of its members and its proceedings;

(*b*) for determining the manner in which its proceedings shall be recorded;

(*c*) for procuring and preserving for the use of the village an adequate supply of pure potable water;

(*d*) for the cleansing of the streets and open spaces of the village;

(*e*) for preventing accumulations of offensive and noxious matter in the village ;

(*f*) for preventing nuisances and indecent or insanitary acts or omissions in the village ; and

(*g*) generally for giving effect in the village to the purposes of this Act

Provisions concerning the making of rules.

12. (1) For not less than three months before any rule which it is proposed to make under section 11 is to come into force, the Committee shall exhibit a copy thereof at the chavdi or some other public building in the village, and there shall be affixed to such copy a notice that objections thereto made in writing to the Collector not later than one month before the date fixed for their coming into force-which date shall be specified-will be received and considered.

(2) Any objections so made shall be considered by the Collector, in consultation with the Committee. If on such consideration, it shall seem desirable to alter or withdraw the proposed rule, such alteration or withdrawal shall be effected by notice exhibited as aforesaid. If the Collector deems it expedient to suspend the operation of a rule, it may be suspended for a specified period by a notice exhibited as aforesaid, which shall state that objections thereto, made as aforesaid not later than one month before the expiry of the said period, will be received and considered. Any objection so made shall be considered as aforesaid, and, if it then seems desirable to alter or withdraw the rule, the same shall be notified as aforesaid.

(3) Subject to the provisions of sub-section (2), every rule made by the Committee, with the approval of the Collector and notified as aforesaid, shall come into force on the day notified in this behalf.

Prosecution of offenders against the rules.

13. Whenever it shall come to the notice or knowledge of the Sanitary Committee that any person in the village has apparently committed or is accused of having committed a breach of any rule made by the Committee under section 11, such Committee may, by notice in writing, require such person's attendance before the Committee.

Cognizance by the Committee of offences against the rules.

14. (1) All offences against the rules made by the Committee under section 11 shall be cognizable by the Committee.

(2) For the purpose of execising this jurisdiction the Committee shall assemble as often as shall be necessary or as the Magistrate of the district shall direct at the chavdi or some other convenient place within the village or near thereto.

(3) The Committee shall, in the presence of the accused person, or if notwithstanding the service of a notice upon the said person as aforesaid he fails to appear, then in his abence, take evidence as to the alleged offence and any evidence produced by the said person in his defence, and shall thereupon either acquit or convict the accused person and, if he is convicted, may sentence him to such punishment authorized by this Act or by the rules as it thinks reasonable.

Appeals against the Committee's decisions.

15. (1) A person convicted by the Committee may, at any time within ten days after sentence is passed against him, appeal to the Magistrate of the district or other Magistrate vested under the Code of

Criminal Procedure with appellate jurisdiction over the place where the sentence is passed, or to such other Magistrate, not being a member of such Committee, as the Magistrate of the district may, subject to the orders of Government from time to time, appoint in this behalf.

(2) If such person gives notice of his intention to appeal and deposits with an officer appointed by the Magistrate of the district in this behalf the amount of the fine inflicted upon him, execution of the sentence shall be suspended until the lapse of ten days from the date of the sentence, or, if an appeal is made, until it is disposed of. If within ten days no appeal is made, the sum deposited shall be appropriated to payment of the fine inflicted.

(3) The Magistrate who hears the appeal may confirm, reverse or modify the decision of the Sanitary Committee and may pass any order as to punishment which it was competent to the Committee to pass. His order shall be enforced in like manner as one made by the Sanitary Committee.

(4) The said Magistrate may suspend execution of the sentence pending disposal of the appeal when such suspension shall appear to him necessary or expedient, on such terms as shall seem reasonable.

Sanitary Committee may authorize expenditure for necessary works or measures.

16. For the purpose of providing for the village an adequate supply of pure potable water, of cleansing the streets and open spaces thereof, of removing offensive and noxious matter therefrom and for other purposes conducive to the health and comfort of the imhabitants of the village, the Sanitary Committee may utilize, as far as available, the voluntary labour of the village and the services of village servants placed at its command under section 42; and when these means are insufficient, may from time to time employ such servants and authorize such expenditure as may be necessary for the purpose aforesaid.

Sanitary Committee may levy a rate on open-air stalls.

17. The Sanitary Committee may levy a rate on open air stalls in the village and the amount so recovered shall form part of the Sanitary Committee fund under section 30D.

Necessary moneys for expenditure may be raised by voluntary subscription or by a rate on the inhabitants.

18. Any sum of money of which the expenditure is authorized by the Sanitary Committee may be raised by voluntary subscription or levied under section 17 or may be recovered by a rate fixed with the approval of the Collector and assessed by the Sanitary Committee on the inhabitants of the village if the same is not available from any other source:

Provided that—

(1) the aggregate amount to be recovered by such rate from the inhabitants of any village in any year shall not except with the permission of the Collector (for reasons to be recorded by him) exceed one-half of the aggregate amount leviable in that year as local fund cess from such village;

(2) the amount assessed on any inhabitant of such village shall be subject to appeal to the Collector within thirty days of the said inhabitant being notified thereof and the Collector's decision shall be final.

Sanitary Committee to prepare annually a statement of income and expenditure.

18A. The Sanitary Committee shall prepare annually a budget statement showing the estimated income and expenditure for the next year and submit it before the end of January to the Collector for approval. Such budget shall be approved with or without modifications by the Collector before the end of March. The Sanitary Committee may incur expenditure within the budget so approved, but if any further expenditure not included in the budget is required, the previous sanction of the Collector shall be obtained thereto by the Committee.

PART III.—SANITARY BOARDS.

Constitution of Sanitary Boards.

19. (1) There shall be a Sanitary Board in every village to which this Part is extended, or one such board for a group of two or more such villages, as the Collector may direct. Each such board shall consist of such number of members not less than seven as may be determined by the Collector, of whom not less than two-thirds shall be elected : provided that there shall be one elected member for every fifty houses within the area of the Board's authority. The remaining members (to be called "nominfited members") shall be appointed by the Collector and shall ordinarily include police patels.

(2) No person may be a member of the Board who is less than 21 years of age and who does not possess the qualifications of an elector.

(3) Every person, whether male or female, not being less than 18 years of age and being resident within the area which is to be subject to the Board's authority and occupying as owner or part owner or tenant or sub-tenant a building or other immoveable property therein and not otherwise disqualified under the rules made by the Collector in this behalf, shall be entitled to vote at an election of the Board.

(4) The election shall take place at a meeting to be convened for this purpose by the Mamlatdar on such date and at such time and place within the area concerned as he may fix in this behalf. A notice of such meeting together with a list of persons eligible to vote at it shall be posted at the chavdi at least fifteen days before the date of the election.

(5) The election shall be by show by hands, or, if the Collector so directs, by ballot. All questions relating to procedure for the election and the qualifications of electors shall be decided by the Mamlatdar in accordance with rules made in this behalf and his orders shall be subject to an appeal to the Collector, whose decision shall be final.

(6) The term of office of members of the Board shall be three years, but every member shall be eligible for re-election or re-nomination.

(7) The Board shall elect annually one of themselves to be the president :

Provided that he shall be removeable from office as president for misconduct either by the vote of two-thirds of the whole number of members of the Board, subject to the approval of the Collector, or by the Collector as provided in section 32.

(8) Each meeting of the Board shall be presided over by the president. In the absence of the president a meeting of the Board shall be presided over by such one of the members present as may be chosen by the meeting to be chairman for the occasion.

(9) The procedure at a meeting of the Board shall be in accordance with the rules made by the Collector in this behalf.

Sanitary Board may make rules.

20. The Sanitary Board may from time to time make rules, with the approval of the Collector, and, save as hereinafter provided, shall discharge functions and exercise authority for the area subject to its authority in respect of the same matters, in the same manner, and subject to like provisions, restrictions and conditions as are hereinbefore enacted in the case of a Sanitary Committee.

Appointment of Sanitary Inspector and other officers.

21. (1) The Sanitary Board may, from time to time, with the sanction of the Collector appoint a Sanitary Inspector for any area or any part of the area subject to the authority of the Board and determine his salary. It may also with the like sanction dismiss or suspend him.

(2) Such Sanitary Inspector may be a person employed by the Taluka or District Local Board having authority at the place. He may be employed by or on behalf of two or more Sanitary Boards.

(3) The Sanitary Board may, in addition to the Sanitary Inspector, appoint such other subordinates as shall appear necessary and determine the amount of the salary to be paid to each. It may also dismiss or suspend the said subordinates.

Duties of the Sanitary Inspector.

22. (1) The Sanitary Inspector shall take measures for preventing breaches of the rules in force in the area for which he is appointed, by, from time to time—

(*a*) posting up and otherwise publishing a general admonition respecting the observance of the said rules ; or

(*b*) admonishing any person whom he finds offending against any of the said rules ; or

(*c*) summoning to appear before the Sanitary Board any person who, from his own observation or from reports made to him by his subordinates, he has reason to think should be prosecuted for offending against any of the said rules.

(2) The Sanitary Inspector shall make such reports and be in such relation to the Sanitary Commissioner, consistent with the duties and obligations imposed on him by this Act or arising out of his position as a servant of a Local or Sanitary Board, as Government may prescribe.

Prosecutions at instance of the Board for breaches of rules.

23. The Board may also by notice in writing require the attendance before the Board of any person who is accused of having committed, or who, to the knowledge of the Board, has apparently committed, a breach of any rule made by the Board under section 20.

Cognizance by the Board of offences against the rules.

24. (1) All offences against the rules made by the Board under section 20 shall be cognizable by the Board, who, for the purpose of exercising this jurisdiction shall assemble as often as shall be necessary or as the Magistrate of the district shall direct,

at some convenient place within or near to the area subject to its authority.

(2) The provisions of sub-section (3) of section 14 and of section 15 shall apply, as nearly as may be, to the hearing and decision of cases under this section by a Sanitary Board and to appeals by persons convicted by such Board.

Sanitary Board's orders by whom to be carried out.

25. (1) The orders of every Sanitary Board shall be carried out and its orders and proceedings shall be recorded in the prescribed manner and preserved by such member of the Board or by such officer of the Board or by such other officer as the Collector may from time to time nominate in this behalf.

(2) The person authorised in this behalf shall be bound to keep a true record of the Board's proceedings and orders, under his signature, and truly to prepare all summonses, notices and orders issuing by direction of the Board or of any member thereof in accordance with this Act or with rules made under section 20.

26. (*Repealed by Bom. XXV of 1931, s. 8.*)

Works and buildings which may be provided by a Sanitary Board.

27. Every Sanitary Board may cause to be constructed such works and buildings as shall be necessary for providing for the area subject to its authority or any part thereof—

(*a*) an adequate supply of water ;

(*b*) proper and convenient places for the temporary deposit or final disposal of sweepings, dust, ashes, refuse, rubbish, carcasses of dead animals and other offensive or noxious matter ;

(*c*) means for conveying away or removing the several matters and things specified in clause (*a*).

Sanitary Board may raise funds by voluntary subscription.

28. The Sanitary Board may, by voluntary subscription, raise any sum of money for any of the purposes of the Board under this Act. Such sum shall form part of the Sanitary Board fund under section 30D and shall be expended by the Sanitary Board within the area subject to its authority and for the purposes of this Act.

Purposes for which expenditure is to be incurred by Sanitary Board.

29. Every Sanitary Board shall be bound to provide for, or authorize the expenditure necessary for—

(*a*) paying the salaries of the Sanitary Inspector and other officers, if any, appointed under section 21 ; and

(*b*) providing stationery and other requisites for the use of the Board and of the said Sanitary Inspector and other officers, if any ; and

(*c*) fulfilling any contract entered into by it under sectio 30C, and

(*d*) constructing necessary works and buildings under section 27.

Sanitary Board's ways and means.

30. (1) A debit and credit account shall be kept by the Sanitary Board in such form as may be prescribed by the Collector. To the debit of such account shall be placed all expenditure authorizedly incurred under the provisions of this Act. To its credit shall be placed all sums raised by voluntary subscription under section 23, all sums rea-

lized from any other source for meeting the Board's expenditure, and the net proceeds of any rate assessed as hereinafter provided.

(2) The Board shall also prepare and submit to the district local board annual returns of its accounts on or before such date and in such form as may be prescribed by the Collector.

(3) For the purpose of raising any money required for expenditure by a Sanitary Board under the Act, the Board may, subject to rules made in this behalf by the Collector, fix and assess a rate on the inhabitants of the area or any part of the area subject to its authority:

Provided that—

(1) the aggregate amount to be so recovered in any year from the inhabitants of any area subject to its authority shall not, except with the permission of the Collector (for reasons to be recorded by him), exceed one-half of the aggregate amount leviable in that year as local fund cess from the inhabitants of such area;

(2) the amount assessed on any inhabitant of such area shall be subject to appeal to the Collector within thirty days of the said inhabitant being notified thereof and the Collector's decision shall be final.

PART IV.—GENERAL PROVISIONS.

Incoporation of Sanitary Committees and Sanitary Boards.

30A. Every Sanitary Committee and every Sanitary Board shall be a body corporate by the name of 'The Sanitary Committee of.....' or 'The Sanitary Board of.....' as the case may be, and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name.

Power to acquire, hold and transfer property.

30B. (1) A Sanitary Committee or a Sanitary Board may acquire and hold property, both moveable and immoveable, whether within or without the limits of the village or villages subject to its authority.

Property vested in Sanitary Committee or Sanitary Board.

(2) All property of the nature hereinafter in this sub-section specified may be transferred to or vested in the Committee or the Board exercising authority in the village in which such porperty is situate, either by the Government or by an officer appointed by the Government in this behalf or by the district or taluka local board to which it belongs or in which it vests; and on such transfer the said property shall be deemed always to have so vested and shall, together with all other property, of what nature or kind soever acquired by it and every work constructed by it at its own cost, be under the direction, management and control of the said Committee or Board and shall be held and applied by it as a trustee, subject to the provisions and for the purposes of this Act; that is to say—

(*a*) public markets, slaughter houses, manure and night-soil depots, places used by the public for the purposes of erecting temporary stalls or generally for the purpose of carrying on any trade or business, and all public-buildings of every description;

(*b*) public streams, springs, pools, tanks, ponds, wells, cisterns, reservoirs, acqueducts, conduits, pipes, pumps and all other water

works for the supply, storage or distribution of water for public purposes, and all buildings, bridges, engines, works, materials and things connected with or appertaining to such water works;

(*c*) public sewers, drains, cess-pools, incinerators, water-courses, culverts, tunnels and all works, materials and things appertaining thereto;

(*d*) public bathing ghats and recreation grounds;

(*e*) public lamps, lamp-posts and apparatus connected therewith or appertaining thereto;

(*f*) public streets and the pavements, stones and other materials thereof, and all trees, erections, implements, and things existing on or appeartaining to such streets; and

(*g*) land or other property transferred to the Committee on the Board by gift, purchase or othsrwise for local public purposes.

Mode of executing contracts,

30C. (1) Subject to the provisions of this Act every Sanitary Committee and every Sanitary Board shall be competent by a resolution duly recorded to lease, sell or otherwise transfer any moveable or immoveable property which may, for the purposes of this Act, have become vested in or been acquired by it; and, so far as is not inconsistent with the provisions and purposes of this Act, to enter into and perform all such contracts and do all such other things as it may consider necessary for the purposes of this Act:

Provided that no contract involving an expenditure exceeding one hundred rupees or purchase of immoveable property (involving similar expenditure) shall be made without the previous sanction of the Collector:

Provided further that in the case of every lease of immoveable property for a term exceeding three years, and of every sale or other transfer of such property, the previous sanction of the Collector is required.

(2) Every contract which under the law for the time being in force is required to be in writing shall be signed, in the case of a Committee, by the chairman, or in the case of a Board, by the President, and shall be sealed with the common seal of the Committee or Board.

Sanitary Committee or Sanitary Board fund.

30D. All moneys received by or on behalf of a Sanitary Committee or a Sanitary Board by virtue of this or any other Act; all rates, fines, fees and penalties paid to or levied by it on its behalf under this Act; all proceeds of land or other property sold by a Sanitary Committee or a Sanitary Board and all rents accruing from its land or other property; and all interest, profits and other moneys accruing by gifts or transfers from the Government or private individuals or otherwise, shall constitute the Sanitary Committee or Sanitary Board fund and shall be held and applied by it as a trustee, subject to the provisions and for the purposes of this Act.

Property and funds of Sanitary Committee or Sanitary Board how to be applied.

30E. All property vested in a Sanitary Committee or a Sanitary Board under this Act, and all funds received by it or on its behalf in accordance with the provisions of this Act, and all sums accruing to it under the provisions of any law for the time being in force, shall be held and applied, subject

to the provisions and for the purposes of this Act, within the limits of the area for which the Sanitary Committee or Sanitary Board is constituted :

Provided that it shall be lawful for a Sanitary Committee or a Sanitary Board, with the sanction of the Collector, to incur expenditure beyond the said limits, for the construction, maintenance or repairs of works for the benefit of the persons residing within the said limits :

Provided further that it shall be lawful for the Sanitary Committee or Sanitary Board, with the like sanction, out of any unappropriated balance of money standing to its credit, to make such contribution on such terms as it shall deem expedient to the cost of any work under construction by a local board in fulfilment of the duties imposed on it by section 50 of the Bombay Local Boards Act, 1923.

Power to deposit and invest surplus funds.

30F. (1) It shall be lawful for a Sanitary Committee or a Sanitary Board to deposit with such bank as may be approved by the Collector any surplus funds in its hands which may not be required for current charges, and to invest such funds in public securities as defined in clause (18) of section 3 of the Bombay District Municipal Act, 1901, in the name of the Sanitary Committee or Sanitary Board, and, from time to time, to dispose of such securities as may be necessary.

(2) All surplus funds over and above what may be required for current expenses shall, unless deposited or invested as provided for in sub-section (1), be deposited in the Local Government treasury or in such other place of security as may be sanctioned for this purpose in the rules of the Sanitary Committee or Sanitary Board.

Vesting of property and rights of a Sanitary Committee or Sanitary Board ceasing to exist or to have jurisdiction.

30G. When a Sanitary Committee or a Sanitary Board ceases to exist or to have jurisdiction over any area subject to its authority, the property and rights vested in such Committee or Board under this Act shall, subject to all charges and liabilities affecting the same, vest in the taluka local board of the taluka in which the area over which such Committee or Board ceases to have jurisdiction is situate :

Provided that such property as may have been transferred to or vested in such Committee or Board either by the Government or by the district local board shall, on such cessation, revert to the Government or the district local board, as the case may be.

Certain Government officers to advise Sanitary Committees and Boards.

31. The Executive Engineer of the district and any subordinate of the Executive Engineer, of the Sanitary Commissioner or of a Local Board, having authority at the place, whom the Collector may appoint generally or specially in this behalf shall have, in relation to a Sanitary Committee or Board, such rights and duties as are assigned to certain officers in relation to Local Boards by sub-section (1) of section 40 of the Bombay Local Boards Act, 1923.

Removal from office of member etc., of Sanitary Committees and Boards.

32. The Collector after giving the person concerned an opportunity of being heard and after recording his reasons may remove from office any member or chairman of a Sanitary Committee and, with the sanction of the Commissioner any member or

president of a Sanitary Board, who appears to be incompetent or who has been guilty of any misconduct or neglect of duty which appears to render his removal expedient.

Filling up of vacancies.

83. (1) Whenever for any reason a vacancy occurs or is about or occur in the office of a member or chairman of a Sanitary Committee, or of a member or president of a Sanitary Board, the Collector shall without delay appoint a person to fill such vacancy.

(2) During any such vacancy the continuing members of a Sanitary Committee or Board may act as if no vacancy had occurred.

Questions to be decided by majorities.

34. Every question which comes before a Sanitary Committee or Board for decision shall be decided by a majority of votes of the members present and voting at a prescribed meeting of such committee or board or at a meeting thereof assembled by direction of the Collector or otherwise after notice duly issued to all the members, the member who presides having a second or casting vote when there is an equality of votes.

Signing of summonses, etc.

35. Summonses, notices and orders issued by a Sanitary Committee or Board or with its authority may be signed on behalf of the committee or board by the member presiding at any meeting of such committee or board.

Punishment for breach of rule made under this Act.

36. A breach of any rule made by a Sanitary Committee or Board under this Act in respect of any matter other than the matters specified in clauses (*a*) and (*b*) of section 11 shall be punishable, unless in any case a smaller maximum punishment is prescribed by the said rules, with fine which may extend to ten rupees and in default, with confinement in the chavdi for a period which may extend to forty-eight hours and, in the case of a continuing breach, with fine which may extend to two rupees for every day after conviction for the first breach or after receipt of the notice from the committee or board or from the Sanitary Inspector, to discontinue the breach, during which the breach continues and, in default, with confinement as aforesaid.

Order for levy of fines.

37. (1) A Sanitary Committee or Board may allow to a person sentenced to pay a fine such time not exceeding four days as it may think proper for payament of the fine, on such terms as to security as it shall seem to the committee or board necessary to impose.

(2) Whenever default is made in the payment of a fine, the Sanitary Committee or Board, which passed the sentence or on appeal from whose decision the sentence was passed, may in its discretion by written order direct the levy of the amount, although the sentence directs that in default of payment of the fine, the offender shall be confined and the offender is or has been confined.

Levy of fines and rates.

38. All fines for the levy of which an order has been issued as aforesaid, all sums assessed on account of any rate under this Act, which are not paid after reasonable notice, shall be leviable by the patel or by such other person as the Collector or the Sanitary Committee or

Board, with the Collector's sanction, appoints in that behalf, by distress and sale of any moveable property of the person liable therefor subject to such exceptions as are enacted in the Code of Civil Procedure in respect of the sale of moveable property in execution of decrees.

39. *Repealed by Bom. XXV of 1931.*

Contributions and loans from local boards.

40. (1) Any district or taluka local board may from time to time assign, by way of donation or loan, to the Sanitary Committee or Board of any village or group of villages in the area subject to its authority, for expenditure on any purpose contemplated by this Act, such sum out of the portion of the local fund at its disposal as it shall think proper.

(2) But no sum shall be so assigned by way of loan, without the sanction of the Collector, and every sum assigned by way of loan with such sanction shall be recoverable by the Collector in such instalments of interest and of principal as shall be agreed upon between the parties, by a rate charged and assessed with the approval of the Collector by the Sanitary Committee or Board, upon the inhabitants of the area subject to the authority of such Committee or Board.

Execution of works in which two or more Sanitary Committees or Boards are jointly interested.

41. (1) Works for the supply of water or for the drainage of two or more villages subject to the authority of different Sanitary Committees or Boards and any other work or measure conducive to the common health or comfort of two or more such villages may, upon request made, with the approval of the Collector, by all such Committees and Boards or by a majority of them, be executed by or under the direction of the Collector or of such other officer as the Commissioner may appoint in this behalf.

Recovery of cost of such works.

(2) The cost of any such work or measure shall be divided between the several Committees and Boards in such proportions as shall be agreed upon by them, or, in default of such agreement, as the Collector shall determine; and shall be recoverable in the said proportions by a rate charged and assessed with the approval of the Collector by each Committee and Board, upon the inhabitants of the areas subject respectively to the said Committee's and Board's authority, subject to the same limit as is provided by section 18, clause (2), in respect of rates charged under section 18, clause (1).

Abandonment of a work proposed to be undertaken by a Sanitary Committee or board in favour of a work to be undertaken by a Local Board.

(3) Where any work undertaken or proposed by a Committee or Board constituted under this Act shall be such as to interfere with or materially affect any work undertaken or proposed by a District or Taluka Board, such latter Board may require the Sanitary Committee or Board to desist from such work as aforesaid, and it shall thereupon be the duty of the District or Taluka Local Board to make reasonable provision, within reasonable time, for supplying to the area under the authority of the Sanitary Committee or Board, such means of health, cleanliness and decency, or means equivalent thereto, as would have

been furnished by the work abandoned in consequence of such requisition as aforesaid.

Local Boards may call for information in such cases.

(4) For the purpose of obtaining information as to any work intended or in course of construction, to which the provisions of the preceding clause may apply, it shall be lawful for the Taluka or District Local Board to call for such report from the Sanitary Committee or Board, through the Collector, as shall be necessary and reasonable and to cause such inspection and report to be made by any person in its employment, as it shall deem necessary in this behalf, and it shall be the duty of the sanitary Committee or Board concerned to comply with such requisition and to give reasonable aid and furtherance to any inspection ordered as aforesaid.

Certain village servants to be placed under command of Sanitary Committee or Board.

42. Village-servants who hold land, profits of land or other emoluments by way of remuneration, wholly or partly, for services consisting in or connected with cleansing or conservancy may, as to such services, be placed by the Collector, subject to the control of the Commissioner under the command and superintendence of the Sanitary Committee or Board having authority in the place in respect of which the said servies are due and shall be bound to fulfil all reasonable orders of the said Committee or Board under such reasonable penalties as may be provided in any rule made unner this Act.

Determination and recovery of dues of village-servants placed under command of Sanitary Committee or Board.

43. (1) The Collector shall—

(*a*) determine all questions as to the amount of any payment at any time by custom or under any settlement mentioned in section 18, 19 or 20 of the Bombay Hereditary Offices Act due to a village-servant placed under the command of a Sanitary Committee or Board under the last preceding section; and

(*b*) if necessary, cause the amount which he determines to be due or the money value thereof at the market-rate of the time being, if the due is payable in kind, to be recovered on behalf of the village-servant entitled thereto, free of charge, as if the same were an arrear of land-revenue:

(2) Provided that the Collector may decline to cause such recovery to be made on behalf of any servant, if, in his opinion, the duty in respect of which the payment is due has not been duly preformed by such servant.

Collector's functions under this Act may be delegated.

44. Any power conferred or duty imposed by this Act upon the Collector may be delegated by him to an Assistant or Deputy Collector.

Collectors, Magistrates, & other public servants subject to usual control in the exercise of their authority.

45. In the discharge of the duties and the exercise of authority assigned to them by this Act, Collectors, Magistrates and other public servants shall be subject to the like control as in the discharge of their ordinary functions.

Indemnity of persons acting in good faith under this Act.

46. (1) No Magistrate, Collector, president, or member of a Sanitary Committee or Board, or Sanitary Inspector shall be liable to any penalty or to payment of damages for any act by him done in good faith

in pursuance or intended pursuance of any authority or duty conferred or imposed upon him by this Act.

(2) And no public servant or person duly authorized or appointed shall be liable as aforesaid for giving effect in good faith to any order or direction issued with apparent authority by a person empowered in that behalf under this Act or under any rule made hereunder.

SCHEDULE.

(*See* Section 3.)

No. and year of enactment.	Subject or title.	Extent of repeal
Bom. Act VII of 1867.	The Bombay District Police Act, 1867.	Sections 33 and 34.
Bom. Act VIII of 1867.	The Bombay Village Police Act, 1867.	Clauses 2, 3 and 4 (except the first two and the last thirteen words) and 5 of section 16.

BOMBAY WEIGHTS AND MEASURES ACT, 1932

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SCHEDULES

Bombay Weights & Measures Act, 1932

Bom. Act No. XV of 1932

(As amended by the Bombay Weights and Measures (Amendment) Acts IX and XXXIII of 1935 and XXII of 1936.)

[*1st December 1932.*

An Act to fix a scale of standard weights and measures for the presidency of Bombay.

WHEREAS it is expedient to fix a scale of standard weights and measures for the presidency of Bombay and to provide for the adoption of the same in specified areas in the said presidency; And whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act and the previous sanction of the Governor required by section 80C of the said Act have been obtained for the passing of this Act ; it is hereby enacted as follows :--

PART 1—PRELIMINARY

Short title.

1. This Act may be called the Bombay Weights and Measures Act, 1932.

Extent and commencement.

2. (1) This Act shall apply to the whole of the presidency of Bombay.

(2) Part I shall come into force at once. Government may, by notification in the *Bombay Government Gazette*, direct that Parts II, III, V and VI shall come into force in any district or municipal area on a date to be specified in such notification.

(3) When Government has directed that Parts II, III, V and VI shall come into force in any district or municipal area under sub-section (2), Part IV shall come into force in such district or municipal area three months after the date specified in the notification.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Inspector" means an inspector of weights and measures and weighing or measuring instruments appointed under section 19 ;

(2) "Measuring instrument" includes any instrument for the measurement of length, area, capacity or volume ;

(3) "Mint" means His Majesty's Mint, Bombay ;

(4) "Mint Master" means the officer appointed for the time being to be the Master of the Mint, Bombay ;

(5) "Prescribed" with its grammatical variations means prescribed by rules or regulations made under this Act ;

(6) "Primary standards" mean the weights and measures prepared and stamped under section 5 ;

(7) "Rules" and "regulations" mean the rules and regulations made under section 41 and section 42, respectively;

(8) "Secondary standards" mean the weights and measures prepared and stamped under section 7;

(9) The expression "verification" or "re-verification" with its grammatical variations, used with reference to a weight or measure or weighing or measuring instrument, includes the process of comparing, checking or testing such weight or measure or weighing or measuring instrument;

(10) "Weighing instrument" includes scales, with the weights belonging thereto, scale beams, balances, spring balances, steel-yards, weighing machines, and other instruments for weighing;and

(11) "Working standards" mean the weights and measures provided under section 9.

PART II.

STANDARDS OF WEIGHTS AND MEASURES

Standard weights and measures.

4. (1) The weights and measures including the multiples and sub-multiples thereof described in the first schedule shall be the weights and measures authorised to be used in every place in which this part has come into force. These weights and measures are called standard weights and measures for the purposes of this Act.

[1] "(2) Notwithstanding anything contained in sub-section (1), Government may, after previous publication by notification in the *Bombay Government Gazette*, declare, either generally or for any trade or class of trades—

(*a*) any other multiple or sub-multiple of a weight or measure specified in the First Schedule, or

(*b*) any other weight or measure, or any multiple or sub-multiple thereof,

to be a weight or measure authorised to be used in any place in which this Part has come into force.

The weight, measure, muliple or sub-multiple shall, to the extent so declared, be deemed to be a standard weight or measure for the purposes of this Act."[1]

Primary Standards.

5. For the purpose of verifying the secondary standards, such standard weights and measures as Government may direct shall be prepared by the Mint Master or by such other person as may be approved by Government. They shall be made of such material, weight, length, form and specifications and in such manner as

[1-1] Sub-section (2) was added by Bom. Act XXXIII of 1935.

may be determined by Government by notification in the *Bombay Government Gazette*. They shall be stamped with the stamp of the Mint or in such other manner as Government may approve. The standard weights and measures so prepared and stamped shall be called Primary Standards.

Note.—This section is printed as amended by Bom. Act IX of 1935.

Custody of primary standards.

6. The primary standards shall be kept in the custody of such officer in the City of Bombay as Government may direct. They shall, once at least in every period of five years, be verified, and if necessary, adjusted or renewed, at the Mint in such manner and by such officer as Government may direct.

Secondary Standards.

7. For the purpose of verifying the working standards and weights and measures in use in any area, such standard weights and measures as Government may direct, shall be prepared by the Mint Master, or by such other person as may be approved by Government. They shall be made of such material, weight, length, form and specifications and in such manner as may be prescribed and shall be stamped with the stamp of the Mint or in such other manner as Government may approve. The standard weights and measures so prepared and stamped shall be called Secondary Standards.

Note.—This section is printed as amended by Bom. Act IX of 1935.

Custody and verification of secondary standards.

8. (1) The Secondary standards shall be kept—

(i) in the City of Bombay by such officer and at such place as Government may direct;

(ii) elsewhere by the Collectors in the Government treasuries at the headquarter towns of their respective districts and at such other town or place within their respective districts as Government may direct.

(2) Government may direct any municipality or district local board to keep the secondary standards at such places, in such custody and in such manner as may be prescribed.

(3) Once at least in every period of five years such secondary standards shall be verified with the primary standards and shall be adjusted or renewed, if necessary, and shall be marked with the date of verification, in the prescribed manner by such officer as Government may direct.

(4) A secondary standard which is not so verified, adjusted or renewed and marked within the aforesaid period shall not be deemed legal and shall not be used for the purposes of this Act.

9. (1) For the purpose of verifying weights and measures in use in any area, Government may provide such standard weights and measures as it thinks fit, to be working standards. They shall be made of such material, weight, length, form and according to such specifications and shall be prepared by such agency and shall be stamped by such person and in such manner as may be prescribed. When they are not prepared at the Mint, they shall be verified with the secondary standards before being stamped.

Working standards.

(2) The working standards shall be kept by such officers and such municipalities and local boards as Government may direct, at such places, in such custody and in such manner as may be prescribed.

(3) A working standard shall be verified or re-verified and marked by such person, at such place in such manner, as may be prescribed.

(4) A working standard shall not be deemed legal, or be used for the purposes of this Act, unless it has been verified or re-verified and marked in the prescribed manner within such period as may be prescribed before the time at which it is used.

A working standard which has become defective shall not be legal, or be used for the purposes of this Act, until it has been re-verified and marked in the prescribed manner.

10. Weighing and measuring instruments stamped in the manner prescribed by such officer as Government may direct shall be kept at all places where secondary standards or working standards are kept. Such instruments shall be of such kind, kept in such number and shall be verified, adjusted or renewed in such manner as may be prescribed.

Weighing and measuring instruments.

Note.—This section provides for the keeping of weighing and measuring instruments at important centres. When the accuracy of weighing and measuring instruments is verified, they should be stamped in the prescribed manner in token of such verification. The provision has, therefore, been made to this effect in this section.

11. Where Government has directed a municipality or local board to keep the secondary standards under sub-section (2) of section 8, the working standards under sub-section (2) of section 9 and weighing or measuring instruments under section 10, the municipality or local board so directed, as the case may be, shall provide and maintain the said secondary standards, working standards or weighing or measuring instruments.

Duty of certain municipalities and local bords to provide and maintain secondary standards, etc.

Prohibition of weights and measures other than standard weights and measures.

12. (1) Subject to ths provisions of section 46, and notwithstanding anything contained in any law for the time being in force, all dealings or contracts, had or made in any area after this Part shall have come into force in the said area for any work to be done or goods to be sold or delivered by weight or measure, shall be deemed to be had or made according to one of the standard weights or measures or to multiples [1] "or sub-multiples" thereof and it shall not be lawful to use any other weight or measure in relation to any such dealing or contract.

(2) Any dealing or contract had or made in contravention of the provisions of sub-section (1) so far as it contravenes the said provisions shall be void unless it is proved that such dealing or contract was had or made without intention to contravene the said provisions.

Explanation.—Unless there is anything repugnant in the subject or context, a dealing or contract is hereinafter called "trade."

Note.—This section contains a provision of fundamental importance. It prohibits the use of any weight or measure other than the standard weight or measure in any area in which the Act would be in operation. It further provides than any contract or dealing not made according to the standard weights and measures will be void (*Statement of Objects and Reasons*).

PART III

VERIFICATION AND STAMPING OF WEIGHTS AND MEASURES.

Stamping.

13. Every weight which conforms to provisions of this Act and the rules and regulations except where the small size of the weight renders it impracticable, shall have the denomination thereof stamped on the top or side thereof in legible figures and letters. Every measure of length, area, capacity or volume, which conforms to the provisions of this Act and the rules and regulations shall have the denomination thereof stamped on the outside of such measure in legible figures and letters. A weight or measure which does not conform to the provisions of this section shall not be stamped in accordance with the provisions of this Act and the rules and regulations.

Stamping and verification of weights and measures

14. (1) No weight or measure shall be used for trade unless it has been verified or re-verified in the prescribed manner and stamped by an inspector with a stamp of verification under this Act.

(2) Government may prescribe the amount of error to be tolerated in weights or measures or weighing or measuring instruments used for trade.

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[1]—The words "or sub-multiples" were inserted by Bom. Act XXXIII of 1935, s. 3

Use of weighing or measuring instrument not verified and stamped prohibited.

15. No weighing or measuring instrument shall be used for trade unless it has been verified or re-verified within the period fixed and stamped in the prescribed manner by an inspector with a stamp of verification.

Sale or delivery of weight, measure, weighing or measuring instrument not verified and stamped prohibited.

16. No. weight or measure or weighing or measuring instrument shall be sold or delivered unless it has been verified or re-verified and stamped in the prescribed manner by an inspector with a stamp of verification.

Note.—This section constitutes a very statutory check on the circulation of spurious weights or measures or weighing or measuring instruments if a provision is made that no such weight or measure or weighing or measuring instrument is sold or delivered unless it is verified and stamped by an inspector in the prescribed manner (*Report of the Select Committee*).

Empowering municipalities and district local boards to stamp weights, etc.

17. Government may empower any municipality or district local board authorised under this Act to keep secondary or working standards or both to stamp weights and measures and weighing or measuring instruments.

Note—This section is printed as amended by Bom. Act IX of 1935, s. 4.

Provision of means of verification and stamping

18. Government shall provide proper and sufficient means for verifying, adjusting and stamping weights and measures and weighing or measuring instruments in the City of Bombay, in all head-quarter towns in the districts and at such other places as Government may determine:

Provided that municipalities and district local boards authorised to keep secondary and working standards under this Act shall also provide proper and sufficient means for verifying, adjusting, marking and, if empowered under section 17, for stamping weights and measures and weighing or measuring instruments at such places within their respective limits, as Government may determine.

Appointment of inspectors of weights and measures.

19. (1) Government shall appoint a sufficient number of persons with prescribed qualifications as inspectors for keeping the secondary and working standards in safe and proper custody and for the discharge of the other duties of inspectors under this Act and the rules and regulations.

(2) A municipality or a disirict local board authorised under this Act to keep [1] secondary or working standards or both[1] shall also appoint a sufficient number of persons with prescribed qualifications as inspectors for the purpose of performing the duties of inspectors specified in sub-section (1).

(3) The number and scale of pay of inspectors appointed under sub-section (2) shall, except in the case of inspectors appointed by the Municipal Corporation of the City of Bombay, be subject to the approval of Government.

Inspectors to enter into recognizance.

20. Every inspector shall forthwith on his appointment enter into a recognizance with Government or the municipality or district local board, as the case may be, in such sum as may be prescribed for the due performance of the duties of his office, for the due payment, at the time and in the manner required by the authority appointing him, of all moneys received by him under this Act and for the safety of the secondary and working standards and the stamps and appliances for verification committed to his charge and for their due surrender immediately on ceasing to hold office.

Verification and stamping by inspectors.

21. (1) Every inspector shall, for the purposes of the verification of weights and measures and weighing or measuring instruments, attend at such time and place within his jurisdiction as may be appointed in this behalf by the authority appointing him.

(2) He shall verify every weight or measure or weighing or measuring instrument which is brought to him for the purpose of verification or re-verification. If he finds such weight or measure or weighing or measuring instrument correct, he shall, if he is an inspector appointed by Government or by a municipality or district local board, empowered under section 17, stamp the same with a stamp of verification in the prescribed manner. If such inspector is one appointed by a municipality or district local board, not empowered to stamp under section 17, he shall, after such verification, refer the matter to the nearest inspector appointed by Government for such action as he deems fit.

(3) It shall be competent to Government to empower an officer to inspect the work of stamping done by an inspector appointed by a municipality or district local board within the area under his charge.

Sub-section (2).—If an inspector appointed by a municipality or local board not empowered to stamp under section 1 finds any weight or measure or

[1-1] These words were substituted for the original words "secondary and working standards" by Bom, IX of 1935, s. 5.

weighing or measaring instrument incorrect, he should refer the matter to the nearest inspector appointed by Government for sanction as he deems fit.

Power to inspect weights, etc., and to enter shops, etc., for that purpose.

22. (1) Every inspector authorised in writing in this behalf by the authority appointing him may, at all reasonable times, inspect all weights and measures and weighing or measuring instruments, within the area uuder his charge, which are used or are in the possession of any person or are on any premises for use for trade and may verify every such weight or measure or weighing or measuring instrument with a secondary or working standard or a weighing or measuring instrument prescribed for this purpose.

(2) Such inspector may seize and detain any weight or measure or weighing or measuring instrument regarding which an offence under this Act appears to have been committed or which appears to have been or which may be used for the commission of such offence.

(3) For the purpose of such inspection, the inspector may at all reasonable times enter into any place where weights and measures and weighing or measuring instruments are used or kept for purpose of trade and inspect such weights and measures and weighing or measuring instruments.

Inspector not to be maker, seller or adjuster of weights and measures or weighing or measuring instruments.

23. An inspector shall not, during the time he holds office, derive any profit from or be employed in the making, adjusting, or selling of weights or measures or weighing or measuring instruments:

Provided that in any area in which it appears to Government desirable that an inspector should be allowed to adjust weights or measures or weighing or measuring instruments, Government may, if it thinks fit, authorise such inspector to adjust weights, measures or such instruments accordingly.

Inspectors to be public servants.

24. Every inspector appointed by a municipality or district local board under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Government or municipality or district local board may determine difference.

25. (1) If any difference arises between an inspector and any person interested as to the meaning or construction of any rule or regulation or as to the method of verifying, adjusting or stamping any weight or measure or weighing or measuring instrument, such difference may, at the request of the party interested or by the inspector of his own accord be referred to such officer as Government may direct or to

the municipality or district local board, as the case may be, and the decision of such officer or the municipality or district local board shall, subject to the provisions of sub-section (2), be final.

(2) An appeal shall lie within the time prescribed from the decision under sub-section (1) to Government or such officer as Government may appoint in this behalf. The decision of Government or such officer under this sub-section shall be final.

Sub-section (2).—Sub-section (2) provides for an appeal from the decision of the officer referred to in sub-clause (1) to lie to Government or to such officer as Government may appoint and the decision of Government or such officer shall be final.

Expenses of municipality and district local board.

26. Notwithstanding anything contained in any enactment in regard to any municipal or local fund, all expenses incurred by a municipality or district local board under and for the purposes of this Act and the rules and regulations may be paid out of the municipal or local fund.

Levy of fees.

27. (1) Government and with the previous sanction of Government, a municipality or district local board [1]"directed under sub-section (2) of section 8 or section 9 to keep secondary or working standards"[1] shall charge such fees for the verification, re-verification, marking, adjustment and stamping of weights or measures or weighing or measuring instruments as may be prescribed.

(2) There shall be credited annually to Government—

(i) in the case of the Municipal Corporation of the City of Bombay, the Municipality of Karachi and municipalities governed by the Bombay Municipal Boroughs Act, 1925, half of the fees levied under this section; and

(ii) in the case of municipalities governed by the Bombay District Municipal Act, 1901, other than the Municipality of Karachi and district local boards, the balance of the fees levied under this section, after deducting—

(*a*) in such number of equal annual instalments as may be directed by Government, the expenses incurred by the said municipalities or local boards as the case may be in providing and maintaining secondary standards, working standards or weighing or measuring instruments under section 11 and

(*b*) all necessary recurring expenditure of the said municipalities or local boards as the case may be under this Act.

[1—1] These words were substituted for the original words "authorised under section 17 or 18" by Bom. Act XXII of 1936, s. 2.

Note.—This amendment shall be deemed to have been made on and to have had effect from 1st December 1932.

(3) The municipalities and local boards mentioned in clause (ii) of sub-section (2) shall forward to Government a quarterly statement of expenditure incurred by them under this Act.

Power of municipalities and district local boards to combine for the purposes of the Act.

28. (1) With the sanction of Government any two or more municipalities or district local boards may combine, as regards either the whole or any part of the area within their jurisdiction for all or any of the purposes of this Act upon such terms and in such manner as may be mutually agreed upon.

(2) An Inspector appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction and duties, as if he had been appointed by each of the municipalities and district local boards which is a party to such agreement.

Validity of weights and measures, etc. duly stamped.

29. A weight or measure duly stamped by an inspector under this Act shall be a legal weight or measure in all places in which this part has come into force, unless false or defective, and shall not be liable to be re-stamped because used in any place other than that in which it was originally stamped.

Stamped weights, etc. to be *prima facie* deemed correct in any court.

30. A weight or measure or weighing or measuring instrument duly stamped under the provisions of this Act or the rules or regulations shall be deemed to be correct until its inaccuracy is proved, if it is produced in any court by any public servant having charge thereof under the direction of Government or the municipality or district local board, as the case may be, or by any person acting under the general or special authority of such public servant.

PART IV

PENALTIES.

Penalty for fraudulent use of weight, measure, etc,

31. Whoever fraudulently uses any weight or measure or weighing or measuring instrument, shall, on conviction, be punished with imprisonment of either description which may extend to three months or with fine extending upto rupees five hundred or with both.

Note.—Part IV (sections 31–40) deals with penalties. The following acts and omissions are made punishable :—

(1) Fraudulent use of a weight, measure, weighing or measuring instrument (s, 31) ;

(2) Possession of a false weight or measure, weighing or measuring instrument for trade (s, 34) ;

(3) Use or possession for use for trade of weight or measure which is not verified or stamped in the manner prescribed (s. 36) ;

(4) Sale or delivery of weight or measure etc. not verified or stamped (s. 37);

(5) Forging or counterfeiting a stamp used for the purpose of stamping a weight, measure, weighing or measuring instrument (sc. 38 (1));

(6) Use of a weight or measure, weighing or measuring instrument with a forged or counterfeit stamp (s. 38 (2));

(7) Neglect or refusal to produce any weight, measrue, weighing or measuring instrument for inspection (sec. 39); and

(8) Misconduct of an inspector (sec. 40).

Penalty for making, selling, disposing of false or defective weight, measure, etc.

32. Whoever wilfully or knowingly makes, sells or disposes of or causes to be made, sold or disposed of any weight or measure or weighing or measuring instrument which is false or defective shall, on conviction, be punished with rigorous imprisonment for a period which may extend to three months or with fine which may extend to rupees five hundred or with both.

Penalty for sale by weight or measure other than standard weight or measure.

33. Whoever sells any article by any denomination of weight or measure other than one of the standard weights or measures shall, on conviction, be punishable with fine which may extend to rupees five hundred.

Penalty for use and possession of weight, measure, etc. not authorised.

34. Whoever uses or has in his possession for use for trade any weight or measure or weighing or measuring instrument which is not authorised, verified or stamped under or in accordance with the provisions of this Act and the rules and regulations shall, on conviction, be punishable with fine which may extend to rupees five hundred and any trade had or made by such weight or measure or weighing or measuring instrument shall be void.

Penalty for giving short weight or measure.

35. Whoever in selling any article by weight or measure delivers or causes to be delivered to the purchaser a [1] weight or measure less than what is purported to be sold shall, if the less weight or measure exceeds the amount of error prescribed under section 46A"[1] on conviction, be punishable with fine which may extend to rupees three hundred.

Penalty for possessing for use weight, etc., not verified or stamped.

36. Whoever uses or has in his possession for use for trade any weighing or measuring instrument not verified or re-verified and stamped under this Act shall, on conviction, be punishable with fine which may extend to rupees two hundered.

[1—1] These words were substituted for the original words "less weight or measure than is purported to be sold shall" by Bom. Act XXII of 1936, s. 3.

Penalty for sale or delivery of weight or measure, etc. not verified or stamped.

37. Whoever sells or delivers any weight or measure or weighing or measuring instrument not verified or re-verified and stamped under this Act shall, on conviction, be punishable with fine which may extend to rupees one thousand.

Penalty for forging, etc. of weights, measures, etc.

38. (1) Whoever forges or counterfeits any stamp used under this Act for the stamping of any weight or measure or weighing or measuring instrument or removes a stamp from any weight or measure or weighing or measuring instrument and inserts the same into another weight or measure or weighing or measuring instrument or willfully increases or diminishes a weight or measure so stamped shall, on conviction, be punished with rigorous imprisonment for a period which may extend to six months or with fine or with both.

(2) Whoever knowingly uses, sells, utters, disposes of or exposes for sale any weight or measure or weighing or measuring instrument with such forged or counterfeit stamp thereon, or a weight or measure so increased or diminished shall, on conviction, be punished with rigorous imprisonment for a period which may extend to six months or with fine or with both.

Penalty for neglect or refusal to produce weight for inspection.

39. Whoever neglects or refuses to produce for inspection all weights or measures or weighing or measuring instruments in his possession or on his premises or refuses to permit an inspector authorised to examine the same or any of them or obstructs the entry of the inspector under section 22 or otherwise obstructs or hinders him in the performance of his duties shall, on conviction, be punishable with fine which may extend to rupees five hundred.

Penalty for breach of duty by inspector.

40. If an inspector knowingly stamps a weight or measure or weighing or measuring instrument in contravention of the provisions of this Act or of the rules or regulations or is guilty of a breach of any duty imposed on him by this Act or by the rules or regulations, he shall, on conviction, be punished with imprisonment of either description for a period which may extend to one year or with fine or with both.

"Knowingly".—The word "knowingly" was inserted in this section by the Select Committee in order to relieve the inspector of any offence if he inadvertently stamps a weight, measure or a weighing or measuring instrument in contravention of the provisions of the Act or the rules and regulations thereunder. The imprisonment to be imposed on conviction of an offence under this section was made necessarily rigorous in the original Bill, but it was made of either description by the Select Committee.

PART V.

RULES AND REGULATIONS.

Power of Government to make rules.

41. (1) Government may make rules for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing provision, such rules may prescribe—

(*a*) the composition, weight, length, form and specifications of secondary standards and the manner in which they shall be made;

(*b*) the places at which, the custody and manner in which secondary standards shall be kept by municipalities and district local boards;

(*c*) the procedure for the verification, re-verification, adjustment or renewal of primary and scondary standards and marking of secondary standards;

(*d*) the composition, weight, length, form and specifications and use of working standards, the authority by whom and the manner in which such standards shall be provided, the agency by whom such standards shall be made, the person by whom and the manner in which such standards shall be stamped, and the places at which and the custody and manner in which such standards shall be kept;

(*e*) the procedure for the verification or re-verification and marking of working standards and the person by whom and the place where they shall be verified or re-verified;

(*f*) the number of weighing and measuring instruments to be kept and necessary particulars regarding the same;

(*g*) the authority by whom certified scales shall be provided for the purposes of this Act and the rules and regulations and the manner in which they shall be verified or re-verified;

(*h*) the composition, weight, length, form, specifications and manufacture of weights and measures in use in any area;

(*i*) the inspection, verification, re-verification, adjustment and stamping of weights and measures and weighing or measuring instruments in use in any area, including the prohibition of stamping in cases where the nature, denomination, material or mode of construction of the weight or measure or weighing or measuring instrument appears likely to facilitate the commission of fraud and the period within which such weights and measures and weighing or measuring instruments shall be verified or reverified;

(*j*) the circumstances and conditions under which and the manner in which stamps may be obliterated or defaced;

(*k*) the tests to be applied for the purpose of ascertaining the accuracy and efficiency of weights and measures and weighing or measuring instruments;

(*l*) the limits of error to be allowed on verification and to be tolerated on inspection either generally or as regards any trade;

(*m*) the amount of error to be tolerated in weights and measures and weighing or measuring instruments used or intended to be used for trade;

[*a*] " (*mm*) the amount of error to be tolerated in selling articles by weight or measure generally or as regards any trade or class of trades;" [*a*]

(*n*) the fees to be charged for the verification, re-verification, adjustment and stamping of weights and measures and weighing or measuring instruments and the collection and levy of the same;

(*o*) the seizure, detention and destruction of weights and measures and weighing or measuring instruments which are not authorised by this Act and in regard to which no regulations have been made under section 42;

(*p*) the matters other than those specified in section 42 in respect of which regulations may be made by municipalities or district local boards;

(*q*) the qualifications, functions and duties generally of inspectors under this Act and the rules and regulations;

(*r*) any other matters for which no provision or insufficient provision is made in this Act and for which provision is, in the opinion of Government, necessary.

(3) The power to make rules under this section shall be subject to the condition of previous publication in the *Bombay Government Gazette.*

The rules made under this section shall be laid on the table of the Bombay Legislative Council for not less than one month previous to the next session thereof and shall be liable to be rescinded or modified by a resolution of the said Council. If any rule is modified, the Governor in Council may accept the modification and republish the rule accordingly, or may rescind the rule.

Power of municipality and district local board to make regulations.

42. (1) Every municipality and district local board, authorised to keep secondary or working standards under this Act, shall, with the previous sanction of Government, make regulations not inconsistent with this Act and the rules for the area subject to its jurisdiction, providing for—

(*a*) the verification, adjusting and stamping of weights and measures and weighing or measuring instruments in use within the area subject to its jurisdiction and for the stamping thereof, when such municipality or district local board is empowered under section 17;

[*a–a*] Clause (*mm*) was inserted by Bom. Act XXII of 1936, s. 4.

(*b*) the seizure, detention and destruction of weights and measures and weighing or measuring instruments which are not authorised by this Act ;

(*c*) the inspection of weights and measures and weighing or measuring instruments ;

(*d*) the duties generally under this Act of the inspectors appointed by such municipality or district local board ; and

(*e*) any other matters in respect of which it is authorised by rules to make regulations.

(2) The regulations for the time being in force shall be kept open for public inspection at the municipal and district local board offices at all reasonable times and printed copies thereof in the vernacular language of the area subject to the jurisdiction of the municipality or district local board, and in the case of city and borough municipalities in English as well as in the vernacular shall be kept on sale at cost price.

PART VI—MISCELLANEOUS.

Protection to persons acting in good faith.

43. No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or the rules or regulations.

"**Note.**—Part VI—Miscellaneous—(sections 43–47) contains an important provision, *viz*, s. 46 which empowers Government to grant exemption from the provisions of this Act in special cases such as sale of drugs, jewels, precious stones, wholesale trades, etc.—where the use of standard weights and measures would not he deemed convenient or practicable.

Cognizance of offences.

44. No prosecution under this Act shall be instituted except by or with the previous sanction of the Collector or any officer specially empowered by him or by Government in this behalf.

Delegation of powers by Government.

45. Any of the powers and duties conferred and imposed upon Government by this Act may be exercised and performed, subject to such conditions as Government may think fit, by any person whom Government may, by general or special order, empower in this behalf.

Power to exempt specified persons, articles or trades from provisions of the Act.

46. Government may, after previous publication by notification in the *Bombay Government Gazette*, and subject to such conditions and restrictions as it may think fit to impose, exempt any class of persons, any commodity, trade, [*a*] any class of trades [*b*] "or any class of weights or measures or of weighing or measuring instruments used or intended to be used for any purpose other than trade" [*b*] specified in the notification from all or any of the provisions of this Act.

[*a*] The word "or" was omitted. by Bom. Act XXXIII of 1935, s. 4 (*i*)

[*b–b*] These words were inserted by Bom. Act XXXIII of 1935, s. 4 (*ii*.

Power to prescribe the amount of error to be tolerated in selling articles by weight or measure,

[c] "46A. Government may prescribe the amount of error to be tolerated in selling articles by weight or measure generally or as regards any trade or class of trades[c].

Repeal and amendments.

47. On the coming into force of this Part in any area—

(a) the enactments specified in Part I of the second schedule shall be deemed to have been amended to the extent and in the manner specified in the third column thereof ;

(b) the enactments specified in Part II of the said schedule shall be deemed to have been repealed, so far as they apply to the presidency of Bombay, to the extent specified in the third column thereof :

Provided that—

(i) the said repeal shall not affect the validity or invalidity of anything already done under the enactments repealed by this Act;

(ii) all appointments made, notifications and notices issued, rules, by-laws and orders made, contracts entered into and suits and other proceedings instituted under any Act or enactment repealed by this Act shall, so far as they are not inconsistant with the provisions of this Act and the Rules and regulations, continue in force and be deemed to have been made, issued, entered into and instituted under this Act.

THE FIRST SCHEDULE

(*See* section 4)

Standard Weights and Measures.

Weights—

The Bombay Tola of 180 grains.

The Bombay Seer of 80 tolas.

The Bombay Maund of 40 seers.

The sub-multiples $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, $\frac{1}{16}$ and $\frac{1}{32}$ and the multiples 2, 4 and 8 of the tola, seer and maund,

The pound avoirdupois equal to 7·000 grains and the sub-multiples, $\frac{1}{8}$, $\frac{1}{4}$, $\frac{1}{2}$, 1, 2, 4 and 8 ounces, the multiples 1, 2, 4, 7, 14, 28 lbs., (1 cwt.), 56 lbs., 112 lbs, (1 cwt) and 2·240 lbs. (1 ton).

The grain is that unit of weight in vacuo which when multiplied by 1799·84585 is the weight of the iridio-platinum cylinder in the custody of the Mint Master, Bombay, the value of which is certified by the Standard Department of the British Board of Trade as 1799·84585 grains in vacuo.

[c-c] Sections 46A was inserted by Bom. Act XXII of 1936, s. 5.

Explanation 1—The equivalent value of the abovementioned iridio platinum cylinder when weighed in Standard Indian Air against Brass Weights having a specific gravity of 8·143 is 1800·00394 grains, *i e.*, a brass weight whose value in vacuo is 1800·00394 grains will exactly equilibrate the abovementioned iridio-platinum cylinder in Standard Indian Air.

Explanation 2.—Since the Bombay tola equals 180 grains in vacuo, its absolute value is equivalent to ·10000856 of the absolute value of the abovementioned iridio-platinum cylinder. But in practice, all verifications against the above-mentioned iridio-platinum cylinder are carried out by weighments in air, and therefore the value 1800·00394 grains is always used for verifying weights

Explanation 3.—Standard Indian Air is defined as follows:—

Temperature: 85 deg. Fahr.—29·44 deg. Cent. Pressure: A column of mercury at 0 deg. C. 29.8 inches or 756·919 mm. in heigh. Carbon diox. gas: 0·0006 of the volume of air. Vapour tension: 0·75 inches = 19·05 mm. Latitude at Calcutta 22° 35′ 6·6″. Height above M. S.L = 22·6 feet. 1 litre of Standard Indian Air at Calcutta weighs 1·14917 grm.

Dry measures—

The Bombay seer.
The sub-multiples $\frac{1}{2}$. $\frac{1}{4}$, and $\frac{1}{8}$ seer.
The Bombay Chatak = $\frac{1}{16}$ seer.
The Adpao = $\frac{1}{8}$ seer.
The Adholi = 2 seer.
The Bombay payali of 4 seers.
The Bombay Maund of 16 payalis.
The Bombay Map of 2 maunds.

Liquid measure—

The Bombay seer.
The sub-multiples $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$ and $\frac{1}{16}$ seer.
The multiples 2, 4 and 8 seers.
The Imperial gallon.
The Pint = $\frac{1}{8}$ galloan.

Dry and Liquid measures—Explanations—

Explanation 1.—The unit of capacity called the Bombay seer is equivalent to the volume occupied by 80 tolas of air-free distilled water weighed in Standard Indian Air against brass weights having a specific gravity of 8·143.

Explanation 2.—The unit of capacity called the Imperial gallon contains ten British Standard pounds of water at 62°F. being in volumn 277·274 cub, in., which contains each 252·724 grains of water in a vacuum at 62° or 252·458 grains of water weighed with the brass weights in air of 62° with the barometer at 30 in,

Length—

The Yard—
The Inch = $\frac{1}{36}$th yard, and
The Foot = $\frac{1}{3}$rd yard.
The Furlong of 220 yards.
The Mile of 1,760 yards.

The yard is that unit of length which is exactly equal to the certified yard kept in the custody of the Mint Master, Bombay,

Area and volume—

The Square Yard, Square Foot and Square Inch.

The Cublic Yard, Cubic Foot and Cublic Inch and sub-multiples of a Cubic Inch.

The anna of $\frac{1}{16}$ of the guntha.

The Guntha of 121 square yards and the acre of 4,840 square yards for land measurement.

The square of 100 square feet.

The Brass of 100 cubic feet.

THE SECOND SCHEDULE*

(*See* Section 47.)

PART I.

Enactments amended.

No. and year of Act.	Title.	Amendments.
		Acts of the Governor of Bombay in Council.
III of 1901 ...	The Bombay District Municipal Act, 1901.	For section 143 the following section shall be substituted, namely:— "143. *Powers of inspection of weights and measures, etc.*—The president, vice-president, or any councillor or officer authorized by the municipality in this behalf may at all reasonable times enter into any place (other than a place prescribed by rules made under the Bombay Weights and Measures Act, 1932) where weights or measures or weighing or measuring instruments are used or kept for purposes of trade and inspect such weights or measures or weighing or measuring instruments."
VI of 1923 ...	The Bombay Local Boards Act, 1923.	After section 61A the following section shall be inserted, namely:— "61B. *Powers of inspection of weights and measures, etc.* The president, vice-president, or any councillor or officer authorised by the local board in this behalf may at all reasonable times enter into any place (other than a place prescribed by rules made under the Bombay Weights and Measures Act, 1932) where weights or measures or weighing or measuring instruments are used or kept for the purpose of trade and inspect such weights or measures or weighing or measuring instruments."

*This schedule is printed as amended by Bombay Act IX of 1935.

THE SECOND SCHEDULE—*Contd.*

XVIII of 1925	The Bombay Municipal Boroughs Act, 1925.	For section 177 the following section shall be substituted, namely :— "177. *Powers of inspection of weights and measures, etc.*—The president, vice-president, chief officer or any councillor authorised by the municipality in this behalf may at all reasonable times enter into any place (other than a place prescribed by rules made under the Bombay Weights and Measures Act, 1932) where weights or measures or weighing or measuring instruments are used or kept for purposes of trade and inspect such weights or measures or weighing or measuring instruments."
XVII of 1933	The City of Karachi Municipal Act, 1933.	In section 165 after the word "place" the words, figures and brackets "(other than a place prescribed by Government by rules made under the Bombay Weights and Measures Act, 1932)" shall be inserted.

PART II

Enactments repealed

No and year of Act.	Title	Extent of repeal
		Acts of the Governor General in Council.
XXXI of 1871	The Indian Weights and Measures of Capacity Act, 1871.	The whole.
II of 1889 ...	The Measures of Length Act, 1889.	The whole.
		Acts of the Governor of Bombay in Council.
Regulation XII of 1827.	A regulation for the establishment of a system of police throughout the zilas subordinate to Bombay for providing rules for its administration, and for defining the duties and powers of all police authorities and servants.	Section 20.
III of 1886 ...	The Bombay General Clauses Act, 1886.	In Schedule B the entry relating to section 20 of Bombay Regulation XII of 1827.
III of 1888 ...	The City of Bombay Municipal Act, 1888.	Sections 418, 419, and 420. Section 461, clause (*o*), sub-clause (*i*). In section 471, the entries relating to section 420, sub-section (2), clauses (*a*), (*b*), (*c*) and (*d*) and sub-section (3), clauses (*a*) and (*b*).
III of 1901 ...	The Bombay District Municipal Act, 1901.	Clauses (*e*) and (*ee*) of sub-section (1) of section 48.
IV of 1904 ...	The Bombay District Municipal (Amendment) Act, 1904.	Section 3.
IV of 1921 ...	The City of Bombay Municipal (Amendment) Act, 1921.	Sections 2, 3 so far as it relates to sub-clause (*i*) of clause (*o*) of section 461 and section 4.
XVIII of 1925.	The Bombay Municipal Boroughs Act, 1925.	Clauses (*h*) and (*i*) of section 61.

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Bombay Acts amending unrepealed General (India) Acts in their application to the Bombay Presidency

The Cattle-Trespass (Amendment) Act, 1924

Bom. Act No. IX of 1924

An Act further to amend the Cattle trespass Act, 1871

WHEREAS it is expedient further to amend the Cattle-trespass Act, 1871, in its application to the Presidency of Bombay in manner hereinafter appearing; It is enacted follows :—

1. This Act may be called the Cattle-trespass (Amendment) Act, 1924.

2. *Amendment of section 6 of Act I of 1871.*—After the proviso to section 6 of the Cattle-trespass Act, 1871, the following shall be inserted, namely :—

(*Other proviso was substituted for this proviso by Bom. Act No. IV of 1926*)

The Cattle- trespass (Bombay Amendment) Act, 1926

(Bom. Act No. IV of 1926).

[*11th May 1926*

An Act further to amend the Cattle Trespass Act, 1871, in its application to the Presidency of Bombay

WHEREAS it is expedient further to amend the Cattle-trespass Act, 1871, as amended by Bom. Act IX of 1924, in its application to the Presidency of Bombay in manner hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Cattle-trespass (Bombay Amendment) Act, 1926.

1. *Amendment of section 6 of Act I of 1871.*—In section 6 of the Cattle-trespass Act, 1871,

(I) for the second proviso, the following proviso shall be substituted, namely :—

Provided further that in the Presidency of Bombay

(*a*) in any local area which has been declared to be a village under clause (*a*) of section 3 of the *Bombay Village Panchayats Act, 1920, when the police patel, or the head of the village, is the sarpanch or a member of the Panchayat, the Panchayat may appoint another person to be pound-keeper ;

(*b*) in any local area in which the functions of the Magistrate of the District under this section are transferred to the local authority, the local authority may appoint another person to be pound-keeper;"

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* Bombay Village Panchayats Act of 1920 was repealed by Bom. Act VI of 1933.

(2) after the words "such Magistrate" the words "or in the Presidency of Bombay, in any local area in which the functions of the Magistrate of the District under this section are transferred to the local authority, by such local authority; and in the said Presidency every pound-keeper appointed by a Panchayat may be suspended or removed by such Panchayat" shall be inserted.

The Cattle-trespass (Bom. Amendment) Act, 1931

Bom. Act No. V of 1931

23rd Mag 1931.

An Act furlher to amend the Cattle-trespass Act, 1871, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Cattle-trespass Act, 1871, in its application to the Presidency of Bombay, in manner hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called the Cattle-trespass (Bombay Amendment) Act, 1931.

2. *Amendment of section 14 Act I of 1871.*—In the proviso to section 14 of the Cattle-trespass Act, 1871, for the words "Magistrate of the District" the words "officer authorised to sell them by public auction" shall be substituted.

The Coroners (Bombay Amendment) Act, 1930

Bombay Act No. XIII of 1930

[*3rd September 1930.*

An Act further to amend the Coroners' Act, 1871, in it application to the Presidency town of Bombay.

WHEREAS it is expedient further to amend the Coroners' Act, 1871, in its application to the Presidency town of Bombay, in manner hereinafter appearing : and Whereas the previous sanction of the Governor General required by section 80A (3) of the Government of India Act has been obtained for the passing of this Act; it is hereby enacted as follows :—

Short title.

1. This Act may be called the Coroners' (Bombay Amendment) Act, 1930.

Substitution of new sections for sections 8 to 20 of Act IV of 1871.

2. For sections 8 to 20 of the Coroners' Act, 1871, hereinafter called the said Act, the following shall be substituted, namely :—

Jurisdiction to inquire into death.

8. (1) When the Coroner is informed that the dead body of a person is lying within his jurisdiction and there is reasonable cause to suspect that such person has died under any of the circumstances mentioned in section 9 or has died a sudden death of which the cause is unknown, the Coroner may proceed to hold a preliminary inquiry on the body without a jury.

(2) For the purpose of an inquiry under sub-section (1) the Coroner shall, as soon as practicable, after receipt of the information proceed to view and examine the body. Such view and examination shall be held in the presence of the Police Officer to whose section the case belongs and, if possible, in the presence of the relations or friends, if any, of the deceased and the Coroner may reduce to writing such observations as the appearance of the body requires. When the inquiry is concluded if the Coroner is satisfied as to the cause of death and if a *post-mortem* examination is in his opinion not necessary, the Coroner may authorise the body to be disposed of.

Inquest by jury.

9. (1) If it appears to the Coroner either before or in the course of an inquiry under section 8, that there is reason to suspect :—

(*a*) that the deceased came by his death by homicide, suicide or infanticide ; or

(*b*) that the death was caused by an accident, or poison, or machinery ; or

(*c*) that the death was caused by an occurrence arising out of the use of a vehicle in a street, public road or in private place; or

(*d*) that the death occurred in a prison in which the deceased was a prisoner or that it occurred whilst the deceased was in the custody of the police ; or

(*e*) that the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public ;

and in any other case, if it appears to the Coroner either before or in the course of the preliminary inquiry that there is reason for holding an inquest by jury, he shall proceed to hold such inquest, whether or not the cause of death arose within his jurisdiction.

(2) Such inquest shall ordinarily be held in the Coroner's Court-house.

(3) The Coroner may hold one inquest on the bodies of several persons provided that they all are believed to have come by their deaths, in or in consequence of one and the same incident.

(4) Every such inquest shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code and for the purpose of any such inquest the Coroner shall have and may exercise all the powers of a Criminal Court under section 476 and section 480 of the Code of Criminal Procedure, 1898.

(5) The Coroner may hold an inquest by jury simultaneously with the preliminary inquiry.

Report to Coroner when prisoner or person in police custody dies.

10. (1) When a person dies in a prison situate within the local limits of the Coroner's jurisdiction or whilst he is in the custody of the police the Superintendent of the prison or the police officer in charge of the section concerned, as the case may be, shall report the death to the Coroner and await his orders before the body is disposed of.

(2) Any Superintendent of Prison or any such police officer who fails to comply with the requirement in sub-section (1) shall, on conviction before a Magistrate, be punished with fine which may extend to five hundred rupees.

11. (1) Any person who, with the intention of preventing the holding of an inquest on a dead body which the Coroner is bound to hold under section 9, buries, cremates or otherwise disposes of it, and any person who with such intention abets such burial, cremation or disposal of a dead body shall, on conviction before a Magistrate, be punished with fine which may extend to five hundred rupees.

Penalty for disposal of body to prevent an inquest

(2) Such punishment shall be in addition to the punishment to which such person may be liable for any offence of which he may be found guilty in respect of the death of the deceased or under section 201 of the Indian Penal Code.

12. A coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where further inquistition is, in the opinion of the Coroner, necessary or desirable in the interests of justice.

Power to order body to be disinterred.

13. In order to the impanelling of a jury for an inquest under section 9 the Coroner shall summon not less than five nor more than eleven respectable persons to appear before him at a time and place to be specified in the summons for the purpose of inquiring where, when and by what means the deceased came by his death.

Summoning jury.

14. (1) On the day and at the hour fixed for the inquest the Coroner shall proceed to open his court by proclamation and shall call over the names of the jurors on whom summonses under section 13 have been duly served. If not less than five jurors are in attendance the Coroner shall administer an oath to each juror to give a true verdict according to the evidence.

Opening Court. Jurors to be sworn.

(2) If the number of jurors in attendance is less than five, or, if in the course of an inquest at any time before the return of the verdict a juror is absent and it is not practicable to enforce his immediate attendance, the Coroner may appoint such number of persons as may be necessary to serve as jurors in the inquest.

14A. An inquest under this Act or its adjourned hearing under section 21 may be held on a Sunday or a public holiday.

Inquest may be on Sunday or public holiday.

15. At or before the first sitting of an inquest on a body the Coroner shall view the body and if before the body has been disposed of, a majority of the jurors so desire, it shall be viewed by the jurors also :

View of body

Provided that when a preliminary inquiry on the body has been held under section 8, or if from the medical evidence or from a medical certificate, the Coroner is satisfied that no advantage will result from such viewing, the Coroner may dispense with a view of the body at the inquest.

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the inquiry is conducted in secret, shall call in separately such as know anything concerning the death,

Proclamation for witnesses

Summoning witnesses.

17. (1) It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses. The Coroner shall inquire of such circumstances and the cause of death, and if before or during the inquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

(2) When any person so summoned fails to appear and the summons has been proved to be duly served on him in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure, the Coroner may, after recording his reasons in writing, issue a warrant for his arrest. Such warrant shall be executed as if it were issued under section 90 of the Code of Criminal Procedure, 1898.

(3) Any person disobeying a summons issued under sub-section (1) shall be deemed to have committed an offence under section 174, section 175 or section 176 of the Indian Penal Code, as the case may be.

(4) For the purpose of causing prisoners to be brought up to give evidence the Coroner shall be deemed a criminal court within the meaning of Part IX of the Prisoners Act, 1900.

Post-mortem examinations. Fees to medical witnesses. Report of Chemical Examiner.

18. (1) If before proceeding to view a body under section 8 or at the view or at any stage of an inquest by jury, it appears to the Coroner that a *post-mortem* examination of the body is necessary to ascertain the cause of death, he may direct such examination to be held by his Surgeon or by a duly qualified Registered Medical Practitioner invited to attend as a witness. The Coroner may also direct an analysis of any of the organs or parts of the body or of their contents. Every Medical witness other than the Chemical Examiner to Government and the Coroner's Surgeon shall be entitled to such reasonable remuneration as the Coroner thinks fit. For the purpose of such *post mortem* examination the Coroner may order the removal of the body to any place within his jurisdiction which may be provided for that purpose.

(2) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination, or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.

Evidence to be on oath. Evidence on behalf of accused Interpreter.

19. (1) All evidence given under this Act shall, except in the case provided in sub-section (2), be on oath and the Coroner shall be bound to receive the evidence on behalf of the person who is alleged to have caused or to be concerned in causing the death of the deceased person.

(2) If such person himself wishes to make a statement it shall be the duty of the Coroner to warn him that he is not bound to make any statement; but if such person persists, the Coroner shall, without administering him any oath, record his statement in full after duly warning him that any incriminating statement which he may make may be used in evidence in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.

(3) For the purpose of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate.

(4) Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the question put to, and the answer given by each witness.

(5) After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness, and if the jury wish that any such questions shall be put the Coroner shall put them accordingly.

Mode of recording evidence.

20. (1) The evidence given to the jury shall be recorded in the manner prescribed in section 356 of the Code of Criminal Procedure, 1898.

(2) For the purpose of this section the Coroner shall be deemed to be a Magistrate.

3. After section 21 of the said Act, the following section shall be inserted, namely :—

Inquest to be adjourned if criminal proceedings have been instituted before a Magistrate.

"21A. (1) If on an inquest touching a death, the Coroner is informed, before the jury have given their verdict, that criminal proceedings have been instituted against some person before a Magistate in respect of an offence touching the death of the deceased, he may adjourn the inquest until after the conclusion of the criminal proceedings and may, if he thinks fit, discharge the jury.

(2) After the conclusion of the criminal proceedings which it shall be the duty of the police to communicate to the Ooroner, the Coroner may, subject as hereinafter provided, if he thinks fit, resume the adjourned inquest:

Provided that at such resumed inquest no inquisition shall be held against any person in respect of any offence with which he was charged or of which he could have been convicted in the proceedings referred to in sub-section (1), and no finding shall be recorded which is inconsistent with the determination of any matter by the result of those proceedings.

(3) Where the Coroner resumes an inquest which has been adjourned and the Jury has been discharged, he shall proceed in all respects as if the inquest had not previously been begun and the provisions of this Act shall apply accordingly as if the resumed inquest were a fresh inquest, except that it shall not be obligatory on the Coroner to view the body.

(4) If, having regard to the result of the criminal proceedings, the Coroner decides not to resume the inquest, he shall furnish the

Commissioner of Police with a certificate stating the result of the criminal proceedings and any particulars necessary for the registration of the death which may have been ascertained.

(5) For the purposes of this section, the expression 'the criminal proceedings' means the proceedings before a Magistrate and before any court to which the accused person is committed for trial or before which an appeal from the conviction of that person is heard, and criminal proceedings shall not be deemed to be concluded until no further appeal can be made in the course thereof."

Substitution of new section 31 for section 31 of Act IV of 1871.

4. For section 31 of the said Act the following shall be substituted, namely :—

List of Jurors. Fine on juror neglecting to attend

"31. (1) The Coroner shall prepare and from time to time revise a list of sufficient number of persons of good character and adequate education, liable to serve as jurors in his Court.

(2) All male persons between the ages of twenty-one and sixty whose names are not in the Common Jury list of the High Court, shall, subject to the exemptions mentioned in section 320 of the Code of Criminal Procedure, 1898, be liable to serve as jurors in the Coroner's Court.

(3) Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror, and upon the non-appearance of such person, and proof that such summons has been served upon him or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit :

Provided that the Coroner may, in his discretion, remit any fine so imposed."

Substitution of a new Schedule for the Second Schedule to Act IV of 1871.

5. For the Second Schedule to the said Act the following shall be substituted, namely:—

"SECOND SCHEDULE.

FORM OF INQUISITION.

(*See Section 24*)

An inquisition taken at on the day of 19 before E. F, Coroner of (in the case of A B, deceased) upon the oath of G H, I J, K L and M N, then and there duly sworn and charged to enquire when, how and by what means the said A B came to his death.

We, the said jurors, find unanimously that the death of the said A. B was caused, on or about the day of 19 , by

1. Cases of homicide. ... a blow on the head with a stick inflicted on him by C D under such circumstances that the act of C D was justifiable (*or* accidental) homicide.

		a stab on the heart with a knife inflicted on him by C D under such circumstances that the act of C D was culpable homicide not amounting to murder.
2.	Cases of suicide ...	shooting himself through the head with a pistol. Drowning himself in a tank, river or sea. Opium arsenic, which he voluntarily administered to himself. Cutting his throat with a razor or any sharp instrument.
3.	Cases of infanticide ...	strangling to death a newly-born child by its mother. by exposure caused by C D with the knowledge that it would necessarily result in the death of A B, a newly-born child.
4.	Cases of accident ...	falling out of a boat into any river, whereby he was drowned. a kick from a horse which fractured his skull and ruptured blood-vessels in his head.
5.	Cases of poisoning ...	opium or arsenic which was administered to the said A B by C D with the intention of killing him.
6.	Cases of death caused by machinery. ...	while working in a mill or a work shop being caught in moving machinery,
7.	Cases of death arising out of the use of a vehicle. ...	the wheel of a motor car or a heavy cart which was negligently driven by C D passing over his chest and causing death.
8.	Cases of death from any other cause. ...	disease of the heart. apoplexy. sunstroke or any other disease.

And so say the jurors upon their oath aforesaid.

Witness our hands. *E. F, Coroner of*

G H, I J, K L, M N, O P (*Jurors*)."

THE BOMBAY
Criminal Procedure (Election Offences) Amendment Act, 1935

BOMBAY ACT No. XXIX OF 1935

[*30th November, 1935.*

An Act to amend the Code of Criminal Procedure, 1898, in its application to the Presidency of Bombay.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the Presidency of Bombay, for the purposes hereinafter appearing; And whereas the previous sanction of the Governor-General required under sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Bombay Criminal Procedure (Election Offences) Amendment Act, 1935.

(2) It shall apply to the whole of the Presidency of Bombay.

Amendment of Section 196 of Act V of 1898.

2. In section 196 of the Code of Criminal Procedure, 1898, in its application to the Presidency of Bombay, after the word and figures "section 127" the words and figures "and section 171F so far as it relates to the offence of personation" shall be inserted.

Amendment of Schedule II to Act V of 1898.

3. In Schedule II to the same Code—

(*a*) in the entry relating to section 171F of the Indian Penal Code, the words "and personation" shall be deleted;

(*b*) after the said entry so amended, the following shall be inserted, namely :—

	Personation at an election.	May arrest without warrant	Ditto.	Ditto	Ditto	Ditto	Ditto

(*c*) in the third column in the entry relating to section 171G of the Indian Penal Code, for the word "Ditto", the words "shall not arrest without warrant" shall be substituted.

The Identification of Prisoners Bom. (Amendment) Act, 1935

Bombay Act No. IV of 1935

[*13th April 1935.*

An Act further to amend the Identification of prisoners Act, 1920, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Identification of Prisoners Act, 1920, in its application to the Presidency of Bombay for the purposes hereinafter appearing; And whereas the previous sanc-

tion of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act ; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Identification of Prisoners (Bombay Amendment) Act, 1935.

(2) It extends to the whole of the Presidency of Bombay.

Amendment of section 4 of XXXIII of 1920.

2. For section 4 of the Identification of Prisoners Act, 1920, the following shall be substituted, namely :—

"4. Any person who has been—

Taking of measurements of unconvicted persons.

(*a*) ordered to remove himself or caused to be removed from British India under section 3 or 17 of the Foreigners Act, 1864,

(*b*) directed to remove himself under section 27 of the City of Bombay Police Act, 1902, or under section 46 of the Bombay District Police Act, 1890,

(*c*) arrested under section 55 of the Code of Criminal Procedure, 1898, or

(*d*) arrested in connection with an offence punishable under section 112 of the City of Bombay Police Act, 1902, or under section 61D of the Bombay District Police Act, 1890, or in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards,

shall, if so required by a police officer, allow his measurements or photograph to be taken in the prescribed manner."

The Identification of Prisoners (Bombay Second Amendment) Act, 1935

Bombay Act No. XXI of 1935

[*1st October 1935.*

An Act to amend the Identification of Prisoners Act, 1920, in its application to the Presidency of Bombay.

WHEREAS it is expedient to amend the Identification of Prisoners Act, 1920, in its application to the Presidency of Bombay, for the purpose hereinafter appearing ; And whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act ; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Identification of Prisoners (Bombay Second Amendment) Act, 1935.

(2) It extends to the whole of the Presidency of Bombay.

Amendment of section 3 of Act XXXIII of 1920.

2. In clause (*a*) of section 3 of the Identification of Prisoners Act, 1920, hereinafter called the said Act, after the word "punishable" the words and figures "under section 121 of the City of Bombay Police Act, 1902, or of any other offence punishable" shall be inserted.

Amendment of section 4, Act XXXIII of 1920.

3. In clause (*d*) of section 4 of the said Act after the figure "112" the word and figure "or 121" shall be inserted.

Female Infanticide Prevention (Amendment) Act

BOMBAY ACT No. III OF 1897

WHEREAS it is expedient to amend as to the Presidency of Bombay, in manner hereinafter appearing, Act VIII of 1870 of the Governor General of India in Council ; 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 this Act ; It is hereby enacted as follows :—

1. *Application of accumulated funds collected under Act VIII of 1870.*—Notwithstanding any thing contained in Act VIII of 1870 (*an Act for the prevention of the murder of female infants*) or in the rules made thereunder, it shall be lawful for the Governor of Bombay in Council, from time to time, by notifications published in the official *Gazette*, to direct that the whole or any part of any moneys, or of any income or accumulated interest accrued or accruing from any moneys heretofore levied or recovered from, or paid by any inhabitants of the district of Kaira, under or for the purposes of the said Act, or any rule made in pursuance thereof, shall be applied for the educational benefit of the Lewa or Kunbi castes or any members thereof in the Kaira District, in such manner as the Local Government may deem expedient, and that the whole or any part of any moneys heretofore levied or recovered from, or paid by, any inhabitants of the district of Ahmedabad, under or for the purposes of the said Act, or any rule made in pursuance thereof, shall be applied for the educational benefit of the Lewa and Kadva Kunbi castes or any members thereof in the Ahmedabad District, in such manner as the Local Government may deem expedient, and to cancel or vary such notifications.

2. *Commencement of Act VIII of 1870 in Bombay Presidency.*—Notwithstanding anything contained in section 7 of Act VIII of 1870, the said Act shall be deemed to extend, and from the 21st December 1870 to have extended, to the Presidency of Bombay.

The Indian Limitation (Amendment) Act, 1912

BOM. ACT No. XIII OF 1912

An Act to amend the Indian Limitation Act, 1908

WHEREAS it is expedient to amend the Indian Limitation Act, 1908, in the manner hereinafter appearing :

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 or this Act ; It is hereby enacted as follows :—

1. This Act may be called the Indian Limitation (Amendment) Act, 1912.

2. Notwithstanding anything contained in the Indian Limitation Act, 1908, hereinafter called the said Act, in computing the period of two years mentioned in section 31 of the said Act in the case of any suit by a mortgagee for foreclosure or for sale for which a certificate granted under section 46 of the Dekkhan Agriculturists' Relief Act, 1879, is required the time intervening between the application made by the mortgagee under section 39 of the last mentioned Act,

and the institution of such suit shall be excluded, provided that such suit has already been instituted, or is instituted within six months from the commencement of this Act; and no such suit shall be dismissed on the ground that the certificate was not obtained within the year immediately preceding the filing of the suit.

3. *Applicability of section 4 of the Indian Limitation Act, 1908.*—The period of two years mentioned in section 31 of the said Act shall for the purposes of this Act be deemed to be a period of limitation within the meaning of section 4 of the said Act.

4. *Retrospective effect of section 3.*—The provisions of section 3 shall be deemed to have come into operation from the 7th day of August, 1908.

5. *Provision for restoration of suits.*—(1) Where the claim of a mortgagee for foreclosure or for sale for which a certificate granted under s. 46 of the Dekkhan Agriculturists' Relief Act, 1879, is required has been wholly or in part dismissed or withdrawn after the seventh day of August, 1910, and before the commencement of this Act either in a Court of first instance or of appeal or of revision, and the Court on application made as hereinafter provided is satisfied that such claim was so dismissed or withdrawn on the ground that,

(*a*) the time intervening between the application made by the mortgagee under section 39 of the Dekkhan Agriculturists' Relief Act, 1879, and the grant of the certificate under section 46 of the last mentioned Act or the institution of the suit, as the case may be, could not be excluded in computing the period of two years mentioned in section 31 of the said Act, or

(*b*) the certificate was not obtained within the year immediately preceding the filing of the suit, or

(*c*) the period of two years mentioned in section 31 of the said Act was not a period of limitation within the meaning of section 4 of the said said Act,

the case shall be restored on an application in writing to the Court, by which the claim was dismissed or in which it was withdrawn; provided that such application is made within six months from the commencement of this Act.

(2) Where any such claim as aforesaid has been dismissed for failure to prosecute such claim after the seventh day of August, 1910, and before the commencement of this Act, either in a court of first instance or of appeal or of revision, and the court on application made as hereinafter provided is satisfied that such failure was due to the belief that such claim, if prosecuted, would be dismissed for any of the grounds specified in clauses (*a*), (*b*) and (*c*) of sub-section (1),

the case shall be restored on an application in writing to the Court by which the claim was dismissed; provided that such application is made within six months from the commencement of this Act.

(3) The provisions of sections 2, 3 and 4 shall apply to any case restored under either of the foregoing sub-sections.

6. *Provision for restoration of applications.*—Any application by the mortgagee under section 39 of the Dekkhan Agriculturists' Relief Act, 1879, in respect of any claim for sale or foreclosure as to which the

mortgagee was entitled to the benefit of the two years' period mentioned in section 31 of the said Act, made on or before the eighth day of August, 1910, and dismissed after the twenty-third day of February, 1911, shall be restored to the file of the Conciliator provided that the application for such restoration is made within two months from the commencement of this Act.

7. *Third parties protected.*—Nothing in this Act shall affect the interests of third parties that may have come into existence between the Twenty-third of February, 1911, and the twenty-eighth of September, 1912.

The Indian Motor Vehicles (Bombay Amendment) Act, 1931

Bom. Act No. VII of 1831.

[*23rd May 1931.*

An Act further to amend the Indian Motor Vehicles Act, 1914, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Indian Motor Vehicles Act, 1914, in its application to the Presidency of Bombay in manner hereinafter appearing; and whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Motor Vehicles (Bombay Amendment) Act, 1931.

New section 18A of Act VIII of 1914.

2. After section 18 of the Indian Motor Vehicles Act, 1914, the following section shall be inserted, namely:—

Cancellation and suspension of driver's permit and disqualification for obtaining it.

"18. (1) Notwithstanding anything contained in sub-section (2) of section 18, where the offence of which a person is convicted is one against rules regulating the use of motor vehicles let or plied for hire in public places, the Court by which the person is convicted of such offence shall, if such person holds a permit to drive any such vehicle issued under the said rules, cause particulars of the conviction to be endorsed on such permit instead of on the licence held by such person, under the Act, and may, in its discretion, cancel or suspend such permit or declare such person disqualified from obtaining a permit under the said rules for a period not exceeding one year from the date of such conviction.

(2) In any such event as is referred to in sub-section (1) the provisions of sub-sections (3) to (7) of section 18 shall, so far as may be, apply to such permits and the holders thereof as if such permits were licences under this Act and the holders of such permits were holders of such licences, and as if

(*a*) in sub-section (3) for the words, figure and brackets 'licence under this Act is accused of any offence mentioned in sub-section (2) may suspend such licence' the words 'permit issued under rules regulat-

ing the use of motor-vehicles let or plied for hire in public places is accused of any offence against the said rules may suspend such permit' were substituted, and

(*b*) in sub sections (4), (5), (6) and (7) for the word 'licence' wherever it occurs, the word 'permit' were substituted."

The Indian Motor Vehicles (Bombay Amendment) Act, 1935

Bombay Act No. XIV of 1935

[*12th September 1935.*

An Act to amend the Indian Motor Vehicles Act, 1935

WHEREAS it is expedient to amend the Indian Motor Vehicles Act 1914, so as to remove doubts as to the validity of certain fees levied under the said Act and as to the powers of the Local Government to appropriate the said fees as part of the general revenues for the purposes of provincial expenditure; And whereas the previous sanction of the Governor General required under sub-section (3) of section 80A of the Government of India Act and the previous sanction of the Governor required under section 80C of the said Act have been obtained for the passing of this Act; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Indian Motor Vehicles (Bombay Amendment) Act, 1935.

(2) It shall extend to the whole of the Presidency of Bombay.

Amendment of preamble of Act VIII of 1914.

2. In the preamble to the Indian Motor Vehicles Act, 1914, hereinafter called the said Act, after the words "British India", the words "And whereas it is expedient to empower the Local Government to levy certain fees in respect of such vehicles and appropriate the said fees as part of the general revenues for the purposes of provincial expenditure" shall be inserted.

Amendment of section 11 of Act VIII of 1914.

3. In section 11 of the said Act, the following Explanation shall be added, namely :—

"*Explanation.*—For the purposes of clauses (*a*) and (*d*), the issue of a certificate of registration or a driving licence shall include the renewal of such certificate or licence respectively."

Insertion of a new section after section 11 of Act VIII of 1914.

4. After section 11 of the said Act, the following new section shall be inserted, namely:—

Power of Government to fix rates of fees and to appropriate them for purposes of provincial expenditure.

"11A. Notwithstanding anything contained in this Act, it shall be deemed to be lawful, and always to have been lawful, for the Local Government under the rules made under section 11 to prescribe and levy fees in respect of the matters specified in the schedule at rates not exceeding the maxima specified therein and to appropriate the said fees as part of the general revenues for the purposes of provincial expenditure."

Using or driving a motor vehicle in good faith prior to this Act without payment of fee not an offence by reason of section 4.

5. No person who in good faith, prior to the commencement of this Act, has used or driven a motor vehicle without payment of fees referred to in section 4 shall be deemed to have committed an offence under the said Act by reason merely of the prescription and levy of the said fees having been declared lawful under the said section.

Addition of Schedule to Act VIII of 1914.

6. To the said Act, the following Schedule shall be added, namely:—

"SCHEDULE.

(*Section 11A.*)

Purpose for which fee is levied.	Maximum rate.
1	2
	Rs.
1. Driving licence	... 20
2. Renewal of driving licence	... 5
3. Registration—	
(*i*) Motor cycles	... 10
(*ii*) Heavy motor vehicles	... 80
(*iii*) Other motor vehicles	... 40
4. Renewal of registration certificates—	
(*i*) when presented on or before the date of expiry or within 10 days after that date	... 8 motor cycles. ... 64 heavy motor vehcles. 32 other motor vehicles
(*ii*) in other cases	... As in 3 above.
5. Dealers' Numbers—	
(*i*) for the first 7 letters	... 150
(*ii*) for every additional 7 letters	... 150"

The Mussalman Wakf (Bombay Amendment)Act, 1935

Bombay Act No. XVIII of 1935

[*23rd September 1935.*

An Act to amend the Mussalman Wakf Act, 1923, in its application to the Presidency of Bombay.

WHEREAS it is expedient to amend to Mussalman Wakf Act, 1923, in its application to the Presidency of Bombay for the purposes hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act and the sanction of the Governor under section 80C of the said Act have been obtained for the passing of this Act ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Mussalman Wakf (Bombay Amendment) Act, 1935.

Heading after the preamble of XLII of 1923.

2. After the preamble of the Mussalman Wakf Act, 1923, hereinafter called the principal Act, the heading "Part I" shall be inserted.

Amendment of section 2 of XLII of 1923.

3. In section 2 of the principal Act,—

(a) after clause (b), the following shall be inserted, namely :—

"(bb) 'District' means a district constituted under section 3 of the Bombay Civil Courts Act, 1869, and includes the City of Bombay."

(b) after clause (e), the following shall be added, namely :—

"(ee) 'Wakf Committee' means a committee constituted under section 6L.

Heading after section 2 of XLII of 1923.

4. After section 2 of the principal Act, the heading "Part II" shall be inserted.

Insertion of Parts III to VI in XLII of 1923.

5. After section 6 of the principal Act, the following parts shall be inserted, namely :—

PART III.

Powers of the Court to call for Particulars and Statement of Accounts.

Power of court to call upon the mutawalli to submit statement.

6A. (1) Notwithstanding anything contained in section 3, it shall be competent to the court, on failure of a mutawalli to furnish a statement as required under the said section, to require the mutawalli to furnish, within such time as the court shall fix, a statement containing all or any of the particulars referred to in the said section, including a copy of the deed or instrument, if any, creating the wakf.

(2) The provisions of section 4 shall apply to a statement furnished under this section as if such statement had been furnished under section 3.

Power of court to require statement of accounts at any time.

6B. (1) Notwithstanding anything contained in section 5, it shall be competent to the court, on failure of a mutawalli to furnish a statement of accounts as required under the said section, to require the mutawalli to prepare and furnish, within such time as the court may fix, a statement of accounts of the nature described in the said section and for such period as the court may think fit.

(2) The provisions of section 6 shall apply to any statement of accounts required to be furnished under this section as if such statement of accounts were a statement of accounts furnished under section 5.

PART IV.

Powers of the Court to Enquire.

Power of court to inquire

6C. (1) The court may, either on its own motion or upon the application of any person claiming to have an interest in a wakf, hold an enquiry in the prescribed manner at any time to ascertain—

(i) whether a wakf is a wakf to which this Act applies ;

(*ii*) whether any property is the property of such wakf and whether the whole or any substantial portion of the subject matter of such wakf is situate within the local limits of the jurisdiction of the court; and

(*iii*) who is the mutawalli of such wakf.

(2) If it comes to the knowledge of the court that a suit has been instituted in any civil court in regard to any of the matters mentioned in sub-section (1), it shall stay the enquiry so far as it relates to, or is likely to be affected by, the court's findings or order in regard to such matters, until the suit is finally decided in that court.

(3) The court shall from time to time ascertain whether such suit has been finally decided and after the final decision of the suit, it shall proceed with the enquiry in regard to such matters, if any, as may not have been decided in such suit.

(4) On completion of the enquiry provided for in sub-sections (1) and (3), the court shall record its findings as to the matters mentioned in the said sub-sections, except such matters as may have been decided in the aforesaid suit.

(5) Save as provided in this section, the court shall not, when acting under this section, try or determine any question of the title of any person claiming adversely to the wakf.

PART V.

Registration of Wakfs, Wakf Accounts and Wakf Administration Funds.

Registration of Wakfs.

6D. (1) The court shall, after the submission of a statement under section 3 or section 4 or section 6A and an enquiry, if necessary, held under section 6C, or merely after an enquiry held under section 6C, record, in such form as may be prescribed in a register called the Register of Wakfs, the following particulars :—

(*a*) a description of the wakf property sufficient for the identification thereof;

(*b*) the gross annual income from such property;

(*c*) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or during the period which has elapsed since the creation of the wakf, whichever period is shorter;

(*d*) the amount of the Government revenue and cesses and of all rents annually payable in respect of the wakf property;

(*e*) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate;

(*f*) the amount set apart under the wakf for—

(*i*) the salary of the mutawalli and allowances to individuals;

(*ii*) purely religious purposes;

(*iii*) charitable purposes;

(*iv*) any other purposes;

(*g*) the name of the mutawalli; and

(*h*) such other particulars as may be prescribed.

(2) Statements, if any, furnished under sections 3, 4 and 6A shall be filed with the said Register of Wakfs.

Amendment of entries in Register of Wakfs.

6E. (1) When any change occurs in any of the particulars recorded in the Register of Wakfs, the mutawalli shall, within three months of the occurrence of such change, report to the court such change in the prescribed form, accompanied by the prescribed fee. The provisions of sections 3 and 4 shall, so far as may be, apply to any such statement.

(2) For the purpose of verifying the correctness of the entries in the Register of Wakfs or ascertaining any change which may have occurred in such register, the court may hold an enquiry in the prescribed manner. The provisions of section 6C shall, so far as may be, apply to any such inquiry.

(3) If the court, after receiving a report under sub-section (1) and holding an enquiry, if necessary, under sub-section (2), or merely after an enquiry held under sub-section (2), is satisfied that a change has occurred in any of the particulars recorded in the Register of Wakfs with regard to a wakf, it shall amend in the prescribed manner the entry or entries affected by such change and shall file the report furnished under sub-section (1) along with the statement, if any, relating to the said wakf filed under section 3.

Entries in the Register of Wakfs and findings recorded under section 6C to be final, subject to section 6G.

6F. The entries made by the court in the Register of Wakfs and the findings recorded under section 6C shall, subject to the provisions of section 6G, be final for the purposes of this Act.

Making or amendment of entries in Register of Wakfs by order of Court.

6G. A civil court of competent jurisdiction deciding any question relating to any wakf may direct that the court shall make such entries or amendments of entries in the Register of Wakfs relating to the said wakf as are consequential upon its decision, and the court shall make such entries or amendments of such entries accordingly.

Maintenance of accounts and their audit.

6H. (1) Every mutawalli of a wakf in respect of which an entry has been recorded in the Register of Wakfs shall keep regular accounts of all moveable and immoveable property received, and of all payments and alienations made and incumbrances created by him on behalf of the wakf of which he is the mutawalli. Such accounts shall be kept in such form and shall contain such particulars as may be prescribed.

(2) The account shall be balanced on the thirty-first day of March in each year, and shall be examined and audited annually or at such other intervals, and in such manner as may be prescribed and by the persons referred to in section 6.

(3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers and other documents and records in the possession and under the control of the mutawalli :

Provided that, if it is proved to the satisfaction of the court that the gross annual income of any particular wakf is less than two hundred rupees, the court may by order in writing exempt such wakf from the provisions of this section.

Annual contribution from wakfs.

61. Every wakf shall, for the purpose of meeting the charges and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the registers of wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act, be liable to pay to the Wakf Administration Fund of the district concerned annually such contribution, on such date and in such manner as may be prescribed :

Provided that the Local Government may, by rules made in this behalf, exempt from the provisions of this section any particular wakf or class of wakfs.

Wakf Administration Fund.

6J. For each district there shall be created a fund to be called the Wakf Administration Fund of the district concerned, and there shall be placed to the credit thereof the following sums, namely :—

(*a*) any fee which may be levied under this Act,

(*b*) contributions under section 61,

(*c*) any sums received by the Wakf Administration Fund from private sources,

(*d*) any sums allotted by Government or by any local authority to the Wakf Administration Fund.

Application of Wakf Administration Fund.

6K. The Wakf Administration Fund of a district shall be under the control and management of the court and shall be applicable to the payment of charges for and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the Register of Wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act.

PART VI.

Supervision and Control.

Constitution and appointment of Wakf Committee.

6L. (1) There shall be constituted in each district a wakf committee to advise and assist the court in all matters relating to the registration, superintendence, administration and control of wakfs.

(2) The Committee shall consist of:—

(*a*) the members of the Indian and Local Legislatures,

(*b*) two members elected in the prescribed manner by the mutawallis of all wakfs in the district registered under the Act,

(*c*) two members elected in the prescribed manner by the members of each district local board in the district professing the Mussalman faith from among their number,

(*d*) one member elected in the prescribed manner by the members professing the Mussalman faith of each municipality in the district constituted under the Bombay District Municipal Act, 1901,

(*e*) two members elected in the prescribed manner by the members professing the Mussalman faith of each municipality in the district constituted under the City of Bombay Municipal Act, 1888, the City of Karachi Municipal Act, 1933, or the Bombay Municipal Boroughs Act, 1925, and

(*f*) such other members not exceeding one-fourth of the total number of the members of the Committee as the Local Government may nominate :

Provided that no person who does not ordinarily reside in the district or does not profess the Mussalman faith shall be eligible to be a member of the Committee.

Functions of Wakf Committee.

6M. (*1*) It shall be competent to the court to refer at any time to the Wakf Committee or any three or more members thereof, for advice, opinion, enquiry, report or recommendation, within such time as the court may direct, any matter relating to the registration, superintendence, administration and control of wakfs, and in particular any matter relating to—

(*a*) the conduct of a mutawalli or a trustee in the administration of a wakf or his fitness to continue as a mutawalli or a trustee,

(*b*) the settlement, cancellation or alteration of a scheme for the administration of a wakf, or

(*c*) the application of the funds of a wakf or any surplus thereof.

(*2*) When the court has referred any of the matters mentioned in sub-section (1) to a wakf committee or any members thereof for advice, opinion, enquiry, report or recommendation, and the committee or the members thereof, as the case may be, have, either unanimously or by a majority, made their recommendation in relation to the matter referred to them, the court may pass orders as it thinks fit after giving due consideration to such recommendation—

(*i*) suspending, removing or dismissing a mutawalli or trustee,

(*ii*) appointing a new mutawalli or trustee,

(*iii*) settling, cancelling or altering a scheme for the administration of a wakf,

(*iv*) directing the application, investment or deposit of the funds of a wakf or any surplus thereof in a particular manner or to a particular purpose,

(*v*) generally for carrying out the purposes of the Act.

Provided that nothing in this section shall be deemed to authorise the court to pass any order which is inconsistent with the objects and purposes of the wakf.

Provided further that no order under this section shall be passed to the prejudice of any mutawalli or trustee without giving such mutawalli or trustee an opportunity to be heard.

(3) For the performance of any of the duties under sub-section (2) the Wakf Committee or any members thereof to whom the court has referred any matter for advice, opinion, enquiry, report, or recommen-

dation, the committee or such members thereof may by order in writing require—

(*a*) the production of any document necessary for the purpose ;

(*b*) the attendance of any person for the purpose of giving evidence or for the production of any document referred to in clause (*a*).

(4) The provisions of sub-sections (2) and (3) of section 6C shall, so far as may be, apply to any inquiry under sub-section (1) or (2).

Court's power to authorise members of Wakf committee to institute suits, etc.

6N. Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908, it shall be competent to the court, after such enquiry as it may think fit, (*a*) to authorise any one or more of the members of a Wakf Committee to institute or defend any suit or proceeding for the purposes of the portection or recovery of the property of a wakf or for the application of the property of a wakf to any public, charitable or religious purpose and (*b*) to allocate from the Wakf Administration Fund such sums as may, in the opinion of the court, be necessary for the aforesaid purpose.

Inspection of wakf property, records and accounts

6O. (1) It shall be competent to the court to direct one or more members of the Wakf Committee to undertake the inspection, in the prescribed manner, of the property, records and accounts of any wakf and to report to the court, within such time as the court may direct, the result of such inspection.

(2) It shall be competent to the court to employ upon such terms and conditions as may be prescribed such persons as may in the opinion of the court be necessary for carrying out the purposes of this Act and to pay them such remuneration from the Wakf Administration Fund as may be prescribed.

Court's power to order special audit.

6P. It shall be competent to the court at any time to order a special audit of the accounts of a wakf by an accountant possessing the prescribed qulifications and to order the cost of such audit to be paid by the mutawalli from the income of the property of the wakf or out of the Wakf Administration Fund.

Publication of lists of wakfs.

6Q. There shall be published annually on such date as the Local Government may determine in the local official Gazette and in the principal vernacular of the district in a newspaper circulating therein a list of wakfs and a statement of the sums standing to the credit of the Wakf Administration Fund, under the signature of the court and in such form as the Local Government may prescribe."

Insertion of a new heading after section 6Q.

6. After section 6Q inserted by this Act, into the principal Act, the heading "Part VII" shall be inserted.

Amendment of section 7 of XLII of 1923.

7. In section 7 of the principal Act after the word and figure "section 4", the words and figures "section 6A or section 6B or section 6C or section 6E" shall be inserted.

Amendment of section 8 of XLII of 1923.

8. In section 8 of the principal Act,—

(*a*) after the word and figure "section 4" the words and figures "or section 6A or section 6C or section 6E" shall be inserted ; and

(*b*) after the word and figure "section 5" the words and figures "or section 6B or section 6C" shall be inserted.

Amendment of section 9 of XLII of 1923.

9. In section 9 of the principal Act,—

(*a*) after the word and figure "section 4", the words and figures "or section 6A or section 6C or section 6E shall be inserted ;

(*b*) after the word and figure "section 5" the words and figures "or section 6B or section 6C" shall be inserted ;

(*c*) after the word and figure "section 6", the words and figures "or section 6H or section 6P or any entry in the Register of Wakfs or any statement, notice, intimation, report, accounts or any document filed under this Act" shall be inserted.

Insertion of new section after s. 9 of XLII of 1923.

10. After section 9 of the principal Act, the following shall be inserted, namely :—

Provisions of Code of Civil Procedure to apply.

"9A. (1) The provisions of the Code of Civil Procedure, 1908, relating to—

(*a*) the proof of facts by affidavits,

(*b*) the enforcing of the attendance of any person and his examination on oath,

(*c*) the enforcing of the production of documents, and

(*d*) the issuing of commissions shall apply to all proceedings held by the court under this Act and provisions relating to the service of summonses shall apply to the service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders passed by the court under this Act."

Heading after section 9A of this Act.

11. After section 9A inserted by this Act, into the principal Act, the heading "Part VIII" shall be inserted.

Amendment of section 10 of XLII of 1923.

12. In section 10 of the principal Act—

(*a*) after the word and figure "sectian 4", the words and figures "or section 6A or section 6C or section 6E" shall be inserted ;

(*b*) after the word and figure "section 5", the words and figures "or section 6B or section 6C" shall be inserted ;

(*c*) after the word "accounts" where it occurs for the first time, the words, figure and letter "or who is required by section 6H to keep regular accounts" shall be inserted ;

(*d*) after the word "document" where it occurs for the second time, the words "or to keep regular accounts" shall be inserted ;

(*e*) after the words "statement" where it occurs for the fourth time the words " or keeps accounts" shall be inserted.

Insertion of new sections after s. 10 of XLII of 1923.

13. After section 10 of the principal Act, the following shall be inserted, namely:—

"10A. (1) If any person fails to comply with any order passed by the Court or by the Wakf Committee or any member thereof under or in pursuance of the provisions of this Act, such person shall, if such failure to comply is not punishable under any of the sections of this Act, be on conviction punishable with fine which may extend to one thousand rupees.

Penalty for non-compliance with any other order

(2) A Criminal Court may, in passing an order of conviction for an offence under sub-section (1), specify the period within which the person convicted shall comply with the provisions of this Act which may be found to have been contravened by him, and may also prescribe a daily fine not exceeding Rs. 50 for every day for the period during which the default continues after the expiry of the period so specified:

Provided that, if the person failing to comply with any direction issued by such court satisfies such court that there is good reason for his failure to do so and applies for an extension of the period specified under this section, such court may, if it thinks fit, extend the period and may remit the whole or any part of the fine paid or due.

10B. (1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Court given in the prescribed manner.

Cognizance of offences.

(2) No Criminal Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try an offence under this Act.

Prosecution of, and suits against, persons acting in good faith.

10C. No suit or prosecution or other proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

Recovery of sums due under this Act.

10D. All sums due under this Act shall be recoverable as arrears of land revenue."

Amendment of section 11 of XLII of 1923.

14. (1) In sub-section (2) of section 11 of the principal Act—

(*a*) in clause (*a*) after the word and figure "section 3" the words and figures "or under section 6A or section 6C" shall be inserted;

(*b*) for clause (*b*) the following shall be substituted, namely:—

(*b*) the manner in which notice to be published under section 4 and the fees to be charged upon application made to the court under sub-section (1) of section 4 or under section 6A or section 6B or section 6C;

(*c*) in clause (*c*) after the word and figure "section 5", the words and figures "or section 6B or section 6C" shall be inserted;

(*d*) in clause (*d*) after the word and figure "section 6" the words and figures "or section 6H or section 6P" shall be inserted;

(*e*) in clause (*e*), after the brackets and letter "(*e*)" the words "the manner of inspection and" shall be inserted;

(*f*) after clause (*f*), the following shall be inserted, namely:—

"(*f1*) the manner in which subject to the provisions of section 9A an inquiry shall be held by the Court and the Wakf Committee

under section 6C or 6M and the manner in which the parties shall be represented in such inquiry and the costs of such inquiry shall be borne,

(*f2*) the manner in which the Register of Wakfs shall be prepared and maintained under section 6D,

(*f3*) the form in which a change in any of the particulars recorded in the Register of Wakfs shall be reported and the amount of fee to accompany such report and the manner in which the inquiry shall be held and the entries in the Register of Wakfs shall be amended under section 6E,

(*f4*) the form in which the accounts shall be prepared, kept and furnished, the particulars to be entered therein, and the manner in which, and interval at which such accounts shall be audited under section 6H,

(*f5*) the amount of contribution, the date on which and the manner in which it shall be paid and exemptions granted under section 6I,

(*f6*) the appointment and remuneration of auditors appointed under the Act,

(*f7*) the management, custody, investment and disbursement of the Wakf Administration Fund,

(*f8*) the purpose for which a Wakf Administration Fund shall be applied under section 6K,

(*f9*) the number of members who shall constitute a Wakf Committtee, the period of office of a Wakf Committee and the manner in which such committee shall hold its meetings and the procedure to be followed at their meetings,

(*f10*) the manner in which the inspection of the property, records and accounts of a wakf shall be carried out, the sum which shall be paid in respect of the costs of the members of the Wakf Committee undertaking such inspection, the terms and conditions on which persons shall be employed and the remuneration which shall be paid to such persons, under section 6O,

(*f11*) the qualifications of an accountant appointed under section 6P,

(*f12*) the form in which a list of wakfs shall be published under section 6Q."

(2) After sub-section (2) of section 11 of the principal Act, the following new sub-section shall be added, namely :—

"(3) Rules made under this section shall be laid upon the table of the Bombay Legislative Council at the session of the said Council next following and shall be liable to be modified or rescinded by a resolution of the said Council and such rule shall after notification in the local official Gazette be deemed to have been modified or rescinded accordingly:

Provided that when in the opinion of the Local Government such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the Local Government may by notification in the local official Gazette declare that the modification or rescission shall have no effect and thereupon the rules shall remain in force as if they had not been modified or rescinded."

The Opium (Amendment) Act, 1923

Bombay Act No II of 1923

[*3rd February 1923.*

An Act further to amend the Opium Act, 1878.

WHEREAS it is expedient further to amend the Opium Act, 1878, in its application to the Presidency of Bombay, in manner hereinafter appearing; and WHEREAS the previous sanction of the Governor General required by clause (*e*) of sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act: It is hereby enacted as follows :—

Short title.

1. This Act may be called the Opium (Amendment) Act, 1823.

Interpretation clause.

2. In section 3 of the Opium Act, 1878, hereinafter called the said Act, after the definition of "Magistrate" the following definition shall be inserted, namely :—

"Officer in charge of a police station" means and includes, in the City of Bombay, an officer in charge of a section, and "officer in charge of the nearest police station" means and includes, in the City of Bombay, the nearest officer in charge of a section, within the meaning of the City of Bombay Police Act, 1902.

New sections 20 to 20C.

3. For section 20 of the said Act, the following sections shall be substituted, namely:—

Powers of certain officers of Salt and Excise and Customs Departments with regard to offences.

"20. Every officer of the department of Salt and Excise not below the rank of Inspector and every officer of the Customs deparment not below the rank of Preventive officer, who may in right of his office be authorised by the Local Government in this behalf, shall, within the area for which he is appointed, exercise powers with regard to offences under this Act, similar to those exercised by an officer in charge of a police station under the Code of Criminal Procedure, 1898.

Disposal of persons arrested and things seized in certain cases,

20A. Every person arrested and thing seized under sections 14, 15, or 19 shall, unless the arrest or seizure has been made by an officer of the department of Salt and Excise or the Customs department authorised under section 20, be forwarded without delay to the nearest such officer, or if there be no such officer within a reasonable distance, to the officer in charge of the nearest police station.

Disposal of person arrested by officer of Department mentioned in section 20.

20B. When any person has been arrested under section 14, 15 or 19 by an officer of the department of Salt and Excise or the Customs department authorized under section 20 or been forwarded to him under section 20A, the said officer may detain such person and shall proceed to enquire into the charge against him, and

(*a*) if he is of opinion that there is sufficient evidence or reasonable ground of suspicion against him, he shall forward him to the nearest Magistrate having power to take cognizance of the offence, or admit him to bail if sufficient bail be tendered for his appearance before the Magistrate ; or

(*b*) if he is of opinion that there is not sufficient evidence or reasonable ground as aforesaid, or that the person arrested may be discharged with a warning, he shall release him on his executing a bond with or without sureties, to appear, if and when so required, before a Magistrate having power as aforesaid, and make a full report of all the particulars of the case to his official superior and be guided by the order which he shall receive upon such report.

Article seized by such officer.

20C. When anything has been seized by an officer of the department of Salt and Excise or the Customs department authorised under section 20, or been sent to him under section 20A, such officer, after such enquiry as may be necessary, shall

(*a*) if it appears that such thing is required as evidence in the case of any person arrested, forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken,

(*b*) if it appears that it is liable to confiscation but is not required as evidence as aforesaid, send it with a full report of the particulars of the seizure to the Collector,

(*c*) if no offence appears to have been committed, return it to the person from whose possession it was seized."

The Opium (Bom. Amendment) Act, 1930

Bombay Act No. XIV of 1930.

[*3rd September 1930.*

An Act further to amend the Opium Act, 1878, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Opium Act, 1878, in its application to the Presidency of Bombay in manner hereinafter appearing; and whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Opium (Bombay Amendment) Act, 1930.

Amendment of section 20 of Act 1 of 1878.

2. In section 20 of the Opium 1878, for the words "and Excise not below the rank of Inspector" the words "not below the rank of Inspector and every officer of the department of Excise not below the rank of Assistant Inspector" shall be substituted.

Presidency Small Cause Courts (Bom. Amendment) Act,

Bombay Act No. V of 1933

[*17th May 1933.*

An Act further to amend the Presidency Small Cause Courts Act, 1882, in its application to the Presidency Town of Bombay.

WHEREAS it is expedient further to amend the Presidency Small Cause Courts Act, 1882, in its application to the Presidency-town of Bombay; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Presidency Small Cause Courts (Bombay Amendment) Act, 1933.

Amendment of the third schedule to Act XV of 1882

2. In the footnote to part E of the third schedule to the Presidency Small Cause Courts Act, 1882, for the words "four annas per day" the words "such fee not exceeding twelve annas per day as may be fixed by the Registrar of the Small Cause Court" shall be substituted.

Prevention of Cruelty to Animals (Bom. Amendment) Act

Bombay Act No XIII of 1922

[*28th December 1922.*

(*As amended by Bom. Act No. III of 1933*)

An Act further to amend the Prevention of Cruelty to Animals Act, 1890.

WHEREAS it is expedient further to amend the Prevention of Cruelty to Animals Act, 1890, in its application to the Presidency of Bombay in manner hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Prevention of Cruelty to Animals (Bombay Amendment) Act, 1922.

Amendment of section 3 of XI of 1890.

2. In section 3 of the Prevention of Cruelty to Animals Act, 1890, hereinafter called the said Act,

(*a*) the words "in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or any such other place" shall be repealed; and

(*b*) after clause (*c*) the following two clauses shall be added, namely :—

"or (*d*) in area to which this clause is by special notification as aforesaid extended, without sufficient excuse neglects to supply any animal under his control with sufficient food or drink; or

(*e*) in any area to which this clause is by special notification as aforesaid extended, without sufficient excuse abandons or turns loose any animal without making due provision for its sustenance."

Amendment of section 6 of XI of 1890.

3. For section 6 of the said Act the following section shall be substituted, namely :—

Penalty for employing animal unfit for labour.

6. (1) If any person employs in any work or labour any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so employed, or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

(2) The Local Government may, by general or special order, appoint places to be infirmaries for the treatment and care of animals in respect of which offences against sub-section (1) have been committed.

(3) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is alleged or proved to have been committed shall be sent for treatment and care to an infirmary and be there detained until, except as provided for in sub-section (4), it is in his opinion or in the opinion of some other Magistrate, again fit for the work or labour on which it has been ordinarily employed. If, however, the Magistrate decides that the animal will never again be fit he may direct that it shall be destroyed or sent to a pinjrapole.

(4) Within any specified area the Local Government may, when any animal has been sent to an infirmary under sub-section (2), authorize any veterinary officer to issue a certificate that in his opinion such animal is fit for the work or labour on which it has been ordinarily employed and such animal shall not be released from detention unless and until such certificate shall have been issued or the Magistrate directs that it shall be destroyed or sent to a pinjrapole.

(5) The cost of the transport to the infirmary and the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate or, in the case of an infimary in a Presidency town, the Commissioner of Police may from time to time prescribe.

*(6) (*a*) If in the case of an animal directed to be destroyed or sent to a pinjrapole under sub-section (4), the owner refuses or neglects to pay the costs incurred in respect of the animal under sub-section (5), such cost shall be recoverable from the owner as a fine on the order of a Magistrate, provided that no such order shall be made without the owner being given an opportunity of showing cause, before the Magistrate, why such costs should not be recovered;

(*b*) if, in the case of an animal certified under sub-section (4) to be fit for work or labour, the owner refuses or neglects to remove the animal within such time as a magistrate may prescribe and to pay the cost incurred in respect of the animal under sub-section (5) the magistrate may direct the animal to be sold and the proceeds of the sale to be applied to the payment of such cost.

(7) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him.

(8) If the cost incurred under sub-section (5) shall exceed the proceeds of the sale, the excess to such extent as shall seem reasonable shall be recoverable from the owner as a fine on the order of a Magistrate, provided that no such order shall be made without the owner being given a reasonable opportunity of urging his objections, if any, before the Magistrate.

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*Sub-section (6) was substituted for the original by Bom. Act III of 1933, section 2.

Prevention of Cruelty to Animals (Bom. Amendment) Act

BOMBAY ACT No. IX OF 1923

[*4th October 1923*

An Act further to amend the Prevention of Cruelty to Animals Act, 1890.

WHEREAS it is expedient further to amend the Prevention of Cruelty to Animals Act, 1890, in its application to the Presidency of Bombay in manner hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Prevention of Cruelty to Animals (Bombay Amendment) Act, 1923.

Amendment of section 11 of XI of 1890.

2. In section 11 of the Prevention of Crulty to Animals Act, 1890, after the words "offence to" the words "abandon, turn loose or" shall be inserted.

The Provincial Small Cause Courts (Bombay Amendment) Act, 1930

Bombay Act No. VI of 1930

[*9th March 1930.*

An Act further to amend the Provinicipal Small Cause Courts Act, 1887, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Provincial Small Cause Courts Act, 1887, in its application to the Presidency of Bombay in manner hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Provincial Small Cause Courts (Bombay Amendment) Act, 1930.

Amendment of section 12 of Act IX of 1887.

2. In sub-section (3) of section 12 of the Provincial Small Cause Courts Act, 1887, hereinafter called "the said Act" for the word "twenty" the word "fifty" shall be substituted.

Amendment of the Second Schedule to Act IX of 1887.

3. In the Second Schedule to the said Act the following amendments shall be made, namely :—

(1) to clause (4) after the words "such property" the following shall be added, namely :—

"but not including a suit for ejectment where—

(*a*) The property has been let under a lease made by a written instrument, and

(*b*) The Court of Small Causes would be competent to take cognizance of a suit for the rent of the property, and

(*c*) The only substantial issue arising for decision is as to whether the lease has determined by efflux of the time limited thereby or has been determined by a notice in accordance with clause (*h*) of section 111 of of the Transfer of Property Act, 1882.

(2) In clause (18) for the words "relating to a trust" the words "to enforce a trust" shall be substituted ;

(3) to clause (20) after the words "Code of Civil Procedure" the words "in respect of any immoveable property" shall be added ;

(4) to clause (21) after the word "attachment" the words "of any immoveable property" and after the word "transfer" the words "of any such property" shall, respectively, be added ; and

(5) in clause (31) for the words "and a suit for the profits on immoveable property belonging to the Plaintiff which have been wrongfully received by the Defendant" the words "but not including a suit for mesne profits" shall be substituted.

The Provincial Small Cause Courts (Bombay Amendment) Act, 1932.

Bombay Act No. IX of 1932

[*10th November 1932.*

An Act further to amend the Provincial Small Cause Courts Act, 1887, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Provincial Small Cause Courts Act, 1887, in its application to the Presidency of Bombay ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Provincial Small Cause Courts (Bombay Amendment) Act, 1932.

Amendment of the second schedule to Act IX of 1887.

2. In sub-clause (*a*) of clause 4 in the Second Schedule to the said Act, beween the words "a written instrument" and "and" the following words shall be inserted, namely :—

"or orally."

The Indian Registration (Bombay Amendment) Act, 1929

Bombay Act No V of 1929

[*22nd May 1929.*

An Act further amend the Indian Registration Act, 1908, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Indian Registration Act, 1908, in its application to the Presidency of Bombay in manner hereinafter appearing ; and whereas the previous sanction of the Governor General required by section 80A of the Government of India Act has been obtained for the passing of this Act ; It is hereby enacted as follows —

Short title.

1. This Act may be called the Indian Registration (Bombay Amendment) Act, 1929.

Amendment of section 8 of Act XVI of 1908.

2. To sub-section (1) of section 8 of the Indian Registration Act, 1908, hereinafter called the said Act, the following shall be added, namely :—

"Provided that the Local Government may delegate, subject to such restrictions and conditions as it thinks fit, to the Inspector-

General of Registration the power of appointing inspectors of registration offices."

Amendment of section 13 of Act XVI of 1908.

3. In section 13 of the said Act,

(1) sub-sections (1) and (2) shall be repealed ; and

(2) after the word "sub-Registrars" the words "and Inspectors of Registration offices" shall be inserted.

Amendment of section 21 of Act XVI of 1908.

4. To sub-section (2) of section 21 of the said Act the following shall be added, namely :—

"In all city surveyed areas in the Bombay Presidency, houses and lands shall also be described by their cadastral survey numbers as in the city survey maps and records."

Amendment of section 22 of Act XVI of 1908.

5. In sub-section (2) of section 22 of the said Act for the word "Save" the words "Except in the case of city surveyed areas in the Bombay Presidency and except" shall be inserted.

Amendment of section 36 of Act XVI of 1908.

6. In section 36 of the said Act for the words "may in his discretion" the words "in his discretion, may upon receipt of the prescribed fee issue, or may" shall be substituted; and after the word 'issue" a comma shall be inserted.

Amendment of section 51 of Act XVI of 1908.

7. In sub-section (2) of section 51 of the said Act after the figures "89" the words and figures " sub-sections (2) and (4) " shall be inserted.

Amendment of section 54 of Act XVI of 1908.

8. In section 54 of the said Act after the word "books" where it occurs for the second time the words "and there shall also be prepared current indexes of the contents of the copies filed under sub-sections (1) and (3) of section 89" shall be inserted.

Amendment of section 55 of Act XVI of 1908.

9. In section 55 of the said Act,

(*a*) for sub-section (1) the following shall be substituted, namely :—

"(1) six such indexes shall be made in all registration offices and shall be named, respectively, Index No. I, Index No. I-A, Index No. II, Index No. II-A, Index No. III and Index No. IV :"

(*b*) after sub-section (2) the following sub-section shall be inserted, namely :—

"(*2A*) Index No. I-A shall contain the names including the father's name, or, in the case of persons usually described by their mother's name, the mother's name and the places of residence of all persons executing, and of all persons claiming under, the documents of which copies are filed under sub-section (1) or (3) of section 89 ;"

(*c*) after sub-section (3) the following sub-section shall be inserted, namely :—

"(3A) Index No. II-A shall contain such particulars mentioned in section 21 as the Inspector-General may, from time to time, pre-

scribe in this behalf in regard to every copy filed under sub-section (1) or (3) of section 89;"

(*d*) for the words "and additions" wherever they occur, the words "including the father's name, or, in the case of persons usually described by their mother's name, the mother's name, and the places of residence" shall be substituted.

Amendment of section 57 of Act XVI of 1908.

10. In sub-section (1) of section 57 of the said Act after the words and figure "Book No. 1" the following words and figures shall be inserted, namely :—

"and, so long as they are preserved, the copies filed under sub-sections (1) and (3) of section 89 and the indexes relating to such copies."

Amendment of section 69 of Act XVI of 1908.

11. In clause (*h*) of sub-section (1) of section 69 of the said Act, after the figures "I" and "II" the figures "I-A" and "II-A" respectively shall be inserted.

Amendment of section 89 of Act XVI of 1908.

12. In sub-sections (1) and (3) of section 89 of the said Act for the words and figure "Book No. I" the word "office" shall be substituted.

The Indian Registation (Bombay Amendment) Act, 1930

Bmbay ot No. XVII of 1930

[*4th September 1930.*

An Act further amend the Indian Registration Act, 1908, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Indian Registration Act, 1908, in its application to the Presidency of Bombay, in manner hereinafter appearing; And whereas the previous sanction of the Governor General required by sub-section (3) of section 80-A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Registration (Bombay Amendment) Act, 1930.

Amendment of section 69 of Act XVI of 1908.

2. After clause (*g*) of sub-section (1) of section 69 of the Indian Registration Act, 1908, hereinafter called the said Act, the following clause shall be inserted, namely :—

"(*gg*) regulating the procedure for transmitting documents for being photographed and the serial numbering, binding and preservation of the photographic prints and negatives."

Insertion of new Part XI-A in Act XVI of 1908.

3. After Part XI of the said Act, the following shall be inserted, namely:—

PART XI-A

OF THE COPYING OF DOCUMENTS BY MEANS OF PHOTOGRAPHY

Application of this part.

70-A. This Part shall apply to the areas only in respect of which a notification is issued by the Local Government under section 70-C.

Definition.

70-B. For the purposes of this Part 'Photo-Registrar' means any person appointed by the Local Government to perform the duties of Photo-Registrar under this Part :

Provided that the Local Government may delegate, subject to such restrictions and conditions as it thinks fit, to the Inspector-General of Registration the power of appointing Photo-Registrars.

Documents may be photographed in areas notified by Government.

70-C. (1) The Local Government may, by notification in the *Bombay Government Gazette*, direct that in any district or sub-district specified in the notification copies of documents admitted to registration under this Act shall be made by means of photography.

(2) On the issue of such notification it shall be translated into the vernacular of the district and shall be posted in a conspicuous place at the Registration offices affected by the notification.

Application of Act to areas notified under section 70-C.

70-D. In any district or sub-district in respect of which a notification has been issued under section 70-C the provisions of this Act shall, for the purposes of this Part, be subject to the following modifications, namely :—

(1) (*a*) every document admitted to registration under section 35 or section 41 shall be carefully marked with an identification stamp and the serial number of the document on every page.

(*b*) It shall then be transmitted by the registering officer to the Photo-Registrar, who shall cause, each side of each page of such document together with all stamps, endorsements, seals, signatures, thumb impressions and certificates appearing thereon to be photographed without subtraction or alteration. He may for this purpose cut or untie, without breaking any seals, the thread ot ribbon wherewith the pages of the document are sewn together in order or separate the pages of the document, and, as soon as the document has been photographed, he shall rebind the document exactly as before and if he has cut the thread or ribbon shall seal it over the joint with his seal :

Provided that before transmission of the document to the Photo Registrar the party presenting the document may require the registering officer to have it copied by hand under section 52 on payment of an additional copying fee.

(*c*) There shall then be prepared and preserved the negative and at least one photographic print and to each such negative and print the Photo Registrar shall fix his signature and seal in token of the exact correspondence of the copy to the original document, as admitted for registration.

(*d*) One set of such prints arrauged in the order of their serial numbers shall be made up into books and sewn or bound together. To each such book the Registrar or Sub-Registrar shall pre fix a certificate of the serial numbers it contains, and the books shall then be preserved in the records of the Sub-Registrar. The negatives shall be preserved in such suitable place as the Inspector-General may prescribe.

(2) All words and expressions used in the Act with reference to the making of copies of documents by hand or the entering or filing

of documents or memprandum in books provided under section 16 shall, so far as may be necessary, be construed as referring to the making of such copies by means of photography or the entering or filing of documents or memoranda in books made up of copies prepared by means of photography.

(3) Where this part applies the sections mentioned below shall be deemed to be modified as follows :—

(*a*) In section 19 the words 'and also by a true copy' shall be omitted ;

(*b*) sub-section (4) of section 21 shall be omitted ;

(*c*) the words 'according to the order of its admission' occurring in clause (*c*) of sub-section (1) of section 52 shall be omitted ;

(*d*) section 53 shall be omitted ;

(*e*) in sub-section (1) of section 60 the words 'and page' shall be omitted ;

(*f*) sub-section (1) of section 61 shall be omitted ;

(*g*) in sub-section (1) of section 62,—

(*i*) for the word 'transcribed' the word 'copied' shall be substituted ; and

(*ii*) for the words and figures 'copy referred to in section 19' the words 'photograph of the original' shall be substituted."

The Indian Registration (Bombay Amendment) Act, 1933

Bombay Act No XVIII of 1933

[*18th October 1933.*

An Act further amend the Indian Registration Act, 1908, in its application to the Presidency of Bombay.

WHEREAS it is expedient further to amend the Indian Registration Act, 1908, in its application to the Presidency of Bombay, for the purpose hereinafter appearing ; And whereas the previous sanction of the Governor Genteral required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Registration (Bombay Amendment) Act, 1933.

Amendment of section 69 of Act XVI of 1908.

2. To clause (*gg*) of sub-section (1) of section 69 of the Indian Registration Act, 1908, in its application to the Presidency of Bombay, hereinafter called the said Act, the following shall be added, namely:-

"and the manner of fixing the signature and seal of the Photo-Registrar at the end of a length of film;"

Amendment of section 70-D of Act XVI of 1908.

3. To clause (*c*) of sub-section (1) of section 70-D of the said Act the following shall be added, namely :—

" provided that when more than one such negative is recorded on one length of film and the Photo-Registrar has affixed his signature

and seal at the end of such length of film certifying in the manner prescribed by rules made in this behalf, the exact correspondence of all copies on such length of film with the original documents, the Photo-Registrar shall be deemed to have affixed his signature and seal to each such negative on such length of film."

The Societies Registration (Amendment) Act, 1912

Bombay Act No. II of 1912

[*29th May 1912*

An Act to amend the Societies Registration Act, 1860

WHEREAS it is expedient to amend the Societies Registration Act, 1860, in manner hereinafter appearing;

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 this Act; It is hereby enacted as follows:

Amendment of section 14.

1. Notwithstanding anything contained in section 14 of the Societies Registration Act, 1860, hereinafter called "the said Act," it shall be lawful for the members of any society dissolved under section 13 of the said Act to determine by a majority of votes of members present personally or by proxy at the time of dissolution of such society that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in section 1 of the said Act.

The Cotton Ginning and Pressing Factories (Bombay Amendment) Act, 1936

Bombay Act No. IV of 1936.

[*16th March 1936*

An Act to amend the Cotton Ginning and Pressing Factories Act, 1925, in its application to the Presidency of Bombay.

WHEREAS it is expedient to amend the Cotton Ginning and Pressing Factories Act, 1925, in its application to the Presidency of Bombay for the purposes hereinafter appearing; And whereas the previous sanction of the Governor General required under sub-section (3) of section 80A and the previous sanction of the Governor required under section 80C of the Government of India Act have been obtained for the passing of this Act; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Cotton Ginning and Pressing Factories (Bombay Amendment) Act, 1936.

(2) This Act shall extend in the first instance to the Province of Sind or such area in the said Province with effect from such date as the Local Government may by notification in the local official Gazette appoint. The Local Government may by notification in the local official Gazette extend the provisions of this Act to any other area with effect from such date as the Local Government may appoint in the said notification.

Amendment of section 2 of Act XII of 1925.

2. In section 2 of the Cotton Ginning and Pressing Factories Act, 1925, hereinafter called the said Act,—

(1) after the word, comma and dash "context,—,' the following shall be inserted, namely :—

"(*aa*) 'admixture of cotton' means a prescribed mixture of different varities of cotton ;" and

(2) after clause (*f*) the following clause shall be inserted, namely :—

"(*ff*) 'licence' means a licence granted under section 2A."

(3) after clause (*h*) the following clause shall be inserted, namely :—

"(*i*) 'Season' means such period as may from time to time be prescribed."

Insertion of section 2A in Act XII of 1925.

3. After section 2 of the said Act, the following section shall be inserted, namely :—

Licence for working cotton ginning factory or cotton pressing factory.

"2A. (1) No cotton ginning factory or cotton pressing factory shall be worked without a licence granted to the owner thereof by such authority, in such form, subject to such conditions and on payment of such fee, as may be prescribed.

(2) (*a*) A licence for which the prescribed fee has been paid shall be liable to be refused only on the ground that the owner or person in charge of a cotton ginning or cotton pressing factory in respect of which a licence is applied for has been convicted of an offence punishable under this Act.

(*b*) A licence shall be liable to be suspended, withdrawn or cancelled only on the ground that the owner or person in charge of the cotton ginning or cotton pressing factory in respect of which a licence was granted has been convicted of an offence punishable under this Act:

Provided that no licence shall be suspended, withdrawn or cancelled under this clause until after the expiration of the season in which the said owner or person has been so convicted.

(3) If any person works a cotton ginning or cotton pressing factory in respect of which a licence has not been granted or has been suspended, withdrawn or cancelled, such person shall be punishable :—

(a) on a first conviction, with fine which may extend to five hundred rupees and, if the offence has continued for more than one day, with an additional fine which may extend to one hundred rupees for every day subsequent to the first day during which the offence has continued ; and

(b) on every subsequent conviction, with fine which may extend to fifteen hundred rupees and, if the offence has continued for more than one day, with an additional fine which may extend to two hundred rupees for every day subsequent to the first day during which the offence has continued."

4. In sub-section (2) of section 3 of the said Act:—]

Amendment of section 3 of Act XII of 1925.

(1) the word 'and' shall be omitted, and

(2) the following words shall be added at the end :—

" and the prescribed particulars as supplied by such person of the cotton ginning factory where it has been ginned."

Insertion of new sections 3A, 3B and 3C in Act XII of 1925.

5. After section 3 of the said Act, the following new sections shall be inserted, namely:—

Prohibitions against watering, etc., of cotton.

"3A. (1) The Local Government may by notification in the local official Gazette declare that in any area specified in such notification and to which this Act has been extended, no cotton which is ginned or pressed in a cotton ginning or cotton pressing factory shall contain any admixture of cotton.

(2) Any owner of a cotton ginning or cotton pressing factory or any person in charge of such factory—

(a) who knowing or having reason to believe that any cotton is watered or contains seed in excess of the prescribed proportion or contaians any foreign substance, gins or presses or allows such cotton to be ginned or pressed in such factory, or

(b) who in area specified in the notification under sub-section (1) gins or presses or allows to be ginned or pressed any cotton which he knows or has reason to believe to contain an admixture of cotton,

shall, on conviction, be punishable with fine which may extend to five thousand rupees.

(3) Any owner of cotton who knowingly waters any cotton which is ginned and which is being, or is intended to be, pressed in a cotton pressing factory, or mixes seed or foreign substance with such cotton, or in any area specified in sub-section (1) makes any admixture of cotton, or abets or knowingly allows or connives at any such watering, mixing or admixture of cotton, shall, on conviction, be punishable with fine which may extend to five thousand rupees.

Explanation.—For the purposes of this section, cotton shall not be deemed to be watered, unless such cotton contains moisture in excess of the normal quantity. The normal quantity of moisture in any given quantity of cotton is the amount of moisture that such cotton is reasonably expected to have, regard being had to the place or places at or to which, and the time or times of the year in which, such cotton has been picked, collected, stored, conveyed, left ginned or pressed. A certificate given by the prescribed authority as to the normal quantity of moisture that a given quantity of such cotton should have and the quantity of moisture that it possesses shall be evidence of such matters, until the contrary is proved; and if the latter quantity exceeds the former it shall be evidence, until the contrary is proved, that the cotton is watered.

Examination of cotton, packages or bales.

3B. (1) The Local Government or any gazetted officer authorised by it in this behalf may on its or his own motion or on receipt of a complaint that there has been a contravention of the provisions of section 3A in respect of any cotton, package or of any bale and in the case of a complaint, on payment of the prescribed fee by the complainant, cause such cotton or the contents of such package or bale to be examined by tha prescribed person or body.

(2) A certifiate given by such person after examination of the contents of any bale under sub-section (1) shall be admissible in evidence and be presumptive proof of the facts mentioned therein until the contrary is proved.

Entry and inspection.

3C. (1) The Local Government may authorise any gazetted officer to enter into and inspect, at any reasonable time, any cotton ginning or cotton pressing factory for the purpose of ascertaining whether there is any contravention therein of any of the provisions of this Act or of any rule made thereunder or of any of the conditions subject to which a licence has been granted in respect of such factory and to seize all things in respect of which an offence punishable under this Act appears to have been committed.

(2) The owner or the person in charge of every cotton ginning or cotton pressing factory shall give every reasonable assistance to the inspecting officer in the performance of his duties under sub-section (1).

(3) The owner or the person in charge of such factory shall, in every instance, be permitted to attend during the inspection and the things seized during such inspection shall be sealed in the prescribed manner."

Amendment of section 5 of Act XII of 1925.

6. For section 5 of the said Act, the following section shall be substituted, namely :—

Returns.

"5. (1) The owner of every cotton ginning factory shall submit to the prescribed authority, within such time and in such form, as may be prescribed, monthly returns showing the quantity of cotton ginned in the factory during the preceding month and from the commencement of the season to the end of that month.

(2) The Local Government shall compile from the monthly returns submitted under sub-section (1), and shall publish in such manner as the Governor-General in Council may direct, a statement showing the total quantity of cotton ginned in the province during the month and from the commencement of the season to the end of the month to which the returns relate ;

Provided that the quantity of cotton ginned in any individual factory shall not be published.

(3) The owner of every cotton pressing factory shall submit to the prescribed authority, within such time and in such form, as may be prescribed, weekly returns showing the total number of bales of cotton pressed during the preceding week and from the commencement of the season to the end of that week, and the approximate average net weight of the bales pressed in that week.

(4) The Local Government shall compile from the weekly returns submitted under sub-section (3), and shall publish in such manner as the Governor-General in Council may direct, a statement showing the total number of bales pressed in the province during the week and from the commencement of the season to the end of the week to which the returns relate :

Provided that the number of bales pressed in any individual factory shall not be published.

(5) If default is made in submitting any return as required by sub-section (1) or sub-section (3), the owner of the factory

shall, on conviction, be punishable with fine which may extend to fifty rupees.

(6) When the owner of a cotton ginning or cotton pressing factory has notified to the prescribed authority that the work of ginning cotton or pressing bales in that factory has been suspended, it shall not be necessary for the owner to submit returns under sub-section (1) or sub-section (3) until such work has been resumed."

Amendment of section 6 of Act XII of 1925.

7. In section 6 of the said Act, after the words "other than" the words and figures "the standard weights and measures, weighing and measuring instruments authorised under the Bombay Weights and Measures Act, 1932, in districts or areas in which Parts II, III, V and VI of that Act are in force or elsewhere other than" shall be inserted.

Amendment of section 7 of Act XII of 1925.

8. In sub-section (1) of section 7 of the said Act, after the words "for the purpose of sections" insert the figures and letters "3A, 3C."

Insertion of new section 11A in Act XII of 1925.

9. After section 11 of the said Act the following new section shall be inserted, namely :—

Power of Magistrate to pass sentence.

"11A. Notwithstading anything contained in section 32 of the Code of Criminal Procedure, 1898, a Presidency Magistrate or a Magistrate of the First class may pass any sentence provided for any offence punishable under this Act and the provisions of the said Code shall be deemed to have been amended accordingly."

Amendment of section 13 of Act XII of 1925.

10. (1) In section 13 of the said Act, after clause (*a*), the following clauses shall be inserted, namely :—

(*aa*) what shall constitute an admixture of cotton ;

(*ab*) the period which shall from time to time constitute a season ;

(*ac*) the authority by whom, the form in which, the conditions subject to which and the fees on payment of which, a licence may be granted under sub-section (1) of section 2-A ;

(*ad*) the particulars of the cotton ginning factory to be entered in the register maintained under sub-section (2) of section 3 ;

(*ae*) the proportion of seed which may be contained in cotton;

(*af*) the person authorised to give a certificate regarding the quantity of moisture contained in any cotton and other matters specified in section 3-A;

(*ag*) the person authorised to examine bales under section 3-B;

(*ah*) the procedure for making a complaint and causing the contents of a bale to be examined and the fee for examination of the contents of a bale under sub-section (1) of section 3-B;

(*ai*) the manner in which the things seized shall be sealed under section 3-C."

(2) Section 13 of the said Act shall be renumbered as sub-section (1) of that section and after the sub-section so renumbered, the following sub-section shall be added, namely :—

(2) "The rules to be made under sub-section (1) shall be subject to the condition of previous publication.

(3) Rules made under sub-section (1) shall as soon as they are made be laid upon the table of the Bombay Legislative Council for a period of one month and shall be liable to be modified or rescinded by a resolution tabled at the session thereof immediately following the expiry of the said period; such rule shall, after notification in the local official Gazette be deemed to have been modified or rescinded accordingly:

Provided that when, in the opinion of the Local Government, such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, the Local Government may, by notification in the local official Gazette, declare that the modification or rescission shall have no effect and thereupon the rule shall remain in force as if it had not been modified or rescinded."

Addition of sections 16 and 17 in Act XII of 1925.

11. After section 15 of the said Act, the following sections shall be added, namely :—

Penalty.

"16. Whoever contravenes any of the provisions of this Act or any rule made thereunder or any of the conditions subject to which a licence has been granted to him shall, on conviction, if no other penalty is already provided in this Act for such contravention, be punishable with fine which may extend to five hundred rupees or, if he has previously been convicted of an offence under this Act or any rule made thereunder, with fine which may extend to fifteen hundred rupees.

Compounding offences, etc.

17. (1) The District Magistrate may accept from any person whose licence is liable to be suspended, withdrawn or cancelled under this Act, or who is reasonably suspected of having committed an offence under this Act, a sum of money in lieu of such suspension, withdrawal or cancellation or by way of composition for the offence which may have been committed, as the case may be.

(2) On payment by such person of such sum to the District Magistrate, such person if in custody shall be set at liberty and if criminal proceedings shall have been instituted against such person, the composition shall be held to amount to an acquittal."

Amendment of sections 3, 4, 6, 7, 8 and 9 of Act XII of 1925.

12. In sub-sections (5) and (6) of section 3, in sub-section (2) of section 4, in sub-section (2) of section 6, in sub-section (3) of section 7, in sub-section (2) of section 8 and in sub-section (3) of section 9 of the said Act for the words "shall be punished" the words "shall, on conviction, be punishable" shall be substituted.

The Indian Lunacy, Bombay District Municipal and Bombay Municipal Boroughs (Amendment) Act, 1936

BOMBAY ACT No. XV OF 1936

[*27th November 1936.*

An Act to amend the Indian Lunacy Act, 1912, in its application to the Presidency of Bombay, the Bombay District Municipal Act, 1901, and the Bombay Municipal Boroughs Act, 1925

WHEREAS it is expedient to amend the Indian Lunacy Act, 1912, in its application to the Presidency of Bombay, the Bombay District Municipal Act, 1901, and the Bombay Municipal Boroughs Act, 1925, for the purposes hereinafter appearing; And whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this passing of this Act; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Lunacy, Bombay District Municipal and Bombay Municipal Boroughs (Amendment) Act, 1936.

Amendment of section 88 of Act IV of 1912.

2. In the Indian Lunacy Act, 1912—

(1) In section 88—

(i) after the words "has the means to maintain him", the words "or if any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be inserted;

(ii) the words "or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be deleted;

(iii) after the word "resides", the words "or the local authority liable for the cost of his maintenance is constituted" shall be inserted;

(iv) at the end of the marginal note, the following words shall be added, namely.—

"or by local authority liable for such costs.

Amendment of section 89 of Act IV of 1912,

(2) In section 89—

(i) in sub-section (1)—

(a) after the words "such lunatic" where they occur for the second time, the words "or that any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be inserted;

(*b*) after the words "such person", the words "or from such local authority" shall be added ;

(*c*) at the end, the following proviso shall be added, namely :—

"Provided that no order for the recovery of the cost of maintenance of such lunatic from a local authority shall be made if he has an estate applicable to his maintenance or if there is any person legally bound, and having the means, to maintain him."

(*ii*) in sub-section (2), after the word "person", the words "or the local authority" shall be inserted.

Amendment of section 55 of Bom. III of 1901.

3. In section 55 of the Bombay District Municipal Act, 1901—

(1) the words "habitually resident within or" shall be deleted;

(2) for the proviso the following shall be substituted namely:—

"Provided that wheere an application is made to the High Court or a District Court under the provisions of section 88 of the Indian Luanacy Act, 1912, no order for the payment of the cost of maintenance of the lunatic by a municipality shall be made without an opportunity being given to such municipality to show that the lunatic has an estate applicable to his maintenance or that there is a person legally bound, and having the means, to maintain him.

Provided further that the municipality shall not be liable under this section for the maintenance and treatment of any lunatic or leper in any such asylum, hospital or house as aforesid, unless such lunatic or leper, immediately previous to his admission thereto, has been resident in the municipal district for at least one year.

The officer in charge of an asylum to which lunatics or lepers for whose maintenance and treatment a municipality is liable under this section are admitted shall maintain a clear account of the cost of maintenance and treatment incurred on account of such person detained in the asylum and shall furnish a copy thereof to the munictpality."

Amendment of section 70 of Bom. XVIII of 1925.

4. In the second provfso to section 70 of the Bombay Municipal Boroughs Act, 1925, for the words beginning with the words, "before making any order" and ending with the words, "the Local Government", the following shall be substituted, namely :—

"where an application is made to the High Court or a District Court under the provisions of section 88 of the Indian Lunacy Act, 1912, no order for the payment of the cost of maintenance of the lunatic by a municipality shall be made without an opportunity being given fo such municipality to show that the lunatic has an estate applicable to his maintenance or that there is a person legally bound, and having the means, to maintain him."