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THE  
**Dekkhan Agriculturists'**  
**Relief Act**  
( Act XVII of 1879 )

**As amended up-to-date**

WITH

An Exhaustive Commentary, Explanatory and Critical  
Notes, up-to-date Case-law, Notifications, Rules,  
High Court Circulars, etc., etc.

BY

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With a Foreword by  
The Hon'ble Mr. Justice **H. V. Divatia, M. A., LL. B.**  
High Court, Bombay

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## PREFACE

In preparing this work, an attempt has been made to present to the legal profession and the judiciary an exhaustive and a reliable commentary on the Dekkhan Agriculturists' Relief Act. With this view, I have included in this book, all cases on the subject reported in the official and unofficial journals. The principles underlying the various sections have been clearly explained and stated in the words of the deciding Judges wherever necessary. In citing the authorities the original reports have been always consulted. But at the same time I have refrained from unnecessarily cramming the book with lengthy, unconnected and undigested extracts from the judgments. Sind view has been specially noted and discussed wherever it differs from the Bombay view.

The commentary under each section is arranged under suitable headings, and for the purpose of easy reference the synopsis of commentary has also been given. The object, scope and history of each section have been explained, and for that purpose the Proceedings in the Legislature, Report of the Deccan Riots Commission 1875, Reports of the Commissions appointed to enquire into the working of the Dekkhan Agriculturists' Relief Act, in 1891 and 1911, the annual reports issued by the Special Judges, etc. etc., have been freely used. Wherever the sections have been amended, the old law has been stated and the effects of the amendment have been discussed. The facts of all important cases have been stated concisely and in a manner so as to bring forth the point under discussion.

Where the decisions seem to be faulty, I have respectfully criticised them and tried to state the correct view on the subject. I have discussed certain points that are likely to occur in practice but which are not yet judicially noticed.

In order to make the book complete and self-contained, I have added numerous Appendices at the end of the book. In referring to the various cases, I have given parallel references wherever possible, and I have taken particular care to make the General Index very exhaustive.

I am deeply obliged to Messrs. A. G. Wagholikar, LL. B.; D. H. Chaudhary, LL. B.; K. D. Dikshit LL. B. and R. H. Bhalunkar, LL. B. for having gone through portions of the manuscript and making suggestions for its improvement. Mr. K. D. Dikshit, LL. B. is responsible for the General Index, and Mr. A. S. Deshpande, LL. B. for the Index of Cases, and I am very much indebted to both of them for their kind labours.

I express with pleasure my deep debt of gratitude to the Hon'ble Mr. Justice H. V. Divatia, M. A., LL. B., of the Bombay High Court, for taking a kindly interest in my book, and for sparing time to write a learned 'Foreword' to it.

Lastly, in offering this book to the lawyers and judges, I have to say that I shall consider my labours sufficiently compensated, if it is of some help to them.

99 Shukrawar Peth,  
POONA,  
1st Sept. 1934. }

D. B. Godbole.

## FOREWORD

( *By the Hon'ble Mr. Justice H. V. Divatia, M. A., LLB.,  
High Court, Bombay.* )

The prosperity of a predominantly agricultural country like India depends on the well-being of those millions who depend for their livelihood on cultivation of the soil and agricultural labour. Generally speaking, in this country they are an illiterate and unsophisticated class of people and partly because of the vagaries of the monsoon, partly because of the avarice of the money-lenders and landlords, but mostly because of their own improvidence, their more or less extreme poverty has remained a formidable obstacle to the general progress of the country. Any legislation, therefore, which aims at the amelioration of the conditions of agriculturists and the protection of peasants must be zealously guarded and administered so that its provisions are not ignored or abused. The Land Revenue Acts and Tenancy Acts in the various provinces of India have more or less succeeded in giving security and safety to this class of people. In our Presidency, we have in force for the last half a century, the Dekkhan Agriculturists' Relief Act with the object of relieving agricultural classes from indebtedness. Though the whole Act is confined in its operation to only four districts in the Deccan, some of its important provisions have been extended to the rest of the Presidency and it has now become a familiar enactment with lawyers as well as laymen.

However, how far the Act has succeeded in its object has still remained a matter for controversy. The definition of the term 'agriculturist' is not at all satisfactory and considerable difficulty has arisen in applying that definition. One might well doubt whether it was the intention of the framers of the Act to include within that term large landholders and Zemindars with an income of thousands of rupees per year. Under this definition even such persons have been held to be agriculturists and as such entitled to avail themselves of all the benefits of the Act which might fairly be supposed to be intended for saving ordinary and illiterate agriculturists from greedy money-lenders. The general drafting of

the Act also lacks precision and lucidity and has presented difficulties to the Courts in properly interpreting its provisions. Mr. Justice Crump has, in a recent Full Bench decision, given expression to a note of dissatisfaction as well as a hint to the Legislature which, I feel certain, agrees with the opinion of many judges who have to deal with this Act. He says:—

“ There is a cynical saying that speech is given to us to conceal thought. The author of the saying is unknown, but it might plausibly be conjectured that he was a lawyer embittered by a perusal of the Dekkhan Agriculturists' Relief Act. It is notoriously a badly drafted statute. It is extremely difficult to construe it as a logical whole; and parts of it are so obscure as almost to baffle enquiry. If any one says that I exaggerate, let him read and endeavour to understand Ss. 2 and 3. The arrangement of the subject-matter is faulty; there is for instance no clear distinction between those provisions which apply to the trial of suits, and those which apply to proceedings in execution. The result has been to cause much uncertainty, and much waste of time, and the construction of any section is liable to lead to anomalous results. These difficulties have been further increased by partial extension of the Act which has destroyed any coherence which the Act may possess as a whole. The multitude of notifications makes it a matter of uncertainty whether any section does or does not apply in any district. In these circumstances, it is difficult to interpret any one section in the light of any other, or to regard a decision upon any one section as being in any sense a guide to the meaning of another. Since the enactment of the Usurious Loans Act X of 1918, much of the Dekkhan Agriculturists' Relief Act is out of date. But until the Legislature can find time or inclination to deal with the existing chaos, the Courts must make the best of it and this in my judgment can only be done by confining attention to each section as it falls to be interpreted.”<sup>1</sup>

The Courts are no doubt valiently trying to make the best of this chaos and have to be very vigilant so that neither bona-fide

1, *Matekhal v. Mahipataam*, (1927) 29 Bom. L. R. 1109.

agriculturists nor bona-fide creditors might suffer on account of the defects in the Act. Indeed, cases are not rare when an honest creditor has to be protected against a dishonest pseudo-agriculturist who, taking advantage of some of the lax and obscure provisions of the Act, succeeds in considerably delaying and sometimes even defeating the just claims of his creditor even after a decree is passed against him. The right of an agriculturist to plead his status for the first time in execution proceedings in order to prevent his arrest as also his right to plead that status in spite of his having contracted himself out of it have been recognized. That would show that the Courts are interpreting the provisions of the Act in consonance with its object to protect the agriculturist. If, however, the Act has still resulted in putting a premium on dishonesty and has fomented unnecessary litigation instead of checking it, it would be a matter for serious consideration as to whether it should not be materially amended or even ended.

But as long as the Act remains on the Statute Book, it has to be enforced and a well-annotated text book of the Act would be a great help to the Bar as well as to the Bench. Mr. D. B. Godbole has done his best to provide such a text book and judging from the proofs of the book I have seen, the annotations have the merit of being lucid as well as exhaustive without being unduly prolix. I am sure it will prove useful to the profession as well as to the public.

*Bombay,* }  
6-8-1934. }

**H. V. Divatia**



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## ADDENDA

*These pages contain cases that were published while the book was being printed. The figures within brackets refer to the pages of the book where the ruling should be incorporated.*

### **S. 13. Rules for taking accounts:—**

**S. 76 cl. (a) of the Transfer of Property Act is not applicable:** In taking accounts under s. 13 of this Act, the Court is to set aside any agreement between the parties as to setting off profits in lieu of interest and then it is to take account according to the rules laid down in this section. In doing so, *actual receipts by the mortgagee are to be taken as being what he has received*, though with more careful management he would have realised more from the property. In such a case s. 76 cl. (a) of the Transfer of Property Act, which provides that the mortgagee must manage the property as a man of ordinary prudence would manage it if it were his own does not apply. For "there is a special Act, the D. A. R. Act, regulating the relations between impoverished and indebted agriculturists and their creditors, while the General Act, the T. P. Act, prescribes those between the mortgagor and the mortgagee generally, and for circumstances where the special Act does not lay down exceptions to the general rule. Under the D. A. R. Act, the relations between the mortgagor and the mortgagee are practically set aside, and the Court is directed to go into the history of the transactions between them, to calculate debits and credits according to the rules in the special Act, and to set aside certain kinds of contracts, such as the one in this case, that the profits are to be taken in lieu of interest. It seems to us difficult to reconcile this complete setting of the original contractual relations between the parties, with the rules of general law which would apply had not the special Act dealt with the particu-

lar case, and we think that in the circumstances, s. 76 does not apply to this case.<sup>1</sup>

**A Reasonable rate of interest:—**In this case the lower Court had allowed interest at nine per cent per annum. In appeal it was argued that the Court rate of six per cent only should be allowed. It was held that "the ordinary rate of interest in the mofussil is a rupee per hundred per month, that is twelve per cent. We think that in the circumstances of the case the rate adopted by the learned Subordinate Judge of nine per cent is a reasonable one." Considering that some Subordinate Judges often allow only six p. c., p. a., it is hoped that this observation of the learned Judge will help the Courts in exercising their discretion in fixing a reasonable rate of interest.<sup>2</sup>

**Prices of grain where payment is in kind:—**Where the payment is made in kind, in settling the prices of grain for each year the Court should not rely only on the statements of the plaintiff. It should try to find the course of actual prices, evidence of which must be available locally. Attempt should be made to look at records of prices during the series of years. Such evidence on the point as is available should be called for and taken, and that if none is offered, statistics must be consulted to show the course of prices in the interval of years, and the conversion from payment in kind into payment in money should be effected on this basis.<sup>3</sup>

**(P. 67) Suit under s. 3 cl. (z):—**A special suit under S. 15 D of the D. A. R. Act does not lie where the suit though for redemption, is really for reconveying property of which the plaintiff is alleged to have been deprived by fraud. Such a suit is not within the terms of S. 3 cl. (z) of the D. A. R. Act.<sup>4</sup>

1 Sakharam v. Dhaktojirao, (1934) 36 Bom. L. R. 633. In this case it was alleged by the mortgagor that the mortgagee had put a relation of his in possession of the land, as tenant and that a low rent was taken from him, whereby damage had been caused to the interests of the mortgagor. The latter claimed therefore that in taking accounts under s. 13 the mortgagee should be debited with a fair rent (what he would have received if he had managed the property

as a man of ordinary prudence would have managed his own property : S. 76 (a) J. P. Act.) It was held that the mortgagee must only be debited with what he received, as 76 of the T. P. Act was not applicable in a case under the D. A. R. Act.

2 Sakharam v. Dhaktojirao, (1934) 36 Bom. L. R. 633.

3 Ibid.

4 Chhotabhai v. Dadabhai, (1934) 36 Bom. L. R. 738.

(p. 31) S. 2: **Or who ordinarily engages personally in agricultural labour** :—A man who has been a trader cannot, by merely working in the fields for a couple of months, acquire the status of an 'agriculturist' within the meaning of the second part of the definition of the term in S. 2 (1) of the D. A. R. Act, i. e. on the ground that he ordinarily engages personally in agricultural labour.

The finding of the lower Court as to the status of the judgment-debtor relates to the date of the decree and not to the date when the suit was filed.

The date of determining the status of the judgment-debtor in the execution proceedings is the date on which the order for sale is made, and not the date on which the subsequent order is made after the issue of notice under Order XXI r. 66 of the C. P. Code.

In suit brought by the plaintiff to recover a sum of money the Court decreed his claim on Feb. 20, 1932 holding that the defendant was not an agriculturist. On March 7, 1932, the judgment creditor filed a darkhast and the property of the judgment debtor was ordered to be attached and the Court ordered the sale of the attached property on April 21, 1932. In reply to the notice under Or. 21 r. 66 of the C. P. Code, the judgment debtor contended that he was an agriculturist and that his property could not be attached and sold under S. 22 of the D. A. R. Act. It was *held* that as the judgment debtor was not an agriculturist on Feb. 20, 1932 he could not be deemed to have become an agriculturist within the definition of that Act on 21 April 1932.<sup>1</sup>

( )

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<sup>1</sup> Sopana v. Dattatraya, (1934) 86 Bom. L. R. 804.

S. 13 (g). (P. 151) Under s. 13 of the D. A. R. Act, the account of the transaction in dispute can be taken to the date of the suit and not to the date of the decree. The account between the date of the suit and the date of the preliminary decree can be taken under the ordinary law under r. 7 Or. 34 of the C. P. Code, and the award of interest is governed by r. 11 of the Order.<sup>1</sup>

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1. Chhotalal V. Nathubhai 36 Bom. L. R. 1342; Dattatraya V. Mahomedkhan 37 Bom. L. R. 76.

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# Appendix A.

## Directions to the Court trying Suits under the D. A. R. Act.\*

1. To distinguish cases dealt with under the Dekkhan Agriculturists' Relief Act from others, and to facilitate the work of inspecting officers, as well as the compilations of special statistics in districts in which chapter III and not the whole of chapter II is in force, the following abbreviations should be used in the column 'No. of Suit' in the Register of Suits:—

(a) the letter D should be used to signify that the case is dealt with under the Dekkhan Agriculturists' Relief Act;

(b) the letters W, X, Y or Z should be inserted after D in order to show whether the suit is of the description mentioned in clauses W, X, Y or Z of section 3 of the Dekkhan Agriculturists' Relief Act;

(c) the letter P should be inserted after any of the above letters whenever the past history is investigated under sections 12, 13 and 71A;

(d) whenever relief is granted under sections 15A, 15B, 15C, 15D, 16, 17 and 20, such section should also be quoted in the said column.

In the Register of Suits such officer of the Court as the Court may direct, should insert the abbreviations specified in (a) and (b) after the number of the suit in the plaint. In the heading of every judgment in such case the same abbreviations should also occur after the number of the suit; and after a case is decided such officer of the Court as the Court may direct, should add to them the abbreviations specified in (c) and (d) if action has been taken under the sections referred to. If action is taken in execution proceedings, the letter E should be added after the section, and the section should also be specified in the Register of Applications for Execution (Form No. 1 appended to chapter II) in the column "Orders of the Court."

2. The form of summons laid down (see Form No. 1 appended to this chapter) expressly applies to suits of a simple character, which can be at once fixed for final disposal at the first hearing. They are suits against poor debtors who are agriculturists resident within the local jurisdiction of the Court.

The provisions of section 7 of Act XVII of 1879 give ample discretion to the Courts to decide in each case whether the summons should or should not be issued for the final disposal of the suit at the first hearing, and there is no particular reason why such summons should be issued in redemption and account suits. If the summons be not for final disposal, the form prescribed has no application, and no difficulty need arise. (The form of summons is given under S. 7).

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\* See Manul of Circulars issued by the High Court of Ecmtay for the guidance of the Civil Courts ( 1925 ) pp. 146-148.

3. The following instructions issued by a District Judge may be found to be generally useful and are therefore re-issued here though they are not intended to be imperative:—

(i) In suits under the Dekkhan Agriculturists' Relief Act the provisions of sections 7 and 12 should be first complied with and then issues framed. It is not right first to frame an issue like the following: "Was the bond sued on passed for cash payment as alleged by the plaintiff," and then examine the parties. The object of section 12 is that the Court should do its best to discover whether there is any defence on the ground of fraud, mistake, accident, undue influence or otherwise, and issues are to be framed after this duty is discharged, and not before it is discharged.

(ii) The discretion given by various sections of the Dekkhan Agriculturists' Relief Act is to be exercised judicially and not arbitrarily. One Subordinate Judge allows interest only at 9 per cent., in mortgage cases, and at 12 per cent. in other cases. He has never dealt with the question mentioned in section 13 (d) of the Dekkhan Agriculturists' Relief Act, as he takes it for granted that compound interest can in no case be allowed. Again, though in mortgage cases he allows payment by instalments, he awards no interest after the date of the decree, and in the case of simple money decrees, he allows it only if the plaintiff has not received interest at more than 9 per cent., and if the loan is not an old one. Again, if no accounts are forthcoming, he does not proceed as directed in I. L. R. VII Cal. 428—432. There ought to be no hard-and-fast rules, and every effort should be made to do substantial justice and not to follow out and dried methods or invent technicalities.

(iii) Instead of issuing costly commissions, the ordinary practice under section 13 of the Dekkhan Agriculturists' Relief Act ought to be as follows:—

(a) The Subordinate Judge should settle all questions regarding the valuation of grain advances and the allowing of *watav* in cases of difference of currency, etc., and the rate of interest and the allowing of compound interest (clause d), and then call upon the plaintiff to file a statement in the following form with an affidavit as to its correctness within a particular period.

(b) He should then call upon the defendant's pleader (if the defendant has a pleader) to verify the statement, and file his objections, with an affidavit in their support, within a fixed period. If the defendant has no pleader, the Subordinate Judge should tell off a careful karkun to do the verification.

(c) The Subordinate Judge should then himself take a test of the work done and satisfy himself that the bonds and Samadaskhats and the accounts are properly linked, and then frame issues as to the points on which there is any dispute and examine the plaintiff and the defendant or the karkun regarding them. In many cases it may not be found necessary to take any further evidence.

(d) The Subordinate Judge should make the fullest use of section 65(g) of the Evidence Act.

Form of Statement mentioned in paragraph 3(iii) (a) above.

Consecutive No.	Amount of item of principal.	Date of item of principal.	Date of item of payment by debtor.	Amount of interest at from the date in col. 3 to the date in col. 4.	Amount of payment.	Balance in favour of plaintiff.		Balance, if any, in favour of defendant.		Remarks.
						Principal.	Interest.	Principal.	Interest.	
1	2	3	4	5	6	7	8	9	10	11

4. Whenever the status of a party is in question there should be a preliminary issue on the point. The finding on this issue should afterwards be stated in the decree. A party found to be an agriculturist should not be described in the decree as a non-agriculturist or *vice versa*.

5. Where in execution--proceedings, a decree is converted into an instalment decree, the order directing payment of the decretal amount by instalments should be endorsed on the original decree and on the copy thereof, if any, filed with the darkhast; and the fact should be noted in the Register of Suits and the Register of Applications for Execution.

6. In all applications for revision under section 53 of the Dekkhan Agriculturists' Relief Act the District Judge should issue notice to the parties, and hear them, if they desire to be heard, before passing final orders, whether or not the application has been referred for report to any other Court.

( Vide Bombay Government Gazette, Part I, for 1918, page 642. )

7. A Register of Conciliation Agreements under sections 44 and 45 of the Act should be kept in Form No. 2 appended to this Chapter.

8. The District Judges should insert a paragraph on the working of the Dekkhan Agriculturists' Relief Act in the Annual Reports on the Administration of Civil Justice which are submitted by them to the High Court, so that the necessary information regarding it may be embodied by the High Court in the Administration Report annually submitted to the Government of India. The Bombay Government no longer desire a separate and more detailed report for their own information.

# Appendix B

## Execution by the Collector.

[ For the Presidency of Bombay ]

90. The law on this subject is contained in sections 68 to 72 of the Code and in the Third Schedule.<sup>1</sup>

- No. 3600, Dated the 24th May 1880. Under the Government Notifications shown in the margin decrees of the nature shown against the following districts shall be transferred to the Collector for execution :—
- No. 762, dated the 9th February 1892.
- No. 8039, dated the 27 November 1900.
- No. 5248, dated the 20th September 1907.

Decrees ordering the sale of any immoveable property belonging to a person who is an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act, which has been specifically mortgaged for the repayment of the debt to which any such decree relates.

*Poona.*  
*Satara.*  
*Sholapur.*  
*Ahmednagar.*

(a) Decrees for money in the execution of which a Court has ordered the sale of immoveable property belonging to any person who is an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act.

*All other Districts.*

(b) Decrees ordering the sale of immoveable property belonging to any such person in pursuance of a contract specifically affecting the same.

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(1) *S. 68, C. P. Code* :—Under this section the Local Government is given the power to prescribe rules for transferring to Collector execution of certain decrees.

*S. 69, C. P. Code* :—This section provides that provisions of the third para shall apply to decrees transferred to the Collector.

*S. 70, C. P. Code* :—This section gives the Local Government power to make rules for the above purpose.

*S. 71, C. P. Code* :—This section lays down that the Collector acting under these sections shall be held to be acting judicially.

*The third Schedule* :—The Third Schedule gives the powers of the Collector in execution, and the procedure that he has to follow in such cases.

**Rules prescribed by the Local Government for  
regulating the execution of decrees transferred  
to the Collector.**

In exercise of the powers conferred by sub-section 1 of S. 70 of the Code of Civil Procedure, 1908 ( V of 1908 ), hereinafter referred to as the said Code, and in supercession of the rules published in Government Notification in the Judicial Department No. 199, dated 24th January 1880, as subsequently amended, the Governor in Council is pleased to prescribe the following rules, regulating the execution of decrees transferred to the Collector for execution under provisions of S. 68 of the said Code in regard to:—

(a) The transmission of such decrees from the Court to the Collector, the procedure of the Collector and his subordinates in executing the same, and the return of such decrees by the Collector to the Court ;

(b) The conferring upon the Collector or any gazetted subordinate of the Collector certain powers, which the Court might have exercised in the execution of such decrees if the execution thereof had not been transferred to the Collector.

(c) Appeals against certain orders passed by officers Subordinate to the Collector.

**(1) (a) Transmission of decree to the Collector :—**If the Court is satisfied that the decree is one to which this notification applies, it shall cause a copy thereof to be forwarded to the Collector by post, or in such other manner as shall be most convenient.

**(b) Along with the said copy the Court shall send—**

(i) a statement showing clearly the extent, if any, to which the decree has been already executed, and the portion of the decree still to be executed ;

(ii) a copy of the application for execution of the decree, and of the order for sale, if any, made thereon ;

(iii) any extracts from the record of rights or register of mutations relating to the property that have been furnished to the Court.

*Notes :—*Copy of the judgment should be sent only on the requisition of the executing authority in any particular case or class of cases.

(c) The aforesaid documents shall be prepared at the cost of the parties.

( Vide Government Notification, Home Department, No. 1315, dated 13th June 1924, at page 1433, Bombay Government Gazette for 1924, Part I. )

**(2) Transfer of decree by Collector to subordinate officer :—**On receipt of the decree and of the other documents mentioned in rule 1, the



Collector may either proceed to execute it himself, or may transfer it for execution, subject to his supervision and control, to any of his subordinates not lower in rank than a Mahalkari.

**(3) Hearing of parties ; Notice of hearing ; Production of documents ; Order for execution :—** The Collector, or the officer to whom the Collector so transfers the decree, shall without delay appoint a day for hearing any representation which the parties or any of them may desire to make, as to the manner in which the decree should be executed; and shall cause a written notice to be served on each of the parties to the decree of the day so fixed; and shall also require the judgment-debtor to produce all title-deeds and other documents affecting the property in question which may be in his possession or power; and shall, after such enquiry as he considers necessary, proceed according to the methods prescribed in the Third Schedule to the said Code, as may be appropriate in the circumstances of the case.

**(4) Further attendance of parties :—** The Collector or other officer aforesaid may, from time to time, by similar written notice, require the attendance of the parties to the decree, or any of them, for the purpose of ascertaining their wishes, or of obtaining any information which he may consider necessary to enable him to provide satisfactorily for the execution of the decree; and if any party does not attend in pursuance of any such notice, the Collector or other officer aforesaid shall decide the matter in his absence, and the party so failing to attend shall not afterwards be entitled to be heard with respect to such matter.

**(5) Service of notice :—**(a) Every such notice, and every notice which the Collector shall issue under paragraph 8 of the Third Schedule to the said Code to the judgment-debtor or his representative, may be served in the manner prescribed by section 191 of the Bombay Land Revenue Code, 1879, or by forwarding the same to the Court to be served upon the pleader, if any, of the party to whom such notice is addressed.

(b) Except as otherwise provided, every other notice issued under these rules shall served in the manner prescribed by section 191 of the Bombay Land Revenue Code, 1879.

**(6) Form of orders in execution : diary of Proceedings :—** All orders which the Collector or other officer aforesaid shall pass in respect of the execution of the decree, or of the management or sale of the immoveable property of the judgment-debtor, shall be made in writing, and shall be dated and signed by such officer, and a diary of the proceedings shall be kept in the language of the district and in conformity with the instructions<sup>1</sup> relating thereto.

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<sup>1</sup> Form No. 9 appended to Chapter I of the Manual of Circulars issued by the High Court of Bombay for the guidance of Civil Courts and officers subordinate to it (p. 53).

**(7) Public notice prior to sale to claimants to property :**

**production of documents :—**(a) Previous to proceedings to sell any property, the Collector or other officer aforesaid shall, unless he has already proceeded under paragraph 3 or paragraph 5 of the Third Schedule to the said Code, publish a notice in the language of the district, calling upon all persons having rights in or charges on or claims to the said property or any part thereof, to submit on or before a date, which shall be stated in such notice and which shall not be less than six weeks after the date of such notice, a statement of such right, charge or claim, and to produce the documents, if any, on which such rights, etc., is based.

(b) Such notice shall be published in the manner prescribed in sub-paragraph (2) of paragraph 3 of the Third Schedule to the said Code,

(c) If in the opinion of the Collector or other officer aforesaid any statement so produced is not sufficiently precise or clear, or if it shall appear to the Collector or such other officer that all the documents in the claimant's possession or power relating to the property to be sold have not been produced, he may refuse to receive such statement, and may give or refuse, as he deems fit, time for the production of a fresh statement.

**(8) Documents to be treated as confidential and returned :—**

The Collector or other officer aforesaid shall peruse the documents of title which any such claimant produces; but such documents shall not, without a special order the reasons for which must be recorded, be handed for perusal to any other person than the Collector or other officer aforesaid, and his clerk, reader or interpreter; and they shall, after such perusal, be restored to the persons who have produced them with an endorsement, signed by the Collector or other officer aforesaid on each, of the date on which and the purpose for which they were presented, and of the date of return and of the person to whom they are returned.

**(9) Procedure on sale :—**(a) Every sale of property shall be held before the Collector or other officer aforesaid, or before any revenue officer not lower in rank than a Mahalkari's first karkun specially nominated by the Collector or other officer aforesaid in this behalf.

(b) Except as is otherwise provided by the said Code every such sale shall be proclaimed and held in the manner prescribed by the rules for the time being in force relating to the sale of immoveable property in realization of arrears of land revenue.

(c) Every proclamation of any such sale shall contain, in addition to the particulars required by the said rules,

(i) a list of all claims of which statements have been drawn up under paragraph 4 or 5 of the Third Schedule to the said Code or have been

duly submitted to and accepted by the Collector or other officer aforesaid under rule 7 and which shall appear to the Collector or such other officer to be *prima facie* honest and reasonable;

(ii) a list of all claims appearing in the record of rights or the register of mutations;

(iii) a caution that no guarantee is given either of the judgment-debtor's title or of the validity of any claims preferred by third parties,

(10) **Title-deeds of judgment-debtor:**—The Collector or other officer aforesaid shall retain the title-deeds and other documents produced by the judgment-debtor under rule 3, and if the whole of the property to which they relate is sold, shall hand them over to the purchaser.

(11) **Decree-holder not to bid at sale:**—No holder of a decree in execution of which property is sold shall, without the express permission of the Collector or other officer aforesaid, being a gazetted officer, bid for or purchase the property.

(12) **Certificate of sale:**—When any sale has been finally completed, the Collector or other officer aforesaid shall give to the purchaser a certificate of sale in Form No. 38 of Appendix E to the First Schedule to the said Code *mutatis mutandis*.

(13) **Delivery of possession to purchaser at sale:**—When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequent to the attachment of such property or of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under the last preceding rule, the Collector or other officer aforesaid shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, by proclaiming to the occupant by beat of drum or in such other manner as may be customary at some convenient place that the interest of the judgment-debtor has been transferred to the purchaser, and, unless the occupant is a tenant or other person entitled to occupy the property, if need be, by removing any person who refuses to vacate the property.

(13A) **Resistance or obstruction to possession of immovable property:**—(i) where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Collector complaining of such resistance or obstruction,

(ii) The collector shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same,

**(13B) Resistance or obstruction by judgment-debtor :—**

Where the Collector is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, he shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession the Collector may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

**(13C) Resistance or obstruction by 'bona fide' claimant :—**

Where the Collector is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Collector shall make an order dismissing the application.

**(13D) Dispossession by decree-holder or purchaser :—(1)**

Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Collector complaining of such dispossession.

(ii) The Collector shall fix a day for investigating the matter and shall summon the party against whom the application is made, to appear and answer the same.

**(13E) 'Bona fide' claimant to be restored to possession :—**

Where the Collector is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, he shall direct that the applicant be put into possession of the property.

**(13F) Rules not applicable to transferee 'lite pendente' :—**

Nothing in rules (13C) and (13D) shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

**(13G) Order conclusive subject to regular suit :—** Any party not being a judgment-debtor against whom an order is made under rule (13B)

rule (13C) or rule (13E) may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

( Vide Government Notification, No. 9851 dated the 19th February 1926 at pages 512-519, Bom. G. G. for 1926, Part I. )

**(14) Return of decree to Court :—**When execution of the decree has been as far as possible completed and the balance, if any, of all monies which have come to his hands disposed of in accordance with paragraph 9 of the Third Schedule to the said Code, the Collector shall return the papers received by him under rule 1 together with the execution proceedings to the Court by post or in such other manner as shall be most convenient.

**(15) Powers of executing officer :—**The following powers are conferred on Collectors and on gazetted officers subordinate to a Collector to whom a decree is transferred under rule 2:—

(a) the power specified in sub-rule (1) of rule 72 of Order XXI of the First Schedule to the said Code : Provided that the Collector or other officer aforesaid, to whom an application for such permission may be made, shall not grant such permission unless the decree holder—

- (i) satisfies him that the application is made in good faith, and that the judgment-debtor is not a minor;
- (ii) undertakes that he will not himself or through any other person bid or purchase for a sum less than such amount as the Collector or other officer granting the permission, having regard to the fair market value of the interest to be sold may determine, and that the permission shall be subject to this condition.
- (iii) agrees that if the decree-holder or any one on his behalf becomes the purchaser, the purchase money shall be paid to the Collector or other officer executing the decree unless the decree-holder has obtained an order from the Civil Court that the amount due on the decree or any part thereof should be set off against the purchase-money ( Vide Government Notification, Home Department No. 11530, dated 8th December 1920, at page 3429, Bombay Government Gazette for 1920, Part I. ).

(b) the powers specified in rules 88 and 86 and sub-rule (1) or rule 92 of Order XXI of the First Schedule to the said Code.

**(16) Application to set aside sale :—**If any application to set aside the sale under Order XXI rules 89, 90 or 91 of the Civil Procedure Code, and in the case of an application under rule 89, the deposit as required by the

rule be made within the time limited by law to the Collector or the officer aforesaid; he shall accept such application and deposit, and forward such application and the deposit, if any, to the Civil Court and inform the applicant accordingly. ( *Vide* B. G. G. for 1925, Pt. I. p. 917. )

(17) **Appeals** :—An appeal shall lie to the Collector against any order passed under paragraphs 7, 8 and 10(a) and (c) of the Third Schedule to the said Code, and Rules, 11, 13 and 15 of these rules by an officer subordinate to the Collector; subject to this provision, no appeal shall lie against any order passed under the provisions of the Third Schedule to the said Code or of these rules.

( *Vide* Government Notification, Judicial Department, No. 1203, dated 6th February 1920, at page 469, Bombay Government Gazette for 1920, Part I. )

92. As there is apt to be good deal of delay in the execution of decrees by Collectors, a memorandum book or register should be kept showing all decrees transferred to the Collector for execution with the date of transfer. This memorandum book or register should be inspected at intervals and the attention of the Collector should be drawn to all cases of serious delay.

93. It is desirable that a date should be fixed ( six months from the date of the transfer ) for the return of every darkhast transferred for execution to the Collector under section 68 of the Code of Civil Procedure, and that reminders, fixing further time, be sent, if, on the date first fixed, no return is made by the Collector. The memorandum book or register indicated above will enable the Judge to see that no case of serious delay remains unnoticed.

94. Great delay has also occurred in some Courts in preparing the documents for transfer to the Collector. Care should be taken that such delay does not occur.

95. The sale proceeds of property attached by Collectors in the execution of Civil Court decrees will be transferred by the Mamlatdar or other officer by whom the sale was conducted from " Revenue Deposits " to " Civil Court Deposits " immediately upon the receipt of confirmation of the sale by the Collector. On the same day the Subordinate Judge concerned will be informed of the transfer, and all the papers in the case will be forwarded at the same time to him, or, if for any reason the papers cannot be forwarded, the particulars noted below will be supplied :—

(1) Number of darkhast.

(2) Names of parties.

(3) Description of the property sold,

(4) Amount realized.

(5) Number and dates of Collector's order confirming sale.

( Vide Government Resolution, Judicial Department, No. 7447, dated 23rd November 1917. )

Immediately upon the receipt of such information the Subordinate Judge concerned should take the necessary steps so that particular judgment creditor's application may be disposed of as soon as possible.

( Vide Bombay Government Gazette for 1917, Part I, page 2734. )

96. The orders contained in paragraph 95 are applicable also to those cases in which the full amount specified for recovery in the darkhast is deposited before the sale of the property with the Mamlatdar or other officer entrusted with the sale. The amount should, however, be immediately credited to Civil Court Deposits, without in the first instance being credited to Revenue Deposits.

( Vide Government Resolution, Judicial Department, No. 2100 dated the 15th March 1919. )

( Vide Bombay Government Gazette for 1919, Part I, page 1017. )

**Collector not to recover the expenses of sale:**— In modification of G. R. No. 4603 H. D. dated 8rd April 1924 it is hereby directed that the Collectors should not recover the expenses of the sale in cases of Civil Court decrees transferred to them for execution since the Civil Courts recover poundage on the case at the scale laid down in the High Court Civil Circulars, G. R. 4603 of 21-3-27.

**1. Notice to be served on the parties to a decree under rule 5, P. 341.**

In the Court of \_\_\_\_\_ At \_\_\_\_\_  
 Civil suit No. \_\_\_\_\_ of 193 .  
 A. B. \_\_\_\_\_  
 against \_\_\_\_\_  
 C. D. \_\_\_\_\_  
 Claim... .. Rs.  
 A. B. ( or C. D ), resident of \_\_\_\_\_  
 in the \_\_\_\_\_  
 taluka of the \_\_\_\_\_ District.  
 Whereas the execution of the decree passed by the \_\_\_\_\_  
 Court \_\_\_\_\_ in the above  
 suit on the \_\_\_\_\_ day of \_\_\_\_\_ 193 , has been transferred by the  
 Court \_\_\_\_\_ to the  
 Collector of \_\_\_\_\_ by whom the same has been referred  
 to me.<sup>1</sup>

<sup>1</sup> This must be varied, if the Collector himself executes the decree and issues the notice.

You are hereby informed that I have appointed \_\_\_\_\_ day  
 the \_\_\_\_\_ day of \_\_\_\_\_ 193 , at \_\_\_\_\_ o'clock  
 of the \_\_\_\_\_ noon, for hearing in my office ( or camp )  
 at \_\_\_\_\_ in the \_\_\_\_\_ taluka of \_\_\_\_\_  
 the \_\_\_\_\_ district any representations which the  
 parties, or any of them, may desire to make to me as to the manner in which  
 the said decree should be executed.

And you are hereby required to produce before me at the above-named  
 time and place all title deeds and other documents in your possession or power  
 affecting the below-mentioned property, which is ordered by the said decree to  
 be sold ( or which the Court has ordered to be sold in execution of the said de-  
 cree, or otherwise, as the case may be ).

Details of the property above referred to—

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 193 .



( Signed )

Designation of officer.

(2) Notice issuable to the parties to a decree at any time under rule 6  
 ( see p. 356 ).

**2. Notice issuable to the parties to a decree at any time  
 under rule 6 ( see p. 341 ).**

In the Court of \_\_\_\_\_ at \_\_\_\_\_  
 Civil suit No. \_\_\_\_\_ of 193 .  
 A. B.  
 against  
 C. D.

Claim... .. Rs.

To,

A. B. ( or C. D. ), resident of \_\_\_\_\_  
 In the \_\_\_\_\_ taluka of the  
 District.

Whereas the execution of the decree passed by the  
 Court of \_\_\_\_\_

In the above suit on the \_\_\_\_\_ day of \_\_\_\_\_ 193 .  
 has been transferred by the Court to the Collector of \_\_\_\_\_  
 by whom the same has been referred to me :

1 This provision is to be added only when the notice is to be served upon  
 the judgment-debtor.

2 This must be varied, if the Collector himself executes the decree and  
 issues the notice.



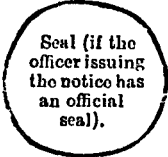
EXECUTION BY THE COLLECTOR

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You are hereby required to attend before me on
day, the day of 193 , at
o'clock of the noon, at my office ( or camp ) at
in the taluka of the
district for the purpose of

If you fail to attend at the above-named time and place in pursuance of
this notice, the above-mentioned matter will be decided upon in your absence,
and you will not afterwards be entitled to be heard with respect thereto.

Dated this day of



( Signed )

Designation of officer.

3. Public Notice to be issued under rule 9 ( see p. 342 ).

In the Court of at
Civil suit No. of 193 .
A. B.
against
C. D.

Claim ... .. Rs.

The property specified in the schedule hereunto annexed having been
attached in execution of the decree passed in the above suit, notice is hereby
given to all persons, having rights in or charge or claims on the said property
or any part thereof, that they should, on or before day, the
day of 193 , submit to the
undersigned by whom the said decree is being executed at his office ( or camp )
at in the

Taluka of the

district a statement of the right, charge or interest which they respectively
claim, and produce the documents, if any, on which they base their claims.

Schedule ( See next page. )

Dated this day of 193 .



( Signed )

Designation of Officer.

( Schedule. )

Immoveable property ( see p. 342 ).

1	2	3	4	5	6	7	8	9
Lot Number.	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 No. Municipal No. and other fiscal designation.	Govt. 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.			Here enter the additional particulars required in rule 11 (a),

N. B. :— No guarantee is given of the title of the said interest claimed by third parties.

or of the validity of any of the rights, charges or

Collector.

## Appendix C.

### Execution of decree by the Collector in the Province of Sind.

Execution of decrees by Collector:—(See the revised manual of the Commissioner in Sind's special circulars, pp. 23-39).

Under Government Notification No. 5249, dated the 20th September 1907 the Government in Council was pleased with the sanction of Governor General in Council, to declare that in Sind the execution of decrees ordering the attachment or sale of immoveable property shall be transferred to the Collector of the district in cases where such property belongs to a person who is an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act, 1879, and has been specifically mortgaged for the repayment of the debt to which the decree relates, and the security still subsists.

2 *Note* :—The rules framed by the Bombay Government under which such decrees are to be executed are applicable. They are given under the head "Rules prescribed by Local Government under S. 70 of Civil P. C. regulating execution of decrees transferred to Collector" in Appendix B above and therefore they are not reproduced here.

3. The first step to be taken by the Collector (or other officer entrusted with the execution of a decree) is, immediately on receipt thereof, to issue the notice prescribed by rule 5 calling upon the parties to appear before him within a certain period, which should not ordinarily exceed six weeks, the judgment-debtor being specifically called upon to produce a complete statement of his immoveable property other than that affected by the decree.

4. Notice should at the same time be issued under rule 9 calling upon all persons having rights in, or charges on, the property to be sold, so that if subsequently the sale of the land is decided on, complete statements of claims may be readily available for inclusion in the proclamation.

5. Simultaneously with the issue of notices under rules 5 and 9 the *tapadar* should be called upon to submit immediately (a) a statement of the judgment debtor's property other than that affected by the decree, and (b) a report as to whether he knows of any persons other than the judgment-debtor who have any right, charge, or interest in the land. The former will be of help in the consideration of the arrangements to be made under paras 7 and 8 below, and the report referred to in (b) will be useful in scrutinizing the statements of claims produced under rule 9.

6. When the parties are present in pursuance of the notices issued under rule 5 and the information called for from the judgment-debtor under paragraph 3 and from the *tapadar* under (a) of para 5 has been received, the Collector

should consider the desirability of applying to the Court, under s. 15B of the D. A. R. Act for an order for the repayment of the amount of the decree by instalments. Whenever it appears that there is a reasonable probability of the judgment-debtor being able to repay the amount in this manner, application should invariably be made to the Court unless the judgment-debtor himself prefers to make the payment in a lump by raising the amount as hereinafter provided, or unless it appears from the papers received that an opportunity of paying the amount by instalments has already been given by the Court to the judgment-debtor but has not been utilized.

7. If an application for payment by instalments is not made or if the Court refuses to fix instalments on an application made under the last preceding paragraph, the Collector should proceed to act under rule 83 (1) of Or. XXI of the First Schedule to the Civil P. C. by calling upon the judgment-debtor to state whether he can raise the whole amount due under the decree by mortgage, lease or private sale of the whole or part of his property, including the property affected by the decree.

8. If after hearing the judgment-debtor, the Collector is satisfied that there is a reasonable probability of the judgment-debtor being able to make the necessary arrangement, he should grant him, as required by clause (2) of the above quoted rule, a certificate authorizing him to make a mortgage, lease or private sale within a reasonable specified period which should not ordinarily exceed 4 months from the date of the certificate. The Collector should at the same time keep in view the possibility of having himself to arrange for a lease or mortgage of the whole or any part of the property affected by the decree under rule (b) of the third Schedule of the Civil Procedure Code.

9. If the judgment-debtor expresses his inability to raise the amount of the decree in the manner laid down in rule 83 of Order XXI of the first Schedule or finds it impossible to do so after the grant of the certificate referred to in paragraph 8, the Collector should proceed under rule (b) of the third Schedule, if he has reason to believe that the requisite arrangement can be made. Such an arrangement can, however, only be made with respect to the property ordered to be sold; if this is not possible, action should be taken without delay towards the sale of the mortgaged property under rule 11.

10. When the sale is decided on, the Collector should (1) issue careful instructions as to the amount of property to be sold taking care that it is no more than is likely, if purchased at a fair price, to be required to satisfy the decree, and (2) fix an upset price, which must be announced before the commencement of the auction. The fact that such an announcement will be made should be specified in the proclamation of sale. It is not intended to enjoin a rigid observance of this procedure which might check biddings of sales. But it should as a rule be adopted except where there is a certainty of brisk bidding at the auction.

11. The sale must be proclaimed and conducted in accordance with the rules relating to the sale of immoveable property in realization of arrears of land revenue and the provisions of sections 165 and 166 of the Land Revenue Code should, therefore, be carefully attended to. The Mukhtiarkar or other officer conducting the sale should also see that statements of claims admitted under rule 10 are duly noted in column 9 of the proclamation. At the time of sale, the Mukhtiarkar must read and carefully explain the proclamation, especially the matters mentioned in clauses (a) and (b) of rule 11, and he must at the same time notify that the sale is subject to the confirmation of the Collector and that it is only the right, title and interest of the judgment-debtor that are being sold.

12. Attention is invited to s. 22A of the D. A. R. Act which has been extended to Sind, and under which the sale may, within thirty days from the date of the auction be set aside by the Collector, if he considers the final bid inadequate. The result of the sale should therefore be communicated to the Collector, with the least possible delay, with an opinion as to the adequacy of the price.

13. The forms of notices to be issued under rules 5, 6 and 9 and of the proclamation are given in Appendix C above. The form of certificate of sale should be the same as given in form No. 38 of Appendix E to the first Schedule to Civil P. Code, 1908.

14. Collectors and Assistant Collectors should see, when the papers are returned to them, that a full and clear diary (see rule 8) has been kept (The form of the diary is prescribed in Appendix C. See p. 40 of the Revised Manual of the Commissioner in Sind's special circular. It is not reproduced here).

15. Under the orders contained in G. R. No. 1612, dated the 11th March 1881, quoted at p. 459 of the compilation of General Rules in force in the R. D. "no fees for the service and execution of processes issued by the Collectors in the exercise of powers under S. 68 of the Civil Procedure Code are leviable." Regarding fees for issuing proclamations and necessary expenses of sale, attention is invited to G. R. No. 4892, dated the 16th July 1900 J. D. under which only the actual expenses are chargeable as far as they can be ascertained. Such expenses are recoverable *after*, not *before* the sale. But now G. R. No. 4603 dated 21st March 1927 quoted at p. 347 states that the Collector should not recover expenses of sale. See the G. R. under the head "Collector not to recover expenses of sale" at p. 347.

16. It occasionally happens that decrees in respect of fallow forfeited survey numbers are transferred to the Collector for execution although Government have not been made parties to the suit and the Collector should not recognize such decrees. Fallow forfeited survey numbers are the absolute property of Government, and the person from whom such survey numbers are forfeited, has no right in law to have them restored to him. The discretion of Government in respect of their disposal is unfettered notwithstanding the fact

that the present policy in most cases is to restore such survey numbers under certain conditions to their former occupants. It follows therefore that the Civil Courts cannot dispose of such survey numbers behind the back of the Collector, i. e. without Government being made a party to the suit.

17. It also occasionally happens that a Civil Court in partitioning an estate passes a decree in respect of survey numbers held on the restricted tenure without either making the Collector a party to the suit or obtaining his permission to the alienation of such survey numbers. Such a decree is in no way binding on the Revenue authorities, and the Collector should not hold himself bound by it unless he has independent reasons for assenting to it.

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## Appendix D.

### Procedure before Village-munsifs.

The following rules are made by the Governor of Bombay in Council under section 37 of the Dekkhan Agriculturists' Relief Act for regulating the procedure of Village-munsifs:—

1. Every suit in a Village-munsif's Court shall be instituted by presenting to the Village-munsif in person a written plaint in the vernacular language of the district, which should contain the following particulars:—

- (a) The name, religion, caste, profession and place of abode of the plaintiff.
- (b) The name, religion, caste, profession and place of abode of the defendant.
- (c) A statement of the circumstances which have led to the institution of the suit.
- (d) A list of the plaintiff's documents, if any, and of his witnesses, and whether he requires the Village-munsif's assistance to procure their attendance or whether he will produce them himself on the day to be appointed under rule 5.

2. If the plaintiff sues upon a document in his possession or power he must produce it with his plaint.

3. The Village-munsif shall reject the plaint at once in the following cases:—

- (a) If it appears to the Village-munsif that the subject of the plaint is not within his jurisdiction.
- (b) If it appears to him after questioning the plaintiff that the suit is barred by the Limitation Law.

4 If the Village-munsif admits the plaint, he shall number and register it in a Register to be kept for the purpose in the following form :—

Date of presentation.	No. of suit.	Plaintiff's name, caste and residence.	Defendant's name, caste and residence.	Nature of claim.	Final order and date thereof.	How executed.
1	2	3	4	5	6	7

5. When he admits a plaint, he shall fix a convenient day, if possible within seven days from its institution, for the trial of the suit, and he shall require the plaintiff to appear with his documents and witnesses, if any, on the day so appointed. He shall also forthwith, with the least practicable delay, send for the defendant and personally explain to him the nature of the claim, informing him of the day fixed for the trial and requiring him to be present in person on that day, unless the defendant admits the correctness of the claim and his own liability, in which case the Village-munsif shall record the admission in full and require the defendant to sign or put his mark to the same and shall also sign it himself.

6. If the defendant does not admit the claim, the Village-munsif shall require him to name his witnesses, if any, and to state whether he will himself produce them or require the assistance of the Court to procure their attendance, and shall warn him to be present in person with his documents and witnesses, if any, upon the appointed day.

7. Whenever it is necessary to procure the attendance of any defendant or witness, the Village-munsif may require any village-officers to produce such person before him; and it shall be the duty of the village-officers to obey the requisition of the Village-munsif.

Any Village-munsif specially authorized in this behalf by the District or Special Judge may, in cases where other means fail, exercise the powers of a Civil Court for the purpose of enforcing the attendance of defendants and witnesses.

8. On the day appointed for the trial, unless the defendant has previously admitted the claim under rule 5, in which case he may at once pass a final order, the Village-munsif shall first of all examine the parties, or the persons if any, permitted to appear for them under section 68 of the Act, and shall peruse the documents, if any, produced on either side, in order to ascertain the point or points in issue, and whether the defendant has any just answer or defence to the suit; and shall then, if necessary, examine the witnesses on either side; and may also send for and examine any other person who may appear to him likely to be able to give useful evidence as to the matters in dispute; and shall

then proceed, at once, if possible, to record his final order in accordance with the just merits of the case.

9. If the plaintiff fails without reasonable excuse to attend with his proofs or omits without reasonable excuse to adopt measures to procure the attendance of his witnesses, the Village-munsif shall reject the plaint.

10. If the defendant fails to appear, the Village-munsif shall adjourn the trial to an early day to be fixed by him, and shall meantime take all the measures in his power, with the assistance of the village-officers, to procure the attendance of the defendant on such adjourned date; he shall not decide the suit without examining the defendant, unless for special reasons to be recorded by him in writing in his final order.

11. If the witnesses on either side or any of them fail to attend on the appointed day, the Village-munsif may, after taking the evidence of those that are present, if he considers it necessary for the purpose of justice and for arriving at a satisfactory decision, adjourn the trial for such period as may be necessary to procure their attendance.

12. The Village-munsif shall examine the parties and their witnesses, if any, orally and it shall not be necessary for him to take down their evidence in writing or make notes thereof; but if he does not do so, he shall embody in his final order the substance of the evidence, together with the points in dispute, and his decision thereon, specifying the amount, if any, awarded to the plaintiff. Such final order shall be deemed to be the decree.

13. If his decision is in favour of the plaintiff, either wholly or in part he may direct the defendant to pay the amount found due, by instalments not extending over a longer period than twelve months.

14. In no case shall he award more than seems to him, on a full consideration of all the circumstances and past history of the debt, to be justly and equitably due.

15. The final order shall be written in column 6 of the Register mentioned in rule 4; and the Village-munsif shall give a copy thereof, under his signature, to either party asking for the same.

16. Every order whether rejecting a plaint or allowing or disallowing a claim shall be endorsed briefly by the Village-munsif on the plaint.

17. If the decision awards the plaintiff's claim in whole or part, the defendant may pay the money due by him under the decree into the Village-munsif's Court and in such case shall be given a receipt for the same, and it shall be the duty of the Village-munsif to cause such money to be paid over to the plaintiff.



PROCEDURE BEFORE VILLAGE-MUNSIFS

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and to require his receipt for the same and to enter the fact of such payment in the last column of the Register.

18. If the decree is satisfied in whole or in part out of Court, it shall be the duty of the plaintiff to certify the fact to the Village-munsif, and when he fails to do so, the defendant may apply to the Village-munsif, who shall then make inquiries and if he finds it proved that the decree has been so satisfied, shall refuse to execute it further. The necessary entry to denote satisfaction under this rule shall be made in the Register.

19. The decree-holder may, at any time within the period allowed by the Limitation law, apply to Village-munsif for execution of his decree or such portion of it as may remain unsatisfied. Such application must be in writing and must state that the decree of which execution is sought has remained unsatisfied, in whole or in part, as the case may be.

20. In the case of decrees which allows payment by instalments, any default by the judgment-debtor entitles the decree-holder to apply for execution.

20A. If the Village-munsif receives such an application as is mentioned in rules 19 and 20 from a decree-holder, he shall number and register it in a Register to be kept for the purpose in the following form:—

Register of applications for execution of decrees in the Court of the Village-munsif of \_\_\_\_\_ in the Taluka \_\_\_\_\_ of the District \_\_\_\_\_ during the year \_\_\_\_\_

1. Serial number.	5 of 1898.
2. Date on which the application for execution was presented.	10th July 1898.
3. Names of the parties and the No. of the suit.	No. 76 of 1897, A. B. Vs. C. D.
4. Name of the party or other person presenting the application for execution, caste, age, occupation and residence.	Plaintiff A. B., marwadi, 39; Trader, Bhingar.
5. Name of the person or persons against whom execution is sought, caste, age, occupation and residence.	Defendant C. D., Maratha, 33, Weaver, Bhingar.

6. Date of decree.	10th December 1897.
7. Amount awarded in the decree.	Rs. 8-4-3.
8. Payment made through Court or privately after decree.	None.
9. Amount claimed on the present application for execution.	Rs. 2-4-3.
10. Date on which the warrant of attachment was sent to the Nazir or Village-officers for execution.	12th July 1898.
11. Date fixed for the return of warrant.	28th July 1898.
12. Amount realized, if any.	Rs. 1-4-3.
13. Result of execution in short.	The Court's warrant was executed on the 17th July 1898.
14. Remarks.	

21. On application as aforesaid by the decree-holder the Village-munsif may, after making such inquiry as he deems necessary cause the decree to be executed by the attachment and sale of any moveable property within the local area of his jurisdiction belonging to and in the possession of the judgment-debtor, except such property as is mentioned in the proviso to section 266 of the Civil Procedure Code. Attachment shall be effected by actual seizure and the property so attached shall be kept in safe custody in or near the village-chavdi. Provided that no more property shall be attached under this rule than shall seem to the Village-munsif reasonably sufficient at a fair valuation to cover the amount of the decree remaining unsatisfied.

The Village-munsif may also, if he thinks fit, but subject to the provisions of clause (h) of the proviso to section 266 of the Code of Civil procedure, cause the decree to be executed by attachment of the whole or part of the salary of the judgment debtor if he be in the receipt of a salary. In such case the attachment shall be made by a written order addressed to the officer or person who disburses the salary, requiring him to withhold every month such portion

as the Village-munsif may direct and to pay the same to the judgment-creditor. Such order may be issued by the Village-munsif, whether the officer or person who disburses the salary is resident and the salary is payable within his local jurisdiction or not.

21A. Any decree passed by a Village-munsif may, on the application of the decree-holder, be forwarded to the District Judge or Special Judge as the case may be, who may transmit it for execution to the Court of any Village-munsif or any other Civil Court having jurisdiction in any place where the judgment-debtor is represented to have moveable property; and such Court shall, subject to the provisions of rule 21, proceed as if the decree was passed by itself.

22. All claims to attached property shall be inquired into without delay and summarily determined by the Village-munsif after hearing such evidence as may be tendered by the claimant and the decree-holder respectively, and after examining, if necessary, the judgment-debtor.

23. If the attached property is subject to speedy and natural decay or when the expense of keeping it in custody shall exceed its value, it may be sold at once by order of the Village-munsif.

24. In all other cases, if the judgment-debtor does not tender the amount of the decree within three days from the date of attachment, the Village-munsif shall issue a notice of the sale of the property, to be posted up in a conspicuous place in the chavdi where the property is kept, specifying the property to be sold, the amount for which the sale is ordered, and the day and hour of sale.

25. Except in the case mentioned in rule 22 no sale shall take place till after the expiration of at least ten days from the date on which the notice has been posted up on the chavdi.

26. If the Village-munsif is himself an officiating Patel and if the property is within the limits of his jurisdiction as such, he shall himself order and superintend the attachment and the conduct of the sale. In any other case, the Village-munsif shall direct his orders for the attachment and sale to an officiating Patel in whose jurisdiction as such, the property is, and it shall be the duty of such Patel to carry out the execution under the orders of the Village-munsif.

In towns which are the head-quarters of a Civil Court, the Village-munsif may, when so authorized by the District or Special Judge, direct his orders to the Nazir of such Court, whose duty it will be to execute such orders accordingly.

27. The officer conducting the sale may in his discretion, for sufficient reason, adjourn the sale, reporting the fact to the Village-munsif, who may pass such orders as may seem just as to the renewal of the sale.

28. The proceeds of the sale shall be made over by the Village-munsif to the decree-holder to the extent necessary to satisfy his decree, any surplus being handed over to the judgment-debtor. Receipts shall be taken for any payment made under this rule; and the necessary entry as to satisfaction shall be made in the Register.

29. The Village-munsif shall be entitled to employ the agency of the inferior village-servants for carrying out his orders in any suit or execution matter pending before him under the Act; and it shall be the duty of the Revenue and Police Patels and Kulkarnis throughout the local area of his jurisdiction to render him all the assistance in their power in connection with the discharge of his duties under the Act.

30. No costs shall be awarded by any Village-munsif.

31. The Village-munsif shall be entitled to hold his Court in the village *chavdi*.

(Vide Government Notification No. 7635 at pp. 1001-1002 of the Bombay Government Gazette for 1879.)

(Vide Government Notification No. 5585 at pp. 708-709 of the Bombay Government Gazette for 1880.)

(Vide Government Notification No. 6545A at p. 894 of the Bombay Government Gazette for 1898.)

(Vide Government Notification No. 8634 at p. 859 of the Bombay Government Gazette for 1903.)

(Vide Government Notification No. 4431 at p. 1009 of the Bombay Government Gazette for 1903.)

## Appendix E.

### Village Registration Rules

Rules made by the Inspector General of Registration, empowered by and with the previous sanction of the Governor of Bombay in Council, under the provisions of S. 61 of the D. A. R. Act, 1879 to 1895, for regulating the proceedings of Village Registrars and for providing for the custody of their records, in supersession of all previous rules on the same subject.

[Note:—Chapter VIII has now become inoperative, since all the appointments of the village registrars have been abolished [Vide G. N. No. 9969 dated

3rd No. 1910]. But Chapter VIII A containing S. 63A which provides for registration of instruments where agriculturists are parties, incorporates by reference the provisions of Ss. 57 and 59. Hence only these rules which lay down the procedure for registering instalments under Ss. 57 and 59 are reproduced below.]

20. Village-registrars shall duly satisfy themselves of the identity of each executant and shall receive the fee for registration before the instrument is written. They shall also satisfy themselves that no agriculturist purporting to be an executant is a lunatic, an idiot or a minor and shall pay careful attention to the requirements of the Stamp Act and the rules issued under it.

*Preliminary measures to be taken before an instrument is written.*

21. Every Village-registrar shall be provided under the order of the Registrar with specimen forms of all instruments to which agriculturists are ordinarily parties. In drafting an instrument, care must be taken to follow the best obtainable form and while fully expressing the intentions of the parties, to avoid repetition and prolixity.

*Preparation of instrument.*

Above all, the language employed shall be simple and clear, and the description of immoveable property, if any, which has to be mentioned in the instrument, shall be such as to enable the property to be unmistakably identified. When the instrument relates to land to which a survey has been extended, the survey numbers shall be set forth.

The Village-registrar shall ordinarily draw up the instrument himself, and shall only employ another person to do so under his superintendence when he is himself prevented by an exceptional press of work or other unavoidable cause from drawing up the instrument himself. When the instrument is not drawn up by the Village-registrar himself, but under his superintendence, the person drawing up the instrument shall be chosen by the Village-Registrar, and in no case to be remunerated by the parties themselves but by the Village-registrar from his percentage fees.

22. When the instrument has been written, it shall be read out to all the parties by the Village-registrar and executed as provided in section 57 of the Act.

*Endorsement to be made on the instrument after its execution.*

The Village-registrar shall then endorse upon the instrument a note in the following form :—

	Rs.	A.	p.
" Fees received for preparation and registration etc., etc.	0	0	0
Total	0	0	0

Immediately below this note shall appear the endorsement of attestation required by paragraph 2 of Section 57 of the Act in the following form :—

" This instrument written by me ( or under my superintendence ), has been executed in my presence, this day, by A. B. of C. D., whom I know ( or of whose identity I have duly satisfied myself )."

If a witness is examined as to identity, his signature and place of residence shall be taken in the following form, viz. :—

" I, E. F. of G. H. identify A. B. ( signature or mark of E. F. )."

The endorsement shall be signed and dated by the Village-registrar; and if any of the parties to the instrument is unable to read it, the attestation of two respectable witnesses shall immediately follow that of the Village-registrar in the following form :—

" We, I. J. of K. L. and M. N. of O. P., have witnessed the execution this day, of this instrument by A. B. of C. D. "

( Signature or mark of I. J. of K. L. )

( Signature or mark of M. N. of O. P. )

The Village-registrar shall next endorse upon the instrument the note required by paragraph 2 of section 59 of the Act as to whether or not the transfer of the consideration named therein or of any part thereof took place in his presence. This note shall be in one or other of the following forms as the case may be :

" A. B. of C. D. has in my presence, this day, received from Q. R. of S. T. the sum of Rs. ( to be entered both in figures and words ) the contract of this matter is not clear. Is it so stated in the notification ( the following articles, viz. ) being the whole ( or part ) of the consideration stated in this instrument ; " or

" No portion of the consideration stated in this instrument has been paid in my presence to A. B. of C. D. "

The endorsement shall be signed by the Village-registrar.

Immediately below such declaration shall be endorsed a further note showing the number of the instrument and the page and volume of the Register Book in which it is registered.

Finally, at the foot of all these endorsements shall be affixed the Village-registrar's signature with his official designation " Village-registrar of, " and the date of such signature.

23. It shall be the duty of the Village-registrar to inquire whether the instrument about to be executed will modify or wholly or partly supercede any previous instrument; and if the parties answer in the negative, the following declaration shall be endorsed on the instrument and signed by the claiming party or parties or by his or their authorized agent,

" I ( or We ) hereby declare that this instrument does not modify or wholly or partly supersede any previous transactions or instruments."

24. When a previous instrument, which is to be modified or wholly or partly superseded by a new instrument, is produced in accordance with the third paragraph of Section 59 of the Act, the Village-registrar shall write upon such previous instrument the following note:—

" This instrument has been modified ( or wholly or partly superseded ) by instrument No. \_\_\_\_\_ of 189 \_\_\_\_\_, executed in my presence by A. B. of C. D. in favour of Q. R. of S. T. and attested by me this day."

On the new instrument which modifies or supersedes the previous instrument, the Village-registrar shall write at the top of the document immediately over the stamp-impression, if there be any, the following note :

" The instrument dated \_\_\_\_\_ executed by A. B. in favour of Q. R., which this instrument modifies ( supersedes ) has been produced this day, and a note of such modification ( supersession ) has been endorsed by me thereon. "

Provided that the writing of this note shall not dispense with the necessity of a full description of the old instrument being contained in the new one as required by Section 59 of the Act.

*Proviso*:— When it is alleged that any such previous instrument is on the record or otherwise in the custody of a Court or is lost, or has been destroyed, the Village-registrar, after ascertaining that such previous instrument was duly registered, may permit a certified copy thereof to be produced in lieu of the original; and in every such case the following procedure shall be observed :

A. The contents of the certified copy shall be fully described in the modifying or superseding instrument and the said copy shall be marked by the Village-registrar under his hand for identification with the words " The instrument of which this is a certified copy has been modified ( or wholly or partly superseded ) by instrument No. \_\_\_\_\_ of \_\_\_\_\_ executed in favour of Q. R. of S. T. and attested by me this day, " and shall then be dated and delivered to the person who produced it.

B. If the previous instrument is lost, or has been destroyed and the registered entry thereof is in the Village-registrar's custody, he shall endorse on such entry a note under his hand as to the modification or supersession of the said instrument, to the following effect :

" The instrument of which this is a copy has been modified ( wholly or partly superseded ) by instrument serial No., dated and executed in my presence by A. B. of C. D. in favour of Q. R. of S. T. "

C. If the previous instrument is in the custody of a Court, or if it is lost, or has been destroyed, and the registered entry thereof is in the custody of another officer, the Village-registrar shall forward a certified copy of the entry in

his Register relating to the modifying or superseding instrument to such Court or Officer, after writing an endorsement of the despatch of such copy below the registered entry in column 8 of the Register book, with a report explaining the circumstances. If the officer be a Village-registrar, he shall, on receipt of such a report endorse on the registered entry a note under his hand as to the modification or supersession of the instrument in the form prescribed in clause B above.

*Note* :— All notes under paras 1 and 2 of rule 24 and under the Clauses A, B and C above shall be signed and dated by the Village-registrar.

In the Sholapur Taluka of the Sholapur District, it shall not be necessary for a person to produce either a certified copy of the destroyed instrument or an extract from the register of suits unless such copy is in such person's possession.<sup>1</sup>

25. In ordinary cases all instruments shall be drawn up and registered at the office of the Village-registrar authorised to prepare the same. But on special cause being shown, such officer may attend at the residence of any person desiring to have any instrument prepared and shall charge an additional fee laid down in the Fee Table prescribed under Section 69 of the Act. A Village Registrar receiving batta under Article V of the Fee Table for attendance at a private residence for the preparation of the instrument, or for the attestation of a power-of-attorney, shall grant a receipt in writing for the money so received by him to the party on whose application he proceeds to the private residence.

#### Rules for carrying out the provisions of this Act.

Vide Notification No. 7183, B, dated 11th September 1896 B. G. G. for 1898 pt. I p. 974.

"The Act" means the Deccan Agriculturists' Relief Act, 1879, as amended by subsequent enactments.

48. No Village-registrar shall prepare or register any instrument under the provision of the Act to which he or any member of his family is a party. For the preparation or registration of any such instrument the parties shall be referred to the Taluka or Petha Village-registrar who has concurrent jurisdiction.

1. Notification No. 8576-2 dated 27-3-31 issued to remove the difficulty felt on account of the previous instruments having been destroyed by the burning of the Civil Courts buildings at Sholapur in 1930.



49. No Village-registrar shall prepare or register any instrument under the provisions of the Act unless it shall be stated in the body of such instrument whether the consideration mentioned in the instrument has already been paid or is to be paid hereafter, and if it has been paid, the manner in which such payment was made shall be fully set forth.

50. For the purpose of section 57 of the Act, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say)—

- (a) if the party executing a power-of-attorney at the time of executing the same resides in any district in which the Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar or Village-registrar within whose district, sub-district or village such party resides ;
- (b) if the party at the time aforesaid resides in British India, but not in any district in which the Act is for the time being in force, a power-of-attorney executed before and authenticated by any Magistrate, Registrar or Sub-Registrar ;
- (c) if the party at the time aforesaid does not reside in British-India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of her Majesty or of the Government of India.

In authenticating or attesting a power-of-attorney the following form of endorsement shall be adopted by Village-registrars :

Executed by A. B. of C. D. in my presence on the ( date ) He is identified by E. F. of G. H.

These endorsements shall be signed by the Village-registrar attesting the power-of-attorney.

## Appendix F.

### XIV.—Registration under Section 63-A, D. A. R. Act.

58. In respect of the registration of any instrument which has been executed by an agriculturist under S. 63A of the D. A. R. Act 1879, Nos. 34, 36, 38, 40, 50, 51, 55, 56, 57, 71 and 74 of these rules<sup>1</sup> shall be deemed inapplicable, and the following special provisions shall apply, namely:—

“(1) An endorsement in the following form shall be substituted for that prescribed by Rule 30,” viz. :—

<sup>1</sup> Rules made by the Inspector General of Registration and approved by the Governor in Council in accordance with the provisions of S. 69 of the Indian Registration Act 1908.

" Prepared at the office of the Sub-Registrar of \_\_\_\_\_, ( or at the house of \_\_\_\_\_, as the case may be ) between the hours of \_\_\_\_\_ and on the \_\_\_\_\_ 19 . "

" (2) Rule 44 shall be read as if for the second and fourth items therein specified the following were, respectively substituted, viz :—

" ( 2nd ) the presentation endorsement referred to in rule 30, as modified by Rule 53, clause (I) : "

" (4th) the endorsements made under Nos. 22, 23 and 24 of the Rules made under S. 61 of the D. A. R. Act, 1879, and the certificate required by S. 60 of the Act, 1908, in the order in which they occur on the instrument. "

" (3) Rule 73 (I) shall be read as if for the first sentence thereof down to and inclusive of the word ' same ' the following were substituted, " viz,—

"If for any class an instrument is not completely executed and registered after the fee for the same has been paid, one-half of such fees and all the copying fee shall be refunded to the person who paid the same." (See rule 58 p. 17 of the Bombay Registration Manual 1925.)

## Appendix G.

**Reductions and remissions of stamp duty :—**F. D. No. 3616-Exc., dated 16th July 1909. In exercise of the powers conferred by s. 9, c, (a), of the Indian Stamp Act, 1899 ( 11 of 1899 ) and in supersession of all previous notifications issued from time to time under the said clause of the said section the Governor-General in Council is pleased to reduce to the extent set forth in each case the duties chargeable under the said Act in respect of the instruments hereinafter described under Nos. 2 and 3 and to remit the duties so chargeable in respect of the instruments hereinafter described :—

1. Agreement of the kind described in D. A. R. Act 1879 ( XVII of 1879 ) s. 43.

2. Promissory note payable on demand to a certain person; and not to order or bearer, when such note is executed by an agriculturist, and is attested at the time of execution by a Village-Registrar, under s. 57 of the D. A. R. Act, 1879 ( XVII of 1879 ).—Duty reduced to one anna.

3. Promissory note payable otherwise than on demand, and not payable at more than one year after date or sight, to a certain person, and not to order or bearer, when such note is executed by an agriculturist and is attested at the time of execution by a Village-Registrar under s. 57 of the D. A. R. Act, 1879 ( XVII of 1879 )—Duty reduced to the amount chargeable under Article

No. 18 (b) of Schedule I of the Stamp Act, 1899, on a bill of exchange for the same amount.

4. Power-of-attorney furnished to a relative, servant or dependant under the D. A. R. Act, 1879 ( XVII of 1879 ) s. 68.

5. Copy of an instrument which a Village-Registrar has to deliver to a party under the D. A. R. Act, 1879 (XVII of 1879 ), s. 58.

## Appendix H.

**Remission of Court Fees :—** The Government of Bombay Notification No. 590 dated 16th September, 1921, published in the Bombay G. G. dt. 22nd Sept. 1921 No. 590. In exercise of the powers conferred by s. 35 of the Court Fees Act, 1870 ( VII of 1870 ) as amended by Act XXXVIII of 1920 and in supersession of so much of all previous notifications under that section issued by the Governor-General in Council as relates to the reduction or remission of all or any of the fees mentioned in the first and second Schedules to the said Act, in the territories under the administrations of the Government of Bombay, the Governor in Council is pleased—

“ to remit the fees chargeable in respect of the documents specified in the First or Second Schedule to the Court Fees Act, 1870 in the case of suits instituted before Village-munsif under chapter V of the D. A. R. Act, 1879. ”

**Cancellation of exemption of Court fees :—** In exercise of the powers conferred by s. 35 of Court Fees Act, 1870 the Governor-General in Council is pleased to cancel (i) clauses 28 to 30 inclusive of the notification of the Government of India in the Department of Finances and Commerce No. 4650, dated 10th September 1889, and (ii) notifications of the Finance Department No. 2844 S. P. and 4415-Exc., dated respectively 23rd May 1902 and the 22nd August 1910.

## Appendix I.

**Process fee not leviable :—** Nothing contained in the rules made by the High Court under s. 20 of the Court Fees Act, 1870 ( or in any rules heretofore made by the High Court under s. 20 of the Court Fees Act ( VII of 1870 ) shall apply to process issued by a Village-munsif under chapter V of the D. A. R. Act 1879.—See *Manual of Circulars issued by the High Court of Bombay (1925 Ed.)*

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