

Bombay Government Gazette.

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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Bill, together with the Statement of Objects and Reasons accompanying it, is published in accordance with Rule 15 of the Rules for the Conduct of Business at Meetings of the Council of His Excellency the Governor of Bombay for making Laws and Regulations:—

Bill No. 5 of 1875.

A Bill to consolidate and amend the Law relating to the powers and procedure of Mámlatdárs' Courts.

Whereas it is expedient to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts; it is hereby enacted as follows:—

I. This Act may be called "The Mámlatdárs' Courts Act, 1875."
Short Title.

II. Clause 2, Section I. of Act XVI. of 1838 and (Bombay) Act V. of 1864 are repealed.
Repeal of Acts.

III. In this Act, unless there be something repugnant in the subject or context,—
Interpretation Clause.

(1.) The word "Mámlatdár" shall mean any Revenue Officer ordinarily ex-

ercising the powers of a Mámlatdár or any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mámlatdár under this Act;

(2.) The words "Plaintiff" and "Defendant" shall include the recognized Agents of a plaintiff or defendant as defined in Section 17 of Act VIII. of 1859.
"Plaintiff," "Defendant."

IV. It shall be lawful for Mámlatdárs' Courts within the territories in their revenue charge to give immediate possession of all lands, premises, trees, crops, fisheries, and maintain existing possession.
Mámlatdárs' Courts may give immediate possession of lands, &c., and maintain existing possession.

and of all profits arising from the same, as well as of the right to water from wells, tanks, canals, or water-courses, to any party dispossessed of the same, or of the profits thereof, otherwise than by due course of law, on such terms as may be shown to be just and reasonable, and also in cases in which a disturbance of the possession of anylands, premises, trees, crops, or fisheries, or of the right to water from any well, tank, canal or water-course, or the right of way to any land is attempted by any party, to issue an injunction to such party to refrain from disturbing the possession of

the party who is in possession: Provided that application be made within six months after dispossession or attempted disturbance.

date of such dispossession, or of such attempted disturbance.

V. All suits under this Act shall be commenced by a

Suits to be commenced by a plaintiff. Particulars to be given in plaintiff.

plaint which shall be presented to the Mámlatdár in open Court by the plaintiff

in person, and which shall contain the following particulars:—

1. The name, caste, profession, and place of abode of the plaintiff.
2. The name, caste, profession, and place of abode of the defendant.
3. The nature and situation and value of the property of which, or of the profits of which recovery, or continuance of possession, is sought, or the nature and value of the right to be recovered or preserved, as the case may be.
4. The date up to which plaintiff was in possession, or on which attempt was made to disturb his possession.
5. The means by which the defendant obtained or attempted to disturb possession.
6. A list of the plaintiff's witnesses, and what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether they will of themselves appear on the day and at the place to be appointed according to Section XI. of this Act.

VI. When the complaint is presented, the Mámlatdár shall require the plaintiff to subscribe and verify the complaint 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 complaint is true, to the best of my information and belief.”

VII. The Mámlatdár shall endorse the complaint to the effect that it was duly subscribed and verified. In case the plaintiff cannot write, the verification may be written for him in open Court, and the Mámlatdár shall, in such case, state that the verification was made in his presence, at the request of the plaintiff, who affixed his mark to his name in token of the authenticity of the verification.

VIII. If the complaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than

those specified, whether relevant to the complaint or not, or if the statement of particulars be unnecessarily prolix, the Mámlatdár may order the complaint to be amended within days from the date of such order.

IX. If the plaintiff decline to subscribe or verify the complaint as hereinbefore required, or to amend the same as directed by the Mámlatdár, or if it appear upon the face

of the complaint, or after questioning the plaintiff, that the plaintiff was dispossessed or that the disturbance of possession or alleged right was attempted more than six months before the complaint was presented, the Mámlatdár shall reject the complaint.

X. If it appear to the Mámlatdár that the property or right concerning which the complaint is brought, is not within his jurisdiction, he shall return the complaint in order to its being presented in the proper Court.

XI. If a complaint is admissible, the Mámlatdár shall receive and file it. He shall then appoint a convenient day and place for the trial of the case. The plaintiff shall be required to

appear with his witnesses and proofs on the day and at the place appointed, of which ten days' notice in the form of Schedule A shall be issued at the plaintiff's expense to the defendant.

The date to be fixed for the trial shall not, unless for unavoidable reasons, be later than 15 days from the day on which the plaint is filed.

XII. If either party require his witnesses to be summoned to appear on the day and at the place appointed, the Mámíatdár shall issue summonses for that purpose. 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 payment of witnesses summoned by the Civil Courts.

XIII. If the plaintiff fails to attend with his proofs, or omits to adopt measures to procure the attendance of his witnesses on the day and at the place appointed, the Mámíatdár shall reject the plaint with costs.

If the defendant fails to attend, the Mámíatdár shall proceed to hear the plaint *ex parte*.

Provided that if either party satisfy the Mámíatdár at any time within 15 days from the date of the plaint being thus rejected, or of such *ex parte* decision, that he was prevented by some unavoidable circumstance from being present, or from procuring the attendance of his witnesses, it shall be lawful for the Mámíatdár to re-hear the case, a notice in the form of Schedule B being issued, at the applicant's expense, to the opposite party.

XIV. If any witnesses who have been duly summoned fail to attend on the day and at the place appointed, the Mámíatdár may, if he consider there is sufficient reason after taking the evidence of those that are present, adjourn the hearing of the suit from time to time till the attendance of the witnesses can be enforced.

The provisions of Section 13 shall apply on any date to which the proceedings may be adjourned under this Section, as if such date were the day originally fixed for the hearing.

XV. On the day appointed the Mámíatdár shall proceed to hear all the evidence that is then and there before him, and to try the following issues, viz.:-

- (a). If the plaintiff avers that he has been dispossessed :
- (1). Whether the plaintiff or any person on his behalf was in possession or enjoyment of the property or rights 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 still in possession, but that the defendant has attempted to disturb him in his possession :
- (1). Whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or rights claimed.
 - (2). Whether the defendant has, at any time within six months before the suit was filed, attempted to dispossess or oust the plaintiff otherwise than by due course of law.

If the Mámíatdár's finding upon these issues be in favour of the plaintiff, he shall award him immediate possession or grant the injunction prayed for, as the case may be.

If his finding be in favour of the defendant, he shall reject the plaint.

In either case the Mámíatdár shall make such award as regards the costs of the suit, including the costs of execution, as he shall deem fit.

XVI. Every order of the Mámíatdár whether for rejecting or returning a plaint, or whether for allowing or disallowing the claim, shall be endorsed by the Mámíatdár on the plaint together with the reasons therefor.

XVII. If the Mámlatdár's decision be Mámlatdár's award for awarding possession or restoring a right he shall issue an order to the Village Officers to give effect thereto.

If it be 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 he be present, and if he be not present, shall send it to the Village Officers to be served upon him.

If the Mámlatdár awards costs, he shall require the party by whom they are declared payable to pay the same then and there; if he fail to do so or to give security for the payment within days, or if he is not present, he shall cause the amount thereof, together with costs of execution, to be recovered as if it were a revenue demand: provided that in the recovery of any such amount the Mámlatdár shall not be entitled to claim any special precedence which he might be entitled to claim on account of a Government demand.

XVIII. The party to whom the Mám-
Possession to be given or maintained without prejudice to the rights of the parties. latdár shall give immediate possession, or whose existing possession he shall maintain, shall continue in possession until ejected in execution of a decree of a Civil Court:

Provided that nothing in this Section shall prevent the party against whom the Mámlatdár's decision is passed from recovering by a suit in the Civil Court mesne profits for the time he may be kept out of possession:

Provided further that the Mámlatdár's decision shall not be accepted in any Civil Court as conclusive proof on any of the points decided by him, anything in any law for the time being in force to the contrary notwithstanding.

XIX. There shall be no appeal from
No appeal to lie from Mámlatdár's orders. any order passed by a Mámlatdár under this Act.

XX. If any plaint verified under this
Punishment for false verification of plaint. Act shall contain any statement which the plaintiff shall know

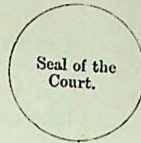
or believe to be false, or shall not know or believe to be true, such plaintiff shall be subject to punishment according to the provision of any law for the time being in force for the punishment of persons intentionally giving or fabricating false evidence.

XXI. A charge of an offence under
Criminal prosecution under this Act not to be instituted, but with sanction of the authority before which the offence was committed, or of a superior authority. the foregoing section shall not be entertained in the Criminal Courts, except with the sanction of the Mámlatdár's Court to which the plaint containing a false statement was presented, or of some other Revenue Officer to whom such Mámlatdár is ordinarily subordinate. Such sanction shall not be given after the expiration of one month from the date of the inquiry required to be made under Section XV. of this Act.

XXII. When a Mámlatdár's Court is of
Mode of proceeding in cases mentioned in the last two preceding Sections. opinion that there is sufficient ground for investigating a charge under Section XX. of this Act, it shall, after making such preliminary inquiry as may be necessary, send the case to the Magistrate of the District, who shall either try or commit for trial the accused for the offence charged, or shall send the case for investigation to any Magistrate having power to try or commit for trial the accused for the offence charged, and such Magistrate shall thereupon proceed according to law.

XXIII. The Mámlatdár's Court when
Bail from accused person when Mámlatdár's Court determines to send the case to District Magistrate. determining to send the case to the District Magistrate shall take sufficient bail for the appearance of the accused person before such Magistrate as shall thereafter be appointed by the District Magistrate to investigate the case, or in default may detain him in custody, and shall report the fact to the District Magistrate, and may bind over any person to appear and give evidence on the investigation of the case.

SCHEDULE A.

(Form of Notice to be issued to the Defendant under Section XI.)

No. OF SUIT.

In the Court of the Mámlatdár of

*Plaintiff.**Defendant.*To the Defendant—*(name, caste, profession, and address).*

Whereas (here enter the name, caste, profession and address 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 on the _____ day of _____ at _____ o'clock in the forenoon to answer the abovenamed Plaintiff; and as the plaint will be finally disposed of on that day, you must adopt measures to procure the attendance of your witnesses on that day at the hour and place above appointed; and you are hereby required to take notice that, in default of your appearance at the before mentioned time and place, the suit will be heard and determined in your absence.

(Signed)

Mámlatdár.

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 XIII.)

No. OF SUIT.

In the Court of the Mámlatdár of

*Plaintiff.**Defendant.*To Plaintiff (or Defendant, *as the case may be*) inhabitant of

Whereas, in the suit above specified, instituted in this Court by the said Plaintiff 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 rehear the case, and the Court has granted his said application.

This is to give you notice that the said suit will be reheard and determined on the day of at o'clock at the village of , at which time and place you must take measures to procure the attendance of your witnesses, and you are hereby required to take notice that in default of your appearance at the abovementioned time and place, the suit will be reheard and determined in your absence.

Dated this day of 187 .

(Signed)

Mámlatdár.

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 C.

(Form of Injunction to be issued under Section XVII).



No. OF THE SUIT.

In the Court of the Mámlatdár of

Plaintiff.

To Defendant.

Defendant.

Whereas in the suit above specified the Court has this day found that you did attempt on or about the to disturb the said plaintiff in his possession (or enjoyment, *as the case may be*) of the undermentioned property (or the undermentioned rights, *as the case may be*), viz. :—

You are hereby prohibited from making any further attempt to disturb the said plaintiff in his possession (or enjoyment) of the said property (*or right*) otherwise than in execution of the decree of a Civil Court.

Dated this day of 187 .

(Signed)

Mámlatdár.

STATEMENT OF OBJECTS AND REASONS.

Act V. of 1864 contains no provision for the levy and award of costs in suits tried under it. The power to grant summarily the enjoyment of rights of drawing water from wells and canals, or of right of way is also omitted from it. The present Bill has been framed mainly to supply these defects, and advantage has been taken of it to amend the wording and lay down distinctly the issues which the Mámíatdár should try. It is also proposed to enact that execution of decrees under the Act shall be enforced through the village officers, a point on which the existing law is silent.

11th September 1875.

(Signed) A. ROGERS.

By order of His Excellency the Governor in Council.

W. LEE WARNER,

Acting Under Secretary to Government.

Poona, 11th September 1875.