

RACE SECTION

Rampur

DECCAN RIOTS COMMISSION

Appendix B.

ACTION

OF THE

LAW AND THE CIVIL COURTS

ON THE

AGRICULTURAL DEBTOR.

PRELIMINARY DIGEST OF EVIDENCE

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DEPOSITIONS OF CONVICTED RIOTERS
AT PRESENT IN THE POONA AND
YERAUDA JAILS.

1. *Krishna bin Siwa*, Shoemaker, Supa.—I have no debts. Some of the property was found in my house, but I was not engaged in the riots.

2. *Tatya Saloo*, Potter, Supa.—I owe Rs. 150 to Jagjivan Blaichand on a registered bond. My house was mortgaged. No decrees have been given against me. Rs. 150 were not received by me in cash. The debt is an old debt from my father's time. I got nothing myself, not even when the bond was passed. I wrote the bond because he was threatening to file a suit against me and get me sent to jail. The amount of the bond was Rs. 150 principal. I don't know the rate of interest. He told me verbally that the interest

37½ per cent.

was ½ an anna in the . . .pee. There were previously 2 bonds both passed about 6 years ago. There was no mortgage in either. One of them, for Rs. 30, was paid off 3 years ago in presence of us both, and was torn up. We only paid the principal, Rs. 30. The banker let us off the interest. I don't know why my father borrowed the money. I know that he did not get cash. It was for an old debt. He got nothing in cash. No old bond was shown. No accounts were shown. He probably got some money to buy donkeys. The Rs. 30

37½ per cent.

bond was probably at ½ an anna interest too. The bond for Rs. 25 was passed on the same day. No money was got for that either. The reason for passing 2 bonds was that the term was different. The Rs. 30 one was for 4 months, and the Rs. 25 one was for 6 months. My father paid for the stamps of both. One of the papers was for 2 annas and one for 4 annas. The Rs. 25 bond was liquidated about 4 years ago by the bond for Rs. 150. First of all the Rs. 25 bond became one for Rs. 40. This was signed by both my father and myself. I paid Rs. 20 of this bond at the time the Rs. 40 was payable, namely 7 or 8 months after it was

executed. I further passed a bond for Rs. 60. On this the bond for Rs. 40 was torn up. My father may have got some turbaud or something from the Marwari as well. I myself have received nothing of any sort whatever. My father is alive. About 2 or 2½ years ago the banker said his bond was becoming time-expired, and he threatened to sue us. On that one bond was passed for Rs. 50 on mortgage of one of our houses, and another was passed, I believe, for Rs. 100 on the other. Both were registered. Jagjivan keeps accounts. About 1 year or 1½ years ago he asked for payment of the Rs. 50 on a threat of suing us. I don't know if my father passed a new bond then or not, as I went to another village, Pandeshwar, to live with my father-in-law. If he had not threatened us with a civil suit and the jail afterwards, we would not have passed the bonds. We paid nothing except the Rs. 50. We gave him 500 to 1,000 bundles of karbe and Rs. 10 or Rs. 12 worth of grain out of our balote. We did not pay this every year. One year it might be Rs. 10 and another Rs. 20. Once we paid him 1,500 bundles of karbe on the occasion of his marriage. He said he would give us a receipt after the wedding was over, but he did not do so. On another occasion, when we gave him 500 bundles, he said that we owed him a great deal and should give him that amount for nothing. He gave us no receipts for the annual amounts, as he said we owed him Rs. 6 for rent. Our property consists of 2 houses and 1 donkey. We have no land, nor ornaments of any sort, nor cooking pots except about Rs. 5 worth. I can't say what the houses are worth exactly. One of them consists of 10 khans and the other of 6 khans (Rs. 100+60?)

Question.—If you gave up all your property now, would you still owe him money unless he lets you off?

Answer.—I don't want to give up my house. I mean by service or otherwise to pay off the debt.

Requestioned.—I believe we should be quits and perhaps something over. I can make about Rs. 50 in 8 months' work as a labourer. The other 4 months I have to perform my duties as village kumbhai. For this I get 10 maunds of grain and about 1,500 bundles of karbe, which I sell. The price is 10 to 12 annas a hundred. We have to buy some as well. This we do out of the wages earned during

the 8 months. I can only save Rs. 4 or Rs. 5 in the year towards paying off the debt. I see that unless some house is built or something turns up for me to do, I must lose my house. I will then beg.

Question.—What will you do as to the balance of your debts, if any ?

Answer.—I will pay them by my labour. The Marwari would not let me go without paying off everything. He would prevent me leaving the village by executing a decree against me or putting me in jail. I don't owe any other Marwari anything. My father may, but I don't know. I have two brothers, both younger than me about 2 years. I don't know why the riots took place. News came from Aligaon about a riot against the Wanis. People said that if we go to the Wanis they will give back our bonds. The first rumour was that they would give back a Rs. 100 bond and take one for Rs. 50. I don't know whether the Wanis oppress people. What has happened I have told. I know that they have taken other people's houses and locked them up. They also take their good clothes, and tell them to walk away with the old ones. The Wani uses the large house now. We can't get houses for hire. I would be willing to give up everything and get free, but I should like a bit of a hut somewhere in the village.

Question.—Why did you go on foolishly signing these bonds ?

Answer.—We could not help it. We could not pay up, and would have been put in jail if we had not paid.

Question.—Why did you not sell one of your houses ?

Answer.—Who will buy one of our houses ! We could not get the money from one Wani to pay another. If it was my father's debt, I might borrow from another Wani. I was not engaged in the riot.

3. *Khandu Bhynaji*, Barber.—I have no land. I owe Rs. 150 to Khema Wani. The bond was passed a year ago on a mortgage of my house. The bond was not registered. The interest is $\frac{1}{2}$ an anna per rupee. I got nothing when this bond was passed. The first bond was passed for

Rs. 30, 3 years ago; that was cancelled by one for Rs. 50 two years ago, and that by one for Rs. 80 after 1½ years. It was for this last that the Rs. 150 bond was passed. I got the whole of the Rs. 30 mentioned in the first bond. I took the money to build a house. It is the one mortgaged. I have no property except the house and 2 or 3 pots worth about Rs. 5. I have a broken mill. Two years after passing the bond I paid Rs. 80. This was at the time I passed the Rs. 50 bond, and in addition thereto I paid Rs. 70 a year after that again. I made the money by acting as a barber in Bombay. I go there from time to time for a year or so. I make Rs. 10 a month at the business. My house is worth Rs. 50 or Rs. 60. I only repaired it with the Rs. 30.

Question.—Then your house will be lost to you?

Answer.—It will; but I must pay up everything I owe, otherwise I will go to hell (*narak*). We can get money in the village at 1 pice; but this man was always our sowkar, so I went to him. I was not in the village when the riots took place, and don't know anything about them. I could not go to a new sowkar, as a new sowkar would not lend me money.

4. *Munnū wullud Yaksoob*, Mussulman dyer.—I owe nothing. I live in Supa. Some property was found in my house. It was brought in by the children.

5. *Jote wullud Mapa*, Mahar.—I have an 1-32 share in the Mahar Watan; the whole assessment is Rs. 32. I don't know the new assessment. I owe nothing. I know nothing of the cause of the riots. I was not there.

6. *Yesu wullud Jiwa*, Shoemaker.—I owe nothing. My brother owes money, I don't know anything about it. I have a house. I have hired some land from the Brahmin inámdar. I pay 2-5ths of the crops.

7. *Bali Salaji*, Marathi.—I have some land. It is assessed at Rs. 31. I have also land for Rs. 20, and local funds, on hire. This latter belonged to my nephew Salaji, who has mortgaged it to Maruti Maistri of Poona. The mortgage debt is Rs. 300. Maruti sued to eject me from my share on my nephew's mortgage, saying he had mortgaged the whole. This was about 2 years ago. Four years ago Maruti took possession of the whole. Mulchland Khem-

chand, my sowkar, ejected him by raising the attachment. Eleven years ago I passed a mortgage to Mulchand. The term fixed was 10 years, but Mulchand sued me to recover the land one year after execution, and obtained a decree. He asked me to make the change of names in the Government books and keep me on as his tenant, paying a share of the crop. I refused, and he sued me. He did not sue on the mortgage bond, but he sued on Rs. 200 unsecured bond. He got a decree and sold up my right in the land subject to his mortgage, for Rs. 30. He then turned me out. The mortgage deed was for Rs. 1,000. The Rs. 200 bond was passed about a year after the Rs. 200 bond was passed. Another nephew of mine, Parbata Jagoji, passed another mortgage deed for Rs. 1,000. I am surety on this. Subhana, my brother, also passed a bond for Rs. 1,000 on mortgage. We thus got Rs. 3,000 and built a well. The money was not given in a lump. The sowkar paid the masons, labourers, &c. We had no dealings with him before this well was built. We owed nothing before that. I don't know whether Rs. 3,000 were really paid or not. I had to trust to the sowkar. (I say to him) You are my mother, and I am your son, say truly what the amount is. The accounts were examined in the presence of the kulkarni. He also wrote the bonds. The kulkarni told us the account was right, and so we signed. How should we accept without his having told us it was correct? The bonds were registered.

Question.—What was the rate of interest?

37½ per cent.

Answer.—The rate was (most) exceedingly high, ½ an anna in the rupee.

Question.—Why did you give so high a rate?

Answer.—Nothing was said about interest originally when the account was started. We had to agree to this amount as the sowkar threatened to stop paying the people if we did not.

Question.—Why did you not go to another sowkar?

Answer.—I did go. I went to a sowkar in Poona. I forgot his name. He lives round here. I told him that I would mortgage my land to him and requested him to settle Mulchand's account, getting the security of my land for the amount he might pay. The Poona sowkar came with

me in the train to Dhond. On his enquiring what the debt was, Mulchand said Rs. 13,000. The Poona sowkar then asked to be allowed to see the accounts. Mulchand then said it would take 8 or 10 days to look them through. The Poona sowkar then said he had not so much time to waste. I don't remember the sowkar's name, but one Naula Bhoula came with him I remember. All this was after Mulchand had refused to lend at less than $\frac{1}{2}$ an

anna. I offered Mulchand $\frac{1}{2}$ anna in
37½ per cent. the rupee. The Rs. 200 bond was

for the labourers in the garden, &c. The Rs. 200 was also a balance of an account. The well now gives 2 mots of water. It is worth less than Rs. 1,000. I should not think it cost more than Rs. 1,000 to build. There was only one suit against me, the one namely for Rs. 200, on which my land was sold for Rs. 30. When the suit for Rs. 200 was brought, I went to the court and admitted the claim. Mulchand first of all took out a warrant on which a notice was issued to me. I did nothing on this. After that the attachment and sale took place. There was no other claim on the land except the Rs. 1,000; my house was also sold. My house sold for Rs. 25. That was all it was worth. Before the court's sale the land was sold for Government assessment. My nephew Parbati's and my share were then sold for Rs. 200. It was bought by Mulchand. The assessment on all 3 shares is Rs. 93. My brother Subhana's share has also been taken by Mulchand. He brought a suit against him the year before that against me, on the Rs. 1,000 mortgage passed by him. Subhana did not go to court. Why should he go? I suppose the summons was served on him. How could the court proceed otherwise? There was no sale in his case. Possession was simply given by the court. Saloji managed to redeem his share by borrowing from Maruti Maistri. Parbata's land was obtained by a suit on a bond for Rs. 100 under which Parbati's share was sold. The amount realized was also Rs. 30. Saloji's only debt was the bond for Rs. 300 to Maruti. Saloji lives in Poona, and I don't know what he borrowed the money for. Maruti has taken out a decree against him and obtained possession. None of us now owe anything except a small sum of Rs. 10 or so. I have 2 bullocks. I live in other people's houses now. I don't pay any hire. I don't know the cause of the riots in Supa. There was none in my village.

8. *Yesoo bin Ramji* of Pimpalgaon.—My cousin Dhondi Sambhaji has in his khata land assessed at Rs. 60. This land is divided in 3 equal shares, viz, myself, Dhondi, and my other cousin Babaji. About 7 months ago I obtained from Kesoo Brahmin Rs. 10 in cash to pay Government assessment and grain and karbe worth Rs. 15, and passed him a bond for Rs. 25. This sum bears interest at $1\frac{1}{2}$ pies per rupee. I have not as yet given any money to my sowkar towards the liquidation of the debt. My two cousins do not owe anyone. The Rs. 25 bond is a personal bond without any mortgage. I do not owe anyone else. The land in my cousins' khata was formerly assessed at Rs. 30. The increase is Rs. 30. I was not in the row. I was at my house. I had heard that some of the villagers had gone to their sowkars to get back their bonds by settling the sowkars' accounts; but I do not know why they had assembled on the date of the row for this purpose. So far as my knowledge goes I have not heard of any force being used towards the village sowkars. I do not owe anyone besides Kesoo. There have been no decrees against me.

9. *Narayan Hasaji Mané* of Koruli, Taluka Bhimthari.—I have no debts, and no decrees against me. I own one survey number; it is not mortgaged to anyone. The assessment according to old assessment was Rs. 6, which has now been increased to Rs. 10. I was not in Supa when the riot took place. I was at Warwand working there as a labourer at a sugarcane mill. I do not know why the disturbance was created. I am not aware of any plannings. I was arrested by the fouzdar. Two or three banias of Supa told the fouzdar that I was in the riot, and I was at once caught. The banias have got a spite against me, for on one or two occasions I had taken their cattle to the poundkeeper for leaving them untended in my field.

10. *Laxumon bin Joti* of Supa, Taluka Bhimthari.—I had to pay about Rs. 40 to Surupchand Bania, but I gave him the produce of my field this year and paid it off. I have no debts to pay now. I have got four survey numbers. They are not mortgaged to anyone. I am required to pay Rs. 60 to Government as assessment, which was according to old rates Rs. 55. No decrees against me. The khata of the fields are in my father's name. I did not belong to the gang of rioters. I had gone to the Deral Station on the day of the disturbance. The patels have ill-feelings against

me, and they mentioned my name to the fouzdar and got me punished one year's rigorous imprisonment. As I was not in the village, it would be impossible for me to say what led the other rioters to create the disturbance. I am not aware of any previous plannings.

11. *Sakharan bin Joti* of Supa, Taluka Bhimthari.—I do not owe a 'kowri' to anybody. I have my own fields bearing the assessment of Rs. 90. They are not mortgaged to anyone. No decrees against me. The khatas of the fields are in my father's name. I hold one survey number in mortgage; its khata is in my name. I was not at Supa at the time of the disturbance. I do not know who were the ring-leaders in the riot, and with what object they engaged themselves in it. The two patels, by name Luxamon and Babaji, have a spite against me. They mentioned to the fouzdar my name as being one of the rioters. The assessment of the fields is increased. The assessment according to the old rates was Rs. 60, and according to new ones it has risen to Rs. 90. I was sentenced by Mr. Macpherson, 1st class magistrate, to rigorous imprisonment.

12. *Nama bin Jabaji* of Supa, Taluka Bhimthari, Zillah Poona.—I do not owe a single farthing to anyone. I have got 4 or 5 fields bearing the assessment of Rs. 30. There are no decrees against me. I have not mortgaged my lands to anyone. When the disturbance took place at Supa I was not there, but was gone to Patas to my daughter's house. There is a long-standing dispute between me and the patels of the village regarding the burning of 'Holi,' and they got me implicated into this trouble. I do not know the motives of the other rioters in creating a disturbance. I am not aware of any previous plannings as regards the riot. I was tried and sentenced by Mr. Macpherson, 1st class magistrate, to one year's rigorous imprisonment.

13. *Ganu bin Janoo* of Kothal, Taluka Shrigonda, Ahmednagar Collectorate.—I was tried and sentenced by the magistrate of Shrigonda to 6 months' rigorous imprisonment. I owe about Rs. 100 to Joru Wani of Kolgaon. I borrowed the above amount for my brother's marriage on a bond. The rate of interest is Rs. 18 per cent per annum. I own about 7 or 8 survey numbers. They have not been mortgaged to anyone. There are no decrees against me. I was not in the riot. There were several others. I have been sentenced

for no fault of mine. I was brought into the trouble through spite by a Marwari residing in the village. His name is 'Ghovla'.

14. *Raoji bin Govindrao, Kumbi*, of Kothal, Taluka Shrigonda, Zillah Nagar.—I lost my father this year. My father originally contracted debts to the extent of about Rs. 500 or Rs. 600. There is only one creditor, and he has not obtained any decrees either against me or my father. My sowkar, by name Joru Wani, holds my land in mortgage. The khata of the land is in the name of the sowkar, who pays the Government assessment Rs. 30. When the disturbance in the above village took place I was not there. I do not know the motives of the other men who were actually engaged in the disturbance. I was tried and sentenced by the magistrate of Shrigonda to 6 months' rigorous imprisonment. I do not know why my father borrowed the above amount.

15. *Sakharam Santoji* of Ghospuri, Taluka Purner, Ahmednagar Collectorate.—I have been sentenced to imprisonment for 2 years. I have a khata of Rs. 16 in Ghospuri; the land in my occupancy is bagait. I have not mortgaged my land to anyone; it is in my occupancy this day. I owe one Wamonrao, Brahmmin of Akulneir, Rs. 75. There are no decrees against me. The villagers, hearing that the residents of the neighbouring villages have got back from sowkars their bonds by force, they also one day collected themselves and went to the shop of Moolchand Hakunchand and demanded from him all the bonds. I was called by my friends to attend the shop, and so I went; but I had personally nothing to do with the bania: I did not owe him anything. Before going to the bania's shop all persons were collected in the village chauri, but I cannot tell who was the leader of the whole party.

16. *Govinda bin Limbaji* of Ghospuri.—I have been sentenced to 2 years. I hold land in Ghospuri assessed at Rs. 10. This land has been mortgaged by me to Ballaji Pant of my village for Rs. 50; this took place 4 or 5 years ago. I however cultivate the land on behalf of my sowkar, give my sowkar $\frac{3}{4}$ of the produce, and keep $\frac{1}{4}$ for myself, from which I pay the Government assessment. I also owe the said Ballaji Pant Rs. 100, for which I have mortgaged to him my cattle. I also owe Wamonrao Badwa of Akulneir some, but I do not know the exact amount. The dealings

with this Brahmin were first commenced by my father. My father died 10 years ago, but since that time I have paid nothing to Wamonrao. About 4 or 5 years ago Wamonrao brought an action against me in the civil court. The summons was received by my people at home, but I was not present. I had been at that time to Kolgaon. The decree was therefore given by the court in my absence. Once or twice I had heard that the plaintiff had procured a warrant for my arrest, but every time the information was received I bolted from my village, and the decree has not as yet been actually executed either against my person or property. When the row took place in my place I was not present. I had been in my field then.

17. *Balwanta bin Hanmanta* of Ghospuri.—I have got land in my khata assessed at Rs. 40. My land is not mortgaged to anyone; I cultivate it myself. I have been sentenced to 2 years' imprisonment. I owed Purma Wani of my village Rs. 22, but the money with interest due was paid in full by me last year. I owe no one now. Purma did not sue me. There were no decrees against me by anybody. I was not present in the village at the time of the row. I was in my field, which is about one mile from the village. I was not aware that a row was to take place in the village.

18. *Kesoo bin Rabhaji* of Ghospuri.—I have been sentenced to 2 years' imprisonment. I have land assessed at Rs. 32 in my khata. This land and my cattle are mortgaged to Balaji Raughath of my village for Rs. 175. I have dealings with my sowkar for the last 3 years. I cultivate my lands and give about Rs. 100 to my sowkar and pay the Government assessment myself. I owe also Rs. 100 or thereabouts to Wamonrao Badwa. About 3 years ago he sued me in the civil court and obtained a decree. The original summons was received by me, but I did not put in my appearance in the court because I had nothing to urge against the claim. My dealings with my sowkars commenced by advances in grain and sundries, and when the account swelled a little I passed bonds for the amount. Last year Wamonrao had brought an attachment at my place, but he did not get any property in my house, and so he went away. Ever since the date of the decree I have not paid anything to Wamonrao. On the day of the row I had been to Walki, about 6 miles from my village. I had been there because it was a market

day. I returned to Ghospuri in the evening, and was then arrested by the police.

19. *Dhondi bin Kandaji* of Ghospuri.—I have a khata of Rs. 40. My land is not mortgaged to anyone. I have got dealings of my own to the extent of Rs. 250. I owed Rs. 25 to Balaji Raugnath, and I have given him jagri worth the amount, so I do not owe him any money now. There were no decrees against me. I was not present in the row: I was in my field. I know nothing about the riot until I was arrested by the police.

20. *Tazo willud Pirá*, Mahomedan of Ghospuri.—I have a khata of Rs. 24. It is not mortgaged to anyone. I have in my occupaney a "mala" assessed at Rs. 2, which is mortgaged to Balaji Raugnath for Rs. 150. I mortgaged it 3 years ago, but I cultivated it. I used to pay my sowkar the amount of interest annually, and sometimes cash in liquidation of the principal. I cannot tell how much I have paid my sowkar up to date, but in the first year I gave him wheat 9 maunds and 9 maunds jowari. Next year I gave him jagri worth about Rs. 14. This year there is the sugarcane crop in the field; but I do not know how much was given to my sowkar, because I do not know what my partners have done since I came to the jail. Of late my sowkars have filed suits against me. The money on account of the bonds for which these suits have been filed had been paid in full by me some time ago; but as I did not get the bonds the sowkars have sued me again for the same bonds. Before these suits no decrees were passed against me, and there were therefore no executions against me. I was not in the row.

21. *Radhoo willud Padoo*, Chambhar.—I have land assessed at Rs. 30; it is not mortgaged to anyone. I owe Rs. 16 to Balaji Pant Kulkarni and Rs. 15 to Dhondo Pant. I have been sentenced to 2 years' imprisonment. Wamon Badwa of Akulneir holds a decree against me for Rs. 35. I have paid half the sum to him. The decree was passed about 2 years ago. When the suit was brought in the court I was served with a summons; but I did not go to court, as I had nothing to say against the claim. Wamon did not at any time attach property on account of the decree. I owe to no one else. I was not in the row, and I do not know how my name was implicated in the affair.

22. *Padoo bin Hybataro*.—I have a khata of Rs. 70. It is not mortgaged to anyone. I do not owe anybody. I was in my field a long way off from the village when the row is alleged to have taken place in the village.

23. *Giranji Sadaseo*, Brahmin of the kulkarni family of Ghospuri.—I have got no khata. I owe Dhondo Raugnath, my relation, Rs. 300, for which I have mortgaged to him my house. I have no decrees against me. While I had been to Násik, Balaji Pant opened my house, which I had mortgaged to him, and consequently there was some enmity between us, and Balaji Pant seems to have implicated me in this affair on that account. I know nothing of the row. I was away in the field at the time of the row.

24. *Mairala bin Khundoo* of Supa.—I am a "Boorood" bamboo basket-maker. I have got no land. I owe no one. I know nothing about the riot. I cannot tell the cause of the riot. I have been sentenced because I took away to my house some property belonging to the banias which was lying on the road.

25. *Krishna bin Shiti*, Kunbi.—I have a khata of Rs. 20. It is not mortgaged to anyone. I owe Gunoo Kale Rs. 50. About 3 years ago I borrowed from him Rs. 25. I did not obtain this cash. Two or 3 months before the passing of the Rs. 25 bond, I commenced an account of taking grain from Gunoo and at the end of the third month Gunoo made up his account and said that I owed him Rs. 25. I did not get the account examined. I admitted the sum he told me, and passed a bond for the amount. In this bond the rate of interest was entered at half an anna per rupee. I have paid him Rs. 5 on account of the bond. About 6 months ago Gunoo told me that if his money was not paid at once he would bring an action in the court. I therefore passed him a new bond for Rs. 50 bearing interest at $1\frac{1}{4}$ pice per rupee per month. He has not sued me in the court. About 4 years ago I obtained from Sukdeo Brahmin Rs. 6 worth of karbe. I gave him afterwards Rs. 2 worth of grain. After about 3 years Sukdeo struck a balance of Rs. 25 against me. I had agreed to pay him interest at half an anna per rupee. About 7 months ago he threatened me to bring a suit in the court, and I therefore passed him a new bond for Rs. 25 bearing interest at half an anna per rupee per mensem. I have only paid Sukdeo

Rs. 2 in grain and nothing besides. There are no decrees against me. I will be able to pay off my debts within about 2 years if the field gives a good crop. The villagers in Pimpalgaon had assembled in front of the bania's shop to settle their accounts by giving the bania some cash and some cattle in payment of their debts. But the sowkar would not agree, and we all dispersed before noon. Although I had no dealings with the sowkars at whose place the villagers had gathered together, I went there with the villagers simply to see what was going on. I had personally nothing to do with the affair. I do not know why the villagers had gone to the sowkar on that particular day to settle their debts. In my village no bonds, &c., were destroyed. In fact nothing beyond asking the sowkar to settle the accounts was done in the village. Besides the 2 men above mentioned I do not owe anyone.

26. *Kashi bin Geno*, Konbi of Sonsangwi, Taluka Sirur.— I have got a khata of Rs. 30, but half of the land is in the occupancy of my cousin and the other half is with me. Since the last 3 years I opened an account with Goolabchand Marwari by taking small advances in grain. I do not know how much grain I had taken in all. I also borrowed from him after 6 months Rs. 30 in cash to celebrate the funeral ceremony of my mother. When I obtained this loan he told me that I owed him Rs. 75. I thereupon passed 3 bonds of Rs. 25 each and mortgaged to him my entire share in land and one house, the value of which may be about Rs. 500. The house and fields are in my possession now. The rate of interest entered in the bond was Rs. 37½ per cent per annum (half an anna per rupee). In the first year I gave him about 15 maunds of jowari and about 1,500 bundles of karbe. I estimate the value of that property to be Rs. 40. I gave the above, and the bania told me that all that has been credited in payment of the interest due on those 3 bonds. He did not pass me any receipt for the payment, although I used to dun him almost every day. In March last I gave the sowkar grain and karbe worth about Rs. 75, but I got no receipt for it. According to my calculation I do not owe Goolabchand any money, but he has not settled my account as yet. On the day the row took place all the villagers had come to the house of Goolabchand to ask back their bonds. They all first told Goolab to produce the bonds, and he did so apparently under the threat that he

might be ill-used. The bonds that were got back were, I think, destroyed on the spot. About 5 or 6 days before the row in my village, the villagers had heard that the residents of Kurdi Nimone have got back by force their bonds from the banias, and since then the villagers were thinking of doing the same in my village, which they ultimately did. I was present at the time, but had nothing to do with the affairs. I do not owe anyone besides Goolab. The bonds for Rs. 75 have been registered at Sirur. There are no decrees against me. I owed no one before I commenced my dealings with Goolab.

27. *Vithu bin Gopalla*, of Pimpalgaon.—I have in my occupancy land assessed at Rs. 25; it is however entered in the khata of my aunt Guza kom Rama Thorat. She has also equal quantity of land, viz., assessed at Rs. 25. I do not personally owe anyone. My elder brother owes to one Keso Brahmin Rs. 40. The name of my brother is Nana bin Gopalla Thorat. I do not know how the dealings first commenced. I cannot tell how much there has been paid to Keso in liquidation of the debt. I know of no other debt, because my brother manages the home affairs. So far as my knowledge goes there are no decrees against us; there were no attachments on our property. My brother is now in the Ahmednagar Jail undergoing his imprisonment. He has been sentenced to 3 years on a charge of theft. It is now nearly 15 months since he is in the jail. On the day of the row I went to the sowkar along with other people to get back the bonds by settling our accounts with the sowkar by giving him our cattle and property, and somehow or other to put a stop to the dealings with these zoolmi sowkars. My object was also to settle my brother's account. The sowkar Keso said that he cannot attend to them that moment, but will see about it afterwards. At about noon the patel came to the place where we were sitting, and told us to go to our houses, so we dispersed. No force was used towards the sowkar by any one of us. None of his bonds were taken from him.

28. *Tookaram Joti*, of Supa, Kunbi.—I have got in the khata of my mother land assessed at Rs. 50 and in my own name land assessed at Rs. 10. My land is in Karoli. I do not owe anyone. My land is entirely in my possession. 3 or 4 days before the row I had been to Bori, about 8 miles from Supa. 4 days after the row I came back to the village, but I do not know what was the reason of the row. Nobody

told me about it. My name was mentioned to the sirkar by the patel Tatia that I was in the riot. I am not on good terms with him on account of the Patilki-watan. I am a member of the patel family. There have been no decrees against me.

29. *Ganoo Siwaji*, of Pimpalgaon.—I have no khata in the village. I owe Gunesh Pant Brahmin Rs. 25. About 4 years ago I borrowed from him Rs. 12 in cash for household expenses, and after about 6 months I took from him a further sum of Rs. 5 in cash, when he made a total sum of Rs. 25 against me, for which amount I passed him a bond and got back the first bond. The first sum of Rs. 12 bore interest at $\frac{1}{4}$ an anna per rupee. I have the lease of the maharki land, and I have agreed to give my sowkar $\frac{1}{4}$ of the field's produce in payment of the interest. The rate of interest is not entered in the bond. Since the date of the bond I annually give him $\frac{1}{4}$ produce, which is about Rs. 15 or Rs. 20 worth. I have not given him anything towards the liquidation of the principal debt. There have been no decrees against me. At the time of the row I was in my house lying sick. I don't know why the row took place. Gunesh Pant lives close to me. I know that some of the villagers had assembled in the street in front of the sowkar's house to ask for the return of their bonds, but I don't know how the whole thing ended. My name was included by the sowkar Gunesh Pant in the complaint which he made against the villagers.

30. *Hari Naroba*, of Dhond, Taluka Bhimthari.—There was an old standing debt from my father to the extent of Rs. 600. When my father died some 10 years ago, the creditors by names Bakaram Patel, Nana Kulkarni, Vitoo Golanda Wani, Badar Wani of Dhond, and Devgirbowa Gosavi of Poona, threatened me that they were about to file a suit against me. I went to them and told them to have patience. I subsequently mortgaged my land and house to Moolchand of Dhond, and borrowed from him Rs. 600. I received this sum in cash. I passed a mortgage bond for the above sum. I promised to pay him 2 pice per rupee per mensem as interest. I paid off all the debts contracted by my father. I do not know why my father involved himself into so large a debt. I came to know subsequent to his death that he had so much debt to pay. I do not know at what rate of interest my father first borrowed the sums.

The above sowkars gave me no detailed accounts. They have however passed receipts for the sums I paid them in liquidation of the debts. The stipulation I made with Moolchand for Rs. 600 was to pay him as interest Rs. 300 every year, and after the period of 2 years if I fail to liquidate the whole of the amount, I shall have no claim over my land and house. Owing to the uncertain rainfall the fields did not yield as much income as I had expected, and consequently I could not pay anything to Moolchand within the stipulated time. The whole of my property has gone into his hands. I have got no land, nor have I a house to live in. I have the kulkarni's house, and pay him rent for it. I live upon labour now. I did not assault the Marwari of Dhond. I simply asked him to give me land which he holds in mortgage to cultivate on the same terms as he gives it to others. Thereupon he said he was not inclined to give the land to me. My sowkar took me to Patas when I first passed a mortgage bond to him. He said to me that he wished to get it registered, to which I objected and immediately went back to Dhond. The Marwari laid a false charge against me and another, that he was severely beaten by us, and got us punished. There was no row in Dhond. All the implements of husbandry are with the Marwari.

31. *Yesoo bin Tukaram*, of Supa, Taluka Bhimthari.—I am a Boorood (basket-maker) by caste and follow the same profession. I have got no field. I owe Rs. 25 to a banis and my casteman. Rs. 10 to the former and Rs. 15 to the latter. I borrowed the above sums 10 years ago to purchase bamboo for my trade. I have passed 2 bonds for the above sums. I pay one pice and a quarter per rupee per mensem as interest for Rs. 10 and one pice and a half for Rs. 15. I have been paying my two sowkars only the interest since the last 10 years. The principal sums yet remain to be paid. I do not know precisely my annual income. I however get enough to maintain my 3 children and my wife. I was not in the riot. I only carried away some articles which I found in the streets to my house. When my house was searched by the police they were found in it. I was then arrested and sentenced. I do not know the rioter's motives in creating a row. There are no decrees against me.

32. *Balkisan Mahadev* of Supa, Taluka Bhimthari.—I have no debts; at present I have got no fields. I am a Telee

by caste and follow the profession of an oilman. I found some property consisting of cloth, &c., in the streets at Supa, which I took to my place of residence. I did not give any intimation of my having found the property either to the police or to any Government officials. The property which I had taken was, in the police search, found at my house, and I was then arrested and taken before the magistrate and sentenced. I do not know why the rioters engaged themselves in the riot. If I had not taken the property, I would not have been punished. On the day of the riot I was at Supa, but did not take any part in the riot.

33. *Sumbaji bin Lambaji* of Pimpalgaon, Taluka Bhimtlari.—I have debts to pay to the extent of Rs. 300 to the following sowkars. Rs. 100 to Nana Goley on bonds at 2 pice per rupee per mensem. Rs. 200 to Apa Pataskar on bond. My land has been mortgaged to him. He cultivates the land and receives its produce. He pays the Government assessment. I am not required to pay any interest for it. There is a condition in the mortgage bond which I have passed him, that after the period of 5 years I should pay him only the principal, Rs. 200. It is now three years since I have mortgaged the land to him. From Nana Goley I have got a field for cultivation. I pay him the produce of the field in shape of interest. I borrowed the above sums for the marriage of my daughter. I was in the gang of rioters. They had assembled to take back the bonds from their different sowkars. We did not succeed in getting back the bonds, for we were prevented by the police from doing so.

34. *Pandoo bin Luxumon* of Sangwi, Taluka Sirur.—I owe Rs. 325 to two sowkars of Malthan, Rs. 300 to Dayaram Guzur, and Rs. 25 to Buhiroo Sindia. My father has borrowed these sums on bonds. My lands and house have been mortgaged to the former. I do not know at what rate of interest these sums have been borrowed by my father. My father is living at present at Sangwi. So far as I know my father did not receive the above sums in cash. He borrowed money; grain, cloth, &c., as occasion required them. Thus the amount has been made up to Rs. 300. Rs. 25 were borrowed to pay the Government assessment. The khatas of my lands are in the name of the sowkar. The sowkar who mentioned my name as being one of the rioters is not my sowkar. I did not take part in the riot that took place here. There are no decrees against my father. The

lands, though in the name of the sowkar at Malthan, are in my cultivation. I pay the Government assessment.

35. *Khundoo bin Khaloo*, Chumbar of Supa, Taluka Bhimthari.—I have no debts. I have no land. I live upon my profession (shoe-making). I found some property lying in the streets of Supa which I carried to my house. In the police search the same was found in my house, and I was arrested and taken to the magistrate and was sentenced to one year, which on appeal has been reduced to 6 months. I earn as much as is required for my wife and daughters' maintenance. I was at my house when the riot took place. I was not among the rioters. I do not know the cause why they created the disturbance. I have my own house in the village.

36. *Sahadu bin Sheti Shitole*, of Pimpalgaon, Taluka Bhimthari.—I have no debts. I have a field bearing the Government assessment Rs. 20. The khata is in my name. I have not mortgaged it to anyone. I have my own house. The average annual income of my field is Rs. 50. The old assessment was Rs. 8. I belonged to those men who had assembled in the village to ask back their bonds from a certain Brahmin sowkar by name Keshow. I joined these men because they requested my assistance to compel the sowkar to give back their bonds, if he resists to do so. We did not get back the bonds, but we threatened him only that if he declined to give us the bonds he would be severely beaten. We were first quite ready to give him our cattle, &c., to free ourselves from debts, but he persisted to have money from us in cash. We were dispersed by the police. We neither beat the sowkar nor was any row created in the village. We went to our respective houses. We were then arrested by the police under orders of the Superintendent of Police, to whom he made a complaint that we were about to assault him. I do not know what led the people together on that particular day in the village. Perhaps they might have got the information of the riot at Supa and other places.

37. *Ramjee Kesoojee* of Nimbgaon, Taluka Sirtur.—I have khatas in Takli and Nimbgaon amounting to Rs. 100. All this land has been mortgaged to Rooka Kunbi of Ganegaon for Rs. 900. The land on my khata is divided into 2 shares. One is with my brother Kooshaba, and the other with me. Of the above sum of Rs. 900, Rs. 400 are due by me and

Rs. 500 by my brother Kooshaba. My father owed Rs. 300 to Gunoo Marwari of Nimbgaon. I do not know on what account he borrowed that money. Gunoo charged Rs. 24 per cent per annua for interest. My father died about 13 years ago, and as I fell out with Gunoo afterwards, because he would not continue his dealings, I closed his account and paid him Rs. 500. This sum I made up by borrowing Rs. 300 from Rooka and selling Gunoo the produce of my Nimbgaon field for Rs. 200. When I obtained Rs. 300 from Rooka I passed a simple cash bond bearing interest at 24 per cent. For a period of about 8 years I paid Rooka in cash and in kind annually about Rs. 75. In the 9th year Rooka asked me for his money, but on my pleading my inability to pay him at once, he asked me to give my Nimbgaon field to him in mortgage. I agreed to his proposal, and he struck a balance of Rs. 400 against me. I got this account examined by a village Brahmin as I am not on good terms with the kulkarni, and finding that the sum was correct passed Rooka a mortgage bond for Rs. 400 bearing interest at Rs. 24 per cent, and transferred to him the land. I have now the lease of the land and I give Rooka $\frac{1}{3}$ the produce retaining $\frac{2}{3}$ for myself. Rooka pays the Government assessment Rs. 35. The bond has been registered at Sirur. The period for redeeming the mortgage is 5 years. It has not yet expired. I also owe Rs. 325 to Chilkoo Marwari and Rs. 150 to Harkoo. I have not received this money in cash. These sums are entirely made up of advances in grain and interest calculated upon these advances. I have my dealings with this man for the last 10 years, and I cannot bring to my mind all the particulars about it. Every second year an account is made up by the bania, and we are called upon to pass new bonds. We quietly pass fresh bonds for fear of going to jail, and eventually losing all prospects of keeping our property from these banias. We generally depend for our good luck on getting a harvest in any year, and when we pass a bond we cherish hopes of repaying our debts in a good season. Such a time rarely occurs, and so the debts swell enormously, and whatever is given to the banias is eaten up by them in the interest account. Last year I gave the Marwari Chilkoo my khoti in the land valued at Rs. 325. He then made up his account and returned me some bonds and told me that I owed him Rs. 175. He has accordingly made adjustments in his account books. About 7 or 8 years ago I borrowed Rs. 120 from Rambhaw Kulkarni to purchase

two carts and one bullock. This sum bore interest at $1\frac{1}{2}$ pice (Rs. 2-5-6 per cent per mensem). In the first year I paid him Rs. 50 in cash and Rs. 20 worth of grain on account of interest, and in the 2nd or 3rd year I made his account and passed a bond for Rs. 300. In this bond it was settled to pay him annually an instalment of Rs. 50. For 3 years I paid the instalment, and last year when I had given Chilkoo grain for Rs. 325, I asked him to pay the Rs. 150 due to Rambhaw; Chilkoo did so, and obtained from Rambhaw my old bonds. I passed no new bond to Chilkoo for this transaction. Many years back a relation of mine by name Nowla borrowed Rs. 100 from Harkoo, and my father stood security for the amount. Nowla did not pay the money, and about 3 years ago I passed a bond to Harkoo for Rs. 150, bearing no interest. This debt is to be repaid by an annual instalment of Rs. 50. Before I passed him a bond for Rs. 150, I had from time to time given him Rs. 300 in cash and in grain. I know nothing about the riot: I was in my field. I know nothing about my brother's affairs.

38. *Nana Venkoji* of Kothal, Taluka Shirgonda, Ahmednagar Collectorate.—I hold a khata of Rs. 17. Ever since the last 25 years I have dealings with Goola Marwari of my village. My father first commenced an account with the Marwari, and I also took from time to time money as required. I do not recollect how much I received from him in all, but I have received nothing during the last 20 years from him. I used to pay him interest for all his advances at the rate of $\frac{1}{2}$ anna per rupee. About 20 years ago the Marwari struck a balance of Rs. 250 or thereabouts against me. I do not know how many bonds I passed him for the amount, but I recollect having passed a bond for Rs. 122 and the others for small sums. In these bonds my bagait field, assessed at Rs. 5-8-0, has been mortgaged to him. Five or 6 years after the passing of the bond I had the management of the field, but in the seventh year the Marwari agreed to free me from my debts provided the said field was given to his possession for 9 years. I consented to this arrangement and made over the field to the sowkar. It is nearly 13 years since the land was given to him, and although I had during the last 4 years often requested him to restore the land to me, he does not do so. A few days ago I pressed him to give me my land, when he told me that I should go to court if I liked. He will not give up

the land. I am a poor man, and cannot afford to go to court. The rate of interest entered in these bonds is, I believe, $\frac{1}{4}$ anna per rupee. The produce of my bagait field does I think yield annually between Rs. 75 and Rs. 100. During the 6 years the land was in my possession I gave him about $\frac{1}{2}$ of the produce and paid the Government assessment besides. After the field was made over to Goolab he paid the assessment for 9 years, but since the last 4 years he takes away the produce and I pay the Government money for fear of losing my land entirely for the Government Revenue. The remaining portion of my khata, viz., land assessed at Rs. 11-8-0, is in my occupancy. It is not mortgaged to anyone. I also owe Rs. 60 to Kustoor Marwari. This account was opened when Goolab ceased to pay me any money. I did not receive the Rs. 60 in cash all at one time, but he used to advance me in small sums when required, and occasionally provide me with clothes, &c. The Marwari used to balance up my account every 12 months. About two years ago I passed him a bond of Rs. 15 due for miscellaneous items. Last year I gave him a bond for Rs. 8. I do not know how much of this was received in cash. But I remember that some rupees were given in cash and some were charged on account of interest on former debts. About 10 months ago I wanted some money for household expenses, and I passed him a bond for Rs. 36. Of this Rs. 25 were received in cash and the rest was the charge on account of interest on former bonds. This Marwari charges interest at half anna per rupee per mensem. I have paid nothing as yet to this Marwari, as I could not save anything of late.

About 15 years ago I was sued for some old debt due to Jormal, and he obtained a decree. I do not remember the origin of this debt. I cannot also bring to mind for how much the decree was passed. I got a summons from the court, but I did not go to court, because I had no money to pay the sum claimed by any sowkar, and the decree was therefore given in my absence. Some time after the decree Jormal attached my two houses and sold them by public auction. One house was purchased by Jormal for Rs. 17 and the other by Goolab for Rs. 13. The house purchased by Goolab is in my occupancy. I live in it as a tenant and pay Rs. 1-8-0 per annum as rent. Since the time Goolab refused to pay the assessment I do not pay him the rent. I live chiefly on the produce of my field. I know nothing

about the riot. I was away in my field. Nobody told me anything after my return from the field. I was implicated in the riot by Govla Marwari. He complained that myself and one or two others burnt the bonds which were in his house.

39. *Mahadeo Bapu*, of Karoli, near Supa.—My father Bapu bin Vithoo Kate has a khata of Rs. 66. This amount has of late been increased by about Rs. 25 or Rs. 26, but I cannot tell exactly how much the increase is. I do not owe anyone. My father owes to Kumalchand of Supa and Babaji Pandoji Sheni of Sasur. I do not know how much he owes to each of these 2 men. I do not know whether or not my father's land is mortgaged to anyone. I have no knowledge of the riot that took place at Supa. I was engaged at Warwand, for about one month looking after the sugarcane crop I had purchased from Govinda Shitoba and Lukhoo Sutar. My name was entered in the petition made by Kumalchand, and I have been sentenced to 2 years' imprisonment. My village is about 4 miles from Supa, and about 12 miles from Warwand.

40. *Babaji bin Raghoji*, Kunbi of Dhalewadi —I have got a khata of Rs. 28. Of this, land assessed at Rs. 7 is in the occupancy of my nephew Kondi bin Koosaji. The remaining land is in my occupancy, and I cultivate it. It is not mortgaged to anyone. I owe Sagan Goojur of Kothale about Rs. 125. I have passed him no bond for the debt. I have an account current with him and he debits me in his own "Khata wahi." I give him interest at $1\frac{1}{2}$ per cent per mensem. We have dealings since a long time, and I cannot state origin of the debt. I get my account balanced with him every year. He has never sued me. I owe no one else. Dhalewadi is half a mile distant from Kothale. I was not concerned in the riot said have taken place at Kothale. I was in the village chouri when the police arrested me.

41. *Aba bin Bapoo*, Kunbi, of Dhalewadi.—I have a khata of Rs. 20. About 2 years ago I borrowed Rs. 200 from Jetha Wozaram at 2 per cent. Last year I gave him the produce of my field value Rs. 100. I got the money (Rs. 200) in cash. I obtained this loan to purchase a bagait field formerly belonging to me but many years ago sold to one Mali by my father. I have not made up the bania's account as yet,

and I do not know how much I owe him this day. Two years ago I got a loan of Rs. 40 from Bala Khadia bearing no interest. I have promised to give him in lieu of interest $\frac{1}{2}$ share in the produce of my field. I got this sum all in cash to purchase a cart and a pair of bullocks. I have not paid this Brahmin in liquidation of the principal. I owe no one else. None of my fields are mortgaged to anyone. I know nothing about the riot.

42. *Rapu bin Anaji*, Kunbi of Dhalewádi.—I have in my name land assessed at Rs. 31. My father died about 12 years ago. At the time of his death I found that he owed Rs. 500 to Sukan Goojur. The rate of interest for this sum was Rs. 2 per cent per mensem. Thereupon I mortgaged one of my bagait fields assessed at Rs. 5 to one Palla Kalhana and took Rs. 400 from him. This sum I paid to Goojur Sukan leaving a balance of Rs. 100 due against me. Palla's agreement is that he should enjoy the produce of the field in lieu of interest and to give up the land when the original sum is paid back to him. I have yet paid nothing to Palla, and the field is in his occupancy.

Five months after the money had been paid to Sukan Goojur I got from him a sum of Rs. 50 for the marriage of my son. This time I passed him a bond for Rs. 175 and mortgaged to him my entire land assessed at Rs. 26. The rate of interest entered in this bond was Rs. 2 per cent per mensem. This bond has been registered. After about 2 years he pressed me for the money and said that unless I give fresh bonds or the money due to him he will not allow me to cultivate the mortgaged fields. Knowing that I would be helpless in such a case, I passed a fresh bond for Rs. 300 bearing interest at 2 per cent. Last year he again threatened me with a suit, and as I could get no one to advance the money I passed a new bond for Rs. 400. Every year I give either grain or cash to the extent of Rs. 50, but I have no idea how his account swells so rapidly. I owe no one else. There have been no decrees against me. I was in my field on the day of the alleged riot. On my return at noon time one day I was arrested by the police.

43. *Apab in Jewba*, Kunbi of Dhalewádi.—We are five brothers named Saoliram, Vithoba, Karbhare, Amroota and myself. There is in the name of my father land assessed at Rs. 85. The khata is not yet changed. We have divided

our estate among ourselves. My share in the land is assessed at Rs. 17. My father had no debts. Two years ago I borrowed from Jetha Wozaram Rs. 50 for the marriage of my son. I got this sum in cash. I passed to him a bond bearing interest at $\frac{1}{2}$ an anna per rupee per mensem. I had also taken from him grain and sundries afterwards, and last year he made against me a sum of Rs. 100 for which I passed a bond with interest at Rs. 1-8 per cent per mensem. There is no security in this bond. About 6 years ago I borrowed Rs. 75 bearing interest at $\frac{1}{2}$ anna per rupee per mensem. This sum was obtained all in cash to purchase grain and bullocks. Five or 6 months afterwards he threatened to sue me in the court, and I passed a bond for Rs. 100 bearing the rate as at first agreed. Two years afterwards I paid nothing; in the 3rd year I paid him Rs. 200, when Sujan calculated interest and said that I owed him Rs. 60. I passed a bond for Rs. 60 and got back old bonds. Six months after that I passed another bond for Rs. 82, because he pressed hard for the money and I had none at the time. Last year he demanded Rs. 150 for the last bond, and as I had no money and was afraid of matters being taken to court I passed a bond for Rs. 150 bearing interest at 18 per cent per mensem. He had not this time returned the Rs. 82 bond to me; it is still with me. I have not mortgaged my land to anyone. It is in my possession. I do not know about the affairs of my brothers. I know nothing of the village riot. I was at Sasur one day and the next I returned to my village. Soon after I reached my house I was arrested by the police.

44. *Khanderao Ehagoji*, Kunbi of Kothale.—I hold a khata of Rs. 50. Of this a field assessed at Rs. 14 has been mortgaged to Mahadev Taple of Belsar for Rs. 100. I borrowed this sum in cash at the rate of 2 per cent interest. This sum was taken to meet the charges in connection with the repairs of a well in the field. I pay him annually Rs. 24 for the interest. I have given him nothing in liquidation of the principal. The bond has been registered at Sasur. The remainder of my land is not mortgaged. About 10 years ago my father died. On his death I found that he owed Jetha Wozaram Rs. 500. He threatened me with a suit. I therefore sold some of my property and paid him Rs. 200 in cash and passed 2 bonds, one for Rs. 100 and the other for Rs. 200. The latter has been registered. 5 years ago

I had given him once or twice the entire produce of my field, but since the last 5 years I have given him nothing. The sum of Rs. 300 bears interest at 18 per cent. There have been no decrees against me; in fact I was never sued by anyone as yet. I owe no other person.

45. *Ganoo bin Bhagaji*, Kunbi of Kothale.—I hold no lands. I work as a labourer. I owe Rs. 175 to Sagan Gujur and Rs. 200 to Fooloo kom Moti. About 2 years ago I borrowed Rs. 100 from Sagan to buy "khoties" of grain and ground-nuts. In this bond the rate of interest was 2 per cent. About 4 months ago I gave him Rs. 20 in cash and a pair of silver armlets of my wife worth Rs. 30 and passed to him a bond for Rs. 175 mortgaging my own house. This bond has been registered at Sasur. No interest is charged in the bond. I have agreed to pay him annually Rs. 20 on account of the rent of my house. This sum is to be taken by the bania towards the interest due on Rs. 175. About 15 years ago I entered the service of Fooloo's husband, Moti. There was agreement as regards my wages, but Moti used to give grain now and then. I served Moti for 7 years, after which he died. I continued in the service for 2 years after his death. About 6 years ago one day Fooloo told me that Rs. 300 were due to me by my service, and if I would pass her 2 bonds for Rs. 100 each, she would advance me Rs. 500, with which money I should carry small dealings of my own. I consented to this arrangement and passed her the bonds bearing interest Rs. 7-8 per cent per annum. She did not however pay me any money for the bonds or for my wages, but always put me off from time to time. I got tired of asking her and gave up all idea of going to her. She did not ask me for the money until the last 5 or 6 months, when one day I received a summons from the Talegaon Court. The claim in that summons was, I believe, for Rs. 100. I appeared in the court on the fixed date and pleaded that although I have passed the bond I had received no consideration for it, and that Fooloo owed me Rs. 300 on account of my past wages. The court heard me and directed me to engage a wakil. I did accordingly. Fooloo got her witnesses to prove the bond, and I gave 2 or 3 witnesses to prove that I had served the plaintiff for several years, and that she had to pay my wages. In the meantime I was tried and convicted, and I had no time to go to court again. I do not know how the court has

decided the case. I am a poor man. I was implicated in the row by Fooloo through malice. I know nothing about the riot. I was sick with fever at the time. I had heard that some of the villagers were sitting at Dhurma in the houses of banias and demanding their bonds back from them. There have been no decrees against me, because I did not owe anyone.

46. *Dhondi bin Foyalla*, Maratha of Kothale.—I have a khata of Rs. 25. Of this land one field, assessed at Rs. 11, has been mortgaged by me for Rs. 65 to Kuspi Ghondhali. I mortgaged this land 5 years ago. In this bond it is stated that the sowkar is to enjoy the produce of the field in lieu of interest until the repayment of the principal money. About 8 years ago I commenced an account with the sowkar by borrowing now and then from him. I cannot tell how much in all I have received in cash. My mother formerly paid the sowkar some money. I do not know how much it was. Before I passed the mortgage-bond I had changed 3 bonds. After every 12 or 18 months the sowkar used to make up his account, and I used to pass him new bonds, because I had not sufficient money to pay up his debts in full. Every payment made by me to the sowkar in cash and in kind was duly credited by him to my account. I have no reason to find fault with him as regards his dealings. I estimate the net produce of my mortgaged field at Rs. 30 a year. I don't see my way at present towards liquidating this debt. I do not know when I shall be able to do it.

I also owe Rs. 66 to Fooloo korn Moti Gujur. I have passed 2 bonds to her for the amount: one for Rs. 40, and the other for Rs. 16. These sums bear interest at 2 per cent per mensem. About 8 or 10 years ago I borrowed from her Rs. 35 for bullocks. On the day the money was obtained I paid back to her Rs. 5. In the first year I gave her Rs. 10 worth of bajri. In the second year I gave her wheat and other grain worth Rs. 30. In the third year I gave her Rs. 14. In the fourth year Rs. 25 were paid. In the fifth year Rs. 40. It is nearly 3 years since I passed the 2 bonds above mentioned. The first bond was for Rs. 35, but I cannot tell how many times I changed bonds. I used to do so every second or third year. Last year I gave Fooloo Rs. 45. I have obtained no receipt from Fooloo. I believe that she has credited me in her books correctly. When

passing new bonds I may have taken from her some money to pay the Government assessment and to defray other household expenses, but I cannot bring all these details to memory. This woman has never sued me as yet.

I owe Palla Kalhana Rs. 40. About 7 or 8 years ago my aunt mortgaged her field, assessed at Rs. 13, to Sukoo kom Vitha Jagtap, and 27 years ago I borrowed Rs. 40 from Palla to redeem this field which is now in my occupancy. This debt bears interest at $1\frac{1}{2}$ pise per rupee per mensem (Rs. 2-5-6 per mensem). I have paid nothing to Palla as yet. I owe no one else. There have been no decrees against me. I know nothing about the riot. I was not present in the village at the time. I was arrested by the police as being concerned in the riot. There was no complaint against me. No bonds were destroyed in my village so far as by knowledge goes.

47. *Bhiwa Balurji* of Kothale.—I have a khata of Rs. 15. It is not mortgaged to anyone. I owe to the persons below named :—

1. Sukan Gujur Rs. 13, rate of interest 2 per cent. per mensem.
2. Motiram Gujur 28 do. do.
3. Gunoo Lingda „ 30 do. at 1-8 da.

I got Rs. 8 from No. 1 for my son's marriage, and I had to pay him on his old account Rs. 5; so I gave him last year a bond for Rs. 13.

About 7 years ago I borrowed Rs. 50 for bullocks from Motiram and passed him a bond. Until last year I gave him the following articles :—

Kardai, 7 maunds	...	...	Rs. 17	8	0
Khoti	...	...	„	40	0 0
1 Bullock...	...	...	„	40	0 0
Bajri worth	...	...	„	25	0 0
				<hr/>	
				122	8 0

Last year the sowkar's wife made up an account, by which she showed that I owed her Rs. 28, and threatened to sue if the money was not paid. So I passed a new bond to her.

About 8 years ago I borrowed from No. 3 Rs. 15 to purchase a "khoti." After about 2 years I paid him Rs. 10 and passed a bond for Rs. 40. After 2 years I gave him jowari worth Rs. 40, and passed a bond for Rs. 50. Last year I gave him the produce of my field (worth Rs. 40) and passed a new bond for Rs. 30. I did so to prevent him from going to court and then taking me to jail.

In the land on my relation (Gunoo Oodaji's) khata I have a field assessed at Rs. 3-8-0. Two years ago I mortgaged this field to one Apa bin Sudhoo for Rs. 75. I got this sum in cash to perform my son's marriage. The conditions of this bond is that the sowkar is to enjoy the produce of the field for 6 years in lieu of interest. I have not paid this sowkar any money in liquidation of the principal. There have been no suits against me. I know nothing of the riot.

48. *Hybati bin Bapuji*, Kunbi of Lirabgaon.—I have got no khata in my name. I cultivate a field belonging to Vinayekrao Gokhlay, a Brahmin, and give him two maunds of grain annually. The Government assessment for the field is Rs. 60, of which I pay one-third Rs. 20, the other two-thirds being paid by my 2 brothers who also cultivate the field jointly with me. I owe Rs. 100 to the above Gokhlay, the particulars of which are that about 12 years ago I had borrowed of him Rs. 30 for my family expenses, for which a bond was passed to him bearing interest at 2 pice per rupee. He had leased out his field to me on the condition of my giving him two maunds of grain per year as stated above. These two maunds I failed to give for two or three years. The price of this grain was calculated to be Rs. 30. So that the first sum of Rs. 30 added to the latter Rs. 30 made Rs. 60 in all, for which I passed to him a bond again. I paid in liquidation of this latter debt Rs. 40, and a balance was struck which with interest and all came to Rs. 100, for which again a fresh bond was passed, bearing interest at 1½ pice per rupee. This was passed in March last.

About 12 years ago, I borrowed Rs. 20 from Rāma Kulkarni to advance the money to one Rukhma Mali on the security of his field assessed at Rs. 5. I agreed to pay for this debt interest at the rate of half an anna per rupee. After two or three years Ramchundra made his accounts and struck a balance of Rs. 50, for which I passed him a new bond bearing the same interest. About three or four years ago the same debt swelled to Rs. 100, as I had paid him nothing from the date of the transaction. So I passed him a new

bond for the last amount. He still holds the same bond. I got back the sum advanced by me to Rukhma Mali, but it was spent by me in household affairs, and I have restored to him the mortgaged field. About 6 years ago I commenced a grain advance account with Harkoo Bania. He used to lend me grain now and then. About six months after the account commenced I obtained Rs. 25 to buy sugarcane seed and one bullock for Rs. 30. At this time he made up his grain account and showed me a balance of Rs. 45 against me. I therefore passed him a bond for Rs. 100, bearing interest at $1\frac{1}{2}$ pice per rupee. Two years ago I sold my jagery for Rs. 100 to the bania. This money he took in part payment of the debt and struck a balance of Rs. 100 against me. I relied upon the bania's word for the account and passed a bond for the amount he said I owed him. This bond bears interest at $1\frac{1}{2}$ pice per rupee. It is nearly two years that I passed the bond. I have paid him nothing since.

About two years ago I commenced account of taking grain advances from Ganoo Wani. I think I have taken from him about Rs. 30 worth of grain. I also took Rs. 25 in cash to purchase a bullock and about Rs. 25 in cash to purchase manure. I have passed him no bond as yet. We have a khata account with him, and I do not know how much I owe him exactly.

Three years ago I purchased a turband for Rs. $1\frac{1}{2}$ from Bhicoo Wani and also opened a grain account with him. About a month or two afterwards, he made a debt of Rs. 12 against me, for which I passed a bond, bearing interest at half an anna per rupee. There are no decrees against me now. None have sued me. Five or six years ago there were one or two petty decrees against me, but they were compromised when the plaintiff brought an attachment against my property. These debts were compromised by selling some of my cattle and a portion of my household property. I know nothing about the riot.

49. *Hari bin Sakharam*, of Soné Sangwi, Taluka, Sirur.—I hold two survey numbers in the above village. Their khatas are in my name. I have not mortgaged the lands to anybody. I pay Rs. 10 on account of assessment for the two numbers. No revised rates have yet been introduced. I am indebted to Buhiroo Shindeo of Malthan to the extent of Rs. 125 at 3—2 per cent per mensem. I first borrowed Rs. 60 at 2 per cent per mensem from him about 6 years ago on bond. I received the above sum in cash for my

marriage. I paid him bajri worth Rs. 30 in one year, bullocks of Rs. 30 in another year, and Rs. 30 cash in the third year. So in all I paid him Rs. 90 in liquidation of his debt. He once told me that I should pass him a bond for Rs. 125, and if I did not do so, he threatened me to file a suit against me, attach my property, &c. I was then, notwithstanding the payment of Rs. 90, compelled to pass a bond to him for Rs. 125 about 2 years ago. He did not give me his account. I did not pay him anything after passing the bond. No decrees against me. I know nothing about the riot. I was arrested by the police and brought before the magistrate, who sentenced me to 6 months' imprisonment. My lands were never sold on account of assessment. I have been all along paying it.

50. *Rokdi bin Nana*, of Soné Sangwi, of Taluka Sirur.—I hold four numbers in the above village. Their khatas are in my father's name, who is in the village. I do not know whether my lands are mortgaged or not. My father knows all about it. I only work in the fields. I do not know how much Government assessment my father is required to pay. No increase in the assessment. I do not know whether my father is indebted to anybody. I only know that my father gives the produce of the fields to some sowkars in Malthun. I neither know them personally, nor have I heard their names. I know nothing about the riot. I never heard of it. I was arrested by the police and brought before the magistrate, who sentenced me to 6 months' imprisonment. There are decrees against my father, but I do not know the names of the sowkars who have obtained them. I know that one of my fields has been attached and sold. I also know that no lands have been sold on account of Government assessment. My father has been regularly paying it.

51. *Kondobin Kooshaba*, of Soné Sangwi, Taluka Sirur.—I hold 3 survey numbers in the village. Their khatas are in the names of my elder brother and the sowkar, but I do not exactly know how the case is. I do not know whether the fields are mortgaged to anyone. I am indebted to some sowkars in the village, but to what extent I do not know; my brother knows all about that. I never borrowed a single pie myself. No decrees against my brother. The lands were never sold for assessment. I work in the fields and my brother looks to other matters. I do not know whether any produce of the fields is given to the sowkars. My

brother, if sent for, will tell all about the debts. There was no disturbance in my village. I never went to any other village and joined the party of rioters. I was arrested by the police and brought before the magistrate, who sentenced me to 6 months' imprisonment.

52. *Chima bin Maljibown*, of Soné Sangwi, Taluka Sirur.—I hold 3 survey numbers in the village. Their khatas are in the name of my sowkar Dayaram Gujar of Malthan. He pays the Government assessment. I cultivate the lands as his tenant. I have got my own bullocks. I take half the share of the produce and he takes the other half. I owe Rs. 200 to the above sowkar. I passed him a bond for the above sum about a year ago. The history of this debt is that my father had originally borrowed some rupees from this sowkar some forty years ago. I do not know for what purpose and at what rate of interest. My father died 10 years ago. We have been borrowing and paying since that time. I cannot give details, because I do not remember them. The sowkar has advanced us sometimes money, sometimes grain for seed and eating, and sometimes gave us clothes to wear. We pay him sometimes the produce of the field and sometimes money in cash. I first mortgaged my fields to him about 12 years ago; when I knew that I could not pay him back his money, I went to the *mámletdár's* office and relinquished the rights of my fields, i. e., the khatas were transferred to his name. Last year I got him to square my account and have passed him a bond of Rs. 200. In shape of interest I pay him half the produce of the fields. He never filed a suit against me. I do not know whether he would give me back my lands if I pay him the sum of Rs. 200. I have never asked him about this. I know nothing about the riot. I was arrested by the police, who got me sentenced to 6 months' imprisonment.

53. *Gangaram Bapuji*, of Soné Sangwi, Taluka Sirur.—I hold 2 survey numbers. Their khatas are in the names of my sowkars Raoji Bhiwa Dhere, of Soné Sangwi, and Shivram Marwari, of Malthan. I pay the assessment. I cultivate the lands as their tenants. They have no share in the produce of the fields. I do not know the details of the original debt, but my father mortgaged one number to Shivram 12 years ago for Rs. 200. I know that my father did not receive this money in cash. The sum was made up of original debts, principal and interest, and the price of grain he had occasionally

advanced to my father for seed and eating. The rate of interest for the above sum is 2 per cent per mensem. My father died three years ago. I do not know what my father gave him in liquidation of the debts; he used to pay sometimes the produce. But since his death I have been paying him only the interest in cash. I have not given him anything towards the liquidation of the principal amount. This sowkar never filed a suit against me.

Now, as regards the other sowkar, Rاجي Bhiwa. I owe him some rupees on a mortgage bond. My father, about 12 years ago, mortgaged the other number to this sowkar. I do not know for what sum. I have never made any inquiries as regards the amount since my father's death. I do not know the original history of the debt. The rate of interest was 2 per cent per mensem. After my father's death, I entered into a fresh agreement with this sowkar that within the period of 5 years if I pay him Rs. 300 land will be given back to me. Accordingly I have been paying him for the last 3 years at the rate of Rs. 60 a year. I gave him in all Rs. 180. I know nothing about the suit. I have been sentenced to 6 months' imprisonment.

54. *Nana bin Tabaji*, of Limbgaon Chawhan, Taluka Sirur. —I hold 3 survey numbers in the village. The khatas are in my name. I am required to pay Rs. 35 on account of assessment. The new rates are introduced, but I do not know what are my liabilities. I have got very large debts to pay, the details of which are as under. About 12 years ago I borrowed on bond Rs. 40 from Bhikoo Nemchand Marwari, of Limbgaon, at 2 pice per rupee per mensem and purchased bullocks. In the first and second year I gave him in liquidation 10 maunds of bajri and 10 maunds jowari, and in the third year passed him a bond for Rs. 175 on mortgaging one of my survey numbers. He then made over to me my first bond of Rs. 40. The rate of interest for Rs. 175 is at 2 per cent per mensem. I passed him about 7 years ago another bond for Rs. 99. I purchased 2 bullocks from him for Rs. 50, and received some money in cash at 2 pice per rupee per mensem. He filed a suit against me and obtained a decree for Rs. 150. He then attached my property, consisting of cows, bullocks, house, &c., and sold it. He purchased all these things himself. For how much I do not know. I have not paid him anything since my property was sold. I do not now know how much I am yet to pay him.

I passed 2 bonds to Chotoo Marwari of Malthan: one for Rs. 100 and the other for Rs. 16 at 2 pice per rupee per mensem. I did not receive the money in cash, but in grain, &c. For the sum of Rs. 16 he has obtained a decree against me. I paid him Rs. 25 and Rs. 16 after the passing of the decree.

I also owe Rs. 50 to Rambhaw Kulkarni of the village at the above rate of interest. I borrowed the above sum to pay Government assessment. I paid him Rs. 16, Rs. 10, and Rs. 150 in liquidation of his debts during the last 5 years. He still says that I owe him Rs. 12, for which he has kept the bond with him.

I have got about Rs. 200 to pay to other petty sowkars. I borrowed them to pay assessment, to purchase grain for seed and eating; the rate of interest is 2 pice per rupee per mensem. I have not paid them anything. I do not know anything about the riot. I have been sentenced to 6 months' imprisonment.

55. *Tookaram bin Balaji Mahadick*, Kunbi, of Limbgaon.—I have got no khata. I maintain myself by working in other's fields. About three years ago, I got a loan of Rs. 10 from Sotoo Bania. Of this sum Rs. 5 were paid in cash and Rs. 5 in grain. I paid to the bania Rs. 4½ as interest for the sum for the first year. Nothing more has been paid to him. He still holds the same bond. I owe nothing to anybody else. Nor have there been any decrees against me. I know nothing about the riot.

56. *Kesoo bin Sheeba*, Kunbi of Pimpalgaon.—I have got no khata. I cultivate Vinayekrao Gole's field and give him one-third of the produce, and the Government assessment is also paid in the same proportion. About four years ago, a dyke was constructed in Vinayekrao's field, so he charged me with Rs. 7 as my portion of the cost. He purchased a three rupee stamp paper to write out the lease of the field in my cultivation, and I had taken from him Rs. 2 worth of grain, so in all I owed him Rs. 12, for which I passed a bond at 2 pice per rupee. In this I mortgaged a bullock to him. Last year the bullock was sold by me for Rs. 35. I paid this amount to my sowkar Vinayekrao, and he then struck a balance of Rs. 8 for which I passed him a bond at half an anna per rupee. I owe no one else. No decrees against me. I know nothing about the riot. I was not present at the time.

57. *Patla bin Andoji Kunbi* of Pimpalgaon.—I hold land on my khata assessed at Rs. 11 or Rs. 12. It is not mortgaged to anyone. I owe only Rs. 5 to Sudew. I did not obtain this money in cash. About 4 years ago I got a loan of 50 bundles of karbe from Sudew. I had given him one rupee, but last year he pressed me for a bond of Rs. 5 on account of that transaction, which I have passed to him, because I did not want to displease him. I have agreed to pay him interest at 2 pice per rupee. I do not owe anyone, nor have there been any decrees against me. I was not present on the date of the riot. I was at Patus. I know nothing as to what took place in the village.

58. *Genu bin Rakhmaji*, Kunbi of Pimpalgaon.—I have got no land on my khata. One-fourth of the maharki land has been leased to me for a term of 10 years. I give Rs. 10 annually to the proprietors. I owe Rs. 9 to Sudew, a Brahmin, and Rs. 12 to Gumpatrao Kalé, also a Brahmin. These sums were borrowed three years ago for household expenditure. I give interest to the above individuals at the rate of 2 pice per rupee. Kadirthai, Risaldar of the Poona Horse, has a field in Pimpalgaon. I had the lease of the field for two or three years. About five years ago I wanted money to purchase bullocks and for other private expenditure. So I obtained in cash a loan of Rs. 150 from Kadir. The interest for this sum was one pice per rupee. I sold four of my bullocks for Rs. 50 each and paid the proceeds Rs. 200 to Kadir in satisfaction of all his claims against me. I got my bond back from Kadir. I do not owe anyone else. There have been no decrees against me. I was not in the village when the riot is said to have taken place.

59. *Andoo bin Shewla*, Kunbi of Pimpalgaon.—I hold no land in my khata. I have a lease of a field belonging to Vinayakrao Golé. I give him one-third of the produce, retaining two-thirds for my share. The Government assessment Rs. 20 is also paid in the same proportion. I owe Sudew Baman Rs. 10 at 2 pice per rupee. I got this sum four years ago to defray my household expenses. I also owe Rs. 12 to Vithoo Sonawni. I give him interest at 2 pice per rupee. I had obtained this loan partly to pay in the Government assessment and partly for my own expenses. To Sudew I paid Rs. 10 after 2 years. He took all that sum in liquidation of interest and said that I still owed him Rs. 20. So I passed

him a bond for that amount at 2 pice per rupee. To Vithoo Sonawni I used to give Rs. 4 or Rs. 5 worth of grain. Two years ago he struck a balance of Rs. 25 against me; so I passed him a new bond. I did so, because I thought that all I had paid him was mainly in liquidation of the interest, and that nothing was paid towards the principal debt. I owe no one else. There have been no decrees against me. One day the villagers had gathered before the bania's shop demanding immediate settlement of their debts. I was standing in the mob and was thereupon arrested. This is all I know about the riot.

60. *Genu bin Sumbhoo*, Kunbi of Sonsangwi.—I had a khata of Rs. 11. My father owed Rs. 100 to Roodi Patel. About five years ago Roodi commenced to cultivate the land against our will. So I borrowed from my cousin Rama bin Kaloo Shelka Rs. 125, and with that money compromised Roodi's affair. Rama's rate of interest was at first 9 pies per rupee, but considering it too high I begged of him to reduce it. He agreed to do so, and about three years ago I passed him a new bond for Rs. 125, bearing interest at Rs. 1-8-0 per cent. The security for this debt is my field, which I mortgaged to him, and the khata of the land has also been transferred to his name. I cultivate the field for Rama, give the entire produce to him, and myself pay the Government assessment. In the year when the bond was passed I paid him Rs. 40 by selling a portion of my cattle. I paid him nothing more yet. About four years ago I purchased from Bahirao Sinda a bullock for Rs. 15 and Rs. 10 worth of grain, and passed him a bond for Rs. 25 at 2 pice per rupee. I do not know how much I owe him on that bond this day. I have passed him no new bonds for the debt. There is no security for it. Last year I gave him about four maunds of bajri, being my share in the produce of another field, of which I have a lease. I gave him nothing besides. I know nothing about the riot. I do not owe Guloo Wani, who complained against me. I was not on bad terms with him. I am sinking a new well in my field, where I was working when I was arrested. My father owed about Rs. 400 to Shivrām Wani of Malthan. The debt was of a long standing. So I cannot remember the details of it. About 5 or 6 months ago I settled his account by giving him 6 bullocks, 2 cows, and Rs. 200 worth of grain. There have been no decrees against me.

61. *Kashiram Apaji*, Lohar (ironsmith).—I hold no lands. I maintain myself on balloota. I owe Sagan Gujur Rs. 20

I got this sum in cash. I have passed a bond for the amount. I have agreed to pay interest at the rate of 1½ pice per rupee per mensem (about Rs. 33 per cent per annum). I have paid nothing to the bank as yet. There have been no decrees against me. I know nothing about the riot. I was lying sick at home at the time.

62. *Hari Bapu*, Ramoshi of Kothale.—I hold no khata. I have no debts. I know nothing about the riot. One day after returning from my field I was arrested by the police and brought to Sasur with the other villagers. I am an hereditary village watchman and possess a share in the inám land. I get balloota to the extent of Rs. 6 or Rs. 7.

63. *Gunoo Hunmanta*, Ramoshi.—I have no khata. I owe no one. I live on my inám produce and balloota. I had nothing to do with the riot, about which I know nothing.

64. *Nama Gopal*, Mahar.—I have no khata. I have a share in the maharki watan land. I was arrested by the police as a member of the riot, but I know nothing about it. I am not indebted to anyone.

65. *Vithoba bin Sadoba*, Kunbi of Kothale.—I have a khata of Rs. 56. The land on my khata has been subdivided into 5 or 6 shares. For my own share I have got land assessed at Rs. 16-12-0. Fooloo kom Moti's family resides in my village for many years. I have dealings with that family since a very long time. We were four brothers. Of those two, Genu and Narayen, died leaving their children behind. One of my brothers is named Luxumon. He is in the Poona Police. About 6 years ago we all separated ourselves. At this time there was a joint debt of Rs. 880 due to the under-mentioned people:—

1. Fooloo kom Moti ...	Rs. 600
2. Tatia Kelkar, of Poona ...	75
3. Yessoo Piraji, of Poona ...	125
4. Koosa Mali, of Poona ...	30
5. A broker called Tambarkar, in Bhowani Peith ...	50

880

The debts owed to Nos. 2 and 5 came to my share. Fooloo's money was divided in 2 equal shares between Narayen and

Genu, but on their deaths I passed in my name new bonds to Fooloo for the share of Genu's debt, and took that debt on my own shoulders. Of the sowkars named above No. 1 Fooloo is an old creditor, and I cannot tell all the details about it. About 2 years ago I settled his account and passed to him 2 bonds—one for Rs. 100 and the other for Rs. 43. I have also borrowed from him Rs. 16 in cash, for which I have passed a third to him. The interest for this total sum of Rs. 159 is as under:—

Rs. 100 at 12 per cent per annum.
 „ 59 at 1½ pice per rupee per mensem.

The above debt is personal. There is no security for it. Since these bonds were passed I did not make any payment to Fooloo.

The debt due to Tatia Kelkar was incurred 6 years ago. The sum of Rs. 75 was actually received by me in cash. I got the loan to open a tobacco-shop in Poona. The rate of interest is Rs. 1-8-0 per cent per mensem. I have paid the principal. He has of late filed a suit against me. I have not known the decision of the court in that case. There is no mortgage.

No. 3, Yessoo Piraji, advanced me Rs. 125 in cash for the marriage of my son. He has charged interest at Rs. 21 per annum. I got this loan on a personal cash bond. I have paid him nothing since the bond.

About 4 or 5 years ago I obtained tobacco from Nos. 4 and 5, and the sums due to them are on that account. These sums bear no interest. I have not paid them any money since I got the tobacco from them.

My father owed Rs. 200 to Palla Kalhana of Dhalewadi. I do not know the history of this debt. After the death of my father I passed a bond to him, mortgaging half of my field assessed at Rs. 25. The other half is in my possession. There is no interest mentioned in the bond, but it is agreed that the sowkar is to enjoy the produce of the land so long as the debt may remain unpaid. I have paid him nothing as yet, and he is hitherto in the peaceful enjoyment of the half field.

The debt due to Fooloo by my brother Narayen remained unliquidated for some time, and I got my brother's field mortgaged to Fooloo for Rs. 300 without interest. The agreement in the bond is that Fooloo enjoy the produce of the

field for 10 years, after which period he should give up the field. This took place 2 years ago.

Tatia Kelkar, Koosa Mali, and the broker Tambarkar have filed suits against me and obtained decrees. These decrees have not been executed. In all these 3 cases summonses were received by me. Tatia Kelkar's suit was filed when I came into the jail, so I did not go to the court. The debt of Koosa I admitted before the court, and the decree was passed. When the case of Tambarkar came on for hearing I was laid up sick, so I did not go.

66. *Patla Sajinaji*, Kunbi of Dhalewádi.—I have some fields in the name of my father Sajinaji Bapuji. He owes Rs. 400 or Rs. 500 to Jetharam Wazaram, but I know nothing about the details. My father manages everything, and he knows our home affairs. No attachments were brought to our house by the creditors.

67. *Mahipati Kooshaba*, Kunbi of Dhalewádi.—I have a khata of Rs. 35. I owe no one. There was no row in my village that I am aware of. There have been no decrees against me.

68. *Maloo bin Dhuroo*, Barber of Dhalewádi.—I have a khata of Rs. 20 in Ambi. About 3 years ago I borrowed Rs. 10 from Sukan Gujur at the rate of $1\frac{1}{2}$ pice per rupee for interest, and after a year I again took Rs. 8 at the same rate of interest. I used to receive from him now and then miscellaneous articles, such as oil, salt, &c., and last year when he struck a balance of Rs. 50 against me, I passed him a fresh bond for Rs. 50 and got my old bonds. In this bond interest has been entered at $1\frac{1}{2}$ pice per rupee per month. I have given nothing to the sowkar ever since I commenced an account with him.

About 4 years ago I borrowed Rs. 50 in cash from Sudaba Kulhana at the rate of $1\frac{1}{2}$ pice interest per rupee per mensem. After one year I re-paid to him in the chouri all his money with interest. He did not, however, give me my bond back, but promised to do so in the evening. I asked for the bond oftentimes, but he said that that he lost it. In last Shimga he sued me on that bond in the Talegaon Court. The claim was for Rs. 56. I received the summons, and appeared in the court on the due date. When Sudaba paid the Rs. 50 he had obtained that money from Oomaji Marwari of Jijuri, and when I paid him the money

In the chouri, he gave me back the bond which Sadoba had passed to Oomaji. I engaged a wakil to defend me, who told me that no proof beyond the evidence of the Marwari was required. I listened to his advice and pleaded in court the payment of the money in the village chouri, and that Sadoba paid the same to his Marwari sowkar and redeemed the bond which I also put in evidence. The Marwari was examined by the court, who said that he knew nothing about my affairs with Sadoba, and that the latter alone paid him the money for the bond. I lost the case and a decree was passed against me a month ago. I have lately heard that some of my property was sold by the court and the decree was satisfied; but I do not know the particulars as all this took place after I came into the jail.

I owe no one else. I did not bring a charge of cheating against Sadoba, because he is a member of the Patelki family; and I thought that he would not make use of the bond since it has been paid in full. I have no knowledge whatsoever of the riot alleged to have taken place in my village.

69. *Dhunsing Niloo Sing of Supa.*—I have no khata. I do not owe anyone. I was not concerned in the riot. Some property belonging to banias was found in my house, and I was therefore convicted and sentenced by Government.

70. *Nagoo bin Hari, Kunbi of Dhalwadi.*—I have a khata of Rs. 33. The land is not mortgaged to anyone. I owe Rs. 153 to Jatha Wazaram. About 9 years ago Amrita Mahar borrowed Rs. 80 from Jetha and I stood security for the amount. Amrita paid the bania until a balance of Rs. 10 was due against him, but afterwards declined to pay any more. Last year the bania said to me that I owed him Rs. 20 on that security bond. I had also taken from him advances in grain from time to time, but I have no knowledge how much I owe on that account. Grain was advanced to me on "Wadhi Didhi" tenure, viz., to return him 3 maunds of grains for every 2 maunds taken from him. I had such dealings with him since the last 5 or 6 years. Last year I wanted Rs. 50 for the marriage of my son, so I went to the bania and asked for the money. He said that I should pass a bond for the old account, and he would give me the required money. He made his account and struck off balance of Rs. 100, for which I passed a bond. The interest on this bond is at the rate of Rs. 2-4 per cent. This

Rs. 100 bond includes the security transaction. I also obtained from him the further loan of Rs. 50, which also bears the same rate of interest. I have paid nothing since the bonds. About 5 or 6 years ago I borrowed Rs. 80 from Joolaba Marwari at 2 per cent. Until last year I paid him everything except Rs. 12, for which I passed him a new bond, bearing interest at the rate of $1\frac{1}{2}$ pice per rupee. I do not owe anyone. There have been no decrees against me.

71. *Patta Kooshaba*, Kunbi of Dhaewadi.—I have got a khata of Rs. 13. The land in my khata is divided into 3 shares, v. z., my two brothers and myself. My brothers are alive. About 12 years ago I borrowed Rs. 16 at $\frac{1}{2}$ anna interest to purchase a bullock. I have up to date paid him at different times Rs. 100 and passed new bonds every third year for fear of taking the matter to court and then being put into jail. About 4 years ago I passed him a bond for Rs. 80, bearing $\frac{1}{2}$ anna for interest per rupee. It is a simple cash bond. After the passing of the bond I paid him Rs. 9 only. I have paid him nothing of late. He holds the bond now.

Since the last 7 years I commenced to deal with Gaza Mahar. I obtained now and then small sums to pay the banis Jetha and once or twice to buy a bullock. After 2 years he (Gaza) made a balance of Rs. 100 against me, and I passed him a bond for the amount at $\frac{1}{2}$ anna per rupee for interest. I have in this bond mortgaged to him my bagait field. He takes all the produce and I pay the Government assessment. My bagait field yields about Rs. 40 worth of grain annually.

Five years ago I borrowed Rs. 50 from Mayaji Ingla to purchase bullocks. I promised to give him interest at $1\frac{1}{2}$ pice per rupee per mensem. Last year I again wanted Rs. 30 to purchase grain and fodder. I asked Myrala for the money, and he advanced me the same at this time, and he made my account and struck a balance of Rs. 100 against me, including the Rs. 30. I had given him nothing in lieu of the first debt. I passed a new bond to Mayaji for Rs. 100 and have agreed to pay him annually half the produce of my dry crop field in lieu of interest. I have mortgaged the field to Mayaji. The bond has not been registered. I do not owe anyone. There was no row in the village, and I do not know what charges the sirkar preferred against my village people. There have been no decrees against me.

72. *Babaji Martand*, Mali of Dhalewádi.—I have a khata of Rs. 22 in my village and another of Rs. 17 in Kothale. The land in my occupancy is not mortgaged to anyone. My father owed Rs. 200 to Jetha Wazarem. My father died a year ago. I do not know the details about this debt. I have passed him no new bonds after the death of my father. He has my father's bond still. This debt bears interest at Rs. 1-12 per cent. Last year I sold my sugarcane crop for Rs. 150 and deposited my money with Sukan. After last Dewali I took Rs. 105 from him and paid him Rs. 42 on account of interest on Rs. 200 and Rs. 3 for certain clothes purchased from him.

My father also owed Rs. 100, bearing interest at Rs. 1-4 per cent. to Baluroo Barala. After my father's death I gave him (Baluroo) Rs. 15, and passed him a bond for Rs. 100 at the same rate of interest.

I owed no one else, and there were no decrees against me.

73. *Gopala bin Abaji*, Kunbi of Dhalewádi.—We were five brothers. One of us died some years back. Four of us are now living. In the name of our elder brother Vithu Abaji, there is a khata of Rs. 10. I have a fifth share in it. I have in my name land assessed at Rs. 10-8-0 in the inám village of Nazre. In this land also I have one-fifth share. I owe Fooloo kom Moti Rs. 30, bearing interest at Rs. 2 per cent, Sukan bin Hati Rs. 50, bearing interest at Rs. 2 per cent, and Gangaoo Shenwi Rs. 90 at 2 per cent.

About 7 years ago I borrowed Rs. 15 from Fooloo to purchase khoti. Two or 3 years afterwards I gave her Rs. 15. In March last she said that there were Rs. 30 against me and demanded payment. As I had no money to pay her, I passed a new bond for Rs. 30.

Eight years ago I wanted some money to repair my house, so I got a loan of Rs. 25 from Sukan Gujur. For two or three years afterwards I gave him nothing. In the fourth year I gave him Rs. 10 and afterwards I gave him annually grain worth Rs. 4 or 5. Last year he made up his account and demanded Rs. 50 from me, so I passed him a new bond for the amount, mortgaging my house to him. I have made no payments to Sukan since the bond.

Nine years ago I borrowed Rs. 20 from Ganjao to purchase a bullock. Since the date of the loan I paid her Rs. 2 only, but I passed her new bonds every second or third year. I do not recollect the amounts of the different bonds passed

by me. About 2 years ago I passed her a bond for Rs. 90. I did so each time as I had no money to pay her. In Shimga last she sued me on that bond in the Talegaon Court. The summons was received by my family at home, but I did not go into the court as I was not in the village at the time. She has not executed the decree as yet.

I do not owe anyone else, and there have been no decrees against me.

74. *Babaji bin Nana*, Kunbi of Dhalewadi.—I have a khata of Rs. 17. I have also in my occupancy a field assessed at Rs. 6, but it is entered in the name of my uncle Martanda. I owe Jetha Wazaram Rs. 100 and Martanda Gurow Rs. 142. Jetha charges interest at Rs. 1-12-0 per cent. and Martanda at $\frac{1}{2}$ anna per rupee per mensem. About 10 years ago I borrowed Rs. 25 from Jetha to repair my house. I promised him interest at $\frac{1}{2}$ anna per rupee per mensem. I gave him annually about Rs. 10 or Rs. 15 in cash or in kind. About 6 years ago he threatened me to go to court, and I therefore passed him a bond for Rs. 50, bearing interest at Rs. 1-12 per cent. After passing this bond I gave him some bajri and kardai. In the second year of the bond I gave him Rs. 50, being the sale proceeds of my khoti and Rs. 50 worth bajri. He then made up his account and said I owed him Rs. 100. I remonstrated with him, but, finding that he would not come round, I passed him a bond for Rs. 100. I thought that if I refused to pass the bond, he would drag me to court and put me in the jail. It is now more than 3 years since I passed the bond. In the second year I gave him wheat of the value of Rs. 14. After that I have given him nothing because I think I do not owe him any money now. Of late he duns me now and then, but I disregard his threats. The bania has not given back my old bonds which are also in his possession. There is no security for this transaction. I have passed a cash bond.

About 5 years ago I borrowed Rs. 50 from Danoo Murali of Jijuri to purchase a bullock and fodder. I agreed to give her in lieu of interest 2 maunds of jowari and 2 maunds of bajri. I did so annually, but she never passed me a receipt. In the third year she filed a suit against me in the Talegaon Court. I received a summons, but as I had no receipts to produce in the court I was advised by my villagers to keep myself at home. The decree was therefore given in my absence, and my fields and house were attached and sold by the court. The house was pur-

chased by the woman for Rs. 6. She also purchased a field, assessed at Rs. 7-8, for Rs. 8. Finding that I thus became helpless I got Martunda Goorow to compromise, and he said that he had settled it by paying her Rs. 142, for which sum I passed him a bond. The payment to Banco was not made in my presence, so I cannot tell how much was actually paid to her. I have agreed in the bond to pay him an annual instalment of Rs. 50. I have mortgaged my house, one of my bagait fields, and one-half of the dry-crop field. The bond has been registered. It was passed about 18 months ago. All the land and house is in my possession. I have last year given him the instalment. I tell this from what I learnt about the bond after it was registered. He Martand never explained to me the conditions of the bond, when it was written, or even after it was registered. I got some information about the contents of the bonds from some of my villagers a long time afterwards.

Five or 6 years ago I got a loan of Rs. 50, bearing interest at Rs. 1-12 per cent, from Gunoo Kala. Next year after that I sold some of my property and made a sum of Rs. 25, and asked Mulhari Kala to lend me Rs. 60. He agreed to give me at the rate of Rs. 1-8 per cent for interest. One day I took Rs. 25 from Mulhari, and with the Rs. 25 in my possession I paid the money due Gunoo and obtained from him the bond I had passed him. On the following day I went to Mulhari to demand from him the Rs. 35 and to pass a bond for the total sum of Rs. 60. He called a writer to prepare the bond, which on being completed was read out to me, when I found that instead of entering the interest at Rs. 1-8 he had got it entered at $\frac{1}{2}$ anna per rupee. I asked Mulhari to explain this, but he changed and said that the rate could not be altered. I was vexed at this, and I left the place without signing the bond. I also left with him the bond which Gunoo gave back to me. Mulhari has not yet given me the remaining sum of Rs. 25, but I hear that he has completed the Rs. 60 bond and has it in possession.

I owe no one else, and there are no decrees against me. I know nothing about the riot.

USURY LAWS.

EXISTING LAW ON THE SUBJECT.

The law of India as to the rate of interest is contained in Act 23 of 1855, which is in the following terms:—

2. In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon, at such rate as the court shall deem reasonable.

4. A mortgage or other contract for the loan of money by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

HINDU LAW OF USURY.

The following texts will sufficiently show what rates of interest are allowed by Hindu law. They appear to be practically the same as under the ordinary law of India. Where there is risk even 240 per cent is allowed. Where there is good security high interest is not allowed, and the same is the case ordinarily speaking under the general law as administered in India (see III. Bombay High Court Reports, page 11). As to the rule of *Damdapat* that is only a law of limitation. If a creditor does not get in his interest when it amounts to the principal he loses it unless he gets a fresh acknowledgment by a new bond. The rule does not prevent him recovering any amount of principal if necessary, provided he comes to court in time.

Monthly interest is declared to be an eightieth part of the principal if a pledge be given; an eighth part is added if

there be (only) a surety; and if there be neither pledge nor surety, two in the hundred may be taken from a debtor of the sacerdotal class. (*Vyasa, Col. Dig. I. 27.*)

An eightieth part (of the principal) is the monthly interest when a pledge has been delivered, otherwise it may be, in the direct order of the classes, two, three, four or five in the hundred. (*Yajnyawalkya, Digest I. 28.*)

If (he have no pledge, a lender of money) may take two in the hundred by the (month) remembering the duty of good men; or by (thus) taking two in the hundred he becomes not a sinner for gain.

2. He may thus take (in proportion to the risk), (and) in the direct order of the classes two in the hundred (from a priest), three (from a soldier), four (from a merchant), and five (from a mechanic or servile man); but never more, as interest by the month. (*Manu, Col. Dig. I. 29.*)

Interest on interest is (chacravridhi); monthly interest is (named) calica; that which is stipulated by the party himself is carita; but cayica accrues from the body (of a pledged quadruped). (*Yajnyawalkya, Dig. I. 38.*)

A lender of money may take, in addition to his capital, the interest allowed by Vasisht'ha (that is) an eightieth part of a hundred or one and a quarter by the month, if he have a pledge,

or (if he have no pledge) he may take two in the hundred (by the month) remembering the duty of good men: for by (thus) taking two in the hundred, he becomes not a sinner for gain. (*Manu, VIII., 140 and 141.*)

Interest on money received at once (not month by month or day by day, as it ought) must never be more than enough to double the debt (that is more than the amount of the principal paid at the same time), on grain, on fruit, on wool or hair, on beasts of burden (but to be paid in the same kind of equal value); it must not be more than enough to make the debt quintuple. (*Manu, VIII., 151.*)

Let no lender (for a month, or for two or three months, at a certain interest) receive (such) interest beyond the year; nor any interest which is unapproved; nor interest upon interest by previous agreement; nor monthly interest exceeding in time the amount of the principal; nor interest exacted from a debtor (as the price of the risk, when there is no public danger or distress); nor immoderate profits from a pledge to be used by way of interest. (*Manu, VIII., 153.*)

He who cannot pay the debt (at the fixed time), and wishes to renew the contract, may renew it in writing (with the creditor's assent), if he pay all the interest then due.

But if (by some unavoidable accident) he cannot pay the whole interest, he may insert (as principal) in the renewed contract so much of the interest accrued as he ought to pay. (*Manu, VIII., 154 and 155.*)

3. Yajñyavalkya ordains: "All borrowers, who travel through vast forests, may pay ten, and such as traverse the ocean, *twenty in the hundred.*" They must pay it, as shown by the last half of the couplet: "To lenders of all classes (according to circumstances), or whatever interest has been stipulated by them (as the price of the risk to the lender)."

4. Vishnu says: "In all the classes, if a person borrow money under agreement, as 'I will repay it to-morrow,' but should for his own profit not pay it, the lender shall receive interest from after (the term fixed)"—*The Vyavahara Mayukha, on Hindu Law, Chapter V. Section I.*

6. Brhaspati: "On the precious metals (or gems), the interest may make the debt double; on clothes and inferior metals, treble; on grain, quadruple; so on fruit, beasts of burden, and wool or hair. *Fruit, flowers, roots, fruits, &c. Beasts of burden, bullocks, &c. Wool, that of sheep; and the hair of the chamara (Bos Grunniens) and other (animals of that species).*" But, this of Manu: "Interest on grain, fruit, or wool or hair on beasts of burden, (but to be paid in the same kind of equal value) must not be more than enough to make the debt quintuple," must be understood as a prohibition of sixfold, or higher increase. Kātyāyana says: "For gems, pearls and coral, for gold and silver, for cloth made of (cotton), the produce of fruit or made of silk or made of wool or hair, the interest stops when it doubles the debt." Of silk that is made from the produce of insects and clothes made from the hair of the chamara and other animals, Vasishtha: "Interest on copper, iron, queen's metal, prince's metal, tin, and also on lead, makes the debt threefold only if much time have elapsed." Vyasa: "Interest increasing the debt sixfold, is declared allowable on vegetables, cotton and seeds." Kātyāyana: "For all sorts of oil, and spirituous liquors, for the different kinds of clarified butter, for molasses, and salt, the interest is held legal, though (with the principal) the debt may be made octuple."

Vishnu : " On precious metals, (or gems), the highest interest shall make the debt double ; on cloth, treble ; on grain quadruple ; (on fluids, octuple) ; on female slaves or cattle, the offspring shall be taken as interest." So : (Rare) flowers, roots, and fruit ; what is sold by weight (except gold and the like), may make the debt eightfold.

7. Narada : " Of interest on loans, this is the universal (and highest rule) ; but the rate customary in the country where the debt was contracted may be different." *Universal*, every where current ; and this relates only to a debt doubled, or more than doubled, by interest, by the first transaction ; for if at a different time a fresh speculation be entered into, with a different person, or even with the same under a chance of profit or loss, in such case even higher interest may accrue." So also Manu : " Interest on money received at once, (not month by month, or day by day, as it ought), must never be more than enough to double the debt, (that is more than the amount of the principal paid at the same time.)" But in any one case where it is realized (by degrees) or at various times also, more than this legal or allowable interest may be levied, according to Vijñāneśvara and other authorities. (*The Vyāvahara Mayukha, Chapter V. Section II.*)

II. The bad consequences that will ensue to a debtor neglecting to pay his debts are now described. Katyayana says : " He who shall not pay to his creditor what he has received from him in loan (uddhara) or other way shall most certainly be born again, either his slave, servant, wife, or beast of burthen." *Loan, debt (of all kinds, rna) to others* must be supplied, loan for use, and deposit. *Slave, one by birth. Servant, a slave bought with a price.* Narada : " *If a man do not repay what he has borrowed for use and a debt, as well as what he has promised, that sum may be increased even to ten million times its original amount.* And after that if it be allowed to increase still more, until by its own accumulation it have amounted to an hundred (times) a million, it must then stop ; the debtor shall become, in each successive birth, a horse, an ass, a bullock and a slave." *Promised, what he has agreed to give.* Vyasa says : " When a person being either an ascetic or keeper of a perpetual fire, dies indebted to anyone, the future rewards of the austerities of the one, and the sacred duties of the other, shall all be transferred to the account of the creditor." (*Vyāvahara Mayuka, Chapter V. Section IV.*)

MAHOMEDAN LAW OF USURY.

In Mahomedan law the taking of interest is absolutely prohibited; hence there are no rules as to the rates which may be taken.

ENGLISH LAW OF USURY.

In England the amount of interest that may be taken is unlimited in all cases with the exception only of pawnbrokers. The old usury laws were repealed by 17 and 18 Vic. ch. 90.✓

The rates of interest to be taken by pawnbrokers are regulated by 39 and 40 Geo. 3 c. 99. The rates are $\frac{1}{4}$ d. a month in the half crown for small loans, *i. e.*, 20 per cent per annum. On sums above 42/ the rate is 3d. in the pound per month, *i. e.*, 15 per cent. Act 17 and 18 Vic. ch. 90 expressly provided that the rates of interest to be taken by pawnbrokers were not to be affected thereby.

RATES OF INTEREST TAKEN UNDER THE PRESENT LAW.

The evidence under this head is very meagre. No doubt it is shown that in many cases high rates of interest are paid; but in order to show that there is any abuse of the present law, it would seem to be necessary to show not only that the rates are high, but that they are as a rule higher than is warranted by the risks the creditor runs of losing his money entirely. In order to show this it would be necessary to make much more searching enquiry than has hitherto been made. Where there are mortgages for example, it would be necessary to ascertain the annual profit the land yields and the certainty or otherwise of its remaining at or near that amount. When for example the assessment is arbitrarily fixed, the amount of profit would be very uncertain and the security comparatively worthless. Again, the law of joint

property among Hindus makes all titles insecure. So much is this the case that a Bombay solicitor has informed me that he invariably refuses a Hindu title as a security for his clients who wish to lay out money on mortgages. Another risk is that the debtor may deny the debt, and the court further generally cuts down the contract in his favour. The point to be considered seems to me to be whether the interest taken is exorbitant under the security offered.

Average interest on mortgages in Haveli Taluka, Poona, as shown by the registered mortgages :—

	Rs.	a.	p.	
1871	1 9	6 per cent per month.
1872	1 4	9 " "
1873	1 7	0 " "
1874	1 6	0 " "
1875	1 2	0 " "

N.B.—The above figures have been obtained by taking every 20th mortgage bond in each year, adding the interest up, and dividing by the number of the bonds so obtained.

Agriculturists have to contend against drawbacks; although generally (Beluchis excepted) watchful of their interest, the tillage of the soil is rude, and does not generally produce profits high enough to place them in independent circumstances from the *money-lenders who by combination take every possible advantage in obtaining high rates of interest repayable either in kind or money, and so it happens that some of the zemindars are indebted to the banias and money-lenders, and that now and then landed proprietors of standing fall into difficulties, and their estates have to be sold and are purchased by those who have no original interest in the soil.*—*Extract para. 14 of a Report by Colonel Francis Loch, Political Superintendent and Magistrate, Frontier Districts, dated 29th August 1874.*

The rate of interest charged is hardly ever less than 1½ per cent monthly, or 15 per cent yearly; 24 per cent is general and 36 per cent common. In addition, the borrower almost always pays a smart premium out of the loan, and

has to defray by a deduction from it the cost of the stamp, the registration fee, and any other expenses.—*Extract from the Note by W. G. Pedder, C. S.*

In the year A.D. 1827 the nominal rates of interest were limited by law to 12 per cent. Such a provision was, however, in practice, easily evaded, and in A.D. 1840 as at present, creditors would seem to have been in a position by making deductions, *mādamani*, from the amount actually advanced, to recover from the most needy of their debtors from 1 to 6 per cent additional profit. In A.D. 1856, according to Mr. Forbes, interest was stipulated for at 2 per cent per mensem, or, if the terms were usually moderate, at one. At the present time, according to the returns received in small transactions when an article is given in pawn, artisans and well-to-do cultivators pay interest at rates varying from 6 to 9 per cent per annum, the charge in the case of the poorer cultivators rising to 12 per cent. In such transactions if personal security only is received, the corresponding rates are said to vary from 9 to 12 per cent per annum for the richer, rising as high as 25 per cent for the poorer class of borrowers. In large transactions if moveable property is mortgaged, the rates are said to vary from 3 to 4½ per cent per annum in the case of artisans and well-to-do cultivators, who give jewels as security. When cattle or other moveable property is pledged by the poorer cultivators, interest is charged at from 9 to 18 per cent per annum. When land is mortgaged, the rates are reported to vary from 6 to 18 per cent per annum. Except in the case of the Umreth and Borsad subdivisions where the interest exacted on the personal security of poor cultivators is said to rise as high as 48 per cent per annum, there would seem to be but little variety in the amount of interest charged in different parts of the district. Six per cent per annum is said to be generally considered a fair return for money invested in buying an estate, the estimates varying from 4½ per cent in Mehmabad to 7½ per cent in Umreth.

The system of advancing grain is governed by rules and rates of interest distinct from ordinary money-lending transactions. Village shop-keepers of all castes and well-to-do landholders are said to advance grain freely to the Muslim and Koli classes of cultivators. The only exception to this practise would seem to be in the Borsad sub-division, where it is said the money-lenders have begun to refuse to make advances of grain to Kolis. The rates reported to be

charged for an advance of grain, generally made in the beginning of the rains and returned after six months at harvest time, is one quarter in addition to the quantity received. The payment is almost always in kind. If it is made in money from 25 to 36 per cent, interest is recovered. Higher rates are, however, it would seem, sometimes charged. Desai Javerbhái, of Nariád, mentions that an additional half is in certain cases exacted, and in the statements of the Parsátej Koli cultivators appended the return of double the quantity advanced is said in some instances to have been demanded.

The custom of making advances of grain is not, however, of recent growth. The practice would seem to have been, in the year A. D. 1820 almost universal, while in A. D. 1840 the Collector, Mr. Kirkland, wrote:—"It has always been the custom for the cultivator to hand over the produce of his field to meet advances received from his banker." It is not stated in Mr. Kirkland's report at what rates cultivators were accommodated with advances of grain. But in the year A. D. 1856 Mr. Forbes wrote that advances of grain have to be returned twofold.—*Extract from the Kheda money-lending by Mr. Campbell, Bom. C. S.*

The worst creditors on an average come to the court in 70 cases out of 100; but they are insignificant men, their dealings are also insignificant. There are some *Marwaris* at *Tasgaon* and I think the like can be found everywhere who usually deal with the worst men, lend very small sums seldom exceeding Rs. 10 or Rs. 20, charge very heavy interest such as 50 or 75 per cent per annum, and are frequently seen in the court with a plaint in their hand for Rs. 10 or Rs. 12.—*Extract from the Tasgaon Sub-Judge's Report, dated 14th August 1874.*

The rate of interest usually charged to a common artisan and to a cultivator of middling circumstances, if he has a good credit, varies from 12 to 18 per cent per annum, and to a poor cultivator and others from 24 to 36 per cent per annum. That those who have little credit generally borrow small sums by pawning ornaments or other little things, and thus what they gain in pawning they lose in want of credit. The rate of interest charged to them is usually a pice per rupee per month, that is to say 18½ per cent per annum. Those who have pretty good credit seldom borrow small sums on pawning. To those who have their credit established the rate of interest charged is the same whether

they borrow small or large sums. The debtor may borrow money either for agricultural purposes or otherwise, either upon personal security or with a lien upon crops, it makes no difference in the rate of interest charged.

When large sums of money are borrowed with a mortgage on such moveable property as can readily be changed into money, such as gold and silver, the rate of interest charged varies from 6 to 12 per cent. Houses and lands are not so readily convertible into money, and the creditors are not usually allowed to enjoy these mortgages peaceably. The rate of interest therefore charged when they are mortgaged is usually 24 per cent per annum. But when the immovable property mortgaged can peaceably be enjoyed, the interest charged varies from 9 to 12 per cent.

When an estate yields 9 per cent clear annual profit on the money invested in buying it, it is considered a fair return for the money so invested.—*Extract from the Tasgaon Sub-Judge's Report, dated 14th August 1875.*

Substantially there are only three different rates of interest for all classes. On pledges of ornaments from 9 to 12 per cent per annum. On mortgages of houses and lands of intrinsic value 18 to 24 per cent. On personal security from 2 pies or 6 pies per rupee per mensem to 1 anna. Inam or mirasi land, or land having wells or large permanent fruit trees or panmala, I consider as of intrinsic value. Gatkuli land depending on rain for production is treated as no security at all. No doubt they are largely mortgaged, but it does not vary the rate of interest from that of personal security. Mortgage of crops or other moveable property is in the same category as gatkuli land.—*Extract from the Patna Subordinate Judge's letter, No. 27, dated 31st March 1875.*

15. Indian money-lenders, it is true, demand a high rate of interest, from 9 per cent to 24 per cent, on good landed security. These rates appear to Englishmen exorbitant; it is almost ruinous for landholders to borrow at such rates, except in countries which offer far better opportunities for the employment of capital in land than does India generally. In many parts of these provinces there is little competition among many landholders to keep the rates of interest low; but this is not the sole reason for the maintenance of such rates; otherwise, in places where there is such competition the rates would be lower. In the district in which

I am writing, there are English bankers having capital to lay out, who either decline to make advances to landholders, or who demand the same rates as are charged by the native money-lenders. The causes of this distrust of land as a security are not far to seek. There is the uncertainty of obtaining payment of the interest; and if it becomes necessary for the mortgagee to take possession, he will hardly find less difficulty in collecting his rents in a disorderly district, than does the auction purchaser, of whom the Secretary to the Board writes, "that in numbers of the cases he never dreams of going near his village; an agent is sent to collect the rents. The agent sometimes gets involved in a brawl, and is himself despatched." Should the mortgagee bring a suit to recover his advance, his claim is too often met by a false denial of the execution of the deed, or the payment of the consideration; or the title of the mortgager is disputed by the members of his family. If the civil court is satisfied of the justice of the claim, and the mortgagee obtains a decree, the chances are greatly against his realizing the amount in full. Then again the value of land as a security is impaired when the land is subject to a variable assessment of land revenue; the lender having no certain data on which to compute the probable increase of the assessment at a new settlement or the new cesses that may be imposed on it. Lastly, the value of land as a security must be rated higher in a country in which the laws relating to land are settled and are not likely to be greatly altered by the legislature, than in a country in which they are regarded as open at any time to revision. The frequent recurrence of discussions as to the advisability of preventing by law the sale of land for the satisfaction of debt, and of placing impediments in the way of lenders in realizing their debts, the not less frequent and hardly less arbitrary proposals for altering the law of landlord and tenant cannot tend to improve the value of land as a security. These causes which operate with more or less force on the rate of interest in all parts of this country, are apt to be overlooked by those who are prompted by their generous instincts to sympathy with embarrassed proprietors. In India, as elsewhere, the maxim obtains that high interest means corresponding risk.

If the measures I have suggested be adopted, and if it become known that Government intends to abstain from interference with laws relating to land, and if not to confer on the people permanent settlement, at least to prescribe

such a system of assessment that the probable increase at each settlement might be calculated with some degree of accuracy, all will have been accomplished that the Government has it in its power to undertake for the relief of land-owners. While the provisions of the Bill tend, as it appears to me, to stimulate the frequent transfer of land, and to injure the credit of land-owners, I would recommend that increased security should be given to capitalists, to induce them to compete for investment on mortgage, and by competition the rate of interest would, I believe, in course of time, undergo material reduction. A repetition of the transfers which I have shown to be attributable to the misfortunes attending the early years of the past settlement, will be avoided if the Collectors exercise reasonable care in watching the incidence of assessments, and move the Government to afford seasonable relief in times of agricultural distress. The transfers occasioned by the attractiveness of the high prices induced by active competition, for land cannot be restrained by any measure short of the total prohibition of voluntary transfers—a measure which it is now too late to introduce, even if it were, which in my mind admits of doubt, desirable.—*Extract from the Note by the Honourable Mr. Justice C. A. Turner, dated 14th February. 1875.*

OPINIONS IN FAVOUR OF USURY LAWS.

The usury laws of England were no doubt founded on a mistaken prejudice and an economical heresy; yet in setting a maximum legal rate of interest, they set up a standard and gave fixity to men's vague ideas of what might reasonably be asked for the use of money in those numerous cases in which the loan partook but slightly of the character of a true mercantile transaction. In the commercial development of recent times, such cases are becoming rarer in proportion to those wherein the loan is taken in perfect independence, and without any sense of obligation on either side; but at an earlier stage borrowing at interest in England, as elsewhere, was generally an appeal of helplessness to avarice. It was well in such circumstances that the spirit of unlimited exaction should be kept somewhat in check by the dread of legal penalties, as well as of popular censure, and that the courts, so far as they could, should give relief by undoing all that had been ingeniously done to defeat the law. There are few who will deny that the India

we have now to deal with, is much more like that earlier England than the England of to-day. The typical borrower in India is in no position, financially or intellectually, to contract a loan on terms regulated by the calculation of an actuary or a banker. The typical lender reproduces young Ralph Nickleby with his simple rule of "Two-pence for every half-penny." The rule of "laissez faire" applied to such parties operates simply as a license to extortion. It is liberty to the fly to entangle itself in the spider's web.

But the same lesson was even more effectively gathered, had instructions been wanted from the native practice. The Hindu law nowhere manifests that repugnance to the taking of interest which we or at least our grandfathers inherited from Rome and the Old Testament; but the rule of "Dandupat," applying to nearly all loans of money, imposed a limit which at least sometimes kept extortion within tolerable bounds. The practice that grew up at least in the Deccan is stated in Steele's *Laws and Customs*: "Punchayats award a sum according to the debtor's circumstances, either taking off the interest of a particular period, or reducing it to 1 or 2 per cent., or striking off the excess of double the amount of principal, and decree that it shall be recovered by instalments. In case of poverty the principal only, or a part of it, is accepted by the creditor." The payment of what was awarded was enforced, as we have seen, by measures of great leniency. In the days when India was governed by Regulations, it was thought a proper course to limit the interest recoverable in a court to 12 per cent., and few or no complaints were ever made that this rule unfairly hampered a mercantile nation in the inter-dependent arrangements of a system of credit. The passing of Act XXVIII. of 1855 was a mere adoption of an English doctrine supposed to have been proved correct by impregnable reasoning. In the circumstances assumed as data this was so; for India perhaps the maintenance of the limitation, or a still closer approximation to the native practice by giving to the courts an extended discretion to deal with interest, would have been a more politic course to follow until its people had acquired the capacities of a self-asserting and intelligent mercantile community. At least this would probably have been best as to debts of small amount, the larger transactions being left to the operation of supply and demand.

There can be no reasonable doubt that in many parts of the country interest upon interest at enormous rates is eating

up the resources of the people. The rich tend to grow still richer, the poor still poorer. This is the exact condition of affairs from which the impoverished cultivators of Rome and Sparta sought relief in revolution and a repartition of the land.

On the other hand it may be said that the way to make capital cheap is to interfere with its natural flow as little as possible. One reason that the mofussil districts remain so backward is that the intercommunication between them and the large towns is so little developed. A high rate of remuneration for loans will tend to draw capital and intelligence out into the country; and competition will then bring down interest, whatever form it may assume, to its natural rate. These considerations are of very considerable weight, and when transactions can be supposed to have been of the kind to which economic principles really apply, ought to determine the policy of Government. When that is not the case, the Government should decline to lend its aid to give effect to extortionate dealings. The courts already decline to enforce contracts entered into between parties, one of whom, through some previous transaction, holds ruin *in terrorem* over the other in order to extort some further unfair advantage. The New Contract Act provides that a person suing for the breach of a contract shall receive not all that in any case he has stipulated for, but "reasonable compensation not exceeding the amount so named." Borrowers of small sums so much oftener stand in a suppliant than in an independent relation to the lenders, that the Legislature might well apply a corresponding principle distinctly to their case.

In the case of all obligations for a principal of not more than Rs. 500, the courts should have full power to treat any interest in excess of 9 per cent. as simply penal, and to cut it down to such rate as should, under the circumstances, seem just. This would afford an immediate and sensible relief to the class who are really victimized by the money-lenders. Transactions for sums of above Rs. 500 are nearly always entered into by people who are able to form an intelligent judgment for themselves, and the amounts are large enough to bring wealthy and respectable men into the market as lenders. It is needless, and would probably be useless, to attempt to supersede the ordinary law of supply and demand in these cases. Compound interest should be disallowed, consistent as it is with sound commercial principles, in order

to make it a disadvantage to creditors to leave obligations unsettled until the debtors are involved beyond redemption.

There is an apparent extension of this principle which at first sight has some attractions. "Look," it may be said, "not only at the document actually sued on, but trace the transactions which have led to it back to their origin, and award no more than such an investigation shows to be just." The answer to this is that it would involve the courts in an almost endless series of inquiries, which they could not possibly carry out with success. It is hard enough to determine in many cases whether the single transaction sued on is established or not; to go behind it would be to commit the result altogether to chance, cunning, and hard swearing. There is a vast difference, too, between the moral effects of reducing interest to an equitable rate, and allowing an obligor to shirk his responsibility as such altogether. Money-lenders, too, would never know how they are situated, could not replenish their capital by loans made on a precise estimate of their assets, and would soon learn to elude the law by bandying the debtor between two or more of their class, so as to have a fresh creditor for each renewal of the obligation. These objections seem to be conclusive against such a proposal, and the debtor could not reasonably claim any further relief than would be afforded by the measure to be suggested further on.—*Mr. Raymond West's Suggestions on the Land and the Law in India.*

It appears to me that some limitation of the rate of interest and some restriction on grossly unfair stipulations in contracts, as contrary to justice and public policy, are practicable and expedient.—*Extract from the Note by W. G. Pedder, C.S.*

35. My experience in every district in which I have served, leads me to advocate the regulation of the rate of interest on debts by the Legislature. Forty-eight per cent. per annum and more is not uncommon in the Tanna District. In bonds founded on old bonds which have nearly run the period of limitation, it is impossible to estimate what small proportion of the consideration was an actual cash payment.

36. In this matter, as in regard to the land, I would suggest resort to the principles of Hindu Law. A usury law founded on native principles would, I submit, be

accepted as reasonable by all classes, when a perhaps more symmetrical enactment would be misunderstood.

37. Interest from money is analogous to mesne profits from land. Theoretically it appears just that interest should be had and recovered to the last penny at the rate agreed on. It however appeared to the early Hindu lawyers as practically incongruous that interest should be recovered at one time in excess of the principal, and the rule of "damdupat" was made (*Vyavahara Mayuka*, vi, 6-7; 1, Bombay High Court Reports, 47), providing that no greater arrear of interest could be recovered at one time than the amount of the principal sum. Thus negligence on a creditor's part can never subject a debtor to the shock of a claim for interest of a greater amount than the principal sum, but payments obtained beforehand by the vigilance of the creditor are excluded from the calculation. This equitable rule serves the vigilant and is accordant with the maxim "Vigilantibus non dormientibus jura subveniunt." A creditor shall not find the law on his side in lulling a debtor into fancied security in view of thoroughly ruining him at an opportune moment, by selling him up under a court's decree—a mode of sale notoriously subject to the influence of combination, and unfavourable to the realization of a fair value.

38. "Damdupat" under Hindu Law applies only to money, jewels, and precious metals; for inferior metals twice the value of the principal is recoverable, treble for grain, and so on. The proportion was evidently arbitrarily settled by the State. I am aware of no valid reason why the Legislature should not now alter the "damdupat" rule while adhering to its principle—*1stly*, by prohibiting the recovery of, say, more than $\frac{1}{2}$ or $\frac{1}{3}$ of the value of the principal of money lent at once; and *2ndly*, by extending the rule beyond the Hindu community to the public generally. It might be considered proper to allow a larger proportion for grain, &c., lent in kind. It is of much importance that our laws be not only intrinsically good, but that they also be acceptable to the people of this country.—*Extract from the Tanjavur Session Judge's letter, No. 1639, dated 17th May 1875.*

My own belief is that the real protection the borrowing landholders want is a return to a reasonable legal rate of interest; but, as this is rank heresy in these later days, I dare not further dwell on the point.—*Extract from the Allahabad Judge's letter, No. 76, dated 7th February 1871.*

The indebted condition of the agricultural classes of this presidency and the effects of the action of the civil courts upon them, have for some time past engaged the anxious attention of Government. The subject is beset with difficulties. Before any practical action can be attempted, it will certainly be advisable to collect authentic facts from different representative districts; and Government will be obliged to Mr. Hope for suggestions as to the best means of obtaining this information. The extent of the evils complained of having been authoritatively ascertained by statistical and other facts, amongst the principal remedial measures that will have to be considered, *will be whether the law relating to interest should not be altered*; whether the courts should not be bound by equitable considerations, and should not pass decrees on the mere admission of the execution of a bond; whether the law of compulsory registration should not be extended; whether the value of the bonds should not be paid in the presence of the Registration Officer; and whether the system under which the execution of decrees takes place should not be reformed.—*Extract from Government Resolution No. 4634, dated 29th August 1874.*

This might be changed by allowing only, when a decree is passed against a debtor, interest at the rate of 9 per cent per annum.—*Extract para. 14 of a Report by Colonel Francis Loch, Political Superintendent and Magistrate, Frontier Districts, No. 2692, dated 29th August 1874.*

OPINIONS AGAINST USURY LAWS.

Next to the system of protection, among mischievous interferences with the spontaneous course of industrial transactions may be noticed certain interferences with contracts. One instance is that of the usury laws. These originated in a religious prejudice against receiving interest on money, derived from that fruitful source of mischief in modern Europe, the attempted adaptation to Christianity of doctrines and precepts drawn from the Jewish law. In Mahomedan nations the receiving of interest is formally interdicted and rigidly abstained from, and Sismondi has noticed as one among the causes of the industrial inferiority of the Catholic, compared with the Protestant part of Europe, that the Catholic Church in the middle ages gave its sanction to the same prejudice. * * * In more improved countries legis-

lation no longer discountenances the receipt of an equivalent for money lent; but it has everywhere interfered with the free agency of the lender and borrower, by fixing a legal limit to the rate of interest and making the receipt of more than the maximum a penal offence. This restriction, though approved by Adam Smith, has been condemned by all enlightened persons since the triumphant onslaught made upon it by Bentham in his "Letters on Usury," which may still be referred to as the best extant writing on the subject.

Legislators may enact and maintain usury laws from one of two motives: ideas of public policy or concern for the interest of the parties in the contract; in this case, of one party only, the borrower. As a matter of policy, the notion may possibly be, that it is for the general good that interest should be low. It is, however, a misapprehension of the causes which influence commercial transactions, to suppose that the rate of interest is really made lower by law than it would be made by spontaneous play of supply and demand. If the competition of borrowers left untrained would raise the rate of interest to six per cent, this proves that at five there would be a greater demand for loans than there is capital in the market to supply. If the law in these circumstances permits no interest beyond five per cent, there will be some lenders who not choosing to disobey the law, and not being in a condition to employ their capital otherwise, will content themselves with the legal rate; but others, finding that in a season of pressing demand, more may be made of their capital by other means than they are permitted to make by lending it, will not lend it at all; and the loanable capital, already too small for the demand, will be still further diminished. Of the disappointed candidates there will be many at such periods, who must have their necessities supplied at any price, and these will readily find a third section of lenders, who will not be averse to join in a violation of the law, either by circuitous transactions partaking of the nature of fraud, or by relying on the honour of the borrower. The extra expense of the roundabout mode of proceeding, and an equivalent for the risk of non-payment and of legal penalties, must be paid by the borrower, over and above the extra interest which would have been required of him by the general state of the market. *The laws which were intended to lower the price paid by him for pecuniary accommodation, and thus in great measure increasing it.* These laws have also a directly

demoralizing tendency. Knowing the difficulty of detecting an illegal pecuniary transaction between two persons, in which no third person is involved, so long as it is the interest of both to keep the secret, legislators have adopted the expedient of tempting the borrower to become the informer, by making the annulment of the debt a part of the penalty for the offence; thus rewarding men for obtaining the property of others by false promises, and then not only refusing payments, but invoking legal penalties on those who have helped them in their need. The moral sense of mankind very rightly infamizes those who resist an otherwise just claim on the ground of usury, and tolerates such a plea only when restored to, as the best legal defence available against an attempt really considered as partaking of fraud or extortion. But this very severity of public opinion renders the enforcement of the laws so difficult, and the infliction of the penalties so rare, that when it does occur it merely victimizes an individual, and has no effect on general practice.

In so far as the motive of the restriction may be supposed to be not public policy, but regard for the interest of the borrowers, it would be difficult to point out any case in which such tenderness on the legislator's part is more misplaced. A person of sane mind and of the age at which persons are legally competent to conduct their own concerns, must be presumed to be a sufficient guardian of his pecuniary interests. If he may sell an estate, or grant a release, or assign away all his property, without control from the law, it seems very unnecessary that the only bargain which he cannot make without its intermeddling should be a loan of money. The law seems to presume that the money-lender, dealing with necessitous persons, can take advantage of their necessities, and exact conditions limited only by his own pleasure. It might be so if there were only one money-lender within reach. But when there is the whole monied capital of a wealthy community to resort to, no borrower is placed under any disadvantage in the market merely by the urgency of his need. If he cannot borrow at the interest paid by other people, it must be because he cannot give such good security; and competition will limit the extra demand to a fair equivalent for the risk of his proving insolvent. Though the law intends favour to the borrower, it is to him above all that injustice is, in this case, done by it. What can be more unjust than that a person who cannot give perfectly

good security, should be prevented from borrowing of persons who are willing to lend money to him, by their not being permitted to receive the rate of interest which would be a just equivalent for their risk? Through the mistaken kindness of the law, he must either go without the money which is perhaps necessary to save him from much greater losses, or be driven to expedients of a far more ruinous description, which the law either has not found it possible, or has not happened, to interdict.

Adam Smith rather hastily expressed the opinion that only two kinds of persons, "prodigals and projectors," could require to borrow money at more than the market rate of interest. He should have included all persons who are in any pecuniary difficulties, however temporary their necessities may be. It may happen to any person in business to be disappointed of the resources on which he had calculated for meeting some engagement, the non-fulfilment of which on a fixed day would be bankruptcy. In periods of commercial difficulty, this is the condition of many prosperous mercantile firms, which become competitors for the small amount of disposable capital which, in a time of general distrust, the owners are willing to part with. Under the English usury laws, now happily abolished, the limitations imposed by those laws were felt as a most serious aggravation of every commercial crisis. Merchants, who could have obtained the aid they required at an interest of 7 or 8 per cent for short periods, were obliged to give 20 or 30 per cent, or to resort to forced sales of goods at a still greater loss. Experience having obtruded these evils on the notice of Parliament, the sort of compromise took place, of which English legislation affords so many instances, and which helps to make our laws and policy the mass of inconsistency that they are. The law was reformed as a person reforms a tight shoe, who cuts a whole in it where it pinches hardest, and continues to wear it. Retaining the erroneous principle as a general rule, Parliament allowed an exception in the case in which the practical mischief was most flagrant. It left the usury laws unrepealed, but exempted bills of exchange, of not more than three months' date, from their operation. Some years afterwards the laws were repealed in regard to all other contracts, but left in force as to all those which relate to land. Not a particle of reason could be given for making this extraordinary distinction; but the "agricultural mind" was of opinion that the interest

on mortgages, though it hardly ever came up to the permitted point, would come up to a still higher point; and the usury laws were maintained that the landlords might, as they thought, be enabled to borrow below the market rate, as the corn laws were kept up that the same class might be able to sell corn above the market rate. The modesty of the pretension was quite worthy of the intelligence which could think that the end aimed at was in any way forwarded by the means used.

With regard to the "prodigals and projectors," spoken of by Adam Smith, no law can prevent a prodigal from ruining himself, unless it lays him or his property under actual restraint, according to the unjustifiable practice of the Roman law and some of the Continental systems founded on it. The only effect of usury laws upon a prodigal is to make his ruin rather more expeditious, by driving him to a disreputable class of money-lenders, and rendering the conditions more onerous by the extra risk created by the law. As for projectors, a term, in its unfavourable sense, rather unfairly applied to every person who has a project; such laws may put a veto upon the prosecution of the most promising enterprise when planned, as it generally is by a person who does not possess capital adequate to its successful completion. Many of the greatest improvements were at first looked shyly on by capitalists and had to wait long before they found one sufficiently adventurous to be the first in a new path; many years elapsed before Stephenson could convince even the enterprising mercantile public of Liverpool and Manchester, of the advantage of substituting railways for turnpike-roads; and plans on which great labour and large sums have been expended with little visible result (the epoch in their progress when predictions of failure are most rife) may be indefinitely suspended, or altogether dropped, and the outlay all lost, if, when the original funds are exhausted, the law will not allow more to be raised on the terms on which people are willing to expose it to the chances of an enterprise not yet secure of success.—*Extract from Mr. Mills' Political Economy, Book 5, Chapter X.*

Reference has also been made to the exorbitant rate of interest charged and the re-enactment of the usury laws has been advocated; but I doubt whether such a step is necessary as the provisions of Act XXVII of 1855 do not take

away the equitable jurisdiction which the courts possess to relieve against cases where the rate of interest is usurious.—*Extract from the Khandesh Session Judge's letter No. 580, dated 19th June 1875.*

3. I have reason to believe that though the administration of civil justice in the sub-courts is on the whole very creditable, yet the civil courts as an institution are not generally considered to work advantageously for the people. It is chiefly in the matter of the indebtedness of the cultivators that the courts are considered almost to work oppressively. The cultivators as a rule are indigent and ignorant, always in want of money and unable to protect themselves from the rapacity and dishonesty of their creditors. Frequently they borrow money in utter recklessness, receiving not nearly the amount for which they give their bonds, and agreeing to whatever rate of interest the sowkars choose to ask; and having given their bonds, their ignorance leaves them entirely at the mercy of their creditors from whom, though they may pay them what they owe, or part of it, they seldom exact receipts or equivalent for such payment. As much as two annas per mensem on each rupee is often exacted by the sowkar, and the courts are almost powerless to check this species of extortion, and as to proving the payments they may have made; these cultivators are necessarily at a great disadvantage, as they have little but oral evidence to adduce, to which the sowkar's books are opposed, backed by the production of the unsatisfied bonds. This is not the only way in which the sowkar cheats the cultivators, the forgery of bonds and promissory notes, and such like is by no means uncommon, and the richer man can usually gain the day by the production of witnesses who swear to the genuineness of the forged instrument. *I suppose that on considerations of Political Economy the Legislature is almost powerless to prevent lenders exacting as high rates of interest as they may choose; but as a check on forgery and repeated exactions of payments already made, a remedy might perhaps be found in an extension of the Registration Law, as by making it compulsory to register every written security for money and by permitting the debtors on such securities to make their payments to the Registrar.—Extracts from the Dhulia Judge's letter No. 728, dated 8th August 1874.*

PRIVATE SALES AND MORTGAGES OF LAND.

EXISTING LAW ON THE SUBJECT.

There is no general law of sale laid down by statute for India. In the case of Hindus, Hindu Law is applied; and in the case of Mahomedans, Mahomedan Law, under the provisions of the various Regulations and Acts directing the Courts to use these laws. English cases are also quoted occasionally to elucidate the general principles of law applicable to sales and mortgages of land. It is unnecessary to quote at length the large mass of law that has been laid down by the Courts in India on these subjects. It is sufficient to state that there is practically speaking an almost unlimited power of alienation given by the Courts both to Hindus and Mahomedans, except where there is some express rule either of Hindu Law or of Mahomedan Law by which the power of alienation is limited.

HINDU LAW.

(1) *As to the sale of land.*

The following texts of Hindu Law will sufficiently show the nature of its provisions on the subject of the sale of land. It would appear from them that by Hindu Law a person who is absolute owner of land may sell it without any limitation whatever. When the seller is a member of a joint family there are several restrictions; but the reason for them would appear to be the protection of the rights of the other persons interested in the land, and not the prohibition of sale as in itself an evil.

Two kinds of property are universally acknowledged, immoveable and moveable; when a contract of sale is made, both are called by the name of vendible property.—*Dig I. 1.*

Property in this world is of two kinds, immoveable and moveable; and in the laws of purchase and sale, both are called vendible property.—*Dig I. 2.*

Heirs have a lien equally on the immoveable heritage, whether they be divided or undivided, and a single parcener has no power to give, pledge, or sell the whole.—*Dig I. 18.*

Of precious (metals) or stones or pearls, coral (and other moveables), the father has power to give or sell the whole; but neither the father nor the grandfather shall alien the whole of immoveable property.—*Dig I. 13.*

(Land or other) immoveable property and slaves (employed in the cultivation of it) a man shall neither give away nor sell, even though he acquired them himself, unless he convene all his sons.—*Dig I. 14.*

If they severally give or sell their own (undivided) shares, they may do what they please with their property of all sorts, for surely they have dominion over their own.—*Dig I. 6.*

He then who, having sold vendible property for a just price, delivers it not the buyer, shall be compelled, if it be immoveable, to pay for any subsequent damage (as the loss of a crop, and the like); and if moveable, for the use and profits of it.—*Dig I. 18.*

A man who has bought or sold anything in this world (that has a fixed price, and is not perishable, as land or metals,) and wishes to rescind the contract, may give or take back such a thing within ten days.—*Manu VIII. 222.*

But after ten days he shall neither give or take it back; the giver or the taker (except by consent) shall be fined by the king six hundred (Panas).—*Manu VIII. 223.*

He who has bought and sold any article in this world that has a fixed price, and is not perishable, as land or copper, or the like, and repents of the contract, thinking it ill-made, may return the goods within ten days, or may take back the thing sold.—*Dig I. 23.*

Land is conveyed by six formalities, by the assent of townsmen, of kindred, of neighbours, and of heirs, and by the delivery of gold and of water.—*Dig IV. 33.*

Let the acceptance be public, especially of immoveable property, (and) delivering what may be given and has been promised, let not a wise man resume the donation — *Yajnavalkya*.

1. *Katyayana* :—“ Recission of sale of land within ten days (is permitted) whether to the buyer or the seller.” *Brhaspati* :—“ Within those times, if a blemish be anywhere discovered in the commodity purchased, it must be returned to the seller, and the purchaser shall take back the price.

4. *Yajnavalkya* says :—“ That which has been sold by a drunken or by an insane man ; or for a base price ; also that which has been sold by one not independent, and by an idiot, must be given up and restored by the purchaser.—*Vyavahar Mayukha, Chapter XIII., Sections I. and II.*

(2) *As to mortgage of land.*

From the following texts it would appear that the owner of land is allowed to mortgage it also without limitation. In reading the texts it should be remembered that in Hindu Law a lien on property by way of security for a loan is called by one name (*i. e.* pledge) whether the property hypothecated be moveable or immoveable.

1. *Brhaspati* :—“ A pledge (*adhi*) is called *bandha* and is declared to be divisible into four parts ; moveable (or personal) and fixed, (or real) ; for custody only (*gopya*) and for use (*bhogyā*).” *Narada* :—“ That to which a (secondary) title is given, is a pledge. It has two forms, to be released at a fixed time, or to be retained until payment be tendered.”

5. *Katyayana* :—“ Should a man hypothecate the same thing to two creditors, what must be decided ? The first hypothecation shall be established, and the debtor shall be punished as for theft.”

6. *Yajnavalkya* says :—“ That pledge is totally lost, which the pawner fails to redeem when the principal is doubled. That fixed with a term for redemption, is lost on the expiration of the term, but a usufructuary pledge is never destroyed.

7. *Brhaspati* :—“ When the debt is doubled by the interest, and the debtor is either dead or has absconded, the

creditor may attach his (pledge or the debtor's) chattel, and sell it before witnesses." Yajnavalkya :—" A debtor shall be compelled to pay, with interest, a debt contracted on a peculiar pledge (charitram), and he shall be compelled to repay twofold a debt contracted on a chattel (of small value) delivered as an earnest (of purchase or sale). When a borrower, from his confidence in the lender, deposits with him a valuable pledge for a small consideration, or where the lender, entertaining a like confidence in the borrower, advances a large sum on a pledge of small value, this will be a peculiar pledge; or the word charitram may signify the pledge of good actions, as of the reward for ablution in the Ganges, or the like. And in both these species, denominated peculiar pledge, even if the thing be doubled by interest, it is not forfeited. Even if the debt be doubled, it must be paid, but the pledge is not forfeited. Delivered as an earnest, means that when a debt contracted on such grounds is doubled with interest, the earnest so pledged is not forfeited."

8. The same author says :—" To the debtor who comes to redeem his pledge, the creditor shall restore it, or be punished as a thief; and if the creditor be (dead or) absent, the debtor may pay the debt to his kinsmen, and shall take back his pledge."—*Extract from Hindu Law Books, Vyavahar Mayukha, Chapter V. Section II.*

21. † Prajapati also says :—" If there be no distant kinsmen, let it be paid to some twice-born man, or be cast into the water. When cast into the water or into the fire, that money is carried to the account of (the deceased, or of) his ancestors in a future state." If however an owner should appear to claim money (which is to be so) thrown into the fire, or the like, he shall obtain it.—*Extract from Mr. Stokes' Hindu Law Books, Vyavahar Mayukha, Chapter V. Section IV.*

1. A pledge (adhi) is called (bandha), and is declared to be divisible into four (pairs.)

2. Moveable (or personal), and fixed (or real); for custody only, and for use; unlimited, and limited as to time; with a written contract, and with a verbal attested agreement.

That to which a (secondary) title is given (adhicriyate) is adhi, a pledge.—*Dig. I. 81.*

Pledges are declared to be of two sorts, immoveable and moveable ; both are valid when there is actual enjoyment, and not otherwise.—*Dig. I. 125.*

The pledge is forfeited if it be not redeemed when the debt is doubled ; (since it is) pledged for a stipulated period it is forfeited at that period ; but a pledge to be used (for an unlimited time) is not forfeited.—*Dig. I. 112.*

After the time for payment has past, and when interest ceases (on becoming equal to the principal) the creditor shall be owner of the pledge ; but the debtor has a right to redeem it before ten days have elapsed.—*Dig. I. 115.*

When the debt is doubled by interest, and the debtor is either dead or has absconded, the creditor may attach his (pledge, or the debtor's) chattel, and sell it before witnesses.

2. Or having appraised it in an assembly of good men, he may keep it ten days ; after which, having received the amount of his debt, he must relinquish the balance (if there be any).

3. Having ascertained his own demand by the help of men skilled in arithmetic, and taken the attestation of witnesses, he commits no offence by thus recovering it.—*Dig. I. 121.*

A debt secured (merely) by a written contract shall be discharged (from a moral and religious obligation) only by three persons (the debtor, his son, and his son's son) ; but a pledge shall be enjoyed until actual payment of the debt, by any heir in any degree.—*Dig. I. 38.*

But when a pledge has been given (which the creditor promised to return on the debt being doubled), then surely, the interest having equalled the principal, the pledge must be released on the double sum being paid, or having been received from the use of the pledge.

Even if the highest interest (or that equal to the principal sum) have accrued, the creditor shall not (be forced) to restore a pledge fixed (in his hands) unless there have been a special agreement.—*Dig. I. 47.*

Neither a pledge (without limit) nor a deposit, are lost to the owner by lapse of time ; they are both recoverable, though they have long remained (with the bailee).—*Manu VIII. 145.*

Mortgaged land being carried away by a rapid stream, or being seized by the king, another (pledge) of land must be delivered, or the sum lent must be restored to the lender.

Whatever pledge has been lost by the act of God or the king, the debt, for which it was given, shall be paid by the debtor to the creditor with interest.

If one field has been mortgaged to two creditors (so) nearly at the same time that no (priority can be proved), it shall belong to that mortgagee by whom it was first possessed (without force).—*Dig. I. 131.*

But if a man first mortgage land without noticing all (circumstances), and afterwards mortgage it with express description by name (and the like), that writing which contains an express distinction shall prevail.

2. If a field or a house be described in a written instrument by its limits, and if villages and the like be (so) described, the contract is valid.—*Dig. I. 135.*

He who has mortgaged even a bull's hide of land to one creditor, and, without having redeemed it, mortgages it to another, shall be corporally punished (by whipping or imprisonment); if the quantity be less, he shall pay a fine of sixteen (suvernas).—*Dig. I. 129.*

That immoveable property, which has been delivered (restorable) when the sum borrowed is made good, the creditor must restore when the sum borrowed has been made good.

When land or other (immoveable property) has been enjoyed and more (than the principal debt) has accrued therefrom, then the principal and interest having been realized, the debtor shall obtain his pledge.—*Dig. I. 108.*

1. When a debtor mortgages land to his creditor, declaring and specifying "this shall be enjoyed by thee, even though interest cease" (on becoming equal to the principal).

2. That pledge shall be restored to the debtor whenever the principal and interest shall have been received. This is declared to be the legal rule concerning pledges for loans on interest.—*Dig. I. 109.*

Even though the utmost interest have accumulated, (the creditor need) not (restore) an immoveable pledge without a special agreement.—*Dig. I. 110.*

Or even in the absence of the debtor, the creditor may sell the pledge before witnesses.—*Dig. I. 123.*

1. When the pawnee is missing, let the creditor produce his pledge before the king; it may be then sold with his permission: this is a settled rule.

2. Recovering the principal with interest he must deposit the surplus with the king.—*Dig. I. 122.*

Should the creditor, against, or even without, the assent of his debtor possess himself of more (land or other) property than was expressly mortgaged, he shall pay the first amercement, and the debtor shall receive back his whole pledge.

A pledge shall be enjoyed until actual payment of the debt.—*Dig. I. 111.*

MAHOMEDAN LAW.

The following provisions are taken from Hamilton's translation of the *Hedaya*. This work, according to Mr. Morley, is the most celebrated treatise on Mahomedan Law according to the doctrines of Abu Hanifa. It has been declared like the Koran to have superseded all previous books on the law.

(1). *As to sale of land.*

Beeya, or sale, in the language of the law, signifies an exchange of property for property with the mutual consent of the parties.

Sale is completed by declaration and acceptance, the speech of the first speaker of the contracting parties being termed the declaration and that of the last speaker the acceptance.

The rights of a sale are things essentially necessary to the use of the subject of the sale, such as, in the purchase of a house, the right of passing through the road that leads to it, or, in the purchase of a well, the right of drawing water from it. Appendages imply things from which an advantage is derived, but in a subordinate degree, such as a cook-room or a drain.

The dissolution of a sale previous to taking possession of the article sold, whether of a moveable or immoveable descrip-

tion, is a breaking off, according to Hanifa. According to Aboo Yoosaf, it is a breaking off with regard to moveable property only.

A dissolution with respect to immoveable property, on the contrary, previous to the taking possession of it, is a sale according to Aboo Yoosaf, as he holds that the sale of immoveable property, previous to the seizure of it, is lawful.

In the sale of land, the trees upon it are included, although they be not specified, because they are joined to it, in the same manner as foundation and superstructure in the preceding case.

In a sale of ground the *grain* then growing on it is not included unless particularly specified by the seller, because it is joined to the ground, not as a fixture, but for the purpose of being cut away from it, in the same manner as goods of any kind which may have been placed upon it.

So also if a person should sell a tree on which *fruit* is growing, the fruit belongs to the seller unless it has been specifically included in the sale.

If a person sell a piece of ground in which seed has been sown, but of which the growth has not appeared above ground, in this case the seed is not included in the sale.

(2). *As to mortgage of land.*

Rakn literally signifies, to detain a thing on any account whatever. In the language of the law it means the detention of a thing on account of a claim which may be answered by means of that thing as in the case of debt.

It is not lawful to pledge fruit without the trees which bear it, crops without the land on which they are produced, or trees without the ground on which they stand; for as the pledge in all these cases, has a natural connection with an article which is unpledged, it is therefore in effect indefinite, until such time as it be separated from that article. In the same manner also it is unlawful either to pawn a piece of ground without the trees which are produced upon it, a field without its produce, or a tree without its fruits; because in these cases a mortgage is induced of an article naturally conjoined with another which is not pledged.

The title from the revenue of tithe lands held in pawn precedes the right of the pawnee.

If a pawnee die, his executor is empowered to sell the pledge and discharge the debt, provided he obtain the consent of the pawnee.

If the pawner sell the pledge without the consent of the pawnee, the sale remains suspended upon his will, because of his right being involved in the pledge.

A pawnee has not a power of selling the pledge without the consent of the pawner, as the property of it belongs absolutely to him.

It is not lawful for the pawnee to enjoy in any shape the usufruct of the pledge.

OTHER LAWS AS TO THE SALE AND MORTGAGE OF LAND.

So far as I am aware, there is no modern law by which the sale or mortgage of land is prohibited. I believe that previous to the Encumbered Estates Act in Ireland, sales of estates were prohibited. In the Mosaic Code sales and mortgages were allowed, but subject to the condition that every 50 years all the lands sold in the interval returned to the original owners. Practically by that law land could only be let on leases to expire at the next jubilee.

OPINIONS IN FAVOUR OF PROHIBITING PRIVATE SALES AND MORTGAGES OF LAND.

The sub-judge is of opinion that rights and interests in landed property, especially that of an hereditary kind, should never be alienated, as it inflicts a hardship on many a family, who are rendered destitute owing to the reckless habits of those who involve their family estates.—*Extract from letter of J. W. Power, Judge, N. W. P.*

The origin of property regarded as secluded against trespass is thus traced, with such clearness as the subject admits of, to the religious notions which appear to have possessed the minds of nearly the whole Hindo-European race—to have almost exclusively possessed them—in the early dawn of primitive civilization. It was natural that, being thus regarded, the family lands should also be deemed inalienable. An Aryan freeman would have answered the sacrilegious proposal of a grasping superior with the same vehemence as Naboth :—“The Lord forbid it me that I should give the inheritance of my fathers unto thee.”

The sale of land was positively forbidden in Sparta and many other ancient States; and the utmost amelioration allowed at Athens under the laws of Solon was that a man might part with his land if he would also renounce his citizenship. It is by the light of these indications that we should read that antique rule quoted in the Mitakshara which says that "in regard to the immoveable estate, sale is not allowed." This law, as we know, was afterwards changed; but the primitive notion has not even yet lost all its influence. The law of equal partitions so broke in upon the original sole succession of the eldest, as solely capable of performing the family rites, that the idea of complete inalienability could not be maintained; yet in the cumbersome ceremonies through which a transfer was to be effected, we find a trace of the earlier state of things. The Roman *mancipatio*, a religious ceremony, was an analogous way out of the same difficulty. In Greece there could be no sale without a sacrifice.

We have come in these later days of the Christian dispensation to regard certain personal capacities of the individual man, notwithstanding their appreciable money value, and the possibility of placing them wholly at the service of another, as essentially *extra commercium* and inalienable. A man may not sell himself or his family into slavery. He may not, as in China, submit himself to a vicarious punishment for money payment. The worth of the humblest citizen in the eye of our faith, and thence of our law, is too great to be thus made a subject of mere barter. Such a conception, natural as it now appears to us, would have seemed chimerical to the ancients. This may make us the more ready to believe that our conception of property as severable at will, or by order of a judge, from the person of a debtor, was to them full of difficulty. A voluntary alienation of land or house was allowed, but by degrees. Confiscation was a punishment reserved at first for those who for their crimes were driven into banishment, as amongst the Hindus, for an out-lawed Brahman. The execution of decrees against a debtor's reality was a thing not dreamed of. His property was deemed inseparable from his person and essential to his citizenship. Even the Roman laws of the twelve tables, though they placed the person of the debtor completely at his creditor's mercy when once the requisite formalities had been gone through, yet preserved his proprietorship of his land.

Though alienation is allowed, the assent of the king is essential to its validity (Colebrooke's Dig. B. II., Ch. IV, Sec. II., T. 33, and Mitakshara, Chap. I., Sec. I, Paragraph 31). The word "Samanta," translated "neighbours," should, Mr. Ellis thought, have been rendered king or lord, and in this sense Jagannatha has taken it. Jagannatha, commenting on the text, "All subjects are dependent, the king alone is free," says:—"Therefore it is proper that they should make gifts or sales with his assent." Property again "consists not in the right of aliening at pleasure." Hence, though "the cultivator is not destitute of ownership," as some would infer, his ownership is a qualified one, and being subordinate to that of the king, cannot be transferred without his consent. Practice on this point has been conformable to the principles laid down by the native lawyers. Mr. Ellis shows that in Malabar, where the proprietary right of the subject is probably better defined than in any part of India, "the established form of transfer before the introduction of the British rule contained the formula "in the presence of the rulers of the land," or something equivalent as an essential part of the conveyance.

27. The first and most important of these remedies is a definite limitation of the power to alienate land. The Government has for the most part divested itself of that exclusive ownership which arose from the gradual increase in its demands under the native rulers; but it still has that "protective ownership" without the assertion of which, according to the Hindu lawyers, "there can be no certain rule for the protection of the subjects." It is bound too on every occasion to do that which will best promote the general welfare; and finding that the principle of free trade in land, which is adopted from the best motives, is not adapted to the present condition of the people; it may properly impose such limitations on its further application as experience has suggested. *The Government should pronounce all land held from it to be either inalienable except with its assent, or else subject, on alienation, to re-assessment, and to the levy of a rack-rent for the benefit of the community.*

A holding exceeding in extent what was necessary for the comfortable maintenance of the family or families, its tenants, would be made freely alienable as to such excess. Such excess, and such only should be liable to attachment and sale in execution of decrees. The crops and the cattle and implements requisite for working the regulated mini-

num holding, should be as exempt as the land itself from attachment, and so in most cases should the cultivator's dwelling.

28. The working of the plan would be this. A ryot desirous of selling or incumbering his holding, would make an application jointly with the proposed purchaser for permission to do so. As to the excess above a certain quantity, the Collector would immediately grant permission. As to the minimum, he would carefully consider the circumstances and allow or disallow the sale. He would generally refuse to permit the splitting up of a small holding unless something had given it an exceptionally high value. Where there was any indication of the cultivator being imposed on, or unduly pressed, he would refuse his sanction altogether. Thus, the ryots would be kept on their lands except when it was plainly advantageous that they should transfer them, while changes of proprietors would not be prevented in proper cases. Orders for the execution of decrees against land should be sent to the Collector, and should be carried out only against land held in excess of the minimum.

30. Native ideas, which are opposed to a sale of family property, are not unfavourable to temporary mortgages. But an unlimited power of mortgaging is virtually equivalent to an unlimited power of sale, and should be subjected to equal restraints. A mortgage is enforced by foreclosure; and if sales were restricted and mortgages not, the end would be attained by a mortgage and a friendly suit. The device would be specially resorted to in order to destroy the rights which Hindu children acquire on their birth, or to make their assertion practically impossible. A mortgage with possession for a limited time, at the end of which the produce of the land is to be considered as having paid off principal and interest, restores the land after a period to the family; but if it has extended to a considerable portion of the estate, it has probably plunged the mortgager into debt, and made a fresh mortgage necessary immediately on the lands being freed from the old one. A mortgage with possession and enjoyment of the produce as an equivalent for interest alone might keep the mortgager out of possession all his life through his inability to pay off the principal. A rule might be made, allowing mortgages with possession to be made at will, but limiting the lien on the land to a prescribed number of years, after which the amount of the loan, if not discharged by the terms of the transaction,

should become a mere money debt; but this would have the effect in many cases of starting young men in life without resources of fitting employment. When on the expiration of the mortgage made by their father, they came into possession, they would probably be loaded with debt and obliged to mortgage again. Upon the whole it seems that the *best plan would be to subject mortgages and charges on the land to the same rules of sanction as sales.*

31. Leases can be so contrived as to keep a family out of its property as effectually as sales or mortgages. A long lease or one defeasible only on some improbable condition ought, therefore, to be subject to the same rule as a sale of land. On the other hand, sickness or some other casualty may often render it desirable that even the smallest landholder should let his land for one or two years. All leases for more than one year might be made subject to the Collector's approval. Tenancies from year to year should be allowed without the necessity for sanction. They should be registered by the village officers for a small fee, and should not enable the tenant to retain possession against his landlord, who desired to re-enter at the close of any cultivating season. This would prevent a good deal of vexatious litigation and the setting up of titles in opposition to the title of the landlord. The English theory on this point, which gives so great an advantage to the physical possession, is attended with some benefits, but it should not be applied to cases in which the official record of the letting left no doubt of the landlord's title.

In England there has for long been no fighting caste, or rather the fighting caste has embraced the whole community. The distribution of the land therefore on purely economic principles has wrought no mischief beyond what may be portended by the sullen murmurs that are now rising from the landless class. But how is it in India? The Rajput or Maratha yeomen disappearing or sinking into indigence and despair are replaced, as the Roman freeholders were, by a class of mere cultivators living from hand to mouth, without strong local attachments or the sturdiness which independence gives. Above these come the new race of capitalists; men possessed by no ennobling ideas of public duty, cowards, as a rule, by caste and confession, citizens in no sense beyond that of benefiting society by selfish accumulation. A country with such a class of landlords must soon afford a caricature that should rather

startle the advocates of economics and self-adjustment as the sole or chief basis of polity. A true self-adjustment there cannot be however in a society so governed. If there were, the strong would soon take back by force what the weak had won by astuteness, and the land would once more be held by men prepared to guard their possessions. This of course is not to be tolerated, but are we to forget caste, and character, and all the conditions of native society until we have laboriously reduced it everywhere to a state of unstable equilibrium? In a time of trial we may need the support of the courage and home love of the hereditary landholder, of the loyalty that springs from a diffused content. There is some room to fear that we might have at such a time to support tottering institutions with British bayonets that were all, and more than all, required elsewhere.—*Dr. Raymond West's suggestions on the Land and the Law in India.*

Above the class we have been considering comes that of the zemindars holding lands which they sub-let in farms either to hereditary or to casual tenants, retaining only a small portion of their estates in their own hands. They vary as to pecuniary means from a condition of great poverty to one of affluence. Many of the most ancient families of this class seem to be perishing away, or sinking into hopeless indigence by a process as certain and inevitable as that which is working on the smaller landholders. All who are acquainted with the districts in which these decayed gentry abound, deplore the condition to which many of them are reduced, but compassionate instincts are the most hazardous basis for political action. Against their promptings, and the argument by which they are supported must be weighed the considerations urged by the opposite school, which deems it a law of nature that the weaker should go to the wall, and sees nothing but advantage in proprietors who have capital taking the place of those who have none. . . . That these considerations are of great weight and importance cannot for a moment be denied. The Government cannot for ever go on sustaining a feeble class too nerveless and too steeped in false pride to make any exertion for themselves, and it is the tendency of aid of this kind to create a need for still more aid and a feeling of a right to it which causes intense resentment when in the end it has to be withdrawn. It is a necessary result of our rule that the class of intelligent adventurers who adapt themselves to the new

conditions should grow rich while those who do not grow poor. "Or dans une societe," says Tocqueville, "on la richesse se deplace, les rangs sont bien pres d'etre renverves." Money has a weight and influence which will find exercise in some channel, and the natural desire to possess land cannot with safety be replaced by a craving and a struggle for employment under Government which in France "devint la source commune des revolutions et de la servitude." An effective desire of accumulation is set to work by smaller returns from land than from any other investment, and thus freedom of transfer leads to national economy. English civilization too must in the main radiate from the great towns, and the spirit of improvement is most likely to be developed in those who become proprietors unhampered by the conventions and prejudices that embarrass moneyless landlords of old pedigree.

36. But again we must remember that it is not a European country that we have to deal with ; but India, with its classes sharply marked off, and with the character and capacities of each too uniformly moulded to admit of sudden change. Opium is a pernicious drug, yet its unreserved withdrawal may cause death. On the "greatest happiness" principle, therefore, some time ought to be given to the zemindars to adapt themselves to the inevitable change ; some means, if possible, provided by which they can escape its threatened effects. Even on purely economic grounds it may be urged that the money which new men invest in land would otherwise be profitably employed in commerce ; while the class who receive it as vendors almost invariably squander it in fruitless prodigality. *It might therefore be expedient from this point of view to impose some check on the license of sale and encumbrance ; since it may well be that men who are useful members of society as landlords, still need some protection against their own improvidence, which, left to itself, must make them at once landless and useless, or worse.—Mr. Raymond West's suggestions on the Land and the Law in India.*

7. With regard to my proposals Government remarked :
 "His Excellency is altogether unable to accede to these novel proposals made to fix two kinds of rates, the higher to be paid by occupants sub-letting their lands, and the ordinary rate to be levied when they cultivate

the land themselves. Mr. Robertson fails to show in what way the fixing of the demand of the State on land at such a pitch as to represent only a tax on its rent instead of the full amount of the rent, is not really advantageous to the cultivator who profits by the difference between the two, while it would be clearly impossible to prevent collusion between the occupant and his sub-tenant, if the former chose to represent his land as cultivated by himself when in reality it was sub-let."

8. I fail to understand the reasoning of Government. It is true that the demand of the State is but a tax on rent, and as long as land is held and cultivated by the occupant, the occupant profits by the difference between the two. It is this profit I desire, by my proposals, to retain to the cultivator. The bulk of the population consists of cultivators, and to secure permanently to them the full advantage of our liberal settlement should be our object. If, on the other hand, forgetting that our assessments are made for the cultivators themselves, we allow a few wealthy speculators and money-lenders, successful wakils, and retired well-to-do Government servants to step in and seize the opportunity of a ryot's extravagance and to secure from him that which is most valuable to him, namely, his right of occupancy of the land, then this moneyed-man having become the occupant forces the ryot, as his sub-tenant, to pay any rates he pleases, and in fact reduces him to the position of his bond-slave. Then the difference between the full amount of the rent of the land and the State demand or tax upon that rent, instead of being a profit to the cultivator, becomes a profit to the usurer, or land speculator. True, there would be instances of collusion when we attempt to carry out my proposals; but these in comparison with the vast benefit the cultivator would derive would be but few indeed, and not worth consideration. I fully admit that to carry out my suggestions would require some consideration and entail some difficulty, still this must be expected in any new proposal. But I have no doubt whatever that proper means for carrying them out could be devised were it deemed necessary. So convinced am I that the fact of the great extent to which the actual cultivators of Government are sub-tenants is the true cause, not only of the indebtedness of the ryot, but of the opposition in some quarters to the revision of the survey assessment, that I feel I would be doing wrong were I not again to urge the subject upon the consideration of Government. That

this subject will force itself upon the consideration of Government at some future time, and that Government will be forced to adopt measures similar to those I now propose, I feel convinced. I only trust that the necessity of dealing with it may be met before the difficulties become too great and complicated.

11. It will, of course, be urged that the measures I propose will lessen the value of land. True it will do so, but only its mortgaging value will never be so valuable to a speculator, but it will more than ever have its value to a cultivator. We shall have a more thrifty, well-to-do, and contented peasantry, and, what is of importance, a better hold on the country than if we continue the present system of protecting the usurer and do not take care to secure to the ignorant ryot that protection against his own thoughtless extravagance and the greed of the money-lender, of which he stands so much in need.—*Letter from the Collector of Dharwar No. 67, dated 7th January 1875.*

Mr. Robertson's proposal, shortly stated, is that a rack-rent should be imposed on all land which is sub-let. This measure, he thinks, would prevent the ryots' lands from passing into the hands of money-lenders and land speculators.

The undersigned considers that the measure would be futile in practice. In doing away with sub-tenancy it would make the indebted ryot still more the servant and bond-slave of his creditor. He would cultivate as a labourer at the lowest wages for the new occupant, who would allege acquisition by purchase or mortgage. Thus the rack-rent would be evaded and the condition of the ryot be worse than ever.—*Remarks by the Revenue Commissioner, S. D., on the above letter.*

It is probable that a well devised modification of the law for regulating the sale and hypothec of peasant occupancies might diminish the process of absorption of the most remunerative Deccan holdings by the village sowkars, which is represented as being largely effected. As regards the actual quality of the agriculture, there is no reason to apprehend that it would suffer, but rather to anticipate improvement by the land passing into the hands of wealthier and more intelligent occupants.—*Government Resolution No. 4590, dated 26th August 1874.*

The extent to which land is changing hands, that is, passing from the possession of the present proprietors into that

of a sowkar middleman, who has no personal interest in the welfare of the people, and exacts a rack-rent, is a very serious evil; no reduction of assessment reaches the cultivators: it is absorbed by the middleman and it becomes a serious question whether it would not be desirable to make land legally unsaleable and inalienable.—Remarks by the Revenue Commissioner, N. D., on the Report by Mr. T. C. Hope, C. S., Collector of Surat, No. 1776, dated 13th July 1874.

15. The action of our civil courts on the occupiers of land in the presidency generally is a subject so cognate to the intention of judicial Administration Reports that its consideration here hardly needs an apology. I propose very briefly to notice the subject, firstly in relation to cultivators generally, and secondly particularly in regard to Bheels and other wild tribes.

16. That the great majority of superior occupants are hopelessly indebted, and that their right of occupation of Government land has been mortgaged to its full value, is well known to Government, and to all who take an interest in public affairs. How this state of evil has come about, is perspicuously shown in Mr. Justice West's able pamphlet, "The Land and the Law." Various remedies have been suggested. I propose to notice the remedy proposed by Mr. West and that put forth by an eminent revenue officer, whose name I have not permission to use.

17. Mr. West (page 30) argues and refers to Mitakshara I., Section I., 31) that under Hindu Law the occupier of the soil had only a qualified ownership of land, and did not hold the right of alienation at pleasure.

18. Without fully assenting to this doctrine, as that of the Hindu Law as we have it in the institutes and commentaries, I affirm that such was the practice under both the Mahomedan and Maratha Governments. This being so, Government has a clear right to act on it now. I have always been unable to agree with those who, in referring to Hindu Law, go back to the period when it was digested and formulated, omitting to notice the living Hindu common law of our own times. I am not aware of any commentary on Hindu Law of importance later than the Vyavahar Mayukha of Nilkanta and the Vivadabandava of Ramalookara, Circa 1600-1670 A.D.; the latter work, although said to be important, has not, I believe, been translated into English, and I am not familiar with it.

19. Mr. Justice West would have the land declared inalienable by sale, without the consent of Government, but would have Government to permit the alienation of land in excess of a minimum to be fixed by the Collector, and would allow execution of decrees as against the excess only. He would permit temporary mortgages.

20. The distinguished revenue officer, of whose views I am so fortunate as to be in possession, advocates three measures: (1) reform of court procedure; (2) a law of bankruptcy; (3) exemption of land from sale in execution of a decree.

22. Both the opinions which I have mentioned are so immeasurably more valuable than mine, that I have much diffidence in expressing any divergence from them.

23. I however observe in the arguments of both, a disinclination to go so far as they otherwise would from consideration for the creditors of landholders. I submit that this is not a question for the personal relief of a class of debtors, but one vitally affecting the good of the State, and that any inconvenience or loss to a particular class may fairly be disregarded for the good of the great majority. It is quite true that often there is little to choose as to morality between the Marwari plaintiff and the Kunbi defendant; but as the landholders are the backbone of the State, and the money-lenders are mostly foreign adventurers, it is to the interest of the State to support the former, and no sentimental considerations should be allowed to stand in the way. I have always been opposed to any particular class being removed from the operation of the general law for its own convenience, but in this matter the necessity is national, not personal, *salus populi suprema lex*.

24. Mr. West's proposal that the Collectors should fix minimum holdings which should be inalienable, and that the excess should be alienable with his permission, would, I venture to think, lead to much uncertainty. Different Collectors would have different opinions; one might favour alienation of all in excess of land necessary for bare subsistence, and his successor might hold a contrary view. *I think land should be made absolutely inalienable either temporarily or permanently without the permission of Government.* This would be a radical remedy, and is, as has been shown, consonant with the practice of Hindu Law. I believe that its effect would be the regeneration of the landholders, by far the most important section of the Indian community. Doubtless at first a tightness in the money market would be felt

and some grumbling might be expected at the money supply being stopped; but, as experience teaches us, the ryots would soon cut their cloth according to their means and would find it easy to forgo extravagances, which they now consider indispensable. Government might relieve the pressure at first by advances of seed, and by great moderation in collecting the assessment.

25. Under the proposed system Government alone could sever the connection of an occupier with his land, and would doubtless show much patience in exercising the right of eviction, only ousting an occupier when hopelessly insolvent, and then offering pre-emption to his agnates.

26. In my very humble opinion no measure short of this will suffice. I am sanguine that if land be declared inalienable and a maximum rate of interest on money lent, fixed, we shall hear no more of "civil courtacha upadrao;" an evil inherent in our law and not, I affirm, in any degree chargeable to the judges of civil courts.—*Extract from the Tanna Session Judge's letter, No. 1639, dated 17th May 1875.*

OPINIONS AGAINST PROHIBITING THE SALE AND MORTGAGE OF LAND.

The right of private sale will of course not be interfered with.—*Minute by Sir W. Muir, dated 9th August 1872.*

I would not place any restriction on the direct and voluntary alienation by proprietors of their land, or on the action of the courts enforcing deeds of such alienation; but I would confine the action of the courts, so far as causing permanent alienation, strictly to cases of direct and absolute sale.—*Minute by W. Muir, Esq., Junior Member, Board of Revenue, N. W. P., dated 2nd February 1859.*

Another cause, no doubt, of the pecuniary embarrassment of landholders, and the consequent alienation of their ancestral property, is their ignorance and improvidence, and the knavery and rapacity of the professional money-lenders. Funds are wanted as an advance for the payment of revenue, or for the celebration of a marriage; the money-lender is resorted to, and the necessities of the borrower enable him to dictate his own terms. Enormous interest is stipulated for, and a mortgage on the landed property of the borrower is demanded. Time passes; interest accumulates; the bor-

rower is forgetful of consequences ; the lender, ever watchful, waits his opportunity ; and when the debt, with interest on interest, has amounted to a sum equal to the value of the hypothecated property, the machinery of the civil courts is called into action, and the ruin of the borrower is consummated:

A striking instance of this kind is given in the letter from Mr. C. Currie, the late officiating Collector of Boolundshuhur, and there is not a district in which very brief enquiry would not discover dozens of similar cases. It is deplorable that knavery of this kind should be rampant, and that its success should be due, in great measure, to the action of our own institutions ; but the remedy does not lie in placing restrictions on the transfer of landed property.—*Minute by Sir G. Edmonstone, Lieutenant-Governor, N. W. P., dated 26th May 1860.*

I should wish to see the following principles laid down and embodied in a legislative enactment.

Direct and voluntary alienation of ancestral landed property shall be recognized by law, and deeds of sale of such land shall be enforced by our civil courts (This is Sir William Muir's view).—*Minute by H. S. Reid, Esq., dated 23rd July 1872*

I agree to the proposal that a proprietor should still be able to sell his rights by voluntary deed. But I would not confine the new scheme to ancestral land only. On the argument that the zemindar has duties as well as rights, and is in a measure a public servant, I would apply the same rule to all, allowing them to resign their position, but not be ousted from it.—*Minute by C. A. Elliot, Esq., dated 28th July 1872.*

3. My last proposal rests on somewhat different grounds, not so much on the desirableness of giving debtors means of freeing themselves from their embarrassments, as on the desirableness of checking the wholesale transfer of land from the land owning and cultivating to the money-dealing classes.

Speaking very broadly, it may be said that we found in Hindu Law two leading principles by no means easy to reconcile, but which the Hindus seem in practice to have reconciled : one family or hereditary responsibility for debt ; the other, the inalienability of family property, especially of land ; in other words (again speaking broadly, for of course

the Hindu law of inheritance and the English law of entail have nothing but a result in common), a general law of entail. Our courts—not apt at reconciling opposed principles and guided by English notions of justice—have in effect fully carried out the first of these principles, and have superseded the second; and Hindu estates in land are therefore exposed to the dangers of the one and have lost the safeguard of the other.

It may, of course, be said that this result was to be desired; that in England it has now been decided that the freest possible transfer of land is beneficial. But India is not England. In England a constant interchange of classes is going on. Partly from the love of the country and of rural pursuits which seem to be innate in the people; partly from the social consideration and political influence which the ownership of land gives; the ambition of the successful man of business is to found and to reside on an estate, and his energy, wealth and intelligence often make him a better landlord than the man from whom he acquires it; while there are many trades and professions to which the family of the ruined land-owner can betake themselves for support and with fair prospects of success. In India it is not so. The land-owner who has lost his estate, sinks into abject poverty, embittered by the memory of the position he has lost, and, if a man of energy or influence, becomes politically dangerous. We know what discontent transfer of the rights of land-owners to their tenants caused in Hindustan. How much greater is discontent likely to be where the change of ownership injures instead of benefiting the cultivator? The money-lender, on the other hand, who acquires the estate, though he likes the possession of land well enough, has no idea beyond that of getting all he can out of it, and would shrink with horror from the notion of leaving the town life, the society of his castefellows, the business, habits and the round of petty gains to which he is accustomed in order to reside in solitary dignity in a remote village. Money grubbing is the life of these people; to drive sharp bargains is their pleasure and glory; public opinion, except that of their own class, which is that to make money anyhow is creditable, and that the mode in which it is made is amply atoned for by some act of showy liberality, has no influence over them; and they treat their tenants without scruple or remorse as they treat their debtors, as persons whom Providence and the Sarkar have delivered into their hands.

The British Government has deliberately divested itself of the ownership of the soil and has transferred it to its tenants, in order to raise the status of the great important cultivating class, to improve by the "magic of property" the wretched Indian husbandry, to confer on the country generally the advantages which economists believe to attend the system of peasant proprietorship. It is surely intolerable that this measure—one, I believe, of the wisest and most successful ever carried out by an Indian Government, should be rendered nugatory by the diversion to another class, totally unconnected with the soil, of the gift which Government made to the cultivators, and that the latter instead of being, as they were meant to be, owners of their holding, subject to a moderate and fixed assessment, or, as they were, tenants of a Government, who at least endeavoured to act towards them with justice and liberality, should become cottier tenants-at-will or something lower, of hard and grasping landlords.

For the reasons stated above, I doubt if we have been right in our policy of making land, as the natives express it, "saleable like a bullock or a turband," and whether we should not have done better to maintain the old restrictions on its transfer. But it is now too late to alter the policy which has been adopted, or rather the form into which the law of India is being moulded under the influence of British legislation, and a much smaller measure will, I believe, be effectual for the object now aimed at.—Extract from the Note by W. G. Pedder, C. S.

33. The extremest proposal is to prohibit all transfers of land. This, though not violently opposed to Hindu, is in direct opposition to Mahomedan Law. The former, it is believed, recognises the right of alienation only in cases of necessity; but the latter places no restriction on it.

The only security being moveable property, houses, standing crops, and so on; a man would be compelled to pledge these, and we should see what has been illustrated in Jhansie. The debtor would become the slave of his creditor. The annual profits of his land would be swept off by the money-lender in payment not of the principal, but of the annual accumulation of interest. You would retain your proprietor on the land, no doubt; but you would take from them all that makes land worth having.—*Extract from Mr. Colvin's Note on the Landed Estates Relief Bill.*

EX-PARTE DECREES.

PROPOSED LAW ON THE SUBJECT.

It is unnecessary to quote the existing law as it is substantially the same as what is now proposed. The following clauses are taken from the Civil Procedure Bill now under discussion :—

Issue of Summons.

62. When the plaint has been registered, a summons shall be issued to the defendant to appear and answer the claim on a day to be therein specified
- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the judge or such officer as he appoints, and shall be sealed with the seal of the court.

63. If the court see reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

If the court see reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

64. No plaintiff or defendant shall be ordered to appear in person, who at the time is *bond fide* residing at a distance of more than fifty miles from the place where the court is held, unless he be resident within the local limits of the jurisdiction of the court :
- No party to be ordered to appear in person unless resident within 50 miles,
or within local jurisdiction of court ;

Provided that, if railway communication exists between the place where he resides and the place where the court is held, or within a convenient distance from such places, the court shall have a discretion as to making such order.

Service on the Defendant.

69. The summons shall be delivered to the proper officer of the court, to be served by him or one of his subordinates.

Delivery of summons of the court, to be served by him or one of his subordinates.
for service.

70. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or by the Registrar or Clerk of the Court, and sealed with the seal of the court.

Mode of service.
the Judge or by the Registrar or Clerk of the Court, and sealed with the seal of the court.

71. When there are more defendants than one, service of the summons shall be made on each defendant:

Service on several defendants.
of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction, service on one defendant for himself and for the other defendants shall be sufficient, unless the court otherwise directs.

72. Whenever it may be practicable, the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service to be on defendant in person, when practicable, or on duly empowered agent.
on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

73. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Service on agent by whom defendant carries on business.
local limits of the jurisdiction of the court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits; shall be deemed good service.

74. In a suit for immovable property, if the summons cannot be served on the defendant in person, and the defendant have no agent empowered to accept the service of the summons, it may be served on any agent of the defendant in charge of the property.

Service on agent in charge, in suits for immovable property.
cannot be served on the defendant in person, and the defendant have no agent empowered to accept the service of the summons, it may be served on any agent of the defendant in charge of the property.

75. If in any suit the defendant cannot be found, and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

When service may be on male member of defendant's family.
Explanation.—A servant is not a member of the family within the meaning of this section.

76. When the summons is served on the defendant personally, or on an agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service is made to an acknowledgment of service to be endorsed on the original summons or on a copy thereof signed and sealed as aforesaid.

Person served to endorse summons.
Procedure where he refuses.
 If such person refuse to sign the acknowledgment, the serving officer may affix the copy of the summons on some conspicuous part of the house in which the defendant is dwelling, but the service of the summons shall be held sufficient if it be proved to the satisfaction of the court, notwithstanding that a copy of the summons shall not have been so affixed.

77. If the defendant cannot be found and there is no agent empowered to accept the service or the summons on his behalf, nor any other person on whom the service can be made, the serving officer shall fix the copy of the summons on some conspicuous part of the house in which the defendant is dwelling, and the summons shall thereupon be deemed to have been served.

If summons cannot be served, copy to be fixed on dwelling-house.
Explanation.—The manner of dwelling here intended is such as renders it probable that the fact of the fixing of the copy will come to the defendant's knowledge.

78. If the summons cannot be otherwise served on the defendant, and the serving officer cannot find any house in which the defendant is dwelling, the serving-officer shall return the summons to the court from which it issued, with an endorsement thereon that he has been unable to serve it.

79. The serving officer shall, in all cases in which the summons has been served, endorse on the original summons, or on a copy thereof signed and sealed as aforesaid, the time when and the manner in which the summons was served, and such endorsement shall be evidence of the service of the summons.

80. When a summons is returned without having been served, if the plaintiff satisfies the court that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or if for any other reason the summons cannot be served, the court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the courthouse, and also upon some conspicuous part of the house in which the defendant last resided; or in such other manner as the court thinks fit.

The service substituted by order of the court shall be as effectual as if it had been made in any of the modes hereinbefore mentioned.

82. If the defendant be in jail under either civil or criminal process, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officers shall cause the summons to be served upon the defendant.

The summons shall be returned to the officer from whom it was received, with a statement of the service endorsed thereon and signed by the officer in charge of the jail.

Of the Appearance of the Parties and Consequence of Non-appearance.

88. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the courthouse, and the suit shall then be heard unless the hearing be adjourned to a future day fixed by the court.

92. If the plaintiff appears and the defendant does not appear, and the court is satisfied that the summons was duly served, the court may proceed *ex-parte* either to dispose of the suit or to settle issues, according to the tenor of the summons.

Procedure if plaintiff only appear.

93. If the plaintiff appears and the defendant does not appear, and the court is not satisfied that the summons was duly served in any of the modes of service hereinbefore provided, the court may direct a second summons to the defendant to be issued in any of the said modes.

If plaintiff only appear, and due service of summons be not proved, court may order issue of second summons.

94. If the plaintiff appears and the defendant does not appear, and it is proved to the satisfaction of the court that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the court shall postpone the hearing of the suit to a future day to be fixed by the court, and may direct notice of such day to be given to the defendant.

Procedure where plaintiff only appears, and it is proved that summons was served, but not in due time.

95. If the defendant, on any subsequent day to which the hearing of the suit *ex-parte* has been adjourned, appear and assign good cause for his previous non-appearance, he may, upon such terms as the court may direct as to costs or otherwise, be heard in answer to the suit, in like manner as if he had appeared on the day fixed for his appearance.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

101. If a plaintiff or defendant who has been ordered to appear in person under the provisions of section 63 or section 430 does not appear in person, or show sufficient cause to the satisfaction of the court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

102. In support of the cause shown by a plaintiff or defendant for failing to appear in person, the court shall receive any declaration in writing on paper signed by such plaintiff or defendant and verified in manner hereinbefore provided for the verification of plaints.

163. If any party to the suit is summoned to attend to give evidence or produce a document, and, without lawful excuse, fails to comply with such summons, or, attending or being present in court, refuses, without lawful excuse, to give evidence or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the court so to do, the court may in its discretion either pass a decree against him or make such other order in relation to the suit as the court thinks fit :

Provided, in the case of a party summoned to attend and failing to do so, that the summons to attend has been duly served upon him :

Nothing in the former part of this section shall be deemed to enable the court to decree a claim which on the face of the record is not warranted by law.

Of setting aside Decrees by Default and Ex-parte.

372. In any case in which a decree is passed *ex-parte* against a defendant under section 92, he may within a reasonable time, not exceeding thirty days after any process for enforcing the decree has been executed, apply to the court by which the decree was made for an order to set it aside :

and if it be proved to the satisfaction of the court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall pass an order to set aside the decree upon such terms as to costs, payment into court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

NUMBER OF EX-PARTE CASES AND THE ALLEGED CAUSES
THEREOF.

Statement showing per cent of cases decided ex-parte.

Ahmedabad ...	...72·8	Poona... ..	...67·5
Surat ...	...60·5	Sholapur ...	...70·7
Tanna... ..	...58·4	Satara... ..	...73·4
Ratnágiri ...	...57·2	Belgaum ...	...66·3
Khandesh ...	...72·4	Dharwar ...	...69·0
Ahmednagar ...	...73·0	Kanara ...	...46·6

*Extract from the General Report on the Administration of the
Bombay Presidency for 1872-73 Chapter III. (under Civil
Justice).*

The total number of applications for executions of decrees was 185,293 against 185,251 in 1871, while of the warrants issued in consequence of these applications no fewer than 139,285, or 75 per cent of the whole, were returned unexecuted.

Table showing per cent. of Warrants returned unexecuted.

Ahmedabad.	Surat.	Tanna.	Ratnágiri.	Khandesh.	Ahmednagar.	Poona.	Sholapur.	Satara.	Belgaum.	Dharwar.	Kanara.
80·4	80·1	70·2	71·6	71·2	75·4	67·7	59·7	61·4	67·3	48·0	41·1

A comparison of this table with the statement given above under the head "decrees *ex-parte*" shows that on the whole the highest percentage of unexecuted warrants is to be found where undefended suits are most numerous. It would seem therefore that the failure of the wilder tribes, the Bheels and Kulis, to defend themselves in civil suits which makes in some districts the action of the civil courts seem so one-sided, is due not more to their knowledge of the

difficulty of disproving a claim than to their experience of the case with which the execution of a decree may be avoided.—*Extract from the General Report on the Administration of the Bombay Presidency for 1872-73.*

NOTE.—The reason here given for so many decisions being heard *ex-parte* is not as it seems to me quite correct. It will be seen from the following table that in the districts where there is a large percentage of land suits, the number of *ex-parte* cases are small, and vice versa.

It appears from the accompanying table that the percentage of suits relating to land varies from 20·5 in Kanara to 6 in Khandesh.

Statement showing the percentage of suits relating to land :—

Ahmedabad	2·2	Poona	6·6
Surat	4·0	Sholapur	2·8
Tanna	4·8	Satara... ..	4·4
Ratnágiri	18·2	Belgaum	7·6
Ahmednagar	3·9	Dharwar	12·0
Khandesh	0·6	Kanara	20·5

Extract from the General Report on the Administration of the Bombay Presidency 1872-73 Chapter III. (under Civil Justice).

12. With regard to the civil returns, it will be observed that the great majority of cases decided were *ex-parte* cases. The fact is that the Marwaris use the courts to collect their debts.

15. The chief remark that I have to make with regard to the operation of the civil courts in this district, is that their whole machinery is worked by the Marwaris and seems to exist almost for their exclusive benefit.—*Extract from the Ahmednagar Session Judge's letter No. 308, dated 12th March 1875.*

It is unsatisfactory to notice that whilst, as a rule, when a case is compromised, the defendant stipulates for payment by instalments, the sub-judges very rarely provide for such a method of payment of the amounts decreed.

This is one of the results of settling a large proportion of suits *ex-parte*. The sub-judges have, in some instances, alleged that where the claim is settled *ex-parte*, the decree is for the payment of the claim in a lump sum, because the court is not satisfied that the defendant cannot pay the whole amount; yet the sub-judges unanimously comment on the impoverished condition of the ryots who form the bulk of the class of defendants. This requires attention.—*Extract from the Surat Acting Assistant Judge's letter, dated 26th July 1875.*

When I was a Subordinate Judge at Ratnágiri, several cases came before me, in which the defendants were undergoing sentences of imprisonment in the Criminal Jail there or in some other District Jail; and it clearly appeared to me that the plaintiffs had purposely brought the suits at a time when the defendants were so confined, so that they might be able to obtain *ex-parte* decrees against them.—*Extract from Mr. Chintaman Sukaram, First Class Sub-Judge's letter to Government, J. D., dated at Kaira, 8th July 1875.*

The unfair practices, which the money-lenders are generally charged with, are:—First, not passing receipt for moneys paid in liquidation of debts before the institution of suits and not acknowledging these receipts in the plaints. Second, not allowing the defendant to have sufficient notice of the institution of suits. Third, not passing receipts or acknowledging the payment of moneys paid after decree and before or during execution. Fourth, pouncing upon the debtor on marriage or festive days; and fifth, arranging with the subordinate officials of the court at the time of the service of summonses or of execution of the decree.—*Extract from the Talegaon Subordinate Judge's letter No. 22, dated 14th June 1875.*

9. Of the suits decided by the courts, 9,680 were decided *ex-parte* as against 9,898 in the previous year. The large proportion of cases so decided in a total of 15,484 is an unsatisfactory feature in the working of the courts, in regard to which I can only repeat the remark recorded in para. 7 of my Administration Report for 1873, that it is impossible to say that the common belief that in many *ex-parte* cases there is no proper service of notice, is altogether unfounded. It is obvious that too great care cannot be taken by subordinate judges to satisfy themselves in all cases that the summons on the defendant has been duly served.—*Extract*

from the Surat District Judge's letter No. 1702, dated 6th August 1875.

Poor debtors complain, says the Subordinate Judge of Borsad, that in the civil courts false claims are brought against them, and that the money-lender makes use of underhand means to keep them in ignorance of the fact that proceedings have been instituted.

To recover the balance due to him, a suit is filed, and, as shown in the accompanying table during the past five years on an average in 69.9 of every hundred applications, the decree asked for has been granted in the debtor's absence. The knowledge that the plaintiff has a claim against him may, in many cases, prevent the debtor from appearing to defend the suit. But this would seem not always to be the reason why the defendant fails to appear. Cases of collusion between the creditor and the messengers of the court, writes the Subordinate Judge of Nadiád, though not frequent, do sometimes occur, and the experience of the Mámlatdár of Mehmádad is, that the complaint made by many cultivators to Government officials that decrees have been passed against them in cases in which no summons has ever been served, is true.—*Extract from the Note on Kheda Money-lending.*

It is much reported that creditors, by some arrangements with the subordinate officials of court, get false reports made as to the service of summons on the defendant, and thus obtain decrees without letting the defendant know that a suit was ever filed against him. On this point I examined some *Khatpat* and intelligent well-known debtors of some well-known villages, such as Bhilawadi, Akalkot, Tásgaon and Pálas, and I am told that during the last five or four years they do not know of any such false reports being made. As for myself, I always on very little evidence allow the case to be restored to the file and give the debtor an advantage of a very slight doubt in his favour, and hence creditors seldom or never now resort to such tricks. I am for myself so much inclined to restore the case to the file and to give the parties fair play, that of late I find when an application under Section 119 of the Civil Procedure Code is made, and defendant pleads want of notice, &c., the creditor consents in writing to restore the case to the file that no time may be wasted in proving and disposing of the notice.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

Ex-parte cases, are cases in which the debtor, as a rule, impliedly admits the debt, and he does not come to the

court, because it puts him to trouble and expense, but gives him no compensation in return.—*Extract from the Tisgon Sub-Judge's report, dated 14th August 1875.*

7. Of the suits decided by the several courts, 9,898 were decided *ex-parte*, as against 8,407 in the previous year. It can never be desirable that any large number of suits should be decided by our courts in the absence of one of the parties, and for this cause alone I am sorry to see an increase in the number of *ex-parte* decisions. It is a common belief that in many *ex-parte* cases there is no proper service of notice on the defendant. It is impossible to say that such a belief is always altogether unfounded. I hope during the current year to be able to satisfy myself by a personal inspection of the records of some of the subordinate courts, whether there is any ground for such a belief, so far as this district is concerned.—*Extract from the Surat Judge's letter, No. 1856, dated 15th August 1874.*

8. This great number of uncontested cases is owing to the reckless way in which people borrow money and the facility with which the money-lenders lend them money, knowing that they can imprison their debtors.—*Extract from the Ahmednagar Sessions Judge's letter, No. 489, dated 10th June 1874.*

I could give these poor people no redress. Yeshwantrao Polkar and his Piudaris could not have plundered them more effectually; but it had all been done with most careful attention to the forms of the Code of Civil Procedure, with one trifling omission. They had had no notice that a suit had been filed against them; the decree had been passed *ex-parte*. Had this formality been attended to however, it would not have altered their position. They did not deny that the sowkar held their bonds; they pleaded that they had not received the consideration stated, and that the bonds were fraudulent. Still it will be urged they were entitled by law to receive a notice that the case would be heard on a given date, and they should have instructed a wakil to defend the suit. Very true, but to give them notice that a suit had been filed, would be giving them notice to move with all their property into the Gaekwar's territory. A wakil who permitted his client's interests to suffer in this way, would soon cease to practise in the Nandurbar Court; he therefore arranges with the process-server that the notice shall never reach the Bheel, and it is returned into court

with the proper endorsement probably written by the wakil himself.—*Report of Mr. Ashburner, Collector of Khandesh, dated 24th July 1870.*

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We beg to append statements showing the number of suits filed by Guzars and money-lenders against Bheels in the Court of the Sub-Judge at Nandurbár during the years 1867, 1868, and 1869, and how they were disposed of. It will be seen from this statement that of the 635 suits that came to inquiry during those years, 612 were decided in favour of plaintiffs, and only 23 in favour of Bheels, and that Bheels appeared to contest the claims brought against them in 29 cases only. In 594 suits judgment went by default against Bheels.

We rely on these figures in support of our statement that the ordinary civil courts are not suitable tribunals for the decision of such claims. It is a significant fact that during the same three years no suits whatever were filed by Bheels against Guzars or money-lenders for breaches of contract, for shares of produce, nor for settlements of accounts, though they crowded our camps in hundreds imploring our interference in such cases.—*Letter dated 9th September 1870 from Captain O. Probyn, Western Bheel Agent, and C. Prichard, Esq., First Asst. Collector, to L. B. Ashburner, Esq., Collector and Magistrate.*

When a sowkar or money-lender of any kind has a case against a Bheel that would admit of dispute, he takes care that the summons is not served; and even if a Bheel went to court with witnesses in his favour, they would be afraid to give evidence against the money-lenders, in whose hands they themselves generally are.—*Extract of letter No. 222, dated 1st July 1870, from Major O. Probyn, Western Bheel Agent, Khandesh, to the District Magistrate, Khandesh.*

OPINIONS IN FAVOUR OF AMENDING THE LAW AS TO EX-PARTE CASES.

Section 372. Supposing that the defendant against whom an *ex-parte* decree has been passed dies after the passing of the decree and without having had any notice thereof, it appears doubtful whether his heir or representative in interest can make an application under this section to have the decree set aside. I think it is necessary to make a clear

provision regarding this in the section. The provision regarding the time for making the application, viz., not exceeding 30 days after any process for enforcing the decree has been executed, does not answer the purpose for which it has been intended. When an *ex-parte* decree has been fraudulently obtained against a defendant who has gone abroad and against whom the summons has not been properly served, it is quite possible for the plaintiff to get some process for enforcing the decree (as for instance a warrant for attachment of his immoveable property in the occupancy of his tenants) executed in such a manner that the defendant could not obtain any information respecting it. And thus to stop him after the lapse of 30 days from the date of the execution of such process, from ever being able to take proceedings to get the *ex-parte* decree set aside. Such frauds to my knowledge have actually been committed, and the defendants in such cases had no remedy left to them, but to submit to *ex-parte* decrees unjustly obtained against them, and to enter into some compromise with the plaintiffs for their satisfaction. It is not, as the section appears to assume, that the defendant must have a notice of every process for enforcing the decree that may be executed.—*Extract from the Memorandum attached to Mr. Chintamon Sakaram, Sub-Judge's letter to Government, Judicial Department, dated at Kaira 8th July 1875.*

OPINIONS AGAINST AMENDING THE PRESENT LAW.

It is true that proposals have been made to do away with *ex-parte* judgments by enforcing the attendance of defendants, but such attempts cause too much inconvenience to be successful. Defendants naturally ask why they are brought 30 or 40 miles and kept hanging about a court simply to acknowledge a debt which they cannot repudiate.—*Extract from the Note by W. G. Pedder, C. S.*

IMPRISONMENT FOR DEBT.

EXISTING LAW AS TO IMPRISONMENT FOR DEBT.

It will be seen from the following quotations that the law in force in India is much more unfavourable to the debtor than that of any other of the countries referred to. Even the Roman Law was not so severe, as the debtor was discharged on delivering up his property (see Roman Law of Insolvency *post*). The law has been relaxed in India as to certain chiefs in Sind and the most important provision of the Baroda Tálukdárs Act, the Ahmedabad Tálukdárs, and the Ajmere Regulation consists in a clause exempting these tálukdárs from arrest. Their property still remains liable. In the Presidency towns the debtor can get off both imprisonment and all future liability on giving up all his property, except Rs. 300 worth.

Civil Procedure Code.

If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both, if necessary.

276. When a defendant is committed to prison in execution of a decree, the court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding four annas per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the court or of the jail where the defendant may be in custody, by monthly payments in advance, before the first day of each month, the first payment to be made for such portion of the current month as may remain unexpired before the defendant is committed to prison.

277. The court may, in case of illness, or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day, as shall appear necessary. The order fixing such allowance may from time to time be revised and altered on due cause being shown.

278. A defendant shall be released at any time on the decree being fully satisfied, or at the request of the person at whose instance he may have been imprisoned, or on such person omitting to pay the allowance as above directed. No person shall be imprisoned on account of a decree for a longer period than two years, or for a longer period than six months, if the decree be for the payment of money not exceeding five hundred rupees, or for a longer period than three months if the decree be for the payment of money not exceeding fifty rupees.

279. Sums disbursed by a plaintiff for the subsistence of a defendant in jail shall be added to the costs of the decree, and shall be recoverable by the attachment and sale of the property of the defendant under the foregoing rules; but the defendant shall not be detained in custody or arrested on account of any sums so disbursed.

Sind Courts Act, No. XII. of 1866.—(An Act to declare Constitution of Courts of Civil and Criminal Judicature in the province of Sind.)

15. No decree for payment of debt passed by any court shall be executed against a defendant who is one of the persons mentioned in schedule annexed to this Act, except in such manner as shall be directed in a special order by the Commissioner in Sind, to whom a copy of the decree and of the application for execution shall be forwarded by the court in which such application is presented.

PROPOSED LAW AS TO IMPRISONMENT FOR DEBT.

The following clauses are taken from the Civil Procedure Bill now before the Legislative Council of India :—

206. If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both.

308. The imprisonment of the defendant in execution of a decree may be in the jail of the district in which the court ordering the imprisonment is held, or, when such jail does not afford suitable accommodation, in any other jail, though not in such district which the Local Government may appoint for the confinement of persons ordered to be imprisoned by the courts of such district.

309. When the defendant is committed to jail in execution of a decree, the court shall fix for his subsistence such monthly allowances as it considers sufficient with reference to the class to which he belongs.

But (except as provided in the next succeeding section) such allowance shall not exceed four annas per day.

The monthly allowance shall be supplied by the party on whose application the decree has been executed, to the proper officer of the court or of the jail in which the defendant is confined, by monthly payments in advance before the first day of each month.

The first payment shall be made for such portion of the current month as remains unexpired before the defendant is committed to jail.

310. The court may, in case of illness or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day, as appears necessary.

The order fixing such allowance may from time to time be revised and altered on due cause being shown.

311. Sums disbursed by the holder of a decree for the subsistence of the defendant in jail shall be added to the costs of the decree, and shall be recoverable by the attachment and sale of the defendant's property under the rules contained in this chapter for the execution of a decree for money:

Provided that the defendant shall not be detained in jail or arrested on account of any sum so disbursed.

Of Discharge from Imprisonment.

312. The defendant shall be discharged from jail, by order of the court,

- (a) on the decree being fully satisfied, or
- (b) at the request of the person on whose application he has been imprisoned, or
- (c) on such person omitting to pay the allowance as hereinbefore directed, or
- (d) by reason of his insolvency, as hereinafter provided, or
- (e) when the term of his imprisonment as limited by section 313 is fulfilled.

A defendant discharged under this section cannot be re-arrested under the decree in execution of which he was imprisoned.

313. No person shall be imprisoned in execution of a decree for a longer period than two years, or for a longer period than six months if the decree be for the payment of a sum of money not exceeding five hundred rupees; or for a longer period than three months if the decree be for the payment of a sum of money not exceeding fifty rupees.

Imprisonment not to exceed two years.

Exemption from Arrest.

696. Except as hereinafter provided, no person shall be liable to arrest under this Code while attending, going to, or returning from the court, either in obedience to a summons or as a party to a suit, appeal or other proceeding.

Persons exempt from arrest.

HINDU LAW OF IMPRISONMENT FOR DEBT.

1. Now these are the rules for recovery of debt by a creditor. Brhaspati :—"From a debtor who promises payment, the debt may be recovered by mild remonstrance and the like, and by other resources; by the mode of moral duty; by legal deceit; by violent compulsion, and by confinement at home."

2. By other resources, that is, by means (upāya) which are thus enumerated by the same author :—"By the interposition of friends and kinsmen, by mild remonstrance, by importunate following or by staying constantly at the house of the debtor, he may be compelled to pay the debt. This mode of recovery is called a mode consonant to moral duty."

(dharna).” “When a creditor, with an artful design, borrows anything of his debtor, or withholds a thing deposited by him, or the like, and thus compels payment of the debt, this is called legal deceit, (upadhi).” “When having tied the debtor he carries him to his own house, and by beating or other means compels him to pay, this is called violent compulsion (balālkāra).” “When he forces the debtor to pay by confining his son, his wife, or his cattle, or by watching constantly at his door, this is called lawful confinement (acharitam).”

3. The rules for putting such means in force are thus declared by Katyayana :—“By mild expostulation let a creditor procure payment from a king, from his master, and from a priest, but from a friend or an heir by some artful contrivance.” Bṛhigu ordained that merchants, cultivators of land, and artists must be made to pay their debts according to the custom of the country ; but that a creditor might enforce payment from dishonest debtors by violent measures. The same author adds :—“A debtor being arrested (and freely acknowledging the debt) may be openly dragged before the public assembly and confined until he pay what is due, according to the immemorial usage of the country (decāchāra.)” Preventing the prisoner from performing natural evacuations, is thus prohibited by the same author :—“When a prisoner has need of ejecting urine or fæces, he should either be followed (at a distance) or dismissed on security.” *Security*, by leaving his son or other relative to be a prisoner in his stead.—*Vyavahar Mayukha*, Chapter V. Section IV.

12. Bṛhaspati declares :—“The sons must pay the debt of their father, when proved, as if it were their own (that is, with interest); the son’s son must pay the debt of his grandfather (but) without interest, and his son (that is, the great grandson,) shall not be compelled to discharge it (unless he be heir and have assets).” So Yajnavalkya :—“The father being gone to a foreign country or deceased (naturally or civilly), or wholly immersed in vices or (difficulty), the sons or their sons must pay the debt ; but if disputed, it must be proved by witnesses.”

14. Narada :—“A father being dead, his sons, whether after partition or before it, shall discharge his debt in proportion to their shares, or that son alone who has taken the burden upon himself.” Katyayana :—“If any debts exist

against the father, his son shall not take possession of his effects. They must be given to his creditors, and if he die without wealth, still his son must pay his debts." *Wealth* must be connected to *without*, the meaning is (if he die) without wealth. Brhaspati :—"The father's debt must be first paid, and next a debt contracted by the man himself, but the debt of the paternal grandfather must even be paid before either of those."

15. Yajnavalkya :—"A son need not pay in this world money due by his father for spirituous liquors, for lustful pleasures, for losses at play, nor what remains unpaid of a fine or toll (*culka*), nor anything idly promised."

17. And first of all, he who has received the estate, on failure of him, the person who takes the wife, and on failure of him, the son possessed of unalienated wealth (*ananyashrita*). If there be none, it must be paid by the grandsons, but the principal only. If they be not in existence, then the great grandson, the wife, daughter, or other heirs (*rikthinah*), if they have received the estate, must pay the debt. Such is the meaning. It is not to be paid by the great grandson, the wife or the others, if they have not taken the estate. But receipt of ever so small a portion of the estate, imposes the liability of liquidating the debts to whatever amount. For there is no such law as (that payment shall follow only on receipt of property) equal or more than equal (to the debt to be paid).—*Vyavahar Mayukha, Chapter V. Section IV.*

5. The distinction in slaves are laid down by Narada :—"One born (of a female slave) in the house (of her master); one bought; one received (by donation); one inherited (from ancestors); one maintained in a famine; and, like him, one pledged by a (former) master; one relieved from great debt."

7. "Paying the debt with interest, a debtor is released from servitude."—*Extract from Vyavahar Mayukha, Ch. X.*

38. The same author says :—"6. "A competent surety must be taken from each party for the decision of the dispute." *The decision of the dispute, the satisfaction of the judgment.* Katyayana specified who are not to be received in the matter of security :—"Neither a master, nor an enemy; nor in like manner the master's foreman; nor one confined, nor in like manner one sentenced to punishment; nor one of doubtful

character at any time ; neither an heir, nor a poor man ; nor even one obliged to dwell elsewhere ; nor one appointed on the king's business ; nor an ascetic ; nor he who is unable to liquidate the claim of the individual, and a sum equal to it, as a fine to the king ; nor one unknown, are to be taken (as sureties) in matters requiring security." *Confined*, bound in fetters, or the like. *One of doubtful character*, one addicted to particular vices. *An heir*, sons, grandsons, and others entitled to take a man's estate. *A poor man*, one indigent, obliged to *dwell elsewhere*, one turned out of the country. Yajnavalkya :—" But the being security, contracting debts, and giving evidence between brothers as well as between man and wife, and likewise a father and son, if they be un-separated, is not recorded."

39. In default of security, Katyayana says :—" If a party be unable to furnish a competent surety, he is to be guarded, and at the close of each day, is to furnish wages for the payment of his guards." The same author adds :—" A man of the twice-born classes, who is deficient in security, shall be guarded by men accompanying him out of doors ; but they shall confine in prison Sudras and the other (low castes) who cannot give security."—*The Vyavahar Mayukha, a Complete Treatise on Hindu Law, by Nilakantha Bhatta, Chapter I. Section I.*

17. The same author defines those who are exempt from confinement :—" Persons standing upon a tree or hill, or situated upon an elephant, horse, carriage or vessel, and one standing in a dangerous place, are all exempt from arrest by those enforcing a demand ; as well as one afflicted with sickness, and one suffering under misfortunes, and one employed (as a minister of religion) by Yajamanas."—*The Vyavahar Mayukha, a Complete Treatise on Hindu Law, by Nilakantha Bhatta, Chapter I. Section I.*

7. Brhaspati :—" This rule concerns an acknowledged debt ; but he who contests the demand, shall be compelled to pay, on proof in court by written evidence or oral testimony." When the debtor appeals to judicature, or when the demand is unliquidated (or doubtful, sandigdha), he shall never be constrained by the mere act of the creditor ; and he who constrains a debtor thus exempted from such constraint, shall be fined according to law." *Constraint (ásedha) imprisonment not against the king's order.* He adds :—" A

debtor is considered as appealing to judicature when he says, "I will pay whatever shall by law be declared to be due."

Katyayana :—"Any creditor who harasses a debtor appealing to judicature, shall forfeit that claim and pay an equal fine." Brhaspati :—"Should any person take upon himself to act in a disputed matter, without having first made known his case to the prince, he shall be seized and sentenced to punishment, neither shall his claim be awarded."—*Extract from Mr. Stokes' Hindu Law Books, Vyavahar Mayukha, Chapter V. Section IV.*

8. Yama :—"If a rich debtor, through dishonest perverseness, pay not his debt, the king shall compel him to discharge it, and may take from him twice the sum (as a fine)." Yajnavalkya :—"A debtor shall be forced to pay to the king ten in the hundred of the sum proved against him; and the creditor having received the sum due, must pay five in the hundred (towards defraying the charges of judicature). Ten in the hundred, that is, ten besides (or over) every hundred (awarded to his creditor). A tenth share (from the debtor cast) and a twentieth (from the creditor) is here meant. The result is that these two shares belong to the king, and the balance goes to the creditor. Taking a tenth share, relates to a poor debtor; for in respect to a rich one Narada records this distinction :—"But if a rich debtor, through dishonest perverseness, pay not his debt, and the king be forced to cause payment, he may then take twenty as his share," meaning twenty in the hundred.

9: When more creditors than one are called together against one debtor, the order of payment is (to be as) thus laid down by Yajnavalkya :—"A debtor shall be forced to pay his creditors in the order in which the debts were contracted, after first discharging those of a Brahman or of the king." And in the Vivada Ratnakara we find these words of Katyayana :—"If there be many debts at once, that which was first contracted shall first be paid, after those of a king, or of a Brahman learned in the Veda." "If all the contracts were written in one day, the debts, payments, subsisting demand, and interest shall be equal, otherwise in order of time." "That capital on which it is proved that the assets were gained and no other debt, must be paid by the debtor (out of those assets).—*Extract from Mr. Stokes' Hindu Law Books, Vyavahar Mayukha, Chapter V. Section IV.*

6. Narada :—“Should a debtor be disabled by (famine or other) calamity at the time from paying the whole debt, he shall be only compelled to pay it (in small sums) from time to time, according to his ability, as he happens to gain property.” Manu :—“Even by personal labour shall the debtor pay what is adjudged, if he be of the same class with the creditor or of a lower; but a debtor of higher class must pay it (according to his income) by little and little.” And though Yajnavalka says :—“He may compel a poor debtor of a low class to do work, by way of paying his debt: but a Brahmana, if indigent, must be made to pay gradually according to his income (or casual gains),” yet the word *Brahmana* here refers to any man of high caste. The same author adds :—“He who recovers an acknowledged debt by his own act (in any of the legal modes to which the debtor has tacitly consented), shall not be blamed by the king; and if the debtor shall complain of such an act before the king, he shall be fined and compelled to pay the debt.”—*Extract from Mr. Stokes' Hindu Law Books, Vyavahar Mayukha, Chapter V. Section IV.*

4. Taking security for a prisoner's appearance he may be set at liberty for meals; for the same author says :—“Should he have given a surety, he must be released each day at the hour of meals; and at night, if a surety have been given to such effect. But if he do not tender a surety for appearance, nor avail himself of such a surety, he must be confined in jail or delivered to the custody of keepers.” “A venerable trustworthy and virtuous man shall not be confined in jail; unrestrained, he must be released (or dismissed) under the obligation of an oath.”

5. Brhaspati :—“After the time of payment has past, and when the interest ceases (on becoming equal to the principal); the creditor may either recover his debt or require a new writing in the form of wheel interest (*chakraviddhi*).”—*Extract from Mr. Stokes' Hindu Law Books, Vyavahar Mayukha, Chapter V. Section IV.*

17. The same author defines those who are exempt from confinement :—“Persons standing upon a tree or hill, or situated upon an elephant, horse, or carriage, or vessel, and one standing in a dangerous place, are all exempt from arrest by those enforcing a demand; as well as one afflicted with sickness, and one suffering under misfortunes, and one employed (as a minister of religion) by Yajámanás.

18. "But women upon whom their families are dependent, profligates, and harlots, and those who are expelled from their families, or degraded, may be summoned." "Having well examined the charge, the king in weighty matters may summon, but in a gentle way, even those who have withdrawn (as hermits) to the woods, and the like of them." Having ascertained the time and comparative importance of the charge, the king may summon even those who are sick, causing them to be brought slowly in carriages. In some copies, they read, by a messenger.

19. A person who being called does not attend deserves punishment, even as Brhaspati says:—"Where a person possessed of relatives or family, from arrogance neglects to go where he is called, let them deliberate upon his punishment in proportion to the cause at issue." Katyayana specifies certain grades of fine for corresponding sorts of complaint. In petty causes the fine shall be fifty, but in the middling, not lower than a hundred (panas), and in great causes, never less than five hundred.

22. In some cases, the absence of a deputy is enjoined by the very same author: "(In prosecutions for) killing a Brahmin, drunkenness, robbery, adultery with a spiritual preceptor's wife, killing a man, theft (steaya), touching another man's wife, and also eating forbidden things; in charges for abduction or ruin, of a virgin assault, and forgery as well as injury to the king, a substitute (pritivádi) is not to be given; the doer of the act shall defend his cause himself." The word *steaya* is used a second time with a view to a more particular prohibition of an attorney. A *substitute*, a deputy (for attorney.)—*Extract from Hindu Law, Vyākahar Mayukha, Chapter I. Section I.*

If a man have a debt to recover, he consents to give up a certain share of it to the chier, who thereupon proceeds to coerce the debtor, but this process is often one of rival bidding for the chief's favour. Powerful guarantees will carry the thing through without appealing to the chief, but this is merely a supplying of his place by another; as a general rule, severity in the exercise of justice cannot be complained of.—*Report upon the general condition in the year 1842 of the Province of Kattywar by Captain George Legrand Jacob, Acting Political Agent in Kattywar.*

The creditor might practise upon the superstitious fears of his debtor by sitting in dharna at his door, might (some-what after the Roman fashion) drag him before the public assembly and then put him into confinement and make him work. But violence seems to have been regarded as inappropriate, except in the case of clearly dishonest debtors. To all others the Hindu Law is singularly lenient. A respectable man is to be released on his promise confirmed by an oath that he will pay when he can, and for this purpose even a Sudra may be respectable. If a debtor is prevented by any calamity from paying punctually, he is to be constrained to pay only by small instalments as his means enable him.—*Mr. Raymond West's suggestions on the Land and the Law in India.*

Insolvent debtors occasionally discharge the obligation by service to their creditors. He is allowed to treat him under such circumstances as he would any other slave, but the period is temporary in proportion to the amount of the debt. Should the debtor die before the expiration of the contract, his son takes his father's place. His wife does not become the creditor's banthee, but in the event of no male of his family remaining, the females must discharge the debt by money or service. It is discretionary with the creditor to accept or refuse ransom offered during the period of service. In some parts of the Kanara and Mysore country it is customary to enslave even the posterity of a debtor, if a Mhar. The Native Government did not enslave debtors for balances due, D. K. * * *

* * * Insolvent debtors should be emancipated whenever the amount of the debt may be forthcoming, D. The sowkar must be indemnified; sometimes the Government will interfere and emancipate the debtor, D.—*Steele's Customs of Hindu Castes.*

1. These sowkars, with rare exception, had their own establishments to recover the money lent. They generally ordered their sepoya to sit "dharna" at the house of their debtors until they make payment. They often took the law into their own hands, apprehended their debtors, brought them to their own houses, sometimes ill-treated them, and in fact used every means to recover their dues. They seldom resorted to Government for the recovery of the money lent. It is the debtors who often complained to the Government for the ill-treatment they received from these

sowkars, and the latter were often warned not to use cruel or other unjust means to recover the debt. I am told that when a debtor admitted the debt, or when it was proved, he was simply ordered to pay it, and the order was never executed by the Government. The sowkars recovered it in their usual way. To sit "dharna" at day time, to attach the person of the debtor, and to detain him at his house were no offences.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

There was then no Limitation Act, and no debtor could be absolved from the payment of the debt, unless he actually pays it. It is inculcated in the Hindu Law that the debtor shall not be admitted into heaven as long as the debt remains unpaid. The spiritual happiness (the sole aim and end of everyone) cannot, it was thought, be attained unless the debt really contracted be paid. Therefore, as far as the payment of debt was concerned, the thought of deceiving the earthly tribunals seldom crossed their minds. Sons in the Hindu Law are directed to pay the debt with interest and grandsons without interest, that by their so doing the debtor may be relieved from hell, where otherwise he is doomed to live, but the bonds of religion have now become all loose. The illiterate and ignorant "Kunbis" are now often found to tell deliberate lies before the court on oath for paltry things. The ignorant are often found openly to say that the Hindu gods have now lost their powers, and therefore they can do them no harm. The oaths which were once considered binding are now recklessly taken; so much so, that to put a witness on oath or solemn affirmation has become a real farce. The consequences of this demoralization are indeed deplorable.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

8. There were then no regular courts nor any sure or certain means of recovering the money lent. Even in the days of the Rajas of Satara there were no fixed rules for the execution of decrees. Complaints of civil nature were then usually made to the patels of the village, who were then very influential men. So much respect was then paid to patels that Mohadji Scindia, after he had obtained so much renown in the field, solicited his master, the Peishwa, to confer upon him the title of a patel. These patels, with the assistance of some neighbours or arbitrators, disposed of the complaints made or referred to them. Private settle-

ment by अडोसी पडोसी (or neighbours,) was then most encouraged, and resort to Government (court) most deprecated. The money-lenders in fact expected very little assistance from Government to recover the money lent. Those, therefore, who had regular establishments as well as very great influence, followed, as a rule, the profession of money-lending, and they usually lent to those who had good credit.—*Extract from the Tāsgaon Sub-Judge's Report, dated 14th August 1875.*

MAHOMEDAN LAW OF IMPRISONMENT FOR DEBT.

8. If a debtor, on being sued, acknowledge the debt, he must not be immediately imprisoned; but if he deny, and it be established by evidence, he should be committed forthwith to jail.

9. If, after judgment, there should be any procrastination on the part of a debtor who has been suffered to go at large, and he may have received a valuable consideration for the debt, or if it be a debt on beneficial contract, he should be committed to jail, notwithstanding he plead poverty.

10. But if the debt had been contracted gratuitously and without any valuable consideration having been received (as in the case of a debt contracted by a surety on account of his principal), the debtor should not be imprisoned unless the creditor can establish his solvency.

11. It is left discretionary with the judicial authorities to determine the period of imprisonment in cases of apparent insolvency.

12. But the liberation of a debtor does not exempt him from all future pursuit by his creditors. They may cause his arrest at a subsequent period on proof of his ability to discharge the debt.—*Macnaghten's Mahomedan Law, Ch. XI.*

ENGLISH LAW OF IMPRISONMENT FOR DEBT.

The following provisions are taken from 32 and 33 Vic., c. 62 entitled an Act for the Abolition of Imprisonment for Debt.

32 and 33 Vic., c. 62, (*An Act for the Abolition of Imprisonment for Debt, for the punishment of fraudulent debtors, and for other purposes*), 9th August 1869.

PART I.

Abolition of Imprisonment for Debt.

4. With the exceptions herein-after mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment :—

1. Default in payment of a penalty, or sum in the nature of a penalty other than a penalty in respect of any contract.
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace.
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control.
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order.
5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order.
6. Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made :

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year ; and secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and impri-

sonment of the person making default in paying such money.

5. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court :

Provided—(1) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions ; that is to say :—

- (a). Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued.
- (b). Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed fifty pounds, exclusive of costs.
- (c). Be exercised only as respects a judgment of a county court by a county court judge or his deputy.

(2). That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just.

The following are some of the previous provisions of the law on the subject :—

By 7 and 8 Vict. c. 96 s. 57 it is enacted that no person shall be taken or charged in execution upon any judgment obtained in any of Her Majesty's superior courts or in any county court on other inferior court in any action for the recovery of any debt wherein the sum recovered shall not

exceed the sum of £20 exclusive of the costs recovered by such judgment.

An execution by *ca sa* is a satisfaction of the debt at law, and equity will not lend assistance—*Horn v. Horn*. Amb 79.

A defendant cannot be taken twice in execution on the same judgment though he was discharged the first time by plaintiff's consent, upon an express undertaking that he should be liable to be taken in execution again, if he failed to comply with the terms agreed on.—*Blackburn v. S. art*, 2 East 243.

The discharge of a defendant from custody under *ca sa* operates in law as an absolute satisfaction of the judgment.—*Catlin v. Kernot*, 3 C. B. N. S. 796.

In England, no debtor, generally speaking, can be imprisoned for a debt under £20; neither can the judgment-creditor execute all the writs of execution at the same time. "The general rule is, that imprisonment is a satisfaction for the debt, unless the debtor die in prison, or escape, or be rescued; and hence, after that kind of execution, the creditor cannot seize his goods and lands also. Again, where a writ of execution against the real estate has been executed, the debtor's person, or personal estate, cannot be taken. But after taking the personal estate, either the person or the real estate may be taken."

In the English county courts, a debtor who has no goods, and does not pay at the time ordered, may be committed to prison for not more than forty days, if it be proved that the debt was contracted fraudulently, or without any reasonable prospect of his having the means of payment. This imprisonment, however, is no satisfaction of the debt.—*Extract from Lord Mackenzie's Roman Law*, pp. 337 and 38.

SCOTTISH LAW.

In Scotland, imprisonment is not permitted for an ordinary debt under £8 6s 8d.; but all modes of execution are concurrent, so that the judgment-creditor can imprison the debtor, attach his debts and goods, and adjudge his real estate at the same time for the same debt.—*Extract from Lord Mackenzie's Roman Law*, p. 338.

FRENCH LAW.

*Code Civil.**Of personal arrest in a Civil Matter.*

Decreed 13th of February 1804. Promulgated the 23rd of the same month.

2059. Personal arrest takes place, in a civil matter, for stellionate.

Stellionate is—

Where a person sells or mortgages an immoveable, of which he knows himself not to be the owner.

Where a party offers as unencumbered, property mortgaged, or where he declares the mortgages as less than those with which such properties are actually charged.

2060. Personal arrest takes place in like manner :—

1st. For necessary deposit ;

2nd. In case of restitution, for abandonment of inheritance, ordered by the court, of an estate whereof the proprietor has been despoiled by force, for the recovery of the profits which have been received during the unlawful possession, and for the payment of damages adjudged to the proprietor ;

3rd. For the recovery of money entrusted to the hands of public persons appointed for that purpose ;

4th. For the production of things deposited with sequestrators, commissaries, and other bailees.

5th. Against judicial sureties and against the sureties of persons liable to arrest, when they have been subjected to such arrest ;

6th. Against all public officers for the production of their minutes, when it has been ordered ;

7th. Against notaries, attorneys, and officers for the restoration of documents entrusted to them, and of money received by them for their clients, in the course of their duties.

2061. Those who by a judgment given on petition, and passed with the authority of a matter decided, have been sentenced to quit an estate, and who refuse to obey, may, by a second judgment, be personally arrested fifteen days after notice of the first judgment personally given or at the party's domicile.

If the estate or the inheritance be distant more than five myriameters from the domicile of the party sentenced, there shall be added to the fifteen days one day for five myriameters.

2062. Personal arrest cannot be directed against farmers for the arrears of the rent of rural property, if it have not been formally stipulated in the act of lease.

Nevertheless, farmers and under-tenants may be personally arrested, on failure by them to produce, at the end of the lease, the beasts in cheptel, seeds, and agricultural instruments, which were entrusted to them; unless they can prove that the deficiency in such articles does not proceed from their act.

2063. With the exception of the cases determined by the preceding articles, or which may be so hereafter by a formal law, it is forbidden to all judges to pronounce personal arrest, to all notaries and registrars to take acts in which it shall be stipulated, and to all Frenchmen to consent to such acts, although they should have been passed in a foreign country; the whole on pain of nullity, costs and damages.

2064. Even in the cases above set forth, personal arrest cannot be pronounced against minors.

2065. It cannot be pronounced for a sum less than three hundred francs.

2066. It cannot be pronounced against persons of seventy years of age, against women and girls, except in case of stellionate.

It is sufficient that the seventieth year has begun in order to enjoy the indulgence granted to persons of seventy years.

Personal arrest on account of stellionate during marriage does not take place except against women who have separate property, or when they have property of which they have reserved the free administration, and by reason of engagements which relate to such property.

Women who having community shall have contracted obligations jointly and severally with their husbands, shall not on account of such contracts be reported guilty of stellionate.

2067. Personal arrest, even in cases authorized by law, cannot be put in force except by virtue of a judgment.

2068. Appeal does not suspend the arrest pronounced by a judgment provisionally executory on giving security.

2069. Exercise of personal arrest does not prevent or suspend prosecutions and executions against the goods.

2070. No infringement is made of the particular laws which authorise personal arrest in matters of commerce, nor of the laws of correctional police, nor of those which relate to the administration of the public money.

ROMAN LAW.

In the time of the classical jurists, a judgment-creditor could adopt three modes of execution against his debtor: 1st, by imprisoning his person; 2nd, by attaching and selling his moveable goods; and 3rd, by attaching and selling his immoveable property. All these modes of execution were concurrent. After the abolition of the formulary system, when any one obtained a judgment ordaining the restitution of a particular thing, he could, if required, be put in possession of the thing *manu militari*—*Extract from Lord Mackenzie's Roman Law, page 337.*

Execution under new law.

JAVA LAW.

In Java imprisonment for debt has, I believe, been abolished by the Dutch Government. I am indebted for this information to Baron van Hoogenthorpe, a high executive official in Java, who is now on a visit to India.

NUMBER OF WARRANTS OF ARREST TAKEN OUT.

In the following table will be seen the results in cases where warrants are executed. I believe only about 10 per cent. of the warrants issued are executed, but there are no published returns as to the actual number of arrests ordered.

E.—CIVIL JUSTICE.

3—General Statement of Imprisonment of Civil Debtors in the Regulation Districts of the Bombay Presidency during the Year 1872.

District.	Number of warrants of arrest issued.	Number of persons arrested.	Number of prisoners committed to jail.	Average number of days prisoner was confined in jail.	NUMBER OF PRISONERS RELEASED.				
					By decrea being satisfied.	On request of person who put prisoner into jail.	On omission of such person to pay the subsistence allowance.	On disclosure by prisoner of all his property under Section 280 of Civil Procedure Code.	On expiry of period for which imprisonment is allowed by law.
Ahmedabad	1,283	295	26	35	67	182	9	2
Surat	428	220	34	9	69	107	3	3
Tanna	1,389	204	37	2	37	137	8	20
Ratnagiri	264	40	22	1	2	29	8	.....
Dhulia	1,017	181	12	10	18	127	22	.....
Ahmednagar	317	80	29	9	11	59	1	.....
Poona	428	427	25	27	101	242	10	21
Sholapur	359	106	34	6	31	60	4	1
Satara	461	226	12	16	51	134	6	.....
Belgaum	284	41	38	4	12	18	1	1
Kaladgi	21	31	3	...	13	2	.....
Dharwar	88	20	37	1	5	10	2	.....
Karwar	817	16	28	1	3	12	.....	.....
Total...	...	7,135	1,877	30	124	407	1,130	76	48
Results in 1871...	1,958	37	169	391	1,175	102	52

The creditor, who has failed to recover his claims by any

Year.	Number of debt suits decided.	Number of judgment-debtors arrested.	Number of debtors confined in the civil jail.
1869.....	5,501	774	107
1870.....	7,371	1,025	132
1871.....	7,871	884	150
1872.....	9,139	641	129

of the means mentioned above, has still one chance left;— he may obtain the debtor's arrest. From the statement noted in the margin, it will be seen that during the four years ending in A.D. 1872, the

average number of defendants in debt suits, calculating on a basis of one debtor to each suit, was 7,470. Of these, on an average 831, or 11·1 per cent, were arrested, and of the number arrested only 129, or 15·5 per cent., were imprisoned. Imprisonment on account of debt cannot, therefore, be considered common in Kheda. The following are the views of the district officers on the subject :—

The Subordinate Judge of Umreth states that of 100 applications for imprisonment, only one or two judgment-debtors are actually sent to the civil jail. In other cases, he adds, the creditors are satisfied with part payments or with simple promises on the part of the judgment-debtor to make such payments.

In the Mehmabad sub-division, the Subordinate judge states that the creditor often goes to extremes, imprisoning a debtor and selling all his property. In other parts of the district the reason why debtors are not imprisoned is, in this officer's opinion, because they are so poor that by this course the creditor would gain nothing.—*Extract from the Note on Kheda Money-lending.*

In the year 1869 a man obtained a decree (No. 738 of 1869 of this court) for Rs. 80 and costs to be satisfied out of the proceeds of the sale of mortgaged property and from the defendant. The amount of costs was Rs. 17-13-5, so the amount of the decree was Rs. 97-13-5. This decree was executed nine times. The cost of execution was Rs. 67-2-0, and the sum recovered under execution was Rs. 31-4-6. Thus, after nine executions, the amount still recoverable under the decree is Rs. 133-10-11. Another plaintiff obtained a decree in the year 1868 (No. 360 of 1868 of this court) for Rs. 60 and costs Rs. 14-3-9. He executed it nine times; the cost of execution was Rs. 24-8-1, and the

sum recovered after decree out of court was Rs. 15, the receipt of which was acknowledged. The amount now recoverable under the decree, after nine executions, is, therefore, Rs. 83-11-10. In a third case a plaintiff obtained in the Ghornadi Court (now abolished) a decree for Rs. 37-11-0 and costs Rs. 6. In the year 1860 he executed it ten times; the cost of execution was Rs. 7-9-4, and the sum recovered out of court was Rs. 25, so the amount recoverable under the decree is Rs. 26-4-4. In all these cases the various modes of execution allowed by the law were resorted to.—*Extract from the Talegaon Sub-Judge's letter No. 22, dated 14th June 1875.*

USE OF WARRANTS OF ARREST AND THREATS OF
IMPRISONMENT TO EXTORT INQUITOUS BARGAINS.

To

SIR WILLIAM MEREWETHER, C.B., K.C.S.I.,
Commissioner in Sind.

The humble Petition of Meer Mahomed Khan, son of
Meer Jam Khan, Talpur, of the Tanda of Meer Jam
Khan, Taluka Hyderabad.

RESPECTFULLY SHEWETH,

That your petitioner, as your honour is perhaps aware, is one of the Talpur dynasty and was closely connected with the late rulers of Sind, he being the present representative and head of the Khananee Talpurs.

That your petitioner's great-grandfather, Meer Moobaruck Khan, had a jaghir granted to him by the Kulloras (the ancient rulers of Sind), which extended to upwards of (9) nine lacs of jerrebs* of land, and the city of Khanápur Sanara, which was built by your petitioner's said great-grandfather, in the Taluk of Khipro, is in itself as large a town as Hyderabad.

That your petitioner's jaghirs, which, in consideration of his position, have been confirmed to him by the British Government for the maintenance of himself and his family, comprise a grant of the 1st class description, and extend to about 68,000 acres of land, being situated in the Hyderabad, Halla, and Guni Talukas in the Hyderabad District.

*A jer reb is equal to about half an acre.

That the land abovementioned actually now yields a produce annually to the extent of Rs. 53,500 as below described, viz:—

	Rs.	a.	p.
Nahajani	40,000	0	0
Bullal	4,000	0	0
Chhurrao	3,500	0	0
Bebri	1,500	0	0
(4) four gardens situated in the Hyderabad Taluka	4,500	0	0
	<hr/>		
Rupees...	53,500	0	0
	<hr/>		

Out of this sum about Rs. 6,000 may be fairly estimated for the costs of the clearance of the canals and the Huckaba charges, deducting which, there remain Rs. 47,500 a year, which ought to be available for the maintenance of your petitioner and his family.

That your petitioner is now about 64 years of age and has a son named Meer Jam, who is aged about 38 years.

That your petitioner and his son are both now seriously in want of a shelter capable of affording them some protection against the various writs of arrest which are now from time to time issued against them from the local courts at the instance of certain unscrupulous creditors, who are being influenced by a man named Gungaram Moolchund, who has possessed himself of your petitioner's jaghirs under various leases which he has fraudulently obtained from your petitioner.

That your petitioner had money-dealings with the father of the said Gungaram, whose father's name is Moolchund Leelaram, and on these dealings which continued by way of a running account, your petitioner was in the month of November 1869 found indebted to him in the sum of Rs. 22,000. On this latter sum the said Moolchund claimed Rs. 10,400 by way of interest.

In the month of July 1869, at your petitioner's request, Major Wallace, the then Collector of Hyderabad, out of mere compassion for your petitioner and his family, undertook to see an arrangement made by which your petitioner expected to find himself relieved of the grasp of certain money-lenders, whose iniquitous charges for interest are notorious.

That on the above occasion your petitioner handed over to Major Wallace a list of his debts which showed his liabilities to be as follows, viz:—

	Rs.	a.	p.
1. Moolchund Leelaram, principal and interest as above stated, viz., principal Rs. 22,000 and interest Rs. 10,400	32,400	0	0
2. Chandoomul Khamchund, viz., Rs. 15,100 principal and Rs. 14,210 interest	29,310	0	0
3. Summon, Hindoo	3,550	0	0
4. Chellaram, principal Rs. 2,410 and interest Rs. 2,230	4,640	0	0
5. Gopaldass, principal Rs. 1,200 and interest Rs. 750... ..	1,950	0	0
6. Ramdass, principal Rs. 2,100 and interest Rs. 900... ..	3,000	0	0
7. Preetumdass	3,050	0	0
8. Assoo	1,400	0	0
9. Jessoo	640	0	0
10. Rochoo	1,000	0	0
11. Kurmoo, principal Rs. 1,600 and interest Rs. 1,700	3,300	0	0
12. Jessoo	150	0	0
13. Sundry items	185	0	0
Total ...	84,575	0	0

Of these debts those numbered 1, 2, 3, and 6 were secured by the jaghir and gardens.

That on the above list being handed over to Major Wallace, he summoned the various creditors and advised your petitioner to find out a banker to whom *Nahajanees*, the largest jaghir of your petitioner, might be leased, and who might undertake to pay the claims of the respective creditors leaving the minor jaghirs in possession of your petitioner for the maintenance of your petitioner and his family.

That since the arrangement suggested by Major Wallace could not be carried out without a money-lender being found, who, as above stated, might become the lessor of your petitioner's jaghir, and who as such might undertake to pay off the claims of the creditors of your petitioner out of the revenue payable by him under the lease, your petitioner yielded to the request of the abovenamed Moolchund Leela-

ram, the creditor No. 1, who proposed that your petitioner should lease to him his *Nahajanee* jaghir for eight years at Rs. 12,500 a year, and that in consideration of this most favourable lease to him, he would give an undertaking before Major Wallace to all of your petitioner's creditors for the satisfaction of their debts, the interest on which he said would as against your petitioner cease from the date he gave such undertaking to them.

That your petitioner finding himself helpless and being desirous of dealing with one man rather than with numerous creditors, who were a source of great annoyance to him, and being influenced by the circumstance that all interest on the money due theretofore was to cease as soon as the said Moolchund Leelaram had given his undertaking before Major Wallace, he (your petitioner), to the great sacrifice of his interests, allowed the jaghir of *Nahajanee*, which is capable of producing more than Rs. 40,000 a year (it does really produce at the present day Rs. 40,000 a year, which fact can be easily ascertained by a reference to the khusras,)* to go to the above Moolchund Leelaram for Rs. 12,500 a year, and executed to him a written agreement for the purpose in his son Gungaram's name at his request.

That after the execution of the above lease, your petitioner took the said Gungaram, son of the said Moolchund Leelaram, to Major Wallace, and there he said that he had obtained a lease from your petitioner, and that he would give the necessary undertaking for the due payment of the debts due by your petitioner to the several creditors.

That Major Wallace accordingly summoned the creditors, who waited in a body on him, and one of these, named Chandoomull, proposed that the said Gungaram or his father Moolchund, should furnish a security to guarantee the due payment of the claims of the several creditors, since he would have the charge of the jaghir by which he was expected to realize an enormous amount of money within the period of eight years, which was the term for which the lease had been executed to him. He (Chandoomull) at the same time offered to pay the whole of the debt on the spot, if Gungaram and his father would only allow him to keep the lease. Gungaram, however, refused to do either; he, moreover, said he would not furnish a security, nor would he return the lease, whereupon Major Wallace informed your petitioner that he would refer the matter to your honour for

* Accounts.

orders before proceeding any further, and your petitioner as well as the others then left his court.

That after your petitioner left Major Wallace, the said *Moolchund Leelaram* came to your petitioner and threatened that he would enforce his claim for the sum of Rs. 32,400, for which he was a creditor, treating here, for the first time, his son Gungaram, in whose name he had only shortly before induced your petitioner to execute the lease, as a distinct person in interest, and having nothing to do with his debt, saying that neither Major Wallace nor your honour had any power to prevent their going into court and obtaining decrees for immediate execution against your petitioner's person and property.

Your petitioner therefore felt embarrassed, and did not know how to act, as he was assured by those around him, that in the event of this man going into court all the others would follow his example, and matters would then attain a crisis; your petitioner therefore was necessitated to yield to another proposal of the said *Moolchund Leelaram*, and for having done so your petitioner now feels extremely sorry; nevertheless he was without an alternative at the time owing to the threats held out to your petitioner and to the persuasions and false representations made use of by the said *Moolchund Leelaram*, who was no doubt, as your petitioner now believes, in league with some of your petitioner's *karbaris*, and it was thus that he so easily found the means of prevailing upon your petitioner in his old age, to obtain from him a most unconscionable and highly iniquitous agreement of which your petitioner begs to give a few details below, viz:—

The said *Moolchund Leelaram* now proposed that your petitioner should consent to give him a bond for Rs. 52,000 as follows, viz:—

1. Rs. 32,400 being the amount for which his name had already been given to Major Wallace as a creditor (this sum in itself was made up of principal and interest, *vide* above).
2. Rs. 12,500 for a supposed loss sustained by the said *Moolchund Leelaram* in a previous lease of your petitioner's jaghir to him in the year 1868 (this was altogether a fictitious claim and had no existence whatsoever, but as that sum was to be given to *Moolchund* by way of a premium to secure his engagement to the several creditors mentioned in the list furnished to Major Wallace, the sum was put down in the account as if it had been due on account of a loss sustained by the said *Moolchund* in the lease of the jaghir to him in 1868, by reason of damage done by the locusts),

and the bond merely contains a recital to the effect that the money was due on the open and running account.

3. Rs. 7,100 for future interest on the aforesaid sum of Rs. 32,400, as he said he would have to wait for his money for some time before he could get it back from the money which might become payable to your petitioner by him on account of the lease which your petitioner had executed for his benefit to his son for the eight years to come.

But this was not all that your petitioner was made to do. He now, in addition to his having executed the bond for Rs. 52,000, as above stated, was further made to execute another document granting a lease of his said jaghir *Nahajanee* for one year more, *i.e.*, in excess of the eight years for which it had been already leased to Moolchund's son Gungaram, for Rs. 10,000, containing an admission by your petitioner to the effect that that sum was due to the said Moolchund (it was never due nor had it any foundation in fact) by your petitioner on account of interest.

The circumstances under which your petitioner was made to sign this document simultaneously with the bond for Rs. 52,000 above mentioned were these, namely, that your petitioner was told by the said Moolchund, that the sum required by him (Moolchund) for the future interest for eight years, until which time he would hold the lease of your petitioner's jaghir, would be Rs. 17,100, out of which he said, he would insert only Rs. 7,100 in the bond, and for the remainder he would take a lease of the jaghir for an additional year. No mention whatsoever was made in the bond of the future interest, as he said that would be opposed to the arrangement which was going to be made through Major Wallace with the creditors in general.

That after the said bond and the document of lease were executed, your petitioner was made to sign a letter to Major Wallace's address to the effect that the sum due to Moolchund Leelaram was Rs. 52,000 and not Rs. 32,400 as previously shown in the list furnished to him, and further, that Moolchund Leelaram was now ready to stand security for the due performance of his son Gungaram's undertaking to pay the creditors, since he (Gungaram) was the lessee of the jaghir and not his father; and that therefore there could be no objections to accepting the latter as the surety for the former.

To this application your petitioner received the enclosed reply (in original forwarded) from Major Wallace, calling

upon your petitioner to explain how the additional sum of Rs. 19,600 was found due to Moolchund, and informing your petitioner that Moolchund would not be admitted as security on behalf of his son, as the two parties were really one and the same in interest.

On the above letter being received from Major Wallace, the same was shown to Moolchund, and he and your petitioner's karbaris prepared a reply for your petitioner to sign, which was to the effect that in the event of Major Wallace objecting to receive the additional claim for Rs. 19,600 on behalf of Moolchund, the original sum of Rs. 32,400 might be allowed to stand intact on the list furnished to him (Major Wallace) for the purposes of the composition through him, and that for the rest your petitioner would settle privately with the said Moolchund, and as regards the security matter, your petitioner wrote to Major Wallace on the assurance given him by Moolchund, that he (Moolchund) would furnish good and sufficient security in the person of another merchant, on Major Wallace's return from circuit.

That shortly after Major Wallace's return from the Districts he was relieved by Colonel Phillips, and that gentleman eventually refused to interfere, stating that it was a matter for the civil court and not for him, and it was from that day that your petitioner's difficulties re-commenced.

That your petitioner now called upon the said Moolchund to fulfil his engagement, namely, to procure your petitioner the discharges from the several creditors by giving them his own undertaking supplemented by such security as they might call for, and your petitioner was told by the said Moolchund that he was ready to do all that was needed, but that the only way to do it was to let those creditors go to court, and that when they had filed their actions, he would defend them on your petitioner's behalf and see that the heavy interest that they had charged was to be repaid by way of instalments, which he said would be fixed by the court, and that all further interest on the money would cease.

Several of your petitioner's creditors filed their suits, but the said Moolchund failed to do anything promised by him, and your petitioner being apprehensive of the consequence, was driven to compromise their claims by giving them fresh agreements payable by instalments, and allowing them all their charges for heavy and unreasonable interest, of which, before going to the court, they were quite willing to forego large portions, and the law charges too, which were incurred

entirely owing to the conduct of the said Moolchund Leclaram.

That on the instalments falling due these creditors commenced to obtain writs of arrest and attachment against your petitioner and his son's persons and property, and your petitioner and his son now are obliged to conceal themselves to prevent their being prisoners. This went on for some time, the creditors keeping at the doors of their residences armed with writs of arrest, for there was very little household property in your petitioner's house, and the jaghir had already been taken possession of by the man Moolchund.

Petitioner, under these circumstances, could not but appeal again to the consideration of the said Moolchund, who having obtained the lease of your petitioner's jaghirs on false representations, and having obtained possession thereof under such representations, had deprived petitioner of the possibility of raising money to pay the abovementioned creditors. Besides which the said Moolchund was bound to pay all the creditors without any further charge for interest, but did not do so, with the exception of only about Rs. 4,000, on which sum, too, he charged interest at Rs. 24 per cent. per annum.

That shortly after this was over, there came Chandoomull, creditor No. 2, with his decrees for Rs. 17,500 for execution against your petitioner, and your petitioner did not know what to do. At last he yielded to another most iniquitous request of Moolchund by giving him a further lease of his Nahajanees jaghir for an additional three years for the paltry sum of Rs. 5,333-5-4 a year, (it produces Rs. 40,000 a year, vide page 2 of this Memorial) on the said Moolchund undertaking to satisfy the said Chandoomull's said decrees by a ready cash payment out of the money payable on the additional lease just mentioned in advance. Moolchund, however, contrary to his agreement, paid only Rs. 11,000; Rs. 2,000 he said he must deduct on account of interest (though no interest was admissible on this sum), and he refused to pay the rest.

Your petitioner now being entirely helpless, at last resolved to take proceedings against the said Moolchund and his son, with the view to have the various agreements and leases obtained by them from your petitioner set aside, and for that purpose he engaged a pleader, but the said Moolchund and Gungaram prevailed upon your petitioner not to do so, re-assuring your petitioner that they were going to pay your

petitioner's debts, which, however, they subsequently again refused to do; and on your petitioner demanding the fulfilment of their promise, the said Moolchund proposed another trap for your petitioner, which was to the effect that your petitioner should sign a receipt in full discharge of his (your petitioner's) claim against the said Moolchund and his son Gungaram in respect of the various sums of money due to him (petitioner) upon the several leases of jaghir held by the said Moolchund's son under different terms, and as your petitioner could not agree to this, the said Moolchund, in order to prevent your petitioner from filing a suit against him, has now done his utmost to render it impossible for your petitioner to find the necessary funds to carry on a suit in a court of law.

In order to reduce the petitioner to a complete state of humiliation, he (Moolchund) induced certain persons, named Chellaram Allumchund and Lekhraj Chellaram, two of your petitioner's creditors, to take out execution of their decrees against your petitioner, and *they accordingly issued warrants of arrest both against your petitioner and his son for Rs. 500 and Rs. 400, respectively.* Your petitioner, therefore, was obliged to leave his residence in the Hyderabad Taluka in the month of January last and seek shelter at Kootree, where he believed the writs of the Subordinate Judge of Hyderabad would not be executed. *But your petitioner's men, however, in your petitioner's absence, with a desire to save his honour, executed a bond for Rs. 1,400, instead of the two sums above mentioned, viz., Rs. 500 and Rs. 400, and thus giving Rs. 500 by way of bonus to induce the said two execution-creditors to forbear execution of their decrees for the period of one year on interest of course at 38 per cent per annum, this being exclusive of the bonus above mentioned.*

In the same month of January last, the said Moolchund and Gungaram induced one Gopaldass Basuntrai to issue a warrant of arrest both against your petitioner and his son for Rs. 1,435. Under this warrant your petitioner was arrested at his residence at Meer Jam's Tanda, and in order to avoid any further disgrace your petitioner was driven to renew a bond to one Khemchund, son of Chandoomull Jeweller, whose claim against your petitioner as a mortgagee of one of your petitioner's gardens, was originally, including interest, only for Rs. 8,000. This he now claimed to be acknowledged for in a new bond with an additional sum of Rs. 4,000 by way of compound interest thereon, and in con-

sideration of your petitioner executing this fresh bond for the sum of Rs. 12,000 as aforesaid, your petitioner was allowed to obtain a fresh loan of Rs. 1,435 on interest at 31-4-0 per cent. per annum, with a condition of paying compound interest. This latter sum was paid by your petitioner in satisfaction of the decree of the said Gopaldass Basuntra, and the bailiff was accordingly removed from your petitioner's premises.

In the latter end of the month of January last, the said Moolchund and Gungaram induced a man named Kurmoo, son of Pagaro, to file suit against your petitioner for Rs. 3,174, and in execution of the decree that the latter obtained against your petitioner in the court of Mr. Aboo Vishnoo, the Subordinate Judge at Mahomed Khan's Tanda, the said Moolchund and Gungaram caused certain sums of money and another property of your petitioner to be attached in their hands, viz., Rs. 2,800 due by them to your petitioner on account of the lease of his jaghir *Behree*, and Rs. 3,000 payable likewise by them to petitioner on account of the lease of jaghir *Nahajanee*, which sum would not fall due to your petitioner until at least another three years, and besides the above sums of money, they further have caused your petitioner's dwelling house to be attached, and all of this was done at the instigation of the abovenamed Moolchund and his son, apparently with the object of causing the above detailed sums and premises to be sold as chattels for a trifle through a court, with a design that they might themselves become purchasers thereof. This property still remains under attachment, and will most probably be sold within a short period.

In this last case, although your petitioner made a defence, and not succeeding in it, he applied for instalments, yet the said Moolchund and Gungaram, who had considerable influence over the court, prevailed upon the Subordinate Judge, Mr. Aboo Vishnoo, to refuse your petitioner's prayer to be allowed to pay the sum by instalments. His judgment, which is remarkable for its tenor, in so far as he refuses to enforce the production of the documents in possession of the said Gungaram Moolchund and the fixing of the instalments, is herewith forwarded for your honour's perusal.

Owing to the fraudulent conduct of the said Moolchund and Gungaram, your petitioner has, as it would appear from the enclosed list, suffered a loss of about Rs. 11,000 in the

way of law charges alone, payable to the several creditors who proceeded to execute decrees against him.

The debts payable by your petitioner are now shown in the schedule annexed to this Memorial, and your petitioner cannot see his way through this affair unless your honour takes compassion upon him and induces the Government to mercifully extend to his miserable case such provisions of the law as were some time ago extended to the thákurs of Broach and tálukdárs of Ahmedabad and Oudh, *vide* Act XV. of 1871, Act XXIV. of 1870, Bombay Act VI. of 1862.

In conclusion, your petitioner prays your honour's forgiveness for the various imprudent and heedless transactions above described, as although your petitioner is not free from blame, yet your petitioner hopes your honour will make due allowance for his infirmities and the simplicity of mind of his son Meer Jam, and the facilities that the said creditors have had to practice fraud and imposition upon your petitioner.

For which act of condescending charity your petitioner shall as in duty ever pray.

MEER MAHOMED KHAN.

19th June 1873.

JUDGMENT.

No. 54 of 1873.

KURREUMCHUND, SON OF PAGARO Plaintiff.

versus

MEER MAHOMED KHAN, SON OF JAM KHAN, and JAM
KHAN, SON OF MAHOMED KHAN. Defendants.

Rupees 3,174-4-10.

The plaintiff sues to recover from the defendants the sum of Rs. 3,174-4-10, being the balance of principal and interest due on a bond for Rs. 3,750-0-0. The defendants had agreed to pay the money by certain instalments, and in default to pay the whole money at once.

It had been further stipulated between the parties that the defendants would, as each instalment became due, cause

the firm of Moolchund and Gungaram to undertake to pay it. Default having been made in the payment of the first instalment, this suit has been brought. On the 30th of January 1873 the defendants having not appeared, I ordered the suit to be heard *ex-parte*.

On the 15th of March 1873, they entered appearance through their wakil, and having shown cause for their former absence, I granted them permission to appear in the suit and reply thereto.

The defendants reply that in accordance to the stipulation in the bond sued upon, they caused Gungaram and Moolchund to undertake the payment of the money, but as they are not on good terms with them, this suit has been instituted through their instigation, and that as they are poor, they pray for instalments.

The issues raised in this suit are :—

1. Did Gungaram and Moolchund undertake to pay the money as agreed in the bond sued upon or not ?

2. Are there sufficient reasons for an award of instalments or not ? No other issue was sought by the parties.

The burden of proving the first issue is upon the defendants. It has been attempted to be proved that one Nubbee Bux, defendant's servant, requested Gungaram to pay the plaintiff Rs. 750 for the defendants. Gungaram denies this. Nubbee Bux was not produced to give his evidence in this suit. He is defendants' servant, and could have been produced without any summons. A show of attempt was made to produce him. Though the court was sitting here, application was made to summon him when there were only two intervening working days. This summons was sent to the Nazir of Hyderabad for service, but he was out of the way, and the summons came unserved. On the 5th instant, application was made for a fresh summons to him, simply with the object that the decision of the suit might be delayed. It was rejected. No attempt has been made to prove that Nubbee Bux had been authorized by the defendants to request Gungaram to pay the money to the plaintiff or that intimation of this was given to the plaintiff. The manner in which the examination of the witness Gungaram was conducted, showed that the defendants had no ground to stand upon. It appears that the defendants and the witness are not on good terms, and that litigation is to commence between them regarding the jaghir of Nahajanee. The witness has not been examined minutely as regards the

points involved in the issues, and it has not been attempted to be shown that the witness had turned against them.

From commencement to end the object of the defendants' wakil seemed to be to draw information regarding the Nahajaneé Jaghir, to create evidence that might be useful in the dispute between them, to get an insight into the original documents by which the witness holds the jaghir, and to harrass him into admissions regarding it. At last, when I found that no matter elucidating the points in dispute was being questioned about, I ordered the defendants' wakil that I would decline to allow any other question to be put which appertained to the dispute between the defendants and the witness.

In addressing the court, the wakil candidly admitted that there was no evidence for the first issue, which I find against the defendants.

Under section 194 of the Act, it is discretionary with the court to make an order for instalments or not. The court is bound to exercise that discretion in a proper manner and not arbitrarily. In this case the defendants are no doubt in involved circumstances, which is, I believe, owing more to carelessness and mismanagement than to any accidental losses. The defendants have jaghirs whose yearly rental is about Rs. 20,000. They receive yearly Rs. 6,000 from Gungaram, neither has it appeared in the case that they have been trying properly to get themselves out from their difficulties or to act with good faith towards the plaintiff. On the suit being filed they avoided the service of the summons and removed themselves to Hyderabad. In order to prolong the decision in the suit they raised false defence. They have assigned away property worth Rs. 2,800 for Rs. 1,400 after the suit, which shows their *malá fides* as well as gross mismanagement. They borrowed from Khemchund Rs. 6,500, and have not shown what they have done with the whole money. All these circumstances do not show that the defendants really intend to pay the plaintiff or to act in good faith towards him. It will be an unwise exercise of my discretion, if, under such circumstances, I award instalments. I decide the second issue against them.

Judgment for the plaintiff for Rs. 3,174-4-10 with costs. The decree to bear interest at 6 per cent per annum.

(Signed) ABA VISHNOO,

Tanda Nhavah, 9th May 1873.

Judge.

Submitted* to Government in original (*to be returned*), in reference to Commissioner's letter Nos. B. 3085 and 4509, dated respectively the 28th October and 8th November 1872, on the subject of the indebtedness of zemindars and jaghirdars in Sind.

2. This correspondence indicates another strong instance of the necessity of some early measures being taken to save those unfortunate gentry from the effects of their own folly and the extortion of money-lenders.—*W. L. Merewether, Colonel, Commissioner in Sind, 25th June 1873.*

I have the honour to submit, for the information of Your Excellency in Council, the accompanying true copies of correspondence on the subject of applying legislative relief to Sind jaghirdars who may be labouring under pecuniary difficulties. The Collectors of Kurrachee and Shikárpur have been consulted, and they admit the necessity for some such arrangement.

2. *Until the year 1862, the Sind jaghirdars were privileged persons and were exempt from processes of the ordinary civil courts.* This protection was afforded to them by the Circular Rules, which were confirmed by Government in their Resolution No. 1858, dated 20th April 1861, by which jaghirdars were forbidden to sell or encumber their grants like other hereditary property. On the introduction of Act VIII of 1859, however, the local privilege was suspended, and the Sind jaghirdars have ever since been liable to the mandates of the civil courts.

3. After giving the subject full consideration, I think that it would be advisable to introduce something like the Tálukdári Act into Sind for the protection of certain classes of jaghirdars which I shall enumerate hereafter. I am fully aware that, as a rule, class legislation is in itself objectionable, but looking to the exceptional circumstances of Sind, I think it justifiable.

4. *By their own acts Government have attached a considerable degree of rank and importance to certain jaghirdars in Sind, and if these persons are to be dragged into court for debt, all that has been done will be undone.* What I mean is that a court will of course attach the revenue of a jaghir without making any provision for the maintenance of the debtor, who will thus lose position and respect and be

* Petitions of Meer Muhammad Khan, vernacular paper, Judgment 54.

reduced to beggary, and although our ideas of the disgrace of debt, and our desire to let the law take its course are strong, still the above is hardly the position in which it is desirable to see people whom Government have delighted to honour.—Colonel Merewether, Commissioner in Sind, 24th August 1868.

HYDERABAD, 27th June 1867.

SIR,—I have the honour to enclose papers as per margin, for your consideration.

1. Petition from Meer Alee Bux Shahnanee to the Judicial Commissioner.

2. Copy of petition from the same to the Collector.

3. The jaghirs are in the first class, and by a sunnud granted in 1861, a re-grant in perpetuity of 171,300 bighas, will, on the Meer's death, be made to his heir, a son now about 16 or 17 years of age.

4. In his petition he states that he is indebted to an amount of Rs. 92,000, which he is unable to pay off, and prays that the Act for the relief of the talukdars in Guzerat (Bombay Act VI. of 1862) may be extended to the Province, in order that he may place himself under its protection, and obtain exemption from civil process, and be enabled to pay off his liabilities.

5. I consider that it is very desirable that an Act analogous to that above quoted, should be introduced into Sind. *There is no doubt that many of our large jaghirdars are deeply involved, and it appears to me to be good policy to relieve them without causing them loss of honour by having to pass through an Insolvency Court.*

F. PHILLIPS, Collector,
Hyderabad.

To
COMMISSIONER IN SIND,

Hyderabad, 21st August 1867.

3. I consider that some measure of relief for the Sirdars and large jaghirdars of this collectorate are most urgently neces-

sary, and I would beg to point out that at present we have not even the ordinary relief of an Insolvent Court available to debtors, who are nevertheless exposed to all the rigours of the Civil Procedure Code.

F. PHILLIPS,
Collector.

To
THE COLLECTOR OF HYDERABAD.

Hyderabad, 20th August 1867.

SIR,

As the Deputy Collector in charge of the district in which large jaghirs are held by Meers Ali Buksh Khan, and Ali Moorad Khan Talpurs, I have been repeatedly solicited to bring under consideration the helpless situation to which they have been reduced by an ever-increasing load of debt, and to represent the utter hopelessness of their endeavours, under existing circumstances, to relieve themselves of their embarrassments.

2. I have yielded to their urgent entreaties with much reluctance, knowing how difficult it is to justify any interference in such matters. I am aware that these are not by any means isolated cases, and that in taking them up it will be very necessary to guard against establishing a precedent which may not be applied generally; yet I think sufficient may be said to warrant an application to the Commissioner in Sind for relief of some kind for the class to which these Meers belong.

3. They have assured me that in spite of their utmost efforts, their debts are increasing on them, at a rate which threatens to overwhelm them entirely, and that they are powerless to avert the ruin.

4. The following information gathered from lists furnished me by the Meers will convince you that their alarm is but too well founded:—

The present liabilities of Meer Ali Buksh			
Khan are	...	...	Rs. 1,02,484
Of Ali Moorad Khan	...	...	„ 30,000
And of Bhoodo Khan	...	...	„ 72,790

Interest is accumulating on these large sums at rates

ranging as high as 5 per cent. a month, but averaging from $2\frac{1}{2}$ to 3 per cent., or from 30 to 36 per cent. per annum, which is sufficient to swallow up the whole of their incomes, even in most favourable seasons.

- 5. The circumstances under which the debts were originally contracted differed very materially from those in which the Meers afterwards found themselves placed—they were, so to speak, drawn into difficulties, and are at least as much deserving of sympathy as blame.

6. Up to the year 1862, these jaghirdars were privileged persons, not liable to the ordinary civil courts, as other members of the community. Sir Bartle Frere's rules, published under Circular No. 3205, dated 8th October 1855, and confirmed by Circular No. 224, dated 2nd February 1859, were designed especially to "improve this class of people, and to make it clearly understood that grants in jaghir could not be sold or burdened like other hereditary property," but subsequent and unexpected events have produced effects exactly opposite to those intended.

7. Only a certain portion of jaghir revenue was held to be available for creditors, and that by means carefully devised to uphold the position of the jaghirdars, and further, *although immunity from arrest is not explicitly laid down as one of their privileges, the inference is, that they were so protected.*

8. While the above rules were calculated to ~~the~~ ^{entire} extravagance on the part of the protégés, the security creditors being of a precarious nature and terminating ^{and} the life of the person incurring the debt, it may well be conceived that money was only procurable on exorbitant terms, but so long as the security remained unaltered, both parties understood their position.

9. *The introduction into Sind of the Civil Procedure Code, however, and the withdrawal of all protection from these jaghirdars quite altered the aspect of their affairs, and they were placed entirely at the mercy of rapacious money-lenders, who, thoroughly appreciating the vantage ground, pressed them on all sides at once, not, as I believe, to recover their claims, but to extort ruinous conditions for the extension of their loans.*

10. Judging from the general want of management, exhibited by jaghirdars of this class, and the extravagant rates of interest now being paid, I think I am within the mark

when I calculate that their liabilities must have doubled themselves since the commencement of 1862, and that five years hence, unless aid be sooner given, they will amount to far more than double what they now are.

11. It may be said that the Meers on whose behalf I now appeal are in receipt of good incomes, and are quite competent to make independent arrangements for the satisfaction of all claims.

12. Theoretically this may be so, but in practice great difficulty arises. *The Meers receive their incomes at stated periods, and any demands in the intervals may therefore be accompanied with usurious conditions, which amount even to extortion, for imprisonment being the alternative compliance is a necessity*; their embarrassments are very pressing, and as the money-lenders are their only refuge, the result may be very easily foreseen.

13. The Judicial Commissioner in his No. 1963, of the 16th November last, reported to the Commissioner in Sind his own conviction that the right of jaghirdars to mortgage their estates could not be limited by Sir Bartle Frere's rules, which want the force of law, and no doubt very effective relief might be obtained by dissipating these fine estates; but although the rules may not now be binding on our courts, the object contemplated by them, as I take it, remains the same, and Government would be far from approving of jaghirs, granted for the purpose of preserving the dignity of the old nobility of Sind passing piece-meal into the hands of grasping money-lenders.

15. That the revenue derivable from these estates is, under proper restrictions, sufficient for the liquidation of all claims in due course of time, will, I think, be allowed, and the Meers are only too anxious to place the management in other hands with that view.

16. Instances are not wanting where Government has come forward to the aid of landowners, whose estates have been hopelessly encumbered, by the enactment of laws, for their especial protection as in the case of the Ahmedabad talukdars, and under Sir Bartle Frere's administration of Sind, rules were framed for the management of such estates and the emancipation of their owners.

17. In their extremity, these Meers are willing to resort to any means for relief, even to the sale of a portion of their

estates, if that were possible, for *the law as it now is affords no protection to a debtor, while it places immense power in the hands of a creditor, who, since the repeal of usury laws, has been enabled to exact the most ruinous terms.*

18. I trust I have said sufficient to justify your submitting the case for the Commissioner's consideration, and that some means may be adopted to afford to this class of jaghirdars, that protection which, in the commencement, they were led to look on as their right, and the withdrawal of which has thrown them into inextricable difficulties.

I have, &c.,

C. F. BOULTON,

Deputy Collector of Mahomed Khan's Tanda.

Hyderabad, 21st April 1868.

SIR,

I have the honour to bring to your notice in continuation of my predecessors' Memorandum No. 1976 of 1868 to your address, that a decree of the District Court has been issued against Meer Ali Buksh Khan, and another against Meer Goolam Oolla Khan, and I fear that they are quite powerless to satisfy demands of these decrees.

3. In the meantime I beg to express my conviction that some action appears necessary to protect the two Meers named in my 1st paragraph from execution of judgment, and would earnestly recommend that the Local Government interfere to stay judgment of all decrees which may be passed against creditors of this class, previously to the passing of an Act by the Legislative Council for their protection.

R. WALLACE, MAJOR,

Acting Collector.

SIR,

I have the honour to acknowledge your letter No. 698 dated 21st ultimo, and regret that I cannot guarantee Government interfering in the manner suggested at the close of your letter.

2. You are aware that a limited protection is provided for certain of the higher Ameeris under Bombay Act V. of 1867.

The instructions of Government will be solicited on the subject of protection to others of the privileged classes in Sind.

I have, &c.,

W. H. HAVELOCK,
Commissioner in Sind.

To

THE COMMISSIONER IN SIND.

Kurrachée, 15th June 1868.

SIR,

I have the honour to acknowledge the receipt of your Endorsement No. 1206 of the 12th instant, and to state that I concur in Major Phillips' recommendation, and think the Act proposed ought to be made applicable to the zemindars of the Province as well as the jaghirdars. No doubt Bombay Act VI. of 1862 originated in the rules laid down by Sir Bartle Frere when Commissioner in Sind, for the relief of the Sehwan zemindars, and which saved two families from ruin. I have before recommended that those rules be embodied into an Act.

I have, &c.,

W. R. LAMBERT, Major,
Collector of Kurrachée.

Bombay Castle, 20th October 1868.

RESOLUTION.—The Right Honourable the Governor in Council is opposed to any class legislation in favour of the Sind jaghirdars to save them from the ordinary tribunals in respect to their property generally.

F. R. S. WYLLIE,

Acting Secretary to Government.

17. Should Your Excellency desire any specific examples of indebtedness amongst the jaghirdars, I may instance that of Meer Muhammed Khan Khanani (one of the four great Talpur families) of Tanda Jam near Hyderabad, and who besides small estates in the talukas of Halla and Guni possesses the jaghir called "Mahejain," one of the finest in Sind. He holds no less than 68,000 bighas, and the hereditary estate which will fall to his son Jam Khan is 42,000 bighas. Yet for years past this family has been in a state of abject want, constantly pursued by remorseless creditors, so that *the old man has been often a prisoner in his own house from fear of being arrested for debt.* The mortgages on his estates exceed one lac of rupees, and his lands are in the hand of money-lenders who rack-rent the cultivators to such an extent that a large number this year refused to continue on the estate and left it in a body.

18. Other instances like this might be multiplied. Mulluk Sirdar Khan, chief of the powerful Numria tribe, first among the first class jaghirdars, whose family intermarried with that of the reigning Ameers, is now so much in debt that he is in daily terror of being arrested. His jaghirs extend over 51,040 bighas much of which is very valuable rice land in the delta. He has an annual pension of Rs 3,035 in lieu of abolished huks and besides this the native town of Kotri belongs to him. I have also recently had a sad case brought prominently to my notice, in which Wadhero Baxu Khan, the chief of the Jamali tribe, has been imploring the assistance of Government to relieve him of the toils with which he is beset.

19. On the other hand, I may give an example of what may be done with a jaghir under careful management. Meer Ali Bux Shahwani of Tanda Mahammad Khan died a few years ago, leaving his estate in an almost desperate condition. The estate was mortgaged, his canals in a ruinous condition, himself in utter want. Yet he held a vast jaghir in different talukas aggregating no less than 342,000 bighas. He died owing Rs. 1,25,000 and his second son Ala Bux has succeeded to a re-grant of 171,300 bighas, all of which have been settled. *Being a minor*, he and his estates were placed under the management of Major Boulton, Deputy Collector of the Tanda, acting under the Collector's orders as administrator. The debts are being rapidly paid off, the canals are being cleared and improved, the land given

out on improving leases is annually increasing in revenue, and when the young Meer attains his majority it is calculated that besides an unencumbered estate he will receive a sum in cash of one and a half lacs of rupees clear savings.

20. I need not go on multiplying instances of the jaghirdar's indebtedness. Suffice it to say that throughout the whole of the Province all are in the same state of debt and call loudly for interference. The Collector of Hyderabad, the best authority, reports in a word that he only knows four in his district tolerably free from debt, and only two who may be called rich.

21. I hope I have now laid before Your Excellency sufficient facts to show the urgent necessity which exists for a speedy settlement of this important question, which has been far too long delayed already. When the British Government conferred on these nobles of Sind their hereditary possessions, it was with the view of securing them a decent maintenance, such as they were in their capacity of leaders of the people entitled to, and also with the object of securing their hearty allegiance to the British Crown. I need not point out how utterly we nullify all our intentions and wishes by allowing the jaghirdars to sink into a wretched and beggared caste, who hate us for the ruin that has befallen them, while the revenues which were intended for their support, and would for no other purpose have been alienated from a too empty treasury, merely serve to swell the gains of the money-lenders.

I have the honour to be, &c.,

W. L. MEREWETHER, Colonel,

Commissioner in Sind.

Can we expect that, by suddenly throwing both the persons and property of the agricultural population into the uncontrolled power of the money-lenders as we have done in Sind, we shall induce the people not to borrow money? To do so, is to presume that by an enactment the condition of the people can be so entirely changed that the *necessity* of borrowing money will be at an end; that they will all of a sudden become so prosperous as never to be in need of ready-money; that they will become so cautious as never

to sign preposterous amounts of interest to loans; and that, therefore, any sum to which a ryot acknowledges his debt, shall be and must be considered as equitably due by him. This supposition is absurd, and I have only to say regarding it, that it does not seem worth while to ruin the whole agricultural community, or, what comes to much the same thing, reduce them to the position of serfs, every penny of whose earnings beyond what is necessary for their bare subsistence must go to the money-lenders, merely to bring the country at once under a particular system of law-administration.

115. The mistakes made by the settlement, and the misfortunes which had attended the Muncher zemindars from 1864 to 1866 had, as I have before said, driven them into the hands of usurers. They were all in debt. On the establishment of the court, the money-lenders began to press them for their money, which it was needless to say they had not by them. Now the Mahomedan gentleman entertained almost as great a horror of being sued in open court for debt, as an Englishman in the same position. The idea was disgraceful to him. *The bania had, therefore, merely to threaten him with a suit and he signed any document which was put before him, trusting to Providence, or rather to fate, that he might be able to redeem his obligation some day or other.* When the next season came round the bania again called on him for his dues, which had in the meantime accumulated to a large amount, with interest fixed at 50 per cent., and a fine for unpunctual payment (which was usually additional interest calculated at more than 2,200 per cent.) After payment of the Government assessment, the zemindar looked round to see what means he had for satisfying his creditor. He had first to pay for the seed he had borrowed. He had taken, say, 15 khurrars, when the bazaar price was Rs. 40 a khurrar. The bania made him promise to consider this rate, Rs. 50 a khurrar, and to pay in return after the harvest wheat to the value of half as much again. The account would then stand thus:

Borrowed 15 khurrars at Rs. 40	=	Rs. 600
This sum, under the hypothetical price of		
Rs. 50 a khurrar	..	... = Rs. 750
Rs. 750 + 375	=	Rs. 1,125, which would purchase at
Rs. 40, 28½ khurrars.		

Therefore, the zemindar would have to repay nearly double the amount of grain he had received. After that was

settled, he had to pay away the remainder in staving off as much debt as he could, and renewing the rest at increased rates, perhaps on the security of his fields. In a short time he would come again to the usurer to borrow money to live on till the next season, and so the account went on and on, increasing day by day, till the victim showed symptoms of entire exhaustion. The usurer had, probably in the meantime, had large extents of valuable lands mortgaged to him, with possession also, the lands to be restored on payment of the sum due. Of course, the only way in which the zemindar could make any money, was by cultivating his fields, so when they were taken from him, all hope of recovery was lost to him. The usurer would begin to press harder and harder, and the zemindar, who was perhaps vainly clinging to the remains of his fields, would at last be taken into court and a decree against him obtained for the sum due, the consideration of the bond might be only a fraction of what was put down in it, but if the zemindar admitted having executed it, that was sufficient. It was no part of the judge's business to find out whether money had really passed, or (knowing perhaps full well that insufficient consideration had been received) to suggest to the zemindar (if he appeared) to make that plea. No, the bond being admitted, nothing more was required, and a decree for the full amount was passed.

116. Then, to squeeze more money from the zemindar, the money-lender would adopt an ingenious torture, which never failed to answer its purpose, and can only be characterized as a disgrace to the system that permits its use. Decree in hand, the usurer would call on his debtor and tell him either to pay the money, or to sign a fresh bond, containing even more outrageous conditions than had been exacted before. "If," he would say, "you decline this alternative, then I shall apply to the court for an attachment of your *moveable property*." The meaning of this is, "A bailiff of the court, who is perhaps a Hindoo, shall forcibly enter and search the recesses of your house. The privacy of your ladies, who have never left the house since they were children, shall be violated, under pretence of collecting your household furniture, and then your character and reputation are blasted for ever." *Under this threat any infamous contract would be signed by the unfortunate debtor*, and so matters went on, till the whole of the zemindar's property was at the mercy of his creditor. The

best portion the bania would probably retain in his own hands, on a nominal mortgage, part of the rest he would have sold up and buy in himself for a trifle. Even of the remainder which he would leave to the zemindar, he himself would take all the produce, giving the owner loans from time to time to keep him from starving; and the once prosperous landlord sank into a wretched and degraded pauper.

117. There are not, it is true, many men who have come to this extremity of misery; *the amount of extortion, however, which has been carried on by threats of putting the civil court in motion is untold.* I shall not anticipate the results, as I purpose giving at the end of this report an account of all the principal zemindars, and their present debts. I by no means, I must observe, attribute entirely to the court the present wretched state of the zemindars. Had not the settlement been bad, the revenue officers, obdurate as to remissions, and crops injured by plagues, the zemindars would not have allowed the money-lenders to get them so entirely into their clutches. What I complain of is, that when once the zemindars became involved, then *the court gave every aid possible to enable the money-lenders to suck their blood.*

163. Syud Izzut Ali possessed at the time of the settlement very extensive estates. The following were the principal:—

	Acres.	1st Assessment.	2nd Assessment.
In Deh Supnr ...	227	1,267	1,093
„ Arbi, half of ...	159	313	180
„ Aktur ...	201	686	665
„ Cutchi, half of...	404	1,061	1,061
„ Juhu, half of ...	305	621	621
Total...	1,296	3,948	3,610

The other half of the Arbi, Juhu, and Cutchi estates belong to Syud Gool Mahomed Shah. Besides this he had a large extent of kharif wheel land in Deh Wahur, and I believe also a little more in some other dehs. He tells me he owed only about Rs. 500 before the settlement, whereas his debts now amount to no less a sum than Rs. 8,467. He has been compelled to sell his estates in Juhu and Cutchi. The former brought him in some Rs. 3,400 with which he paid off the money with interest which he had borrowed to

pay for the expenses of the survey of his lands, and the assessment on waste fields, and on those whose crops failed. The latter fetched only Rs. 600 or thereabouts. The price was expended in paying assessments and staving off a decree which the court had issued against him. A warrant for his arrest was lately granted by the said court, so he tells me, at the suit of a bania, who had promised not to bring him into court. *The bond, however, was one of those referred to in paragraph 119, which has been registered with double fees, so he knew nothing about the matter till he was arrested, and then to save himself he gave a new bond at Rs. 100 per cent.* I have not been able to go into the truth of this, as the court was closed while I was at Sehwan, but I have no reason to doubt the substantial accuracy of his statements. There can, I fear, be no doubt but that banias are in the habit of obtaining new bonds on condition that they will not sue on the old one, and then fraudulently going into court and taking out decrees. A Hindu money-lender was being tried for this offence when I left the taluka. The Syud's holding now is only worth some Rs. 600, and I notice that eight of his fields in Arbi were unwatered this year. He is an excellent old man, and I am very sorry for him.

164. Syud Gool Mahomed Shah is his nephew. This Syud did not owe one pie before the settlement he emphatically told me. On the contrary, he had some Rs. 3,000 in his house. He now owes, that is to say, has signed bonds for Rs. 11,305. The following is the history he gave me of his falling into debt. "Blight" he said, "is what first caused me loss. I sowed 20 khurrars of seed of my own, and got 20 khurrars more from the banias. I had to sign a bond for the last at Rs. 80 the khurrar, which made a debt of Rs. 1,600. The whole of the crop was mildewed and failed. The debts bore interest at Rs. 48 per cent. Though my crops failed, I got no remission whatever, although my assessment was some Rs. 3,600 a year. My gross produce in that year was worth Rs. 500. The next year my Aktur fields did not emerge from the Muncher, and the rest of my crops were not so good as they might have been. I only got enough to pay my assessment, provide for myself for the year, and Rs. 200 over with which to satisfy my creditors, and I paid them it. My lands which were not left dry in time I had to pay for. The year after that my fields did emerge and I had first-rate crops, but then a lease I had held of the Deh Juhu came to an end; I had been pay-

ing Rs. 360 for it, and the new rates were Rs. 1,740. I admit that I had not made the best use of my time while I held the lease, and the greater part of the deh was still jungle. I had to pay upon it all, my uncle and I each holding half of it. The next year locusts ate my crops, and I only got Rs. 80 remission. In the meantime my bonds were rolling on, as I had no surplus to pay them off with, and in many cases a fine of one anna per rupee per diem had been entered for unpunctuality in payment. *The money-lenders then began to threaten me with legal proceedings and I had to give fresh bonds.* Since then I have been obliged to pawn my fields to them, sign new bonds from time to time, to keep my head above water, and this is how my debts have grown so large." This story shows how one mistake ruined a well-to-do man. Had we been liberal to him in the year of the blight, he might have been in prosperous circumstances now.

196. I would propose, and would beg of you to urge on Government the necessity of having an Act passed without the least delay like the Guzerat Tálukdárs' Relief Act, suspending the action of the civil courts as regards the zemindars, and putting the settlement of their debts and the management of their estates into the hands of an officer, the estates to be held by him till all the debts be paid. I have prepared a draft of such an Act, which is appended to this report. It is almost entirely the same as Bombay Act VI. of 1862 with differences in wording necessitated by the circumstances of the case. Unless this be done, there is no hope of the zemindars shaking off their embarrassments.—*Report by Mr. James, Assistant Commissioner in Sind, dated 23rd May 1872.*

Mr. James proposes an enactment similar to the Ahmedabad Tálukdárs' Act (Bombay Act VI. of 1862.) That Act, which discharges a tálukdár from all his debts, on the surrender of his estate for 20 years, was an extraordinary piece of legislation, and could hardly be justified except on the ground stated in the preamble (by many considered to be a fiction) that tálukdári estates are held on leasehold tenure, determinable at the pleasure of Government, and that they could not and cannot be lawfully charged, encumbered, or alienated. It is not to be supposed that such an enactment will ever be sanctioned in regard to the debts of land-owners generally.

The draft Act prepared by the Commissioner in Sind is modelled on the more moderate Broach Thákur's (Act XV. of 1871), which vests the management of the Thákúr's Estate in a Government Officer for a certain, or rather an uncertain, period, at the end of which all claims revive.

Perhaps the Government of India may be induced to pass a similar Act for the Sind zemindars and jaghirdars. But it is to be observed that, when the case of the Broach thákurs was under consideration, this Government recommended that any Act which might be passed should be made capable of extension to land-owners in other districts similarly circumstanced, and that this recommendation was disregarded. And if I remember right, the Broach Act met with considerable opposition in Council. There is no doubt that such special class legislation is objectionable in principle, and I doubt whether in the long run it does any good.

However, I am aware, that a similar question is at the present moment engaging the earnest consideration of the Governments, both of the N. W. Provinces, and the Punjab, and it will no doubt be shortly pressed by those Governments upon the attention of the Government of India. These papers will therefore arrive at an opportune moment, and will help to determine the Government of India as to the necessity of passing a *general* measure of relief. *The same evil exists all over India, and if anything is to be done it is much better that it should be done by one general enactment rather than by piece-meal legislation.*

(Signed) M. MELVILL.

2nd December 1872.

The following facts are taken from a case which I have decided some time ago. The judgment based on these facts has been confirmed in appeal:—

Suit No. 1705 of 1872, decided 26th July 1873. A decree was obtained by plaintiff against defendant in 1863 for Rs. 40-3-4, on a bond stipulating to give 14½ maunds of jowari in consideration of the defendant having then received 7½ maunds jowari. The plaintiff valued the jowari at Rs. 31-15-0. The rest of the amount is for costs.

Decree is dated 9th April 1863 for Rs. 40-3-4.

The first application for execution was presented on the 25th November 1865.

A warrant of arrest was issued on the 4th January 1866. The warrants then generally used to go out almost a month after its issue. The warrant was returned unexecuted in March, with an endorsement that the defendant was not found.

On the 10th February 1866, in the interval of issue and return of the warrant, the defendant passed a bond for Rs. 100 "for old account due."

This bond was obtained under the pressure of the warrant and in lieu of the amount due under it.

On the 19th December 1868 the defendant passed two bonds for Rs. 175, being the principal and interest due under the first bond.

On the 11th August 1869 we find the amount swollen to Rs. 200, on which day defendant passed a bond stipulating to supply 200 rupees' worth of cotton, or pay interest.

In 1871 the plaintiff gives a second durkhast in respect of the original decree, which on the face of it appeared unsatisfied, although we have seen that the first bond for Rs. 100 was extorted in execution of that decree. Nevertheless execution is issued a second time. Defendant's property is attached, and the same is proclaimed for sale. The defendant then pays Rs. 46 to plaintiff without any complaint. The sale is then stopped.

In the suit filed in 1872, in which these facts were unearthed, the plaintiff sought to enforce the bonds for Rs. 200 passed by defendant on the 11th August 1869. He framed the plaint as follows:—Rs. 200 for principal, Rs. 200 for interest, total Rs. 400, received on account two candies cotton Rs. 80; balance due Rs. 320.

It was established by evidence over and above the above facts that defendant gave four candies cotton worth Rs. 160 only a month or two after the date of bond.

These facts have been amply supported by the old bonds and records of execution proceeding. The defendant was an ignorant cultivator, a type of the ordinary class unrepresented. For no pleader would take his case, &c., without a rupee in his pocket, and would not budge to help the court to ferret out the evidence.

This is by no means an anomalous case. On the contrary, I consider that it fairly represents a large number of cases—Patas Sub-Judge's letter, No. 27, dated 31st March 1875.

Among a number of creditors the person who has acquired the good-will of the debtors for the time being,

carries away all the produce to the exclusion of other creditors. The favoured creditor is generally the person who last lent him money, or who has promised to lend him more money. When the older creditors get an inkling of such preference, they at once rush into court for attachments, and all sorts of trickeries are resorted to with court officials to get a priority of attachment. By the way, *these creditors generally keep three or four unsatisfied decrees against a man, some of them even 12 years old for occasions like these. Under pressure of executions they have, in many instances, realized the full amount of decree by obtaining new bonds or grain.* The writs are returned unexecuted with endorsements, property or person not found. No doubt, these things could not be done without the assistance of court officials, of whose morality I have formed a very low estimate. I have heard the most bitter complaints that executions are issued on decrees satisfied out of court. One of them lately burst into court and cried out most bitterly, that he had satisfied the decree twice, and this would be the third time that he will have to pay again. None of these have the means or the inclination to file a suit for refund of money paid out of court. Besides, they can procure no legal assistance, for the pleaders are dependent on the money-lenders for their business; and if a pleader takes up a case for the cultivator, not only he is not able to pay his fees, but the pleader would lose almost all his business from the money-lenders.—*Extract from the Patas Sub-Judge's letter, No. 27, dated 31st March 1875.*

In the execution of decrees the civil courts have no means of lessening the vexation and bother which the creditor intends to give his debtor, so as to extract money from him.—*Extract from the Talegaon Sub-Judge's letter No. 22, dated 14th June 1875.*

Money-lenders generally obtain warrants of arrest or writs of attachment, and takes the kárkun with the writs to the debtor, obtains money in cash, part of the decree or a few heads of cattle, or a quantity of grain, or a new bond, and sends the kárkun away, and such writs are returned by the kárkun with endorsements property not found or the party to be arrested not found. I have closely examined several execution proceedings and took evidence also, and this is the result I have arrived at. Sometimes the property is attached and proclamation issued for sale. The decree

holder then applies to the court to drop the proceedings, alleging that the matter is to be compromised, but, as a matter of fact, occasionally he has exacted something from defendant, for which no credit is given in decree. *Under the pressure of execution, mortgages are also obtained where there is anything worth mortgaging.* When immoveable property is put up to sale, the creditor, as a rule, buys it himself. It is to his interest to buy it for as little as possible, for so much money goes out of his decree which is a valuable source of revenue for him.—*Extract from the Patas Sub-Judge's letter, No. 27, dated 31st March 1875.*

3. With regard to the civil administration, I am of opinion that, considering the very low rate of pay allowed to the judges, the subordinate courts have done their work fairly well. There is no doubt in the Province a certain amount of feeling against the civil courts; but this arises in great measure out of a misapprehension, as was, I think, shown in the case of the Jacobabad Court, which Colonel Lock, Political Superintendent of the Upper Sind Frontier, proposed to abolish. Colonel Lock did not state that the justice of the civil court's decision was questioned, but it appeared that *hardship was felt with regard to the execution of decrees.* But the liability of a debtor to have his house and land sold does not arise from any peculiarity of the civil courts, but forms a part of law which would have to be enforced, whether the suit was brought before a civil court or before the Assistant Superintendent, or the Mukhtyárkár.

4. If any measures are to be adopted for the protection of debtors in the less civilized parts of the Province, the end will be attained, not by transferring the business to tribunals less trained for judicial work, but by making a change in the law. A great opportunity now exists for bringing forward any proposals in this direction, as the Government of India have recently submitted to public criticism their draft of the new Code of Civil Procedure.

5. The subject is no doubt an important one, and it has been brought prominently to my notice in connection with the Seluças and other zemindars, whose ruin is alleged to have been accelerated by the action of the civil courts.—*Letter of the Judicial Commissioner in Sind 1875.*

The most important alteration in procedure which I advocate is not easy to describe briefly and clearly.

In the illustrative case I have given above, it will be seen that not less than three decrees against the debtor arise out of a single loan transaction. In all though the debtor had no defence, the plaintiff's case was tainted with unfair-dealing. On one decree only was execution taken out, and that partially; the others were meant to be kept hanging in *terrorum* over the debtor's head. (I may mention that the average interval between decree and application for execution is nearly two years.) And it was fear of decrees or of execution which induced the debtor to sign bond after bond, each more ruinous than the other.

My object is that whereas at present a suit is but one stage in the debtor's road to ruin, it should be a complete and final determination of all matters in issue between the parties. The creditor should no longer be able to use the court as an instrument to get his debtor more into his power; it should be restricted to its legitimate functions, of ascertaining the fact and amount of debt, and of recovering as much of that amount as possible. And the debtor should feel that the court gives him the best chance of clearing up the state of his affairs and of relief from his embarrassment instead of feeling that the result of a suit is so certainly his utter ruin that it is to be avoided at any sacrifice.

The general rule of procedure, I think, should then be that the creditor, once having filed a suit, it should not rest with him but with the court to at once complete the process by recovering the decreed amount as far as possible; the judgment-debtor being obliged, if he has not means to discharge the debt in full, to come under the provisions of the bankruptcy law.

If this rule were an absolute one, it would be an improvement on the existing state of things, for it is better that a debtor should be stripped and set free than that he should be enslaved. But it would be impossible to forbid a compromise if the judgment-creditor is willing to accept something less than his decreed rights. It should therefore be the rule that any compromise should be recorded in court; should be embodied in the final decree, and should be enforced by the court.—*Extract from the Note by W. G. Pedder, C.S.*

The general condition of the people is at present so far prosperous that it is probable that the bare wants of life can be fairly satisfied; but it is impossible for a large por-

tion of the population to be free from debt as long as the system of borrowing, whether for the sake of display at marriage ceremonies or in order to obtain grain for sowing, now in universal favour, continues. The ordinary peasant, if he want money for any purpose, does not seem to consider whether it will ever be possible for him to repay the sum borrowed. He agrees therefore to the interest demanded, and leaves the future to take care of itself. At the same time all cry out at the want of consideration of the Government in allowing the money-lenders to be so oppressive.—*Mr. T. Bosanquet, C. S., Collector of Sholapur, No. 1752, dated 28th July 1874.*

This is not the place to discuss the measures, if any, by which a permanent improvement can be effected, but it might be worth while to enquire whether the people elsewhere, as here, complain of the liability of land for debt, *the use of unexecuted decrees in terrorem*, and the fraud in attachment and sale, and stigmatize the civil courts as the cause of their misfortunes and the curse of their country.—*Mr. T. C. Hope, C. S., Collector of Surat, No. 1776, dated 15th July 1874.*

On the other hand, the present state of almost hopeless insolvency of the cultivator has thrown them entirely in the power of the money-lenders on whom they entirely depend for seeds, for money to pay assessments and other expenses incidental to agricultural operations and also for their subsistence. Credit on any terms with money-lenders is almost a matter of life and death with the cultivator, and they voluntarily submit to any amount of imposition rather than shake their credit with the money-lenders. It is obvious that a power of this kind can hardly be overrated. I have often observed that a valid defence set up by a debtor in a suit frequently withdrawn, and a judgment passed with his consent. The only explanation he would give is that it is useless fighting against his sowkar, that he would be the sufferer even if he succeed in that solitary case.—*Extract from the Patus Sub-Judge's letter No. 27, dated 31st March 1875.*

On the 3rd of Chaitra Shake 1788 Pandu bin Pirajee Patel executed a bond for Rs. 100 to Shunker rao Appajee Godbolé the interest stipulated for in it being Rs. 24 per cent. per annum. When this bond was about to be time

barred the creditor sued Pandu on it to recover Rs. 175 as follows :—(See suit No. 214 of 1870.)

Principal Rupees	100	0	0
Interest	96	0	0
	<hr/>		
Total	196	0	0
Payment... ..	20	0	0
	<hr/>		
Balance... ..	176	0	0

And obtained a decree. In this suit the court expenses amounted to more than Rs. 24. *The debtor had no money to pay in satisfaction of the decree, he therefore executed a second bond to the creditor for Rs. 200 on the 9th of Magha Wadia shake 1791. When this second bond was about to be time barred a suit was instituted on it on the 16th April 1873 (see suit No. 434 of 1873) to recover Rs. 200 and interest Rs. 200, and a decree was obtained for Rs. 400 and costs which is not yet executed.* Court expenses in this suit amounted to Rs. 45-14-0. The following will show at a glance the history of the above debt :—

The principal sum borrowed	Rs. 100	0	0
Total of the interests on the sum borrowed	„ 272	0	0
Total of court expenses	„ 69	14	0
Interest on the court expenses	„ 24	0	0
	<hr/>		
Total ...	Rs. 456	14	0
Payment „	„ 20	0	0
	<hr/>		
Balance ... „	„ 465	14	0

The proportion therefore of the debt remaining due to the court expenses is as 352 to (Rs. 93-11-0).—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

The following case is taken from the Court Records :—

Appa bin Ganu Rajmane borrowed originally Rs. 25 from one Ranchod Marwari on a personal bond dated 2nd Chaitra shudha shake 1787 and on the 13th of Pousha shake 1788. Appa not having paid the money Ranchod sued Appaji and the surety Krishna Sutar on the bond for the recovery of Rs. 39, Rs. 25 as principal and Rs. 14 as interest, and obtained a decree. *Ranchod thereon attempted to enforce the decree against the surety Krishna only by attaching his person and*

property. The surety Krishna thereon passed to Ranchod a bond in his own name for Rs. 50, Rs. 39 as the amount of the decree, Rs. 7-4-8 as court expenses up to the decree, and Rs. 3-11-4 as court expenses after the decree. After the execution of this bond Rs. 18 were paid by the original debtor which were given credit to, the creditor however sued on the 9th June 1869 for the recovery of the balance Rs. 70 as follows :—(see suit No. 373 of 1873).

Principal Rupees	50	0	0
Interest	38	0	0
<hr/>			
Total ..	88	0	0
Payment...	18	0	0
<hr/>			
Balance...	70	0	0

and obtained a decree. The court expenses of this suit amounted to Rs. 11-3-7.

The surety against whom the creditor again intended to enforce this decree paid Rs. 80 to the creditor in satisfaction of the whole decree, on which Appa the original debtor it is alleged executed a bond to Appa bin Raghoo Patel for Rs. 99, out of which he paid Rs. 80 to the surety Krishna Sutar and Rs. 19 he took for himself. In this case if the outstanding debt be now considered as Rs. 80, the account may be stated as follows :—

Principal originally borrowed	Rs	25	0	0
Total of interest on the sum borrowed ..		43	10	5
Total of court expenses		22	5	7
Interest on the court expenses		8	3	7
<hr/>				
Total...		99	5	7
Payment...		18	0	0
The sum remitted...		1	5	7
Balance or sum still outstanding...		80	0	0

The proportion of the debt remaining due to the court expenses is as Rs. 49-4-0 to Rs. 30-11-2.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

When the threat to enforce the decree ceases to draw out more money from the debtor, further steps have to be taken. An application to the court is accordingly made for an order for the attachment of the debtor's property. In some parts of the district this step would seem to prove very efficacious:

In the Umreth sub-division the subordinate judge reports that on an average in one hundred applications for the attachment of property, the property is actually attached in 10 cases only. No property is found in 40 cases, and in 12 the creditor does not attend to take out the execution process. Of the remainder, 32 are withdrawn at the creditor's request, and 6 cancelled on the receipt of payment in full.

The issue of the orders for attachment would seem to be subject to the same abuse as the serving of summons. The local officers, who have written on the subject with but one exception, agree that at auction sales, held under the orders of the civil courts, the ordinary practice is for the judgment-creditor to purchase the property put up to sale. It is, therefore, the interest of the intending purchaser that the risk of competition at the auction sale should as far as possible be removed. With this object the officers of the court are said to be sometimes conciliated, and orders for attachment kept secret.—*Extract from the note on Kheda Money-lending.*

14. I have made some enquiries as to the execution of decrees, and the results are rather interesting; I give some of them. In the Coompta Subordinate Court 680 applications were made to arrest 862 people unless they paid the sums due; of these only 34 people paid the money due at once without being arrested, 440 were brought before the subordinate court, 196 could not be found, 117 were ill or made some arrangement with their creditors and were at their request not arrested, the warrants as to 15 are to be executed in 1875, while 34 people paid Rs. 1,537 rather than be arrested. Of the 440 brought before the court, no fewer than 226 after being brought up paid more or less what was due, and nothing more was done by the creditors. The total thus paid by them being Rs. 7,316; 12 were ordered to be imprisoned in the civil jail, and 202 paid nothing and no steps as to them were taken by their creditors. Of the 12 ordered to be imprisoned, 3 paid Rs. 286 rather than be imprisoned, and were discharged. The 9 sent to prison owed Rs. 2,156.—*Extract from the Kanara Acting District Judge's letter, No. 474, dated 17th June 1875.*

The sub-judges further report that only few decrees are readily satisfied, that persons are sent to jail, that they execute fresh agreements with their creditors, and that in a large number of cases houses and lands are sold in satisfaction of decrees.

It appears that it is more usual to sell lands and houses than moveable property, as cattle and furniture.

This shows either a forbearance on the part of the decree-holders or that the expense of bringing such moveable property to a distance for sale makes it easier for the creditor to whom the chattels are useful and essential to make a compromise with the creditor.

It would be interesting to learn at what sacrifices such new agreements are made.

One of the effects of the action of the civil courts may be taken to be the transfer of the ownership of a large quantity of culturable land and houses adapted to the use of ryots to a class who are not cultivators themselves.—*Extract from the Surat Acting Assistant Judge's letter, dated 27th July 1875.*

Not 30 per cent. of the sales are, I believe, *bond-fide* sales at all. They are mostly nothing, but the last step in a series of fraud by which the Marwaris contrived to do the ryots out of their lands. They are, in fact, mere private compromises by which probably the ryot—who originally borrowed Rs. 50 of the Marwari, for which moderate sum he mortgaged his field of a rental of Rs. 10 a year, but who has found this debt run up in a few years to the preposterous amount of Rs. 500—at last *driven by threats of the civil courts* and of being sold out of land, house, cattle, and all he possesses, and induced by false promises that when once the sowkar has got in name the land which he has long possessed in almost all else, he, the ryot, will be left in undisturbed occupation of it, consents in an evil hour to transfer to the name of the hated extortionee his hereditary acres. Well may the sowkar, who has purposely, before pushing his claim, run up the debt to an amount which he knew was crushing to the ryot, be satisfied to take, instead of his nominally owed Rs. 500, land worth, perhaps, only Rs. 200, and loudly will he boast of his moderation to the ryot. In but a small percentage of these sales will it, I believe, be found that land is *bond-fide* sold by one cultivator to another. Hence the immense and purely fictitious prices at which such lands are often sold. The very anomaly of the utter poverty of the people on the one hand and the fabulous amounts in appearance paid for such lands, amounting often to 100 or even 200 times their assessment, ought to open our eyes to the true nature of these transactions. One illustration of the truth of what I have said I will mention—a case which the other

day came to my notice in which land bearing an assessment of Rs. 12-12-0, which a year and a half ago was sold *bonâ-fide* by one cultivator of a small village to another for Rs. 50, has lately been nominally sold by its cultivator and owner to his sowkar for Rs. 1,500. Another proof of the worthlessness of these statistics for the purposes to which they have been applied, may be found in the fact that the price for which land is mortgaged bears no proportion to that for which it is sold, but actually often far exceeds it. The reason is plain. The mortgaging price is no more a *bonâ-fide* price than the selling price, and these mortgaging transactions are even more in the hands of the sowkars than sales. For the same reason, viz., to get the ryots hopelessly into their clutches and by the same fraudulent process the sowkar runs up the price of these mortgages as he does that of the sales. Under such circumstances, I do not think that any one knowing the country will look upon these unreal and fictitious transactions as any index of its prosperity.

In the margin is shown the general average rate as compared with its assessment at which land has been mortgaged or sold throughout the collectorate in the past year, and also some specimens of extreme prices paid. At first sight these results would appear favourable to a high degree, and would argue that the district is in a state of high prosperity, but I have shown above what their worth really is.—
Extract from the Ahmednagar Collector's Administration Report for 1874-75, No. 2132, dated 20th July 1875.

Average rate at which Jerayet land was mortgaged, as compared with its assessment.	Average rate at which Bagayet land was mortgaged, as compared with its Assessment.	Average rate at which Jerayet land was sold, as compared with its assessment.	Average rate at which Bagayet land was sold, as compared with its assessment.
15 times the assessment.	29 times the assessment.	7½ times the assessment.	17½ times the assessment.
Maximum rates at which land was mortgaged as compared with its assessment.	}	Taluka Pârner	108 times.
		" Jâmkhed	97 " "
		" Sangammer	338 " "
		" Akola	204 " "
Maximum rates at which land was sold as compared with its assessment.	}	Taluka Jâmkhed	100 times.
		" Newâsa	92 " "
		" Sangammer	188 " "
		" Akola	300 " "

USE OF WARRANTS OF ARREST TO ENSLAVE THE
DEBTORS AND THEIR FAMILIES.

Another very general complaint was that of *the Bheel farm-servants who are retained in a state of the most abject slavery by the Guzar cultivators of Nandurbár and Sháháda*. The position of this class and the means by which the civil court is brought to bear on them is ably described by Mr. Pritchard and Captain Probyn in the enclosed reports. They are in the same transition state as the Sonthals, on the introduction of railway works in Bengal. A general rise in the wages of labour has been taking place for some years past, but the railway works in Khandesh have been in the Eastern districts, and have hitherto affected the wild Western Districts but little; last year, however, large famine works were opened in the west, and these probably made the Bheels aware of the market value of their labour, and gave a tangible form to the discontent which has been growing for some years past. But the most important change in the condition of the Bheels is that which transferred their disputes with their masters from the Assistant Magistrate in charge of the district to the civil court. Under Act XIII. of 1859 the Magistrate had power to exercise an equitable discretion whether to enforce a contract of service or not. When this was found to be the case, the Guzar required his slave to sign a bond for a certain sum of money said to have been advanced, or he made him a partner in his farm under a stamped agreement, by which the Bheel was to receive a share in the produce in return for his labour, and at the end of the year he usually made out that the Bheel had eaten more than his share amounted to; if he demurred, the civil court was at hand to enforce the conditions of the bond, however unreasonable they might be. *So thoroughly in fact is the Bheel enslaved that it is now a common occurrence for one Guzar to sell him to another under pretence of transferring his debt. If he should be deeply involved and his mother's name entered in the bond as a security, he becomes a valuable property; for these poor people will submit to the greatest privations sooner than any indignity should be offered to their mothers. The threat to send his mother to Dhulia Jail would reduce the most contumacious Bheel to obedience.** * * *

It is only a question of time how long the patience of these people will last. A large public work commenced in the west, which would attract numbers of Bheels and compel the Guzars to enforce their bonds, in order to retain possession of their slaves, might precipitate an immediate outbreak; even so simple a cause as the removal of Mr. Pritchard or Captain Probyn from Khandesh might have the same effect. These gentlemen, though they have been unable to do much for them, have listened patiently to their complaints, and have shown the Bheels that they take an interest in their grievances. With such a simple, trusting race this goes a great way.

The author of "Rural Bengal" has given an account of the circumstances which led to the Sonthal insurrection. The Sonthals belong to the same ethnological family as the Bheels, and appear to be identical with them in every respect. Every cause which contributed to the Sonthal rebellion is now in active operation in Khandesh. *Report by Mr. Ashburner, Collector of Khandesh, dated 21st July 1870.*

Every Guzar has a bond on stamped paper purporting to be executed by his servant, acknowledging the loan of a sum of money the man can never by any chance repay. Directly an Awtya shows a disposition to leave a Guzar's service, his master files a suit against him in the civil court for the amount set forth in the bond. The Bheel, knowing he has no chance of success, does not appear to defend the suit. The court accordingly decrees against him, and a distress warrant follows; the poor wretch's few household goods are seized, any little ornament his wife may possess is taken from her, and he himself is arrested and carried off a prisoner to the Munsif's Court. *There his master, having reduced him to a state of utter helplessness, offers him his choice of returning to work or going to the Dhulia Jail.* He returns to service with his liabilities increased by the costs of the suit, of his own arrest, &c., and with no proper agreement with his master. It is no part of the duty of the court even then to see that his master is bound down to treat him fairly. He serves on for a few more months, or perhaps years, on a pittance of grain and the smallest quantity of clothing that will cover him, until tired out, he again strikes work; again his master rushes off to the civil court, and this time the Bheel is not even invited to have his say;

the former decree is still unsatisfied, and another distress warrant is issued without further inquiry. The first the Bheel hears of it perhaps is from the sepoy who has come to arrest him. And so it goes on from year to year. What is this man but a slave? what hope has he? what redress is there for him? He cannot appeal to the judge,* even if his friends manage to provide the money necessary, as he did not defend the suit originally brought in the Munsif's court. He is a mere chattel to be disposed of whenever his master may want money. *It is a common occurrence for one Guzar to sell his Awtya to another under the pretence of a transfer of the Awtya's debts.* A well encumbered Bheel, with a decree of the civil court out against him, is a more valuable commodity in the west than one whose liabilities are smaller.

† Another form of fraud commonly practised by Guzars with their dealings with Bheels, and one even more fatal to the Bheel than that described above, is the following:—A Guzar advances Rs. 40 (say) to a Bheel wherewith to buy a bullock, on the understanding that the Bheel and his bullock are to work on the lender's farm, the Bheel becoming a *gowandya* (or partner) in the concern to the extent of half a plough. A bond is made out for the amount advanced, plus 25 per cent. premium, plus very likely a further amount on account of old debts unjustly claimed. Interest at the rate of 24 per cent. is charged on the whole amount entered, and at the rate of 50 per cent. on the grain advanced for the Bheel's food till harvest time. The Guzar has besides the advantage of the Bheel's labour *free* for his share of the plough. He keeps the accounts and manages the sales, and cheats the Bheel to his heart's content in the division of the produce. So much so, that in all the cases I have gone into I only remember *two* in which a *Gowandya's* debt was not *increased* at the end of a year according to the Guzar's accounts, though none of them ever had more than food and clothes from their partner. At the end of the year there is a pretence of adjusting accounts. The first year the Bheel is put off with the argument that he has to pay for his bullock; next year, too, he gets nothing but clothes and food, and is told he has still something to pay. He asks for a

* Besides the Judge's court is 80 miles away, and months must pass before his complaint can be heard.

† I can produce hundreds of instances if necessary.

settlement of his account, and as a preliminary he is sent for a new stamped paper. His master and two or three "respectable" patels meet and talk his affairs over. A few soft words are said to him; and he is given money to buy his wife a new saree and a little liquor for himself. A new bond is made out, the contents of which he does not understand in the least, and he goes back to his work hoping for a bumper crop and better luck next year. He struggles on for another year or two, and then, feeling that the state of things is very unlike what partnership in a profitable farm ought to be, he determines to leave. Then, for the first time, he realizes the fact that his partner, or master rather, has his acknowledgment for Rs. 200, or more, that the bullock he had toiled for all these years is not his, and that he and all he has is at his master's mercy. The civil court is resorted to, and, as in the case of the *Awtya* described above, all goods are seized and sold, and he perforce becomes the master's slave.*

It may be well to remember that the Sonthal rebellion came out of a state of things precisely similar* to that now existing in the west of Khandesh, and that, though no indications of an approaching outbreak may have presented themselves here, neither did the Sonthals give a word of warning before they burst over the plains of Beerbhoom with an army of 30,000 strong to avenge themselves on the robbers who had robbed and enslaved them under the tacit sanction of civil law.—*Report by Mr. Pritchard, 1st Assistant Collector, Khandesh, dated 1st July 1870.*

*Instances of gross oppression of Bheel Awatwas and
Gowandiyas by Guzar and other*

Hoga bin Gaytya, Bheel; Eerjee Patel, Guzar, Patel of Murwad, Taluka Taloda. The Bheel says he has served

* The resemblance is exact. It was the abuse of the civil courts by usurers and the impossibility of obtaining relief through the courts from the state of slavery into which they had been reduced, that drove the Sonthals into rebellion. They (like these Bheels) endured serfdom in comparative content for years, until a great increase in the wages of day-labourers suddenly took place (the same has now happened in Khandesh), and they saw the prosperity of their free brethren, and then their yoke became galling and unbearable (*vide Annals of "Rural Bengal,"* pp. 228 and 250).

for 14 years and received Rs. 10 only and his food. The Guzar says that the Bheel has worked for him for 13 years, but he gave him Rs. 30 when he first came, and nothing more but food and clothes. He now holds his bond executed in 1868 for Rs. 175, and has obtained a decree for that money. Says that his agreement with the Bheel was for food only, so he has charged against him every year the most of his clothes, and that these charges with original advance and interest at 24 per cent., mounted up in 1868 to the amount entered in the bond.

On its being pointed out to the patel that slavery is not allowed by the British Government, and that 13 years' good work is a very sufficient return for an advance of Rs. 30, he agreed and gave the Bheel an acquittance.

Nanda bin Lakroo, Bheel; Nuthoo bin Kesho, Guzar. Patel of Sinda, Taluka Nandurbár. The patel says *he bought the Bheel from his former master four years for Rs. 42*; that the Bheel served him for two years and refused to work longer; that then having his acceptance for Rs. 96 he sued him and obtained a decree for that amount.

The patel admitted that many Bheels in Sinda now get Rs. 8 a month. He and the Bheel eventually came to terms, the Bheel receiving an acquittance in full.

Bajya bin Jayta, Bheel; Chablya bin Bondya, Bheel; Ragoon Guzar, Patel of Moda, Taluka Taloda. The patel admits that Bajya served him for 14 years and Chablya for 12 years, that the only money he ever gave Bajya was Rs. 12 and Chablya Rs. 40, both these sums being paid when the Bheels entered his service. He has now Bajya's bond for Rs. 60, and Chablya's for Rs. 100. He says that his agreement with both was for food only, and that the cost of their clothes and compound interest have increased their original debts to the above amounts. The Bheels say they were promised Rs. 12 each a year besides food and clothes, and that they have wanted to leave for some years, but have been frightened into remaining on by the threats of the patel to bring actions against them and sell up their households.

The Patel and Bheels eventually came to terms, the latter receiving back their bonds discharged.

Rewka bin Garkya, Bheel; Nana, Guzar, Patel of Moda, Taluka Taloda. The patel admits that he advanced the Bheel, who served him for 3 years, Rs. 40 only, and that of this sum he recovered Rs. 21 from the Guzar who cultivated

the village watchman's inam land in the year, for which it fell to Rewka's share, and that he has obtained a new bond from him for Rs. 40.

It afterwards transpired that the Bheel had done still further work for the patel under threats of an action, and eventually the patel agreed to give him one map of grain and a discharge from all liability.

Raju bin Fakeera, Bheel; Dewlya bin Dussya, Bheel; Hurree bin Oomed, Guzar, Patel of Moda, Taluka Taloda. The patel admits that Raju served him for 10 years, and stated that he originally gave him Rs. 50 (Raju says that he got but Rs. 16), and nothing subsequently but food and clothes. *Raju refused to serve him longer, and he at once filed a suit and obtained a decree for Rs. 50, so Raju had to return to him.*

which Dewlya served him for one year and received Rs. 10 only operation; at the end of the year he left, and the patel that somethinged a suit and obtained a decree against him sent discontent.

Bāgelān in 1867 Kagra, Bheel; Ramdas Patel, Guzar of entered village Baurbar. Boodya is now about 30 years old. killing and work Ramdas Patel all his life, and his father served the final result when he was a boy; the patel spent about and nothing marriage. Beyond this amount he cost the patel nothing, but food and clothes, and served him for some 25 years, first as cattle-herd and later as Awtya. Some Me years ago the patel agreed to take him as a Gowandya, N advanced him Rs. 80 wherewith to buy a pair of bullocks, the same time he made him sign a bond for Rs. 200, and rd a lien on his bullocks and on the whole share of produce that might come to him in the course of his partnership until the amounts were paid. *Three years ago the patel sold him to Nana Nandram, Guzar of the same village, for Rs. 200, and next year bought him back for the same amount.* This patel now holds his bond for Rs. 172 with interest at 24 per cent., and the same lien on his cattle and share produce, and on his refusing to remain Gowandya longer, seized his bullocks and grain, and threatened him with an action in the Munsif's court and imprisonment in the Dhulia Jail. He then came to me, and, on my remonstrating with the patel, the latter allowed he had been a good and very profitable servant, and eventually restored to him his bond and his freedom.—*Appendix to Mr. Pritchard's Report on the State of the People of the Province of the Deccan, 7th July 1870.*

A Bheel in the first instance receives from Rs. 20 to Rs. 50 advance from a Guzar for the purpose of getting married; he then engages to serve the Guzar at so much a year, generally about Rs. 24, his food, and a pair of shoes, cum-bly, and pugri, but the Guzar never allows a debt to be worked off. At the end of the first year, or, perhaps, after two or three years, the Bheel will ask for a settlement. By that time the Guzar will have made an account against him which the Bheel cannot dispute, and the Guzar will then give him a few rupees to appease him; a fresh bond will be drawn up, and the Bheel will be lucky, if by that time his debt is no more than Rs. 100, though probably he may not really owe twenty. The fate of the Bheel is then sealed; he may work on contented or discontented, according to the treatment he receives at the hands of his master. Some are treated well, though, in a pecuniary point of view, unfairly, while others, what with being years abused, and bullied, live a life but little less than slavery, and when too old to work, the son of the Bheel places. The debt of the Bheel Saldar does not decrease year after year. *When the Guzar gives up to two or three hundred rupees he is satisfied, the object being to secure the services of the man, by holding out threats of imprisonment for each contract under Act VIII. of 1859, and for debt through the civil courts.*

While Act XIII. of 1859 gave some security to the Guzar for the fulfilment of their contract by their saldars, it also afforded some protection to the latter, for the magistrates generally dismissed the complaint of the Guzar against his saldar, when the terms of the agreement were not equitable, by reason of the small remuneration which the bond secured to the Bheel servants.

The Guzars thus finding that they would have to pay more wages to secure a criminal hold of their servants, they set on a fresh plan, which gave to them the services of their saldars for a time. The plan adopted was to enlist the saldars as partners. The Guzars give the saldars a bullock, and taking a bond for the purchase-money, the Guzar still gives his saldar (now a partner) grain to feed himself on; but when the harvest comes the Guzar's answer to their new partner's request for a division of the produce has generally been, "The harvest has been bad; you have already eaten more than your share, and owe me money." *who cultivate*

a bond for the debt, and the Guzar then gets a security or two for the money, very often the mother of the saldar partner. This last security is considered a very good one, for a man will naturally do a good deal to save his mother from jail. A sowkar said to me, when pressing his claim for a bond he had against a man who had left Khandesh and gone into the Mewási States: "I do not want the man; if you will only hand his mother over to me, I shall get my money at once." But the Guzar does not wish to press his claim too far, his chief object is to retain the services of his saldar partner under some form or other, and this he has managed to do up to the present time; but the increased discontent has this year been very apparent, and the exasperation of many of the Bheel saldars, who complained against their masters, shows that this system of oppression which the Guzars have been able to carry on under the operation of the civil courts, has arrived at such a state, that something is necessary to be done to prevent the present discontent breaking out in another form. The state of Báglán in 1868, when parties of 40 and 50 armed Bheels entered villages firing off their matchlocks, in one case killing and wounding, indicates what may be looked for as the final result of the oppression now existing in Sultánpur and Nandurbár; for several of the gang robberies, which occurred in Báglán were undertaken with a view to destroy bonds, rather than for the sake of plunder. Fortunately, Mr. Pritchard is in magisterial charge of Sultánpur and Nandurbár Talukas, and he and I have been doing all we can by listening to the complaints of the Bheels who surrounded our tents at every encampment, and in some cases by effecting a settlement between the servant and master, but in reality we are powerless to deal with the evil, though for a time we may allay the irritation of the Bheels.—*Report of Major Probyn, Bheel Agent, Khandesh, dated 1st July 1870.*

If they endeavour to enforce against the Bheels the decrees they hold against them through the Agency Courts, the best that can be hoped for the peace of the country is that the Bheels may carry out their threat of going into foreign territory, out of the court's jurisdiction. But should such be the solution of the dispute, it will not reflect credit on British administration, that in consequence of laws and a judicial system unsuited to the circumstances of the people an opportunity has been afforded for one class

virtually to enslave another, and no remedy should have been devised to prevent the loss to the State of a valuable body of men willing to labour and gain their living honestly, but unable to do so through the action of our own courts.—*Extract of letter No. 4840, dated 14th September 1870, from Mr. A. Rogers, Revenue Commissioner, N.D., to Government.*

It remains, then, for Government to decide whether it will allow one portion of its subjects to be enslaved by another. We state as a positive fact that the *Bheel Awtyas* of these three talukas are the slaves of their Guzar masters, forced to labour, bought, sold, and transferred from one to another like so many cattle. We beg also to state that the existing courts do not afford means of redress to these slaves, for reasons which have been noticed in our former reports. We have again conversed on the subject with the Munsifs of Nandurbár and Shirpur, between whose courts the villages of these three talukas are distributed. These officers have told us that they know the truth of the facts we have put forward, and that in many cases they have found it impossible to do what they believed to be justice between Bheel and Guzar.

There is a great demand for labour now, and the enslaved Awtyas could, if freed to-morrow, find employment at good wages. We know that some employés of labour resident in the same villages, who do not own slaves, have to pay as much as Rs. 8 a month for free labour. The very complaint the Bheel slaves make is that their master will not let them go where they can earn fair wages.—*Extracts of letter dated 31st August 1870, from Captain O. Probyn, Western Bheel Agent, and Mr. C. Pritchard, First Assistant Collector.*

On calling on the Bheels to state what they wished to do, most replied that they would not serve the Guzars longer on any terms; that before us the Guzars spoke fairly and made specious promises, but that as soon as our backs were turned they would keep back all cash payments on the score of old debts, and would treat them worse than ever; that instead of owing the Guzars money, many of them were really creditors of the Guzars; that they could stand the treatment received no longer, and wished to be allowed to leave Khandesh and go over the border. We had great difficulty, for some time, in calming them down; but at last they agreed that if each man's case was separately

inquired into by us, and new agreements were drawn up before us, they would serve on the terms offered by the patels.—
Extracts from Report of Proceedings held before Captain Probyn, Bheel Agent, and O. Pritchard, Esq., First Assistant Collector, in the dispute between Guzar Patels and their Bheel Awtyas, dated 25th August 1870.

TRANSLATION OF GUZARS' reply to the Notice dated the
 26th August 1870.

To

MAJOR PROBYN AND
 C. PRITCHARD, Esq.

SIRS,

We, the undersigned Guzar landholders of Nandurbár, Sultánpur, and Taloda, most respectfully represent that our Bheel saldars lodged complaint against us before Mr. Pritchard, and since then have refused to serve us. On some of us went to the Revenue Commissioner, Northern Division, at Poona, with a view to obtain redress. That officer, after hearing our representations, told us that he had directed Major Probyn to *send our saldars back to their work*. Upon this we returned. After this an order came from the Sirkar that all who had disputes should present themselves at Nandurbár on the 24th August. We and our Bheel saldars are here accordingly. On the 25th we presented ourselves before you, Major Probyn and Mr. Pritchard, expecting that you would make arrangements for us, but you have not acted according to the Revenue Commissioner's orders. On the 26th we received a notice from you both, requiring an answer from us within two days. In that you state that we should give our saldars one pukka seer of grain per day, clothes to the value of Rs. 12 per year, and Rs. 2 in cash per month. Within the prescribed period we give the following answer to the said notice: *We are willing to pay Rs. 5 (per month), but of that we will deduct Rs. 2 (per month), on account of old debts, and pay Rs. 3 per month in cash to our saldars. We are not willing to give them grain (one seer per day) or clothes (of the value of Rs. 12 per year). Major Probyn should make ar-*

rangements (for saldars' return to work) on the terms named in this answer, because the season is advancing, and we shall be unable to pay our rent. Those of our servants who were working up to the time when we received the notice to present ourselves at Nandurbár on the 24th August have struck work. For this reason our crops are spoiling, and we shall not be able to pay the Government rent. We will petition about this in the ordinary mode. We respectfully request a reply to this our answer within two days.

(Signed) SUDASEV MOTTA PATEL,
and 19 others.

* * * * *

On the one hand, it is evident, from the proofs already laid before Government, that the Guzars have made use of the machinery of the civil court to get the Bheels—whom they have not only employed as labourers, but have also lent money to in their necessities—completely into their power with a view to convert them into agricultural helots. But the spirit of the age has vindicated itself, and the pressure having been made a little too tight, they have defeated their own ends, and the decrees they have obtained from the civil court are in most cases so much waste paper. A Bheel has no property worth the cost of attaching, and if his person is attached, that of his keep in jail is simply added to his debt, which there is no hope of recovering. Seeing this, the Guzars still cling to the hope that some interference will yet be exercised by orders of Government, which, although it may not help them to realize old demands, may still enable them to retain their personal power over their quondam helots, *their slaves of the soil* bound to themselves alone, not free to take their labour to the best market.

On the other hand, the Bheels, long accustomed to look at the Guzars as their masters, who supplied them and their families not only with their daily bread, but with the money occasionally necessary for marriages and other ceremonies according to the custom of their caste, although they have combined to strike working for their former employers, hardly yet feel the benefit of entire freedom, and knowing it will prove difficult for them to procure the advanced money they have been accustomed to rely upon the Guzars to make them when required, think it hard they should not be able to get these without binding themselves down to

their old slavery. For the present they are for the most part idle, and, as they earn nothing, must to some extent support themselves by petty thefts of grain from the fields.—*Report to Government by Mr. Rogers, Revenue Commissioner, dated 17th January 1871.*

* * * * *

I need hardly point out to you that a state of matters in which the ordinary labour of the country is disorganized is a very critical one, and cannot last long without leading to crime, or the emigration of the Bheels out of the Regulation Districts. It would be the most cruel course that could be pursued towards these people to let them imagine they can gain their ends, and Government will provide means by which they can escape their liabilities to the Guzars, if they persist in taking the law into their own hands, as they are now doing. Unless they are kept under authority and taught that they cannot live without labour, either for their former employers or some one else, there is no hope of bringing about a settlement of their affairs. Up to last year, it must be remembered, they were on sufficiently good terms with their employers, for the latter, however grudgingly, to give them food. Now the breach between the two parties is so complete, that the former will not give the latter any advances, and the latter will not work for them under the impression that if they do they will not be paid, but their wages will be credited towards the liquidation of former debts.

At the same time I beg to inform you that the Bheels of Mijur complain of a combination among the Guzars to force them to labour for their old employers only. Every precaution must be taken to prove to all parties that any rights to the labour of the former which the latter may have must be settled by the civil courts, and the Bheels must be protected against any illegal interference on the part of the Guzars with their freedom of action in carrying their labour where they may think fit.—*Extracts of letter No. 254, dated 17th January 1871, from A. Rogers, Esq., Revenue and Political Commissioner, N.D., to the Magistrate of Khandesh.*

Mr. Ashburner proposes to station Bheel Agents permanently at Nandurbar and Chálisgaon, and give them power to sit as Courts of Equity to decide all suits in which Bheels and members of other wild tribes are concerned, for the future, and retrospectively for the last five years, exempting such suits from the operation of the civil courts.

There can be no doubt that a special agency will be required to work out the desired change of system, and that the only officers who can do so satisfactorily are men known to the people in whom they have full confidence. The Collector and Magistrate of Khandesh is now Political Agent in the Non-Regulation Districts along the Gháts and the Satpura Hills, and the Superintendent of Police and his First Assistant are respectively in charge of the Western and Kanhar (Chálisgaon) Bheel Agencies. It would be sufficient for the present, and until further inquiry on the spot may enable them to propose more permanent arrangements, to withdraw from the jurisdiction of the civil courts the execution of all decrees for debt, or in matters of cultivation of land in partnership or contracts for labour passed within the last five years against Bheels, &c., by the civil courts in the present district of Khandesh, or the talukas formerly belonging to it, lately transferred to Násik, and to place it in the hands of the Western and Kanhar Bheel Agents under the general superintendence of the Political Agent, declaring those authorities to have power to make such arrangements as they may deem equitable for the gradual extinction of the obligations incurred by such decrees after due consideration of their origin and the circumstances of each case * * * * *

It appears to me that this could not be considered too great an interference with the jurisdiction of the courts, but would be of the nature of a declaration laying down that the method of enforcing the execution of the decrees of such courts might be changed in certain specified cases. "*Salus populi suprema lex,*" and if it can be shown, as it is in the present instance, that *the execution of such decrees by the ordinary process of the courts, is likely to lead to the disturbance of the peace of the country, the degree of interference which would allow the same thing to be done by special officers in another way could not be said to be unjustifiable.* The decrees of the courts would be accepted, and would be fulfilled, not by the attachment and sale of the debtor's property, which would in most cases be almost valueless, but by an arrangement for personal labour, or payment of instalments, or of a certain share of crops, &c. In this way the creditor would have full, and in many cases more than full justice done to him; and the debtor, while enabled to live, and having an inducement to work, as he would under the personal superintendence of the

Agent, would see the light of deliverance from his bondage shining in the distance. Otherwise all is dark in his future, and he may fancy he can see a ray of hope in plundering others to relieve himself, or in breaking through all restraint and endeavouring to free himself of the law altogether.—*Extracts of letter to Government No. 4138, dated 4th August 1870, from Mr. A. Rogers, Revenue Commissioner, N.D.*

During my late visit to the district bordering on the Mewási States in the north and west, I was very much struck by the changes that appeared to have taken place in the condition of the Bheels and wild tribes since my last visit in 1867.

They were then a contented, if not a thriving, population. Only three years have elapsed, and I return to find them extremely depressed, and in a state of feeling very far removed from content or loyalty. They are, in fact, in a state that a medical man would call the incubation of insurrection. There seemed to me also to be a change of feeling towards myself as representative of Government, that was very marked. The Bheel is usually a good tempered creature, frank, and ever ready to enter into conversation with a saheb on the subject of shikar; he now appears sullen and reserved, and if a conversation is forced upon him, you find that he has a grievance. Each day when petitioners were called I found my tent full of Bheels, each of whom had a complaint of oppression and ruin inflicted on him by the action of our civil courts. Nearly all told the same story; they had taken an advance of takavi from Government some years ago, had repaid it, and in an evil hour had borrowed a few rupees, often less than one hundred, from a sowkar. They had re-paid the original debt over and over again in grain, but the sowkar had lately appeared with a few peons of the Adálat and carried off everything—the brass ornaments worn by his wife, the very “saree” she was wearing (worth but a few annas), the stock of grain they depended on for food for the year; cattle, buffaloes, ploughs, everything they possessed, in fact even to the few sticks in the roof of their huts, which were worth carrying away. * *

I would beg to draw your attention to Mr. Pritchard’s very able report on this subject, and to one by Captain Probyn enclosed. The cases Mr. Pritchard has quoted are illustrations of the dealings of the Bheels with the Guzars and Waniars. The civil courts are quite unsuited to deal with such cases, however willing and able the judge may be.

I may perhaps be expected to state what remedy I propose for the state of things I have described. I reply :—

* * * * *

2. Exempt from the operations of the civil courts, all suits in which Bheels, Pardis, Koknis, Warlis, and the wild tribes generally are concerned.

3. Give the Agents powers as Courts of Equity to decide all suits on their merits.

4. Prohibit wakils from practising in the courts of the Agents ;—wherever they practice corruption and perversion of justice becomes the rule.

* * * * *

I shall of course be told that class legislation is objectionable and mischievous. I am not prepared to argue with such theorists. I merely point to the class legislation that has been found necessary in Guzerat and in Oudh to protect the Thakurs from the civil courts. If there had been no ignorant and selfish objectors to class legislation, there would have been no Kaffir or New Zealand wars and no Sonthal rebellion.—*Report of Mr. Ashburner, Collector of Khandesh, 24th July 1870.*

The indebtedness of the Kunbi is increasing and he is sinking deeper and deeper into the mire. A few rupees borrowed from a creditor in an evil hour, often serve to deprive him of his immoveables, moveables, and all, and oblige him to depend upon his ruthless creditor for his very bread.—*Extract from the Talegaon Sub-Judge's letter No. 22, dated 14th June 1875.*

The poor cultivators live very well up to the end of Vaishakha. At this time they think of storing for the monsoons, but their means, as a rule, are very limited ; and I have learnt that *eighty cultivators out of a hundred find themselves without food for themselves and their family, and they are thus obliged to go for it to the sowkar or grain-lenders.* The grain-lender thereon lends them grain sufficient to support them up to the harvest time when he expects it back with usual "wadhā" (increase). The increase (wadhā) charged on the grain is usually one-fourth, that is, 25 per cent., sometimes the wadhā charged is 50, and sometimes 75 and 100 per cent., which, however, is very rare. If the debtor borrows one maund of jowari at the wadhā of 25 per cent., he returns it in the harvest time one and one quarter

of a maund, and so on. The grain borrowed is usually returned in kind, and seldom or never ~~in~~ money.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

The creditor, endowed with an hereditary astuteness, well cultivated by his experience of the world, is far more than a match for his half-savage debtor. *The latter brought fully under the yoke, can but writhe, and shuffle and escape as much toil as his master allows him.* This he does. As it is uncertain how far he will himself be benefited by his labours, he works as little as he can. He wastes much time in sheet evasions; when at work, he feels no wholesome interest in it; he is stripped of his land or his implements, he cannot work; his maintenance has in some form to be provided by the other members of the community. The sig So long as the in this condition produces amongst their fe, ough the medium hatred of their creditors. It becomes a continue. They almost a point of honour to cheat and themselves, and class as far as may be. The law which protect them, must tyrannical power, the rulers who execute farmers, and must they inspire, and the end is a wide, rs in the employ of political demoralization. ther it will be politic

If, on the one hand, therefore, the, for me to say; but if its aid to the creditor as an essenti, if proprietors holding progress, it must, on the other hand, ntage to be anticipated ditions to this aid, without which, d with punctuality and on instrument of social and politic, ed to what it is now. I

The Brahman or bania me, m intelligent men on the sense of moral responsibility to, his district at least it is not his legal rights against a M, usands which is burdensome nt caste than the Patrician cold pensioned Deputy Col- Plebeian debtor. The law docat in his belief if Govern- debtor and his sale into slavery, ay all lands in inam to the amongst his creditors. -It, hld be no better off than they he Roman would be enter, ad I think rightly, that our the State refuses to enfo, and I think rightly, that our to perform promises, implic, H. Spry, First Assistant Collec- ise compulsion, is a quest, ated 6th July 1874.

minable in each case by and the sowkar journey up the are.—*Mr. Raymond We credits the accounts, whilst the do in India.* In exchange for his coins, the

The unpunctuality; the ryot's grain according as it is the difficulty experier, and though rising prices through- speak for themselves, cheapening silver to the mass

classes. It appears from the circumstances which come now and then to my knowledge connected with the realization of land revenue, that the condition of some of the landholders has been actually worse than that of day-labourers. Though they, with all their family members, work hard throughout the year, they are obliged to take the whole produce to their creditors and to stand at their mercy for livelihood and even for the assessment of land. They have no liberty to dispose of the fruit of their labour—a very grievous state of things indeed.—*Mr. Bapu Purshotam, District Deputy Collector, Khandesh, No. 108, dated 12th July 1874.*

If we have a succession of favourable seasons, I hope that the cultivators will escape from the clutches of money-lenders in which most of them are now tightly held.—*Mr. S., Acting Collector of Khandesh, No. 3710,*

I shall of course be 1874
tionable and mischievous the Deccan, I believe that 75 per cent. such theorists. I merely may be said to be overwhelmed with debt. has been found necessary to one of the poorer classes who did not the Thakurs from the completely in the hands of the sowkar. Ignorant and selfish object, ykar sitting in the field while the crops would have been no Kaffir Southal rebellion.—*Report ich shows that in such cases at least Khandesh, 24th July 1870. free agent, but is compelled to part or price the sowkar thinks proper to*
The indebtedness of the is sinking deeper and deeper cultivators it is useless to be lenient. borrowed from a creditor in gives any benefit is the sowkar deprive him of his immovable cultivators have been reduced to oblige him to depend upon his ru—, and the land revenue is bread.—*Extract from the Talegārs, anding the lightness of the as 22, dated 14th June 1875. pidly increasing both in num*

The poor cultivators live very Boswell, Collector of Ahmed Vaishakha. At this time they think 1874.
soons, but their means, as a rule, are vikas are entirely in the hand learnt that eighty cultivators out of a thrant, O. S., 1st Assist. Col without food for themselves and their 182, dated 30th July 1874. thus obliged to go for it to the sowk
The grain-lender thereon lends them ople down is the unfortu support them up to the harvest time wnakng over the whol back with usual "wadha" (increase). Ths it at his own valuation charged on the grain is usually one-fourth the ryot, when once is cent., sometimes the wadha charged is 50, allowed to get free.— and 100 per cent., which, however, is vt of Násik, No. 2518 debtor borrows one maund of jowari at the debtor borrows one maund of jowari at the cent., he returns it in the harvest time one a.

I believe that the people would now be as well off if the assessment had been fixed 30 per cent. higher: the low rates have rather increased the indolence, which is the main cause of the difficulties of the Deccan ryots, and the profit is not been reaped by him, but by the sowkar.—*Mr. W. V. Lock, Acting Second Assistant Collector, Ahmednagar, No. 53, dated 4th July 1874.*

The ryots, specially in Sheogaon and Newási, are in a very impoverished state, and I believe that in numberless cases they are actually only cultivating as servants of sowkars, although the land may still be standing in their own names; the farm bullocks, and, indeed, everything of value either belong to the money-lenders or are mortgaged to them; and these money-lenders sweep off the crops as soon as harvested, only leaving with the ryots barely sufficient to ke out a subsistence till the following year. So long as the ryots are at the mercy of the sowkars, through the medium of the civil courts, this state of things must continue. They are too ignorant and powerless to help themselves, and gradually, unless measures are taken to protect them, must become extinguished as a class of tenant farmers, and must descend to be farm servants and labourers in the employ of Marwaris and other capitalists. Whether it will be politic to allow such a class to die out, it is not for me to say; but if it does, and is succeeded by a class of proprietors holding capital, there is at all events the advantage to be anticipated that the land revenue will be collected with punctuality and ease, even though it be much increased to what it is now. I have continually invited opinion from intelligent men on the point, and they all agree that in this district at least it is not the pressure of Government demands which is burdensome to the cultivating classes. An old pensioned Deputy Collector a few days ago told me, that in his belief if Government was to-morrow to give away all lands in inam to the present holders, the ryots would be no better off than they are now. He considered, and I think rightly, that our system was at fault.—*Mr. A. H. Spry, First Assistant Collector, Ahmednagar, No. 188, dated 6th July 1874.*

As a rule, the kulkarni and the sowkar journey up the valley together, and the one credits the accounts, whilst the other debits the money. In exchange for his coins, the sowkar gets more or less of the ryot's grain according as it is a good or a scarce season, and though rising prices throughout the country may be cheapening silver to the mass

doubtful whether the distant inhabitant of the mountain glen secures his two or three rupees annually on easier terms to himself.—*Mr. A. Wingate, C. S., Supernumerary Assistant Collector, Satara, No. 508 of 1874.*

It has not been uncommon within the last few years to hear on many sides marked expression as to the heaviness of the revision rates imposed by Government. This outcry is chiefly raised by the land speculators or superior holders, who find that when Government commences to demand from them as occupants its fairer proportion of revenue, their profits must be reduced in a corresponding proportion, as their sub-tenants being already rack-rented are unable to bear the extra burden.—*Darwar Collector's No. 527, dated 20th February 1874.*

If, on the other hand, forgetting that our assessments are made for the cultivators themselves, we allow a few wealthy speculators and money-lenders, successful wakils, and retired well-to-do Government servants to step in and seize the opportunity of a ryot's extravagance, and to secure from him that which is most valuable to him, viz., his right of occupancy of the land, then this moneyed man having become the occupant forces the ryot, as his sub-tenant, to pay any rates he pleases, and in fact *reduces him to the position of his bond-slave.* * * * * *

Extraordinary usury soon did what was required; the money-lender soon became the occupant and *owner, of not only the land, but of the ryot.*—*Dharwar Collector's No. 67, dated 7th January 1875.*

In the agricultural portions of the district the reverse is the case; the cultivators, especially in Mahim, Dhanu, Wára, &c., being more or less involved in debt, which with the high rate of interest charged, the resort, too often, to fictitious bonds, combined with the facility with which civil courts decree against them, are fast tending to their holdings or land being alienated from them, and they *merging into the position of mere serfs*; they being permitted by their rapacious creditors to still cultivate their lands on payment of rental barely sufficient to support them and their families.—*Mr. J. W. Robertson, C. S., Collector, Tanna, No. A-3525, dated 31st August 1875.*

The Collector reports the lower classes, by which, I presume, he means the cultivators, as distinguished from the trading classes, to be in a very depressed condition. The courts are being worked with severity to exact payment

of debts, and this probably accounts for their being unable to pay the assessment on their lands. Instead of Government having the first claim on the produce of the soil, the sowkar is allowed to carry off the whole crop, and there is, therefore, nothing left for the taláti to collect. This subject has been fully reported on, and is now under the consideration of Government. There has been a slight fall in the price of agricultural produce, but not sufficient to prevent the cultivator from paying the very moderate assessment on his land, if allowed to retain any of his produce by the sowkar.—*Revenue Commissioner, N.D.'s remarks on the Colába Collector's Administration Report, No. 1097, dated 17th August 1874.*

In Bárdoli, the area under cultivation has decreased largely and continues to decrease, and *many cultivators seem to have run away from their creditors.*—*Mr. H. F. Aston, C.S., Acting Second Assistant Collector, Surat, No. 129, dated 5th July 1874.*

Mándvi, on the other hand, still continues to fall off. Last year there was a reduction of 5,913 acres in the cultivated area, and this year there is a still further reduction of 7,000 acres 3 guntas. *This is partly due to Bheels and Chodras having run away to foreign territory.*—*Mr. A. Woodburn, C.S., Supernumerary Assistant Collector, Surat, No. 69, dated 6th July 1874.*

Where contumacy cannot be traced to the action of some of the associations, which are now doing so much to unsettle the minds of the people, I am inclined to think that non-payment is owing to the system which we tolerate of allowing the sowkar to take the whole of the ryots' crop, and only pay us what he may think proper after satisfying his own claim on the ryot. Even well-to-do cultivators prefer to keep a running account with the sowkar, who takes the whole of their crops off their hands, and, as a rule, they all pay their rent through him. It often happens that after having taken the crops on the understanding that he is to pay the Government rental, he appropriates the whole to the payment of his own debt, and there is nothing left for Government.—*Revenue Commissioner, N.D.'s remarks on the Administration Report of the Collector of Surat, No. 1776, dated 15th July 1874.*

² The general condition of this district is far from satisfactory; such low prices prevail that ryots are unable to pay off the debts recklessly contracted by them while in a more

prosperous state; and the money-lenders, mostly banias, tired of waiting for more favourable times, have stopped credit and crowd the civil courts with proceedings against their debtors. In no part of India, I believe, are the money-lenders more grasping and more heartless than in Kaira, and the present state of the Kolis and poorer classes of Muslims in this collectorate is just now such as to cause me much anxiety. It is even more hopeless than that, in former years, of Bheels in the Western District of Khandesh; and unless matters alter materially before long, some measure of relief will have to be devised.—*Mr. G. F. Sheppard, C.S., Collector of Kaira, No. 1207, dated 13th July 1874.*

I have not met with any instance in which money-lenders have written off any debt as a bad debt, even if it be hopelessly barred by time. Even if the debtor is known and is proved to be absolutely poor, the creditor keeps his account running on, and the decree alive by fresh executions for years, in the hope of recovering something from him at least at a convenient time.—Talegaon Subordinate Judge's letter, No. 21, dated 14th June 1875.

I have not met with instances in which money-lenders, gaining nothing by the imprisonment of a debtor, have ceased to press their claim and have written off the amount as a bad debt. On the contrary, the judgment-creditor never tires with renewing his application for the execution of his decree whenever the judgment-debtor is supposed to have acquired a bit of property.—Mareh Subordinate Judge's letter, No. 21, dated 5th April 1875.

In an expanding society, with abundant means of production spread out before it, everyone can earn something beyond his own subsistence. He cannot in most communities readily quit the neighbourhood where he was brought up. The tremendous compulsion that may, according to primitive laws, be brought to bear upon him in case of necessity, leads the small capitalist to accommodate even a pauper with money and goods to an extent which would otherwise be ruinous to himself. The laws make it generally ruinous to the debtor. The creditor practically has the person of his debtor as a pledge for the debt, and enjoying this advantage, is legally relieved from all that care and circumspection which morality, if not self-interest, ought to make him exercise.—*Mr. Raymond West's suggestions on the Land and Law of India.*

The lands are fast going into their hands, the former being doomed to work as their *helpless bond-slaves*.—*D. Nagar Session Judge's letter, No. 308, dated 12th March 1875.*

The effect of the action of the civil courts on the Bheels and other wild tribes in Khandesh and elsewhere is, I am aware, under the consideration of Government. The position of the Khandesh Ghât Bheels is little less than *state slavery to the Guzar Kumbis*. It is common in the Nerbâr Taluka for a Bheel to serve for ten or twelve years for the consideration of a cash payment of ten and twenty rupees and his food and his clothing being supplied, and charged against him, its cost *plus* interest being brought against him on his showing a desire to leave service. Nearly twenty years' service as Judge of Khandesh, when Mr. Ashburner, C. S. I., was Collector, perhaps entitles me to give an opinion as to the means proper to relieve these Bheels from their unconstitutional, if not, in the narrower sense of the word, illegal position.

I understand that Mr. Ashburner has made, substantially, the following proposals in regard to the Khandesh Bheels—

(1) The establishment of as many Bheel agencies as may be requisite.

(2) The exemption of Bheels and cognate tribes from the jurisdiction of the civil courts.

(3) That the agents be empowered to administer substantial justice to the best of their ability without formal procedure.

(4) The exclusion of pleaders from the Agents' courts.

(5) That it be a *sine qua non*, that the agents be familiar with the Bheels' patois.

I concur in the propriety of each of these proposals, and also in the opinion that the Bheels are entitled to relief from the Government on grounds not only of justice and humanity, but of self-interest, the Bheels being in their place not useful to the State.—*Extract from the Tanna Session Judge's letter, No. 1639, dated 17th May 1875.*

The security on which the lender chiefly relies, is the power which the civil courts give him over the borrowers.—*Extract from the Note by W. G. Pedder, C.S.*

The Acting Assistant Judge, Mr. Aston, is of opinion that another effect of the present action of the civil courts is to tend to render any attempt by a ryot in debt to cultivate land, a bankrupt speculation, because whatever may be the just proportion in which the profits of that cultivating operation, should be divided between, first, the State which provides the land ; secondly, the cultivator who provides labour and cattle and implements of agriculture ; and thirdly, the money-lender, who has a private contract with the cultivator. *The law and the action of the courts makes it possible for the money-lender to step in and sweep away the whole of the profits of the cultivators, or even eject the ryot from his holding before his crop is even ripe. Between the vigilance of the Government Revenue Officers and the private creditor, the ryot who suffers the slightest mischance from loss of cattle, failure of crop or other loss must find it hard to keep up his credit, and at any time may be ordered by the civil courts to pay a lump sum far greater than the Government assessment on his land, or even far greater than the whole profits of his cultivation during the year, and whilst he cannot get nothing from his land till his crop is ripe, the court will order him to pay his debts to the last farthing.*—*Surat Acting Assistant Judge's letter, dated 27th July 1875.*

3. I think the money asked for by Captain Wise may be granted. There will be no eventual loss to Government ; but there will be little permanent benefit to the Bheels so long as the sowkars are able to carry off their little property, and to confiscate their lands as soon as they are cleared and sufficiently improved to be worth taking. I doubt the policy of paying off their debts to the sowkar ; it will only encourage the sowkar to make fresh advances, and to keep up the system which has reduced them to slavery. I should have preferred making the advances to men who have been too poor to get into the sowkar's debt.—*Letter No. 2702, dated 5th May 1874, from Mr. L. Ashburner, Revenue Commissioner, N.D.*

Before the country came under us, no sowkar, Guzar, &c., &c., would have dared to treat the Bheels as they now do, but these people take advantage of our rule to oppress, and make slaves of those they formerly feared. * * *

In April 1872 I visited these villages before making my report, and found the people very hard up owing to the utter failure of crops in 1871, which is well known to

Government. They got no assistance, and went to sowkars for grain, and this year sixteen men who were doing good work, have deserted the place, and run away owing to being pressed for debt. I have got seven of these men back from Leadwa, in Holkar's territory, but cannot find the others.—*Report of Captain Wise, Bheel Agent, Khandesh, dated 19th April 1874.*

He could appeal to the honourable member for Bombay, for confirmation of his representation, when he said that few had done more for that presidency than Captain Wingate, who had planned and superintended the survey which was now going on. He wrote:—

"This miserable struggle between debtor and creditor is thoroughly demoralizing to both. The creditor is made by it a grasping hard-hearted oppressor. *The debtor—a crouching, false-hearted slave.* It is disheartening to contemplate, and yet it would be weakness to conceal the fact, that this antagonism of classes and degradation of the people, which is fast spreading over the land, is the work of our laws and our rule. The corruption and impoverishment of the mass of the people for the enriching of a few have already made lamentable advances in some districts, and are in progress in many, and the evil is clearly traceable, in my opinion, to the enormous power which the law places in the hands of the creditor."

The facilities which the law affords for the realization of the debt, have expanded credit to a most hurtful extent. In addition to the ordinary village bankers, a set of low interest is fast springing up, by whom small sums are lent, for short periods, at enormous rates of interest, to the very lowest of the population, who have not credit enough to obtain advances from the more respectable of the village bankers. All grades of the people are thus falling under the crushing debt, and should the present course of affairs continue, it must arrive that the greater part of the realized property of the community will be transferred to a small moneyed class, which will become disproportionately wealthy by the impoverishment of the rest of the people. No greater misfortune could befall any nation than this, by which many are made miserable in order that the few may be pampered. And yet this is the inevitable tendency of the existing relations between debtor and creditor in our presidency."

* * * * *

OPINIONS IN FAVOUR OF ABOLISHING IMPRISONMENT FOR DEBT.

The question has never, so far as I am aware, been raised in India as a distinct issue, so that there are very few opinions to be got either on one side or the other. In the preceding evidence as to the abuses of warrants of arrests, there are numerous opinions as to the evils with which they are attended, but few of them go so far as to state distinctly that the law should be abolished entirely. I have quoted portions of the debates on the English Bill for the abolition of imprisonment for debt, as the reasons given for the proposed law in England appear to apply as much, if not more, to India also.

The principle of the bill was the abolition of imprisonment for debt, and he did not think it necessary at this time of day to enter into any lengthened argument on that point. The question, as he had before said, was almost concluded by authority. The Commission of 1832, consisting of a number of the judges, had reported in favour of abolishing imprisonment for debt. The report of the Bankruptcy Commission in 1842 was to the same effect; but the Bankruptcy Committee which sat in 1864 and 1865 were also unanimous on the subject; and all the bills introduced since that time, the bill of the honourable and learned member (Sir Roundell Palmer) and that of the Lord Chancellor last year, as well as the present bill were founded on the same principle. *Imprisonment for debt, he would repeat, was not justifiable as a punishment, because it made no distinction between the innocent and the guilty; and, if it were meant to be an effectual remedy for recovering the debt, recent legislation had prevented it from being such a remedy, because, if a man were imprisoned for debt, he could not be kept in prison; he might get out on his own petition, or would be turned out by the Registrar, in Bankruptcy. There was one important reason for abolishing imprisonment for debt, and this had not hitherto been dwelt on. Mr. Commissioner Holroyd, when examined upon this question, said:—*

“The consequence of retaining imprisonment for debt in final process, has been that a multiplicity of petitions for adjudication of bankruptcy on the debtor’s own petition

are filed where there are no assets whatever, and these are resorted to mainly, either for the purpose of being released from prison or to avoid being put into prison. In most of these cases a *certain expense is incurred without the least utility to the creditors*. The following are the number of cases where there were no dividends in the years 1862 and 1863, and therefore, where there were little or no assets, in 1862, 6,910 out of 9,663; in 1863, 5,630 out of 8,470."

It was upon the abolition of imprisonment for debt that he founded his proposal to put an end to adjudication of bankruptcy upon a man's own petition. It was a process which had been most pernicious, which realized no assets, produced no dividends, crowded the gaols, and was of no use to anybody. It was said—"If you abolish imprisonment for debt you ought also to abolish it in the county courts." Now no one could suppose that he was favourable to any extension of the power of imprisonment in the county courts, for he had given earnest of an opposite tendency by introducing a bill for the limitation of that power, which had before been very much abused. He was not, therefore, too friendly to this power of imprisonment by county court judges, and he could only say that he should rejoice if the house could come to the conclusion in committee that this power could be abolished without danger to the working of those courts. It was his duty, however, to lay before the house the reasons which had induced the Government to maintain this provision. In the first place, it was a mistake to suppose that the county court judges had the power of imprisoning for debt. They had only the power of imprisonment in the cases specified in this bill, which re-enacted the existing law, namely, where it appeared to the satisfaction of the judge that in incurring the debt which was the subject of the action the defendant obtained credit:—

"Under false pretences, or by means of fraud or breach of trust, or wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to discharge the same, or had, with intent to defraud his creditors or any of them, made or caused to be made any gift, delivery, or transfer of, or any charge on his property, or had with such intent concealed or removed any of his property."

And then there was another case in which imprisonment was allowed—where it was proved to the satisfaction of the judge that the person contracting the debt had since the

date of the order obtained against him the means to pay, but refused to pay. It was only in those cases that the judge might imprison, and that was in the nature of a quasi-criminal imprisonment. The bill also limited to some extent the power of imprisonment, for it required that every order for imprisonment should be made in open court. This provision applied not only to the county courts, but to the small debts courts, where orders were made by registrars; and, further, the term of imprisonment for default in the payment of any one debt was limited to three months. He had received a deputation of county court judges, and had put it to them whether they could safely answer for the operation of the system if this power were abolished, and they replied that they could not. They observed that in reference to the orders of imprisonment not one in fifty really took effect, and that with respect to the class of persons appearing in the county courts the possession of the power of imprisonment was absolutely necessary to insure the payment of debts. It appeared that in many cases men came into the county court with the money they owed in their pockets, but refused to pay the debt until an order for imprisonment was made out. The power of imprisonment, he had also been informed, operated in favour of the labouring classes, for without its existence they would not be able to obtain credit, and in some cases credit with them was almost a necessity of existence. On these grounds the Government had not felt justified in abolishing this power, which was retained in the bill, subject to consideration by that house. It had been observed that a distinction was drawn between the cases of the rich and the poor, but it should be recollected that in respect to the debts above £50, the bankruptcy law could be put into effect. The debtor could then be compelled to appear in the Bankruptcy Court, and to discover all his property, and if he did not do so his income could be sequestered, and himself made liable to penalties far more severe than any to which a debtor in a county court was subject. The longest term of imprisonment which the latter could suffer under the sentence of a county court was forty days, but a debtor for an amount above £50, if he committed offences of the same description, would, in the Bankruptcy Court, be subject to imprisonment for twelve months, and in some cases might be deemed guilty of felony, and be imprisoned for two years. However, these were matters for consideration in committee, and if it should be deemed possible safely to

withdraw this power from the county court judges he should be glad to do so.—*Debate in the House of Commons on the Bill for the Abolition of Imprisonment for Debt, April 5th 1869.*

The Attorney General said it would be convenient that he should now state the reasons which had induced him to make a change of some importance in the bill. The principle of this bill was the abolition of imprisonment for debt. By imprisonment for debt he meant the power which a creditor had to imprison a debtor for an unlimited time until the debt was paid, without reference to the question whether the debt was contracted by fraud, whether the debtor was or was not able to pay, or whether non-payment arose from misconduct or unavoidable circumstances. That power of imprisonment for debt he proposed to abolish; but, if so, it was only fair to give the creditor every reasonable facility for obtaining the property of his debtor, and for that purpose the Government believed they had made the Bankruptcy Law simpler, cheaper, and more stringent. But that law applied only to debtors of a certain amount. It would be obviously absurd to make a day-labourer a bankrupt; there must be some limit, and the limit which the house had adopted was that of £50; so that, where a man owed above £50, the Bankruptcy Law could be enforced against him, and he could be examined, under some circumstances, arrested, and his property taken from him and divided amongst his creditors. But then came the question, What were they to do with the debtors below £50, and who were not subject to the Bankruptcy Law? Were they to be allowed to escape from the payment of their debts altogether? This raised the very difficult question of the county court jurisdiction. The county courts had not the power of imprisoning a debtor merely for non-payment of debt, but they could commit a debtor to prison, under two sets of circumstances, which it was desirable to keep distinct. The first was where the debt was originally contracted by fraud, or incurred by the debtor knowing that he had not the means of payment; and, secondly, where the debtor could pay the debt, but wilfully refused to do so. The desirability of abolishing the power of imprisonment in county courts had been pressed upon him in many quarters; but he did not feel himself justified in acceding to the request, although he had acceded to it so far as imprisonment under one set of provisions was concerned, and he did propose to abolish the county court power

where the debt has been originally contracted by fraud, believing that the acts of such debtors would be better dealt with by the general criminal law. Therefore, instead of leaving a fraudulent debtor, subject to the county court jurisdiction, he proposed to transfer him to the criminal courts, where the rich and poor would be dealt with on the same footing, and punished accordingly. But then came the other question of county court imprisonment, where a man was able to pay his debt, but would not do so. He did not regard that imprisonment as a mere punishment for a past offence; but it was a process of imprisonment for the purpose of compelling the payment of a debt, and it was a process very analogous to the principle of the Bankruptcy Law. He had had conferences on the point with the county court judges, and he found that they were almost unanimous in favour of maintaining the power of imprisonment in the latter case, as they thought that the courts could not be worked without it. The power, however, was exercised, in comparatively few cases. He found by a return showing the proportion of debtors imprisoned to the number of plaints, issued in the years 1864, 1865, 1866, and 1867 in all the county courts of England, that the average for the four years was, 834,088 plaints entered, 93,383 judgment summonses, 26,833 warrants issued, and 7,202 debtors imprisoned; or one imprisonment to 104 plaints entered. Many men would not pay their debts until the order of committal was made out; and he had received representations not only from county court judges and the trading classes, setting forth that these debts would not be paid if this power were not continued, but also on behalf of the working classes themselves, stating that if it were abolished their credit would be gone, and credit to a poor man, let it be remembered, was almost a necessity of his existence. For these reasons he had come to the conclusion that this power of imprisonment in the one case he had mentioned must be maintained. Then came the question, if maintained in the county courts, why should not the same power be extended to the superior courts in cases where the debt exceeded £50? And as the general feeling of the house appeared to be in favour of such extension, he was ready to amend the bill in that sense. He therefore proposed that the superior judges should have the same power of committal as the county court judges—namely, for six weeks. He trusted that this proposition would meet with the approbation of the commit-

tee, and he now moved to omit at the end of clause 4 the words, "in the county courts and other inferior courts."

Mr. West stated that his proposition in Manchester obliged him to deal very largely with small-debt summonses, and his experience had led him to conclude that the sooner they were put an end to the better. In the first place, *the cost to the public of maintaining prisoners and their families was very considerable*; but besides that, *the sacrifices which the law forced the working classes to make, in order to avoid committal, amounted to a very serious burden*. It had been often stated that the county court judges were opposed to abolition of imprisonment for small debts, but the weight to be given to their objection was diminished by the consideration that they seemed to think that society only existed in order to maintain some work for them to do. * * * *
How could a county court judge give an opinion as to whether a working man would be able to pay or not? He admitted that there was a strong feeling throughout the country on the question, and that probably the country was not ripe for the abolition of imprisonment for debt altogether. He was glad that the Attorney General proposed to apply the same law to the rich and to the poor. The proposal of the honourable and learned gentleman was, perhaps, the most satisfactory that could be made in the present state of public opinion, and, under the circumstances, he should give it his support, reserving to himself, on a future occasion, to move the total abolition of imprisonment for debt, when he should find the country in favour of it.

Mr. Henley said, he was sorry to think that the Government were taking in this matter a decidedly retrograde step. In what was entitled a Bill for the Total Abolition of Imprisonment for Debt they were giving to the judge an arbitrary power of imprisonment if he thought the debtors were able to pay. It was rather a fine distinction for the Attorney General to say that this was not imprisonment for debt. The injustice which had been going on for some years was never made more clear than by what was now attempted to be done. They could not justify a state of things by which a man who owed a debt below £50 was liable to imprisonment, while one who owed a large sum went free, and therefore it was now proposed to extend penal imprisonment, for penal imprisonment it was to all persons. The Attorney General did not state in what condition in the prisons the

new class of prisoners would be, whether they were to come into the same category as those whom the county court judges made prisoners. The Attorney General had justified his proposal by the opinions of the county court judges; but those who had lived some time in the world, must remember when a man might be hanged for stealing a shilling's worth, and plenty of learned judges gave it as their opinion that it would be impossible to say what might happen if this penalty were taken away. And so also, when imprisonment on mesne process was taken away an injustice was got rid of, but now they were taking a backward step. It appeared from the last return of judicial statistics that there were more than 8,000 cases of imprisonment under the County Court Acts, and he should like to ask how many there would be under the proposed new process. He had hoped that when they spoke of a Bill for the Abolition of Imprisonment for Debt, that it would have been fairly carried out, and that the humble would have been exempted as well as the great; but, as he had said, they were retrograding, giving to the higher a power of appeal which was not secured to the humbler debtor. As to stopping credit, he did not believe that the abolition of imprisonment would have any such effect.—*Debate in the House of Commons on the Bill for the Abolition of Imprisonment for Debt, June 22nd 1869.*

Lord Romilly deprecated continuing the power of imprisonment for debt in the hands of county courts as was proposed in the 1st clause. He believed the power of imprisonment for debt was very injurious. Credit was given for goods sold in the ordinary way only because the vendor believed the purchaser would be able to pay, and not because he thought he should be obliged to have resort to compulsory measures, and the fear of imprisonment benefited no one but the tallyman, who was thereby enabled to force his goods on the unwary poor, and relied almost exclusively on the compulsory power of imprisonment. He did not approve the distinction made in the bill between debts for £30 and £50 with respect to imprisonment, a distinction which was wholly irrational. In some respects the abolition of imprisonment for debt seemed to be perfect, but in others it was not. He had given notice of some amendments based upon these views, but having placed them on record, he did not wish to press them.—*Debate in the House of Lords on the Bill for the Abolition of Imprisonment for Debt, July 26th 1869.*

No doubt imprisonment of every kind, whether under civil or criminal process, or whether undergone in the civil or criminal jail, carried with it some degree of punishment, the one being inseparable from the other; but that the punishment of the judgment-debtor was not what was aimed at in his imprisonment, and that his confinement was intended merely as a process to compel payment of what he owed, was, he thought, clear from the fact that, as soon as the judgment-debtor surrendered whatever property he possessed and showed that he had not been guilty of any fraudulent conduct as regarded the means at his disposal for satisfying the decree passed against him, he became entitled to his release, which he could claim as of right although the value of the property surrendered might fall far short of the amount of the judgment-creditor's claim. It was this principle which he was anxious to see extended, and instead of confining the application of it to cases in which the judgment-debtor was actually in jail, *he would allow a judgment-debtor, on being arrested, to obtain his discharge from custody without going to jail, on the same terms as he might claim his release after going to jail, namely by surrendering whatever property he possessed and satisfying the court that his inability to pay the claim in full arose from no dishonest conduct on his part.* This was not a new idea. In the Code of Civil Procedure drawn up by Mr. Mills and himself, they proposed that no debtor should be imprisoned in execution, if he satisfied the court that he had done his best to pay the debt, and had no property or effects remaining from which the debt could be discharged; and in their remarks on this section they observed that "with the view of mitigating the law of arrest, in order that it might operate with less severity on the honest debtor, they had made provision that no debtor should be imprisoned if he could show to the satisfaction of the court that he had done his best to pay the debt, and that the court might at any time suspend execution of a decree upon proof of the inability of the debtor from any temporary cause to discharge the debt, or damage awarded against him."

With these observations he would move that the following new section be introduced before section 70 :—

"Any person arrested under a warrant in execution of a decree for money may, on being brought before the court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or if

possessed of any property, that he is willing to place whatever property he possesses at the disposal of the court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family, and the necessary implements of his trade,) and of the places respectively where such property is to be found, or shall state that, with the exceptions above mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints."

Mr. Ricketts had no objection to offer to the proposed section: his object was to proportion a man's sufferings to his sins. As the 72nd section then stood, it authorized imprisonment for two years for the smallest debt; according to the old law the principle which he supported was in some measure preserved. But as he had no objection to what was proposed, he would reserve what he had to say until section 72 was brought forward.

The motion was then put and carried.

Mr. Harington moved that, after the above section, the following new section be introduced:—

"Upon such application being made, the court shall examine the applicant in the presence of the plaintiff or his pleader as to his then circumstances, and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed, and why the defendant should not be discharged; and should the plaintiff fail to show such cause, the court may direct the discharge of the defendant from custody. Pending any enquiry which the court may consider it necessary to make into the allegations of either party, the court may leave the defendant in the custody of the officer of the court to whom the service of the warrant was entrusted, on the defendant making the necessary deposit for paying the fees of such officer, or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the court may release the defendant on such security."

Agreed to.

Mr. Harington moved that, after the above section, the following new section be introduced:—

“ The discharge of the defendant under the last preceding section shall not protect him from being arrested again and imprisoned, if it should be shown that, in the application made by him, he had been guilty of any concealment or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust, or had fraudulently concealed, transferred, or removed any property, or had committed any other act of bad faith; nor shall such discharge exempt from attachment and sale any property then in the possession of the defendant, or of which he may afterwards become possessed.”

The chairman said he was not quite clear as to this section. His doubt was that, although this was a sort of insolvent law, there was no provision for distribution among all the creditors. On the other hand, the right of arrest was suspended without giving the particular decree-holder a preferable claim to the debtor's future property. It seemed unjust to take all his present and future property for the satisfaction of the particular decree-holder. It was much to be regretted that, in consequence he supposed of the difficulties of the machinery, the code must be defective for want of provisions for the distribution of the assets of an insolvent, and also for the administration of the estates of deceased persons.

The section was then put and agreed to.

Section 72 limited imprisonment for debt to two years.

Mr. Ricketts having enquired what would be the operation of the amendments just carried by Mr. Harington, said he thought they might suffice without his amendment.

Mr. Harington explained that the effect of his amendment if carried would be that a judgment-debtor who, on being arrested could satisfy the court of his inability to pay the debt, need never go to jail at all.

The section was then put and carried. Section 75 provided for applications for discharge on a surrender of the whole of the debtor's property.

Mr. Peacock.—Whether there should not be some power given to the court to deal with cases in which debts had been fraudulently contracted. Supposing the debtor was willing to give up all his property, but the court was satisfied that he had contracted the debt fraudulently or without having

any prospect of paying it. In England, the court might commit him to custody. By the Statute 7 and 8 Vic. c. 96 s. 57, imprisonment for debt below £20 was abolished, and all such debtors were authorized to be discharged out of custody. But there were many remonstrances by tradesmen against that law, and in consequence the Statute 8 and 9, Vic. c. 127, was passed. That statute gave a power to summon a judgment-debtor before a Commissioner of Bankruptcy or Court of Requests. The debtor appearing was examined, or failing to appear, he might be committed to prison. If he had been guilty of fraud in contracting the debt, or having wilfully contracted it without reasonable prospect of being able to pay it, he might be committed to prison.

The English County Courts Act, 9 and 10 Vic. c. 95, repealed this Act as to all places having small cause courts established under the Act. The jurisdiction of such courts (then limited to £20) had since been extended. The present law was that if a man obtained credit under false pretences or by means of fraud, or wilfully contracted a debt without reasonable expectation of being able to pay it, he might be committed to the common jail or house of correction. They could not extend that provision to India in consequence of the difficulties of knowing what persons to exempt from its operation, but he felt some doubt whether the present clause should stand so as to apply to persons who had been guilty of fraud in contracting debts, or who had contracted debts without any probable means of paying them. Under the Insolvent Act the court could commit such a debtor to custody, or leave him to the mercy of his creditors; it did not absolutely discharge him. He should wish to propose some such words as those in the Insolvent Act.

Mr. Currie said, it seemed to him that the legitimate object of a suit in the civil court was simply to recover money due. If the defendant satisfied the court that he had not the means of paying it, and gave up all his property, it would seem that the civil court had discharged its duties, and that it was hardly its province to punish a man for having committed what might be considered a fraud in contracting a debt for which he has not probable means of payment. If there was any fraud in the transactions before the court, the previous section provided for the debtor being detained in custody, and he did not think it necessary to go farther.

The chairman said, the code gave to the creditor, who had

been defrauded by an actual fraud, though, perhaps, one not within reach of the criminal law, the option of keeping his debtor in prison for any time less than two years. The proposal was to extend that option to a creditor who had been defrauded by the species of moral fraud, which consisted in a man recklessly contracting debts which he knew he would be unable to pay. The object of the clause now under discussion was to prevent the imprisonment of a man who was not guilty of fraud and who had done what he could to pay his debt.

There was nothing inconsistent in limiting the indulgence to really honest debtors; if a man recklessly, and therefore dishonestly, incurred the debt, let him be left to the general law of imprisonment.

Mr. Harington thought that the proposed provisions would be inoperative in the Mofussil.

Mr. Peacock said, he would not press his amendment.

The section was then passed as it stood.

Section 76 provided as follows :—

“A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the last preceding section, but his property shall continue liable under the ordinary rules to attachment and sale, until the decree shall be fully satisfied.”

Mr. Ricketts said he had given notice of an addition to this section, but since it had been printed he had seen occasion to alter the amendment which he proposed. It was true that, as the section stood, it was in conformity with the laws of 1806 and 1850. *His object was that the old man should not for ever sit on the shoulders of the debtor, but that he should be discharged from his debt.* He could not think such a provision suitable to the state of things in this country. He had originally given notice of an amendment empowering the court to give an absolute discharge to the extent of five hundred rupees. Upon further advice, he was afraid to go so far. He believed that such a law would be a great blessing to all the poorer classes of natives. *A man now got a decree and held it over his debtor for the remainder of his life.* There were other code makers besides themselves. By Clause 28 of the Sonthal Code, it was provided that—

“*Imprisonment for debt is altogether abolished.*”

Clause 30 provided that—

"If a Sonthal appear before a hakim and request to be released from his debt, his statement shall be taken on solemn affirmation as to the amount thereof, and his means of discharging it, and a day shall be fixed for the appearance of his creditors, of which due notice will be given them. The majee of applicant's village, and applicant himself, with all the male members of his household, shall be warned to appear on the same day, and the hakim shall then make full enquiry, and if satisfied that the applicant's statement is true as to the number and names of his creditors, and the amount due to each, and the extent of his property, he shall take measures to sell or transfer the latter to the creditors, and give the applicant a release in full from all debts due to the creditors whom he has named and upon whom notice has been served."

And then this clause proceeded to provide.—

"Release under this rule is absolute as regards all property acquired by the insolvent after release. Property which he may not have surrendered at his release is always liable, when discovered, and at the same time insolvent may be punished as if for a false claim."

The Sonthal Pargana was thus in advance of all the rest of India, which had no Insolvent Code. He did not, however, go so far. He only proposed that when the debt did not exceed a hundred rupees, the court should be allowed to give an absolute discharge. Such a law it was possible might increase the interest demanded on small debts. It would not have that effect where the borrower was a man of substance and of character, but if it stopped altogether an advance to a person of different class, this he thought would be no evil. He then moved that the following be added to the section :—

"Unless the decree shall be for a sum less than one hundred rupees and on account of a transaction bearing date subsequent to the passing of this Act. When the decree shall be for a sum less than one hundred rupees and on account of a transaction bearing date as above, the court may declare a defendant who shall be discharged as aforesaid, absolved from further liability under that decree."

Mr. Peacock asked, if it ought to apply to every case. Suppose a man took away his neighbour's cow and sold it, and then told the owner—"I have only one rupee; here it is"—should he be discharged? There were certain cases for example, criminal conversation; slander, &c., in which it

would be wrong to give an absolute discharge. He had no wish to offer opposition, but he thought it should be confined to cases of contract.

Mr. Harington said his objection to the amendment proposed by the honourable member of the council was, that it would put the vigilant, or active judgment-creditor, at whose instance the judgment-debtor had been arrested and sent to jail, in a worse position than all other creditors of the same person. It was not proposed to release the judgment-debtor from all his debts to whomsoever owing, but only from that particular debt the non-payment of which had led to his being imprisoned. The judgment-creditor who took out process of arrest against the person of his debtor, had committed no wrong; he had simply been active. Why then should he be placed upon a different footing from the other creditors? Again, if the amendment was carried, a judgment-creditor might abstain from arresting the person of his judgment-debtor, lest the result of his imprisonment should be his discharge from further liability, but he would still hold his decree over him, and there would be nothing to prevent him from seizing and selling the property of his judgment-debtor as fast as he acquired any; from that the amendment of the honourable member would not relieve the judgment-debtor, so that he did not think that much would be gained by the adoption of the amendment, and he should prefer to leave the section as it stood.

*The chairman said, all the sections were open to the objection that they provided a rude and imperfect insolvent law. The judgment-creditor got the fat as well as the lean, for, if his debtor was discharged, the creditor on the other hand got all the property in preference to all other creditors, and not *pari passu*. So far he had the advantage; the disadvantage was that he alone was prevented from going against the future property when his debt was limited to a hundred rupees. He was in favour of the principle of letting a man start fair again if he relinquished all his property.*

Mr. Peacock thought that the first objection made by the honourable member for the North Western Provinces was not so tenable as the second, for every creditor had the same power. As to the second objection, he should vote for the amendment of the honourable member (Mr. Ricketts), because, if the creditor chose to imprison his debtor, and the court afterwards thought he should be discharged, it seemed

reasonable that it should be an absolute discharge, the creditor choosing that remedy must be satisfied with the discharge of his debtor.

Mr. Ricketts' motion was then carried, and the section agreed to.

Mr. Peacock said that though it might be somewhat irregular, he would ask to return to section 72. It had occurred to him when the honourable member (Mr. Ricketts) withdrew his amendment, that two years was too long a period of imprisonment, and he was about to suggest a shorter period. The Small Cause Court Act both here and in England provided a limit of six months when the debt was five hundred rupees.

It was reasonable, especially as the honourable member for the North-Western Provinces proposed to extend that law, that there should be the same limit.

Mr. Currie said, he entirely concurred so far as the limit of six months was concerned, but doubted whether they should go farther; the object was not to punish by imprisonment but to coerce; a poor man might think it better to go to jail for three months than to pay a debt for fifty rupees.

Mr. Peacock said, even in the case of a felony, a distinction was made.

Mr. Harington—Yes, but in a case of felony, imprisonment was intended as a punishment.

Mr. Peacock continued.—The object was to compel the debtor to give up his property; the Code gave the creditor power to take it, and to bring the debtor before the court for examination; it was too severe also to give him the power to lock up his debtor for a long period.

The chairman said, admitting the principle (that the debtor was locked up to make him disclose his property), then if six months was the presumable period of imprisonment, which rather than undergo, he would pay five hundred rupees, if he had the means of paying; it might be supposed that, given the same means, he would rather pay fifty rupees than undergo three months' imprisonment. No doubt a ryot whose time was of no very high value, might prefer imprisonment to payment, but that was not the class of people who had the means of concealing their property, which consisted perhaps of bullocks, or something not capable of concealment. If the debtor really possessed property, he would ordinarily be a person whose time would be of such value that he would gladly pay rather than undergo imprisonment. He thought

that in principle there was nothing inconsistent in the proposed amendment.

Mr. Harington said, they had just adopted a section which rendered imprisonment under certain circumstances payment in full of a debt, and it behoved them to be careful that they did not make the period of imprisonment so short as to hold out a strong inducement to judgment-debtors generally to go to jail rather than make an effort to pay what was owing by them. The object in view in imprisoning a party against whom judgment had been given, was not only to oblige him to disclose his property, but also to compel him to make some arrangement for satisfying the claim either by instalments, giving security for their payment, or in some other way, or to induce his friends to come forward to assist him.

• The chairman said, the amendment which had been adopted, only gave the court power (if it thought fit to use it) to discharge the debt absolutely.

Mr. Peacock's amendment was put and carried, and section 72 then passed.—*Debate on the Civil Procedure Bill, October 30th 1858.*

3. With regard to the Subordinate Civil Court in the Frontier Districts, Sir W. Merewether understands Colonel Loch to mean that he thinks if the court was presided over by an officer of the force located there, who had been long resident, was intimately acquainted with the people and had much influence with both parties in a suit, he could often bring about an equitable arrangement between them, and so perhaps save some of the unfortunate debtors. Sir W. Merewether would go even further than this, and as the Frontier District is an outlying one in which an experiment might be tried without interfering with other plans in any material way, he would ask that the plans originally introduced by General Jacob, and which as often reported worked with such marked success, might be again reverted to. This would be that from a certain fixed date the Civil Code should be held to be in abeyance in the Frontier District, and that *recoveries of debt by law should not be allowed.* All transactions and liabilities up to that date would of course have to be enforced as is now the case, but any fresh ones after that should come under the new ruling. The hearing and deciding of the first-mentioned might then be entrusted to the officers selected by Colonel Loch. Captain S. Reynolds, a sensible painstaking officer, admirably well adapted for the post, having the minor establishment recom-

mended given to him, the subordinate civil judge now employed in the Frontier District would be set free for employment elsewhere.

4. *While General Jacob's order remained in force, the zemindars of the district became rich and prosperous; not being able to obtain money on loan they depended on their own exertions, and received the whole benefit of them. In 1862, after the rule had been some time in force, a complaint was made by certain banias that their occupation was gone, that the zemindars ceased to borrow, and did not even take seed from them, keeping it themselves from the previous crop. The only articles required of the banias were sugar, tobacco, salt, clothes, &c., which should really be their correct sources of profit.*

5. Sir W. Merewether submits this proposal with all deference, but having carefully watched its progress before, and marked its success, he is confident that, with the measures lately proposed for the assistance of those who are involved, a few years will show a most surprising improvement in the condition and circumstances of the people of the district, and on such success following it might then be a question of how much further the plan might be extended.

6. It may be thought such procedure will injure credit. On the contrary, it will tend to restore it to its proper and sound footing. At present it is represented by two and three hundred per cent interest per annum on money taken up.—*Extract from the Sind Commissioner's Report for 1875, No. 785, dated 27th June 1875.*

Once now in the hands of the banias it is only a question of time for the zemindar to be irretrievably ruined and plucked to the skin by the man he has so insanely placed himself in the power of. Of course, the zemindar need not resort to the money-lender unless he liked; but people's habits are not changed in a day, and these men, like their forefathers, fly unthinkingly to the old source of relief when pressed by even slight difficulties. It is not confined to Sind. It is too common unfortunately in India, and I understand, at this very time, the subject is engaging the earnest attention of the authorities in the North-West Provinces, with a view to the adoption of measures for the protection of those who are unable to protect themselves by reason of circumstances for which they are not wholly to blame. *The abolition of recovery of debt by law would prove a most effectual*

remedy, and would establish credit on a sound basis, for no money would be advanced, except in perfectly safe quarters. General Jacob acted on this principle in the Upper Sind Frontier Districts with manifest advantage. The zemindars got clear of debt, and on one occasion the banias of a village complained their occupation was gone; no one borrowed from them, they said, and the zemindars had even taken to preserving seed for the future crop. *This excellent system had to be abandoned on the introduction of the Code of Civil Procedure*, and when I was at Jacobabad last spring, several zemindars, whom I had known formerly as men of substance, owning thousands of acres, came to me with the too common story of ruin—sold up—without an acre left. To introduce universally such a law as that above-mentioned would require lengthened discussion, if it were ever found practicable. For the present, therefore, we must be content to secure something else, which may be speedily brought into force.—*Report to Government by Colonel Merewether, Commissioner in Sind, dated 28th October 1872.*

We would also abolish imprisonment for debt, but on this point we do not intend to offer any arguments, beyond remarking that as it disables a man from earning his subsistence, it ought not to be allowed consistently with what has been here advocated.—*Memorandum by two Pleaders of the Sadar Court of Sind, 1874.*

OPINIONS AGAINST ABOLISHING IMPRISONMENT FOR DEBT.

I have not been able to find any opinion setting forth such a principle in so many words. The following extract shows the necessity of some sort of compulsion which, of course, might include imprisonment:—

It is quite a mistake to suppose that borrowers generally would re-pay their loans without being compelled to do so. They have too long been in the habit—acquired perhaps in self-defence against the fraud and chicanery of lenders—of resorting to every means of evading payment even of just debts. As every judicial officer knows, there is little to choose in point of honesty between debtor and creditor.—*Extract from the Note by W. G. Pedder, C. S.*

INSOLVENCY.

EXISTING LAW OF INSOLVENCY.

It will be seen from the following sections of the Procedure Code that some attempt has been made to enact an Insolvency Law for India. These clauses however are not very favourable; the property of the debtor never ceases to be liable all his life, and his person is liable under every decree, except that under which he has been actually imprisoned. The fact that only 72 persons took their discharge under those sections in a year throughout the Bombay Presidency, shows that the law is practically a dead letter. The Insolvency Law of the Presidency Towns is very favourable; it allows a complete discharge, both from imprisonment and as to the after acquired property. It further allows the insolvent to retain Rs. 300 worth of property. I quote the Thákurs and Tálukdárs Acts, as they are substantially Insolvency Laws; they however only exempt from arrest, they still allow the creditor full power to come down on the property.

Civil Procedure Code.

Of Arrest in Execution of Decrees for Money.

273. Any person arrested under a warrant in execution of a decree for money, may, on being brought before the court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself, and his family, and the necessary implements of his trade), and of the places respectively where such property is to be found, or shall state that, with the exceptions abovementioned, the applicant is not possessed of any property, and the application

shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints.

275. The discharge of the defendant under the last preceding section shall not protect him from being arrested again and imprisoned, if it should be shown that, in the application made by him, he had been guilty of any concealment, or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy or held for him in trust, or had fraudulently concealed, transferred, and removed any property, or had committed any other act of bad faith; nor shall such discharge exempt from attachment and sale any property then in the possession of the defendant, or of which he may afterwards become possessed.

280. Any person in confinement under a decree may apply to the court for his discharge. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family, and the necessary implements of his trade), and of the places respectively where such property is to be found; and such application shall be subscribed and verified by the applicant in the manner hereinbefore provided for subscribing and verifying plaints.

281. On such application being made, the court shall cause the plaintiff to be furnished with a copy of the account of the defendant's property, and shall fix a reasonable period within which the plaintiff may cause the whole or any part of such property to be attached and sold or may make proof that the defendant, for the purpose of procuring his discharge without satisfying the decree, has wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith. If, within such period, the plaintiff shall fail to make such proof, the court shall cause the defendant to be set at liberty. If the plaintiff shall within the time specified or at any subsequent period, prove to the satisfaction of the court that the defendant has been guilty of any of the acts abovementioned, the court shall, at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the

decree; and may also, if it shall think proper, send the defendant to the magistrate to be dealt with according to law.

232. A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the preceding section, but *his property shall continue liable*, under the ordinary rules, to attachment and sale until the decree shall be fully satisfied, unless the decree shall be for a sum less than one hundred rupees, and on account of a transaction bearing date subsequently to the passing of this Act. When the decree shall be for a sum less than one hundred rupees and on account of a transaction bearing date as above, the court may declare a defendant, who shall be discharged as aforesaid, absolved from further liability under that decree.

Insolvency Act, Presidency Towns.

V.—And be it enacted, that from and after the time appointed for this Act to take effect, any person who shall be in prison within the respective limits of the towns of Calcutta, Madras, and Bombay, upon any process whatsoever for, or by reason of any debt, damages, costs, or money which such person is solely, or jointly with any other, liable to pay, or who shall reside within the jurisdiction of any of the Supreme Courts at Calcutta, Madras, and Bombay, respectively, and being indebted on account of any such liability as aforesaid, shall be in insolvent circumstances, may at any time apply by petition to the court for the relief of insolvent debtors within the presidency, where such insolvent debtor shall then be, for the benefit of the provisions of this Act. * * *

VII.—And be it enacted, that upon the filing of any such petition as is aforesaid, it shall be lawful for the said court, and the said court is hereby authorized and required to order, that all the real and personal estate and effects of such petitioner, whether within the territories within the limits of the Charter of the East India Company, or without, *except the wearing apparel, bedding, and other such necessaries* of such petitioner and his family, and the working tools and implements of such petitioner and his family, *not exceeding in the whole the value of Company's rupees three hundred* for each petitioner with his family, and all debts due to him, and all the future estate, rights, title, interest, and trust of the said petitioner in or to any real or personal

estate or effects within or without the said territories which such petitioner may purchase, or which may revert, descend, be devised or bequeathed, or come to him, and all debts growing due to him before the court shall have made its order, in a nature of a certificate as hereinafter mentioned, do vest in the Official Assignee for the time being of the said court. * * * *

XXVIII.—And be it enacted, that it shall be lawful for the assignee or assignees, with the leave of the court first obtained upon application to such court, and by and with such notice to such creditors as it shall think fit to direct, to take such reasonable part of any debt due to the insolvent, as may by *composition* be gotten, in full discharge of such debts, and to submit to arbitration any difference or dispute between the assignee or assignees and any other person, or persons for, or on account, or by reason of anything relating to the estate and effects of such insolvent. * * * *

XXXI.—And be it enacted, that the assignee or assignees shall, with all convenient speed, make sale of the property and effects of the insolvent, if it shall appear that the debts of any such insolvent can be discharged by means of money raised by way of mortgage or otherwise, or any of the said property of the said insolvent, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such insolvent in such manner as may be most consistent with the interest of such insolvent and of his creditors.

LIX.—And be it enacted, that whenever it shall appear that the estate of any insolvent, which has come to the hands of his assignee, has sufficed to pay one-third of his debts admitted or established in the matter of the said insolvency; or that a majority in number and value of the creditors whose debts are admitted by the schedule, or established by proof, have consented to such application, it shall be lawful for the said court, at any time, after the hearing of his petition, upon the application of the insolvent by petition, which may be in the form contained in the Schedule E. to this Act annexed, with such variations as the case may require, to make an order *nisi* for his discharge; and such discharge, unless order shall be made to the contrary, shall extend to,

and shall discharge the insolvent personally, and also his after acquired property, from the demands of all the creditors named in the said order nisi.

Tálukdárs Act No. VI. of 1862.

An Act for amelioration of the condition of tálukdárs in the Ahmedabad Collectorate, and for their relief from debt.

Whereas the lands held in the zillah of Ahmedabad, in the Province of Guzarat, under the title of tálukdári estates are now only held on lease-hold tenure determinable at the pleasure of Government; and whereas it has been brought to the notice of Government that many of the tálukdárs are in embarrassed circumstances, and have borrowed money on the security of their landed estates; and whereas such of the said landed estates as are of the tálukdári tenure aforesaid could not and cannot be lawfully charged, encumbered or alienated; and whereas it is expedient to enable the said tálukdárs to effect a settlement of their debts and liabilities: It is hereby enacted as follows:—

4. From and after the publication of such declaration as aforesaid, the tálukdár, the subject of such declaration, shall not be liable to arrest, nor shall his personal estate of any description whatsoever be liable to seizure, attachment, or sale, under any process, decree, judgment, or execution of the civil court of the Presidency of Bombay, for, or in respect of, any debts or liabilities existing at the time of such declaration other than debts due, or liabilities incurred to the Crown or Government.

5. From and after the publication of such declaration as aforesaid, the landed estates of such tálukdár of any description of tenure, and the rents, profits, and income thereof, shall, during the period of the management thereof by the said officer or officers, be wholly exempt from seizure, attachment, or sale, under or by virtue of any process, decree, judgment, or execution of any civil court of the Presidency of Bombay, for, or in respect of, the debts and liabilities aforesaid, other than debts due or liabilities incurred to the Crown or Government.

7. The said officer or officers shall, during the continuance of his or their management of the said estates, receive the whole of the rents, profits, and income thereof, and shall defray thereout land-tax and other debts due or

liabilities incurred, or hereafter respectively to grow due or be incurred, to the Crown or Government, and pay to the tálukdár such annual sum only as shall appear to the Governor in Council requisite for the decent support of the tálukdár and his family, and any balance remaining after such payment as aforesaid, shall be applied in discharge of the expenses of such management as aforesaid, and in liquidation or settlement of the debts and liabilities to which at the time of the publication of the said declaration the tákukdár is subject, either personally or in respect of his landed estates of description of tenure in accordance with the rules alluded to in the last preceding section.

16. The management of the landed estates of any tálukdár by such officer or officers as aforesaid shall not extend beyond the period of twenty years, to be calculated from the first publication of such declaration as aforesaid in the *Bombay Government Gazette*, and at the expiration of such management, whether before or at the end of such period of twenty years, all debts and liabilities, except as hereinbefore excepted existing at the time of such declaration and comprised in such approved scheme as aforesaid, shall be deemed to be for all intents and purposes whatsoever fully discharged and satisfied, and neither the tálukdár nor his heirs nor representatives, nor his heir, or their estates, whether moveable or immovable, or any part thereof, shall be subject in any manner whatsoever to such debts or liabilities (except as hereinbefore excepted), or any part thereof.

20. From and after the expiration of the period of management of the estate of any tálukdár, whether such period extend to, or be less than twenty years, the tálukdár shall be the absolute proprietor of his said landed estates as regards succession to, and possession, management, and transfer of the same, subject to such land-tax as the Governor in Council may be pleased to reserve, and all usual remedies for the recovery thereof.

Broach Thákurs Act No. XV. of 1871.

An Act to relieve from encumbrances the estates of Thákurs in Broach.

The Governor of Bombay in Council may, by order published in the *Bombay Government Gazette*, appoint an officer (hereinafter called the manager), and vest in him the management of the immovable property of, or to which the Thakur is then possessed or entitled in his own right, or

which he is entitled to redeem, or which may be acquired by or devolve on the Thákur or his heir during the continuance of such management.

4. On such publication, the following consequences shall ensue:—

1st.—All proceedings in respect to such debts or liabilities, which may then be pending in any civil court in British India, shall be barred; and all processes, executions and attachments for, or in respect of, such debts and liabilities shall become null and void.

2nd.—So long as such management continues, the *Thákur and his heir shall not be liable to arrest* for, or in respect of, the debts and liabilities to which the Thákur was, immediately before the said publication, subject, or with which his immoveable property, or any part thereof, was then charged, other than debts due, or liabilities incurred, to Government.

Nor shall their moveable property be liable to attachment or sale, under process of any civil court in British India, for, or in respect of such debts and liabilities other than as aforesaid; and (3rdly) so long as such management continues

(a). The Thákur and his heir shall be incompetent to mortgage, charge, lease, or alienate their immoveable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom, and

(b). Such property shall be exempt from attachment or sale under such process as aforesaid, except for, or in respect of, debts due, or liabilities incurred, to Government.* * *

Settlement of Debts.

9. The Manager shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities due to the several creditors of the Thákur and persons holding mortgages, or liens on the said property or any part thereof.

12. *When all such debts and liabilities have been discharged*, or if within six months after the publication of the order mentioned in Section 3, the Governor of Bombay in Council thinks that the provisions of this Act should not continue to apply to the case of the Thákur or his heir,

The *Thákur* or his heir shall be restored to the possession and enjoyment of his immoveable property, or of such part thereof as has not been sold by the Manager under the power

contained in Section 19, but subject to the leases and mortgages (if any) granted and made by the Manager under the power hereinafter contained.

When the Thákur or his heir is so restored under the circumstances mentioned in the second clause of this section, the proceedings, processes, executions, and attachments, mentioned in Section 3 (so far as they relate to debts and liabilities not settled by the Manager) and the debts and liabilities barred by Section 8, shall be revived, and any mortgagee dispossessed under Section 17 shall be reinstated unless his claim under the mortgage has been satisfied.

PROPOSED ACT ON INSOLVENCY.

The following clauses are taken from the Civil Procedure Bill (No. III.) now before the Legislative Council of India. The proposed law, it will be observed, does not provide a discharge of the property, except in case of debts under Rs. 100; such cases would be rare, as it would hardly pay to take such a petty insolvency case into court at all. In England an insolvent to go through the court must owe £50.

OF INSOLVENT DEBTORS.

314. Any person arrested or imprisoned in execution of a decree for money may apply to be declared an insolvent.

Such application may be made to the District Court which ordered his arrest or imprisonment, as the case may be, or when the District Court has not ordered his arrest or imprisonment, then to the District Court to which the court that made the order is subordinate.

Contents of Application.

315. The application shall set forth—

- (a) the fact of his arrest or imprisonment;
- (b) the amount, kind and particulars of his property;
- (c) the place or places in which such property is to be found;
- (d) his willingness to place it at the disposal of the court;
- (e) the amount, nature and particulars of his debts; and
- (f) the names and residences of his creditors, so far as they are known or can be ascertained by him.

316. The application shall be subscribed and verified by the applicant in manner hereinafter prescribed for subscribing and verifying plaints.

317. The court shall fix a day for hearing the application and shall cause a copy of the application, with a notice in writing of the time and place at which it will be heard, to be served on the holder of the decree or his pleader and to be published in such manner as the court thinks fit.

318. The court may also, if it thinks fit, cause a like copy and notice to be served on any other creditor of the applicant or on any person alleging himself to be such a creditor and applying for leave to be heard on the application.

319. On the day so fixed, or on any subsequent day to which the court may adjourn the hearing, the court shall examine the applicant, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the decree-holder and the other creditors (if any) in opposition to the applicant's discharge, and may, if it think fit, grant time to the decree-holder and the other creditors (if any) to adduce evidence, showing that the applicant is not entitled to be declared an insolvent.

320. If the court is satisfied—

(a) that the statements in the application are substantially true;

(b) that the applicant has not fraudulently concealed, transferred, or removed any of his property;

(c) that he has not, knowing himself to be insolvent, unfairly given a preference to any of his creditors by any payment or disposition of his property;

(d) that he has not committed any other act of bad faith, the court may declare him to be an insolvent, and may make an order appointing a Receiver of his property.

321. The order under section 320, appointing a Receiver, shall operate to vest in him all the insolvent's property (except

such particulars as are specified in Section 215) whether set forth in his application or not.

322. The Receiver so appointed shall possess himself of all such property, except as aforesaid; and on his certifying that the insolvent has placed him in possession thereof or has done everything in his power for that purpose, *the court may discharge the insolvent from arrest or imprisonment, as the case may be.*

Receiver to collect assets.

all such property, except as aforesaid; and on his certifying that the insolvent has placed him in possession thereof or has done everything in his power for that purpose, *the court may discharge the insolvent from arrest or imprisonment,*

Discharge of applicant.

Powers of court as to applicant under arrest.

323. Where the applicant is under arrest, the court may, pending the hearing,

(a) order him to be immediately committed to jail; or

(b) leave him in the custody of the officer of court to whom the service of the warrant was entrusted, on the applicant depositing the fees of such officer, which shall be at the same daily rate as the lowest rate charged in the same court for serving process; or

(c) if the applicant furnish sufficient security for his appearance at any time when called upon, his surety undertaking in default of such appearance to pay the amount mentioned in the warrant, the court may release the applicant on such security.

324. The court shall frame a schedule of creditors and their respective debts according to the justice of the case.

Applications by creditors.

The declaration under section 320 shall be deemed to be a decree in favour of each of the said creditors for their respective debts.

Any creditor of the applicant who is not mentioned in such schedule may apply to the court for an order directing his name to be inserted therein.

Any creditor mentioned in the schedule may apply to the court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

Duty of Receiver.

325. The Receiver shall proceed under the direction of the court—

- (a) to convert the property into money :
- (b) to pay thereout debts, fines and penalties (if any) due by the insolvent to the Crown :
- (c) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts, and without any preference, notwithstanding anything contained in sections 305 and 306 :
- (d) to deliver the surplus, if any, to the insolvent or his legal representative.

326. An insolvent discharged under section 322 shall not
 Effect of discharge. (except as provided in section 327) be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 328) *his property (except as excepted in section 321) shall, by order of the court, be liable to attachment and sale until the decrees against him held by the scheduled creditors are fully satisfied* or become incapable of being executed.

327. The discharge of the insolvent under section 322 shall not protect him from being
 Defendant liable to be arrested if proved guilty of fraudulent concealment of property, &c. arrested again and imprisoned on account of any of the scheduled debts if it be shown that he had,

- (a) in the application made by him, been guilty of any concealment or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust ;
- (b) fraudulently concealed, transferred or removed any property ; or
- (c) committed any other act of bad faith :

In any of such cases the court shall, at the instance of the scheduled creditors, either retain the applicant in confinement, or commit him to jail, as the case may be.

Provided that the term of imprisonment under this section shall not exceed two years from the date of committal.

Or the court may, if it think fit, send the applicant to the magistrate to be dealt with according to law.

328. If the aggregate amount of the scheduled debts is one hundred rupees or a less sum, the court may declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

328A. The Local Government may invest any court other than a District Court with the powers conferred on District Courts by sections 314 to 328 (both inclusive), and the District Judge may transfer to any such court any case instituted under section 314.

HINDU LAW OF INSOLVENCY.

The Hindu Law seems to be almost as favourable to the debtor as that in force in the presidency towns except in the case of non-traders.

Inability on the part of sowkars and traders to pay their creditors arises in this country from numerous causes independently of fraud. Such are the destruction of property by fire, flood, or shipwreck, the loss of property uninsured on carriage, the failure of trading speculations, the falling in price of goods kept for sale. Under the Native Government, advances to chiefs and sirdars, either on account of warlike equipments and enlistments, or for other expenses, were frequently not repaid at the time agreed on, if at all, under pretence of the failure of the military expedition and the non-performance of the Sirkar's promises to themselves. Rich sowkars were also on frivolous accusations obliged to pay fines to Government, or furnish them with forced loans. Advances made to māmlatdārs, inferior officers and ryots, often remained unpaid an account of failure of crops, plunder and exaction.

Fraudulent sowkars under the Native Government, after neglecting their accounts or wilfully making false entries and balances, drawing hundis afterwards dishonoured, and receiving large deposits as bankers, absconded with the money and took refuge with a powerful sirdar.

It has been customary for the sowkar himself (in the former case) to represent the constant tukazu he underwent to Government. The Sirkar authorities then placed men in charge of the sowkar's property and house, for the collection of his debts, and the payment of all or a proportionate part of the claims against him. A man becoming bankrupt signifies his inability to answer demands by placing a light on a small mound of cowdung at his door, himself leaving the house, but not his family. If he shut himself up in the house and deny himself to his creditors, give bills on merchants which are afterwards dishonoured, and refuse to pay the

amount when protested, or continue to evade payments of money due, the creditors assemble and make arrangements for the collection of debts and assets, and dividing the amount, S. By Government authority all the bankrupt's books, papers, &c., may be seized, and his house broken open for that purpose, L. The creditors, or several of the most respectable of them, then assemble, and calling the bankrupt before them, inquire into his debts and assets and the causes of his insolvency. All mortgages are, if possible, paid off, otherwise pledges are generally sold, D. If not redeemed, the pledger can only share the proceeds with the other creditors, S. Deposits of cash are accounted for. If necessary, the creditors would make Tukazu on the individual, with whom the bankrupt has taken refuge, the expense to be borne by agreement among the creditors sending after him, P.

If, on full investigation, the assets appear sufficient to answer the debts, a Panchayet would show a preference to priority in contracting them, but in general debts are paid according to the degree of Tukazu enforced, or priority in establishing a claim, D.

If the assets are insufficient, the creditors (and wakils of absent creditors) then take dividend or percentage on the amount of their respective debts, and give an acquaintance (Farikut) to the bankrupt, by which they forego all further claims on him or his property in future, P. D. K. If the assets are sufficient to pay off principal, but not interest of the respective debts, at various rates, the interest on all the debts is reduced to the same rate (K); but should there be a surplus, the creditor at higher rate of interest receives a larger proportion on that account, D.

There is no preference in paying the creditors to those of higher caste, as prescribed in the Sastru, D.P. A bankrupt becoming so by misfortune is allowed to keep necessary articles of furniture and wearing apparel, S.

If one creditor is absent on a pilgrimage, his share is to be kept in deposit till his return, D. K.

Any of the creditors refusing to receive the dividend, or any absentees whose shares may not be kept in deposit, take their chance for future payment from any property the bankrupt may subsequently acquire, P. The same rule holds on the bankrupt's absconding. His person is also liable to be seized on his return, S.

Moveables of the bankrupt are generally sold, sometimes shared. Even the wife's jewels are not exempted, contrary

to the Sastru. But a watan or immoveable property belonging to the bankrupt is not sold or mortgaged; the annual proceeds only are given up in discharge of debts, P.

It has been customary, on proof that a sowkar requires time to collect money due to him, for Government to prevent Tukazu upon him for a time, on his complaining with that object, P.

Decisions of Panchayets on what is afterwards proved to have been a feigned insolvency may be set aside by Government, D. Fraud is punishable by fine, by authority of Government only, at the recommendation of creditors or Panchayets, S.

Persons not trading becoming insolvent from want of property, cannot benefit by the customary rules in cases of bankruptcy, unless by consent of their creditors. Without an acquittance in either case the insolvent is liable to be sued again for the balance of the debt, though generally for the principal only, from the day on which the goods were seized. If property is expected to be forthcoming, the creditors may procure the continued imprisonment of the debtor, S., though this was not usual under the Native Government.

Under whatever name the trade is conducted, whoever pays and receives profits is the responsible master. Money spent by his Goomashta in another place on his private account is never recoverable, and the Goomashta would be punished; but the master must pay trading debts contracted in consequence (K.), and be answerable for the Goomashta's acts of bankruptcy.—*Steele's Law and Customs of Hindu Castes.*

Among the bankers and traders of the Khaira District cases of bankruptcy seldom occur. Failure to meet his engagements is said to be considered not less disgraceful, and to be visited by the same social penalties, as a breach of caste rules. The religious feeling that connects a man's condition in the next world with the discharge of all claims against him at the time of his death, is strong in this district, and the duty of paying an ancestral debt is said to be evaded only in cases of extreme helplessness or hopeless poverty. In small cities and towns, the amount of property owned by a banker or merchant, and the extent of his trade liabilities, are pretty well known to other members of the same class, and it is therefore comparatively easy to decide how far in any case the failure is attributable to fraud or carelessness, and

to what extent it is due to misfortune. In the event of a trader finding that he is unable to meet his liabilities, the general rule is that he calls his creditors together, explains to them the condition of his affairs, and submits himself to their decision. After ascertaining how matters stand, the creditors, in proportion to their claims, divide the assets. When such a partition has been made, no further steps are ordinarily taken. Unless he has been shown to have acted dishonestly, the discharged bankrupt will probably find little difficulty in raising a sum of money sufficient to help him to make a fresh start in business.

As mentioned at page 6, the shop-keepers of the Khaira District can, as a rule, lay in what stock of goods they require without having recourse to a capitalist, and, as in ordinary times, the risk of loss from fire, flood, or the depredations of robbers is but small, bankruptcy among this class of traders is almost unknown.

With the cultivators, however, the case is different. Though one-fourth of their whole number, according to the estimate of the Collector, is at present in a state of insolvency, there would seem to be no arrangement by which, like a bankrupt trader, a hopelessly embarrassed agriculturist can compound with his creditors and start afresh. In their dealings with the cultivators, money-lenders would seem to refuse to consider any of their claims to be bad debts, renewing the bonds as they fall in, hoping for the recurrence of such an increase of agricultural wealth as took place during the years of the American War.—*Extract from the Note on Khaira Money-lending.*

MAHOMEDAN LAW OF INSOLVENCY.

11. It is left discretionary with the judicial authorities to determine the period of imprisonment in cases of apparent insolvency.

12. But the liberation of a debtor does not exempt him from all future pursuit by his creditors. They may cause his arrest at a subsequent period on proof of his ability to discharge the debt.—*Macnaghten's Mahomedan Law.*

ENGLISH LAW OF INSOLVENCY.

It will be seen that the English Act makes no

provision for a discharge from imprisonment. That is, however, rendered unnecessary by the Act for the abolition of imprisonment. As to the liability of property for debt, it will be seen that $\frac{3}{4}$ ths of the creditors may let the debtor off entirely, and the court may let him off if he pays 10 shillings in the pound. If he does not pay so much, the creditors can still come down on his future property up to that amount, subject to certain conditions. This is much more favourable than the Law of India, where the creditor can come down on the property without any limit or condition during the whole of the debtor's life.

32 and 33 Vict. Chap. 71.

An Act to consolidate and amend the Law of Bankruptcy.

(9th August 1869.)

6. A single creditor, or two or more creditors, if the debt due to such single creditor, or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than fifty pounds, may present a petition to the court, praying that the debtor be adjudged a bankrupt.

15. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:—

- (1.)—Property held by the bankrupt on trust for any other person;
- (2.) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife, and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole.

* * * *

A special resolution shall be decided by a majority in number, and three-fourths in value of the creditors present personally or by proxy at the meeting and voting on such resolution.

48. When a bankruptcy is closed, or at any time during its continuance, with the assent of the creditors testified by a special resolution, the bankrupt may apply to the court

for an order of discharge; but such *discharge shall not be granted, unless* it is proved to the court that one of the following conditions has been fulfilled, that is to say, either that a dividend of not less than *ten shillings in the pound has been paid* out of his property, or might have been, except through the negligence or fraud of the trustee, or that a *special resolution of his creditors has been passed* to the effect that his bankruptcy or the failure to pay ten shillings in the pound has, in their opinion, arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him; and the court may suspend for such time, as it deems to be just, or withhold altogether the order of discharge in the circumstances following, namely, if it appears to the court on the representation of the creditors made by special resolution, of the truth of which representation the court is satisfied, or by other sufficient evidence, that the bankrupt has made default in giving up to his creditors the property which he is required by this Act to give up, or that a prosecution has been commenced against him in pursuance of the provisions relating to punishment of fraudulent debtor, contained in the "Debtors Act, 1869," in respect of any offence alleged to have been committed by him against the said Act.

* * * *

54. Where a person who has been made bankrupt has not obtained his discharge, then, from and after the close of his bankruptcy, the following consequences shall ensue:—

- (1.) No portion of a debt provable under the bankruptcy shall be enforced against the property of the person so made bankrupt until the expiration of three years from the close of the bankruptcy; and during that time, if he pay to his creditors such additional sum as will, with the dividend paid out of his property during the bankruptcy, make up ten shillings in the pound, he shall be entitled to an order of discharge in the same manner as if a dividend of ten shillings in the pound had originally been paid out of his property.
- (2.) At the expiration of a period of three years from the close of the bankruptcy, if the debtor made bankrupt has not obtained an order of discharge, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgment-debt, and subject to the rights of any persons

who have become creditor since the close of his bankruptcy, may be enforced against any property of the debtor, with the sanction of the court which adjudicated such debtor a bankrupt, or of the court having jurisdiction in bankruptcy in the place where the property is situated, but to the extent only, and at the time and in manner directed by such court, and after giving such notice and doing such acts as may be prescribed in that behalf. * * * * *

126. The creditors of a debtor unable to pay his debts may, without any proceedings in bankruptcy, by an extraordinary resolution, resolve that a *composition* shall be accepted in satisfaction of the debts due to them from the debtor.

An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at a general meeting to be held in the manner prescribed, of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given in the prescribed manner, and held at an interval of not less than seven days, nor more than fourteen days from the date of the meeting at which such resolution was first passed.

ROMAN LAW OF INSOLVENCY.

By the Lex Julia, passed either in the time of Julius Cæsar or Augustus, and subsequently extended to the provinces, insolvent debtors were allowed the benefit of *Cessio bonorum*, whereby they were freed from imprisonment on making a voluntary surrender of all their property to their creditors.

This surrender was made by a solemn declaration, either judicial or extra-judicial. The property thus given up was sold, and the price was distributed among the creditors. The debtor was not released from his debts unless the creditors were fully paid, but he was protected from imprisonment at their instance. If the debtor subsequently acquired property, his creditors were entitled to attach it, except in so far as it was necessary for his own subsistence.—*Mackenzie on Roman Law.*

OPINIONS IN FAVOUR OF INSOLVENCY LAWS.

Mr. LeGeyt said he had received a communication from the Government of Bombay on the subject of a law for the

relief of insolvent debtors in the Mofussil. The Government of Bombay had desired him to inform them whether it was in the contemplation of the legislature to deal with that most important question. The immediate cause of the reference was a letter from Mr. Davidson, the Magistrate of Poona, and a very intelligent officer, in which that gentleman strongly recommended a measure of the kind being introduced, stating that the local Superintendent of Police attributed the gang robberies which had been committed during the latter part of 1857 in the hill districts of the zillah, in a great measure to the extreme poverty and indebtedness of the Ramusi and Bheel ryots, and the hardships and tyranny which they underwent at the hands of money-lenders, to whom they were bound hand and foot. Mr. Davidson said that, after enquiry, he was satisfied that this was the main cause of the late disturbances in his magistracy. In short, it appeared to him (Mr. LeGeyt) that the case was very much what had occurred three years ago in the Sonthal Districts. Mr. Davidson was of opinion that a law for the relief of insolvent debtors should be enacted "for the whole country, which would afford the unfortunate and even the improvident an outlet of escape, so that a man might have a chance of making a fresh start without a millstone round his neck for his personal success and elevation in life, not only recovering himself and family from hopeless recklessness and slavery, to his own personal benefit, but to the public benefit of the Government and the country."

He (Mr. LeGeyt) found that this was by no means a new subject before the Government of India. It appeared first to have gone before the Government in the year 1845, when, after considerable discussion references were made to Bombay and Madras and to the authorities here as to the advisability of a law on the subject. *The majority of the answers were decidedly in favour of the proposed law.* In Madras alone it appeared to have been thought unadvisable. He had had access to the papers in the Home office; and he found that after the receipts of the opinions from Madras in 1852 the discussion was dropped. It was mentioned in the List of the Projects of Law pending before the Government of India on the 20th of May 1854, with the following remarks:—

"No act for this purpose has yet been drafted.

"The question originated in a reference from the Madras Government in connection with the Military Courts of

Requests constituted under Acts 3 and 4 Victoria Chapter 37 and Act XI of 1841, respectively. The enquiries made as to the practice of those courts, where there might be more than one judgment-creditor against the same defendant, with insufficiency of assets to meet the claims of all, were afterwards extended to the practice of the civil courts generally, of the East India Company in similar cases. Some difference of practice appears to prevail in the Military Courts of Requests in dealing with such cases.

“The civil courts have their own rules, but there is no provision for the protection of creditors who have not obtained judgments upon which they can proceed.

“The subject is one of much difficulty and importance.”

The subject was one of great importance, and, he admitted, of some difficulty. The only sections in the proposed Code of Civil Procedure bearing on it were taken almost word for word from the Bombay Regulation IV., 1827. No relief could be given under them except where all the property of the debtor had been attached and sold, and the debtor himself was in prison at the suit of a creditor—and *the effect was to relieve him only from imprisonment, at the instance of that particular creditor. The Government of Bombay evidently did not consider that these provisions afforded a sufficient measure of relief.* After the discussion which was upon record, and the difference of opinion which appeared in the papers he had read, he had not presumed to come before the council with a bill on the subject; but he thought that the question might with great advantage be referred to a select committee who might be instructed to report whether legislation was advisable or not. He thought it would hardly do to attempt to introduce an Insolvent Act into the Code of Civil Procedure; and he, therefore, now moved that the subject of a law for the relief of insolvent debtors in the Mofussil be referred to a select committee consisting of Mr. Peacock, Mr. Currie, Mr. Harington, Mr. Forbes, and the mover, with instructions to report whether any legislation was advisable.

Mr. Currie said, he would suggest that the better course would be to refer the communication to the select committee on the Procedure bills. In the Civil Procedure Code as prepared by the commissioners in England, there was a provision to the effect that any person in confinement under a decree who was not entitled to the benefit of any act for the relief of insolvent or bankrupt debtors in India, might pro-

cure his enlargement by making an application to the judge to that effect, and surrendering all his property. The select committee had not finally amended the code, but in going over it they struck out the reference to an Insolvent Act, and appeared to consider that sufficient provision was made for insolvent debtors in the following sections of the code. As, however, the code was still before the select committee they might re-consider the question with advertence to the papers which the honourable member for Bombay had now laid before the council, and probably it would be more convenient to consider it in connection with the provisions of the code rather than as a separate measure.

Mr. LeGeyt said, he had no objection whatever to refer the bill to the select committee on the Civil Procedure Code; but as he had stated before, it has struck him that the present subject hardly came within the scope of that code. *The suggestion made by the Bombay Government was, in effect, that an insolvent debtor in the Mofussil should obtain relief from his debts without being taken to jail and having all his property sold under a decree in the first instance.* In short it was a suggestion that the provisions of the Insolvent Act should be extended to the inhabitants of the Mofussil. Whether the select committee on the Civil Procedure Code would be disposed to consider a question so very much wider than that contained in the code as prepared by the commissioners in England, he did not know. The honourable and learned chairman of the committee would probably inform the council. His own idea was that they would not; and as it was expedient to consider whether such a law as had been recommended should be passed or not, he had moved for a separate committee. If however the select committee on the Civil Procedure Code would consider the subject of a general Insolvent Law for the Mofussil in connection with the code, he had no objection to amend his motion and refer it to them.

Mr. Peacock said, the question was hardly one of procedure at all. It was a question of extending the Insolvent Act over the whole of the territories of the East Company. There was a separate Code of Civil Procedure for each Presidency; and although, as a matter of convenience, the select committees on all three met together, he did not think it advisable that the subject now brought before the council should be referred to any one of them in particular. He thought it would be better if it were considered as a separate measure.

Mr. LeGeyt's motion was then put and agreed to.—*Proceedings of the Legislative Council of India May 22nd 1858.*

The Honourable Mr. Stephen moved for leave to introduce a bill to amend the law relating to insolvency. He said that the law relating to insolvency, as it stood at present, was contained, as regarded the three Presidency towns, in an Act of Parliament, 11 and 12 Vic. Cap. 21, which had been adapted to the circumstances of the presidencies from the English laws relating to bankruptcy then in force. As regarded the Mofussil in general there was no law of insolvency; but there was a section in the Code of Civil Procedure which, to a certain extent, answered the same purpose. This was section 271, which provided that 'if after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof. Provided that when any property is sold subject to a mortgage the mortgagee shall not be entitled to share in any surplus arising from such sale'. In illustration of the objections to the manner in which this section worked as a substitute for a Bankruptcy Act, he might refer to an able pamphlet lately published by Mr. Broughton, the Administrator General of Bengal, upon the state of the law in the Non-Regulation Provinces. Mr. Broughton's remarks were as follows:—

"By that law [*i. e.*, Act VIII of 1859 sec. 271] the first creditor who gets a decree and takes out execution is entitled to be paid in full, while the rest come in *pari passu* and divide what is left. As a natural consequence in places where there is no insolvent law, that is to say, in all India, except the three cities of Calcutta, Madras, and Bombay, there is no sooner a rumour of a trader being in difficulties than all his creditors in self-defence rush into court and contend among themselves for the first decree against him; his property is attached and sold on the spot, always at a considerable loss, and the rival claims of different creditors often produce a contest, sometimes carried out to physical extremities. Perishable goods are hurried away at the best to improper receptacles, and in most instances are considerably damaged, while the judgment-debtor, to avoid these disastrous consequences, finding that his property is un-

protected by the law, is tempted to resort to all sorts of fraud and chicanery to avoid the consequences of his position. In the early part of the year 1867 this change in the law operated in a manner which for the time caused a complete paralysis in the trade of Rangoon, and flooded the courts with litigation."

There were also provisions as to insolvency in some particular provinces. For instance, the document called Civil Code of the Punjab contained such provisions, and others of a similar character comprised in what was called Sparks's Code, after its author, Major Sparks had been in force in British Burma. The validity of the Punjab provisions was, as he (Mr. Stephen) believed, at the present moment under the consideration of the chief court of that province, and there would seem to be considerable doubt as to the legal force of many parts of the code, upon which different decisions had been given by various authorities. The Burmese Code, and especially that part of it which related to the subject of bankruptcy, had been superseded in Burma by the introduction of the Code of Civil Procedure and Act I of 1863.

The general extension of commerce into various parts of India, and the variety of the provisions which at present obtained upon the subject, suggested the propriety of introducing a general measure. The one which he now asked leave to introduce had been adapted from the bill passed last year in England, which might be regarded as embodying the result of controversies carried on; and of experience acquired for upwards of three centuries; for the first English Bankruptcy Act was 34 and 35 Henry VIII, cap. 4, passed in the year 1542-43, and the last was passed in 1869. During the interval between these dates, and especially during the last half century, the subject had been almost continually under discussion, and a long series of important changes had been made in the arrangements by which the object of dividing the property of an insolvent amongst his creditors had been attained.

The system finally arrived at which it was proposed to introduce into British India, had, at all events, the merit of simplicity, and as he (Mr. Stephen) thought of common sense and justice. Its essential provisions might be stated in a very few words, although unfortunately when they were thrown into a legal shape and when the persons appointed to act under the bill had been armed by express provisions made

all the necessary powers, the result was a measure of somewhat formidable dimensions.

In a few words the system proposed to be established was as follows :—When a man committed any one of a certain number of acts of insolvency and was unable to meet his engagements, he might be adjudicated an insolvent upon a petition by his creditors. His property would upon adjudication pass to a trustee, whose duty it would be to realize it under the inspection, and according to the directions, of a committee of creditors, and to divide it amongst them rateably. If the dividend paid amounted to eight annas in the rupee, or if the creditors were of opinion that the failure to pay so high a dividend arose from circumstances for which the insolvent could not justly be held responsible, and if they desired his discharge to be granted, he could be discharged. If a smaller dividend were paid, the insolvent would have three years in which to make up his payments to the amount in question, and any balance that remained unpaid at the end of that period would constitute a judgment-debt, which might be enforced by leave of the court. English experience seemed to point to the conclusion (after many experiments), that this was a fair compromise between the object of favouring commerce and the object of enforcing a complete execution of the contracts into which a trader might enter.

These were the main provisions of the bill, but it contained other provisions, which were unavoidably rather long, upon the various points which it was necessary to provide for, in order that the scheme might be properly worked, such as the appointments and powers of trustees, the meetings of creditors, the effects of insolvency upon the property of the insolvent and that of other persons, the distribution of assets and the jurisdiction of the courts. Provisions also were inserted to enable creditors, if they thought fit, to take the matter entirely into their own hands, and to provide, by a process which had been called liquidation by arrangement, for the objects contemplated by the law.

Every effort had been made to render the bill complete in itself, so that all the law upon the subject might be contained in one measure, and that as little necessity as possible might exist for subsidiary legislation by the courts in the shape of rules of procedure.—*Proceedings of the Legislative Council of India, 30th August 1870.*

Part of the Punjab Manual related to insolvency, and its provisions in this respect appeared to have worked extremely well.—*Extract from the Honourable Mr. Stephen's speech on the Oudh Civil Court's Bill on the 13th June 1871.*

The next Bill on which he had a word to say was the Insolvency Bill. This was a Bill upon which the Government had received a considerable mass of opinions from various persons, and very grave questions indeed had been raised regarding it. The gravest of those questions was whether the Bill ought to extend beyond the Presidency towns. Considerable doubts had been intimated, as to its suitability even to the Presidency towns by a considerable number of persons whose opinions were entitled to great respect, although the balance of opinion was the other way. He might state, with regard to this Bill, that he did not think it was of equal general importance or equally necessary to be disposed of, with the other two Bills which he had mentioned. However it was in a forward state, and would be considered, but it was very possible that the Committee might not proceed with it at present. At all events, he wished to say publicly that this Bill was in a less forward state than the others to which he had referred:—*Extract from the speech of the Honourable Mr. Stephen on the 8th December 1871 (Sundry Bills).*

The other alteration which I mentioned as being of importance relates to a kindred subject, that of one of the debtor's inability to answer the decree against him. At present the Code contains the germ of an insolvent law, but it is nothing more than a germ. By Section 271, when a sale takes place under a decree, the proceeds are first to be applied in paying the holder of that decree, and then are to go rateably and without any priority amongst the holder of other decrees. That provision for rateable distribution is a very rudimentary law of insolvency. Then follow in Section 273 and some subsequent sections some provisions for the discharge of arrested debtors; but they are very meagre and very inconsistent with one another. Their general effect is this, that an arrested debtor may apply for discharge on giving up all his property; that if the court discharges him his person is not to be arrested again under the same decree; and the decree-holder is to be paid out of the proceeds of his property. But his person is not protected as against any debt other than that for which he has been arrested; his property

is not protected at all; and no directions are given to the court what to do with his property after paying the decree-holder. I believe that those sections have been used very little, and if that be so, it is not surprising, for there is very small inducement to the debtor to avail himself of them.

Now it seems to be the prevailing opinion that the judicial machinery in the mofussil is hardly adapted to the working of any general and complete law of insolvency. At all events, such a law should be treated as a separate measure and not as part of this measure. But it will probably be better for the present, and be likely to pave the way to some more complete measure for the future, if we were now to make our law a little less rudimentary than it is at present, and at all events to supplement it where it now seems to be broken off in its natural course. We have therefore framed some sections for the following purposes:—To provide that when a man is tried and finds himself unable to pay his debts he may apply to be declared insolvent. That the court may declare the applicant an insolvent, and appoint a receiver of his property; that it shall frame a schedule of creditors; that the insolvent's property shall be distributed rateably and without any priority amongst all his creditors; that when the insolvent gets his discharge, he shall be protected from imprisonment in respect of all the scheduled debts; and that his future property shall also be protected, unless by order of the court. There must be some provisions against a fraudulent use of the protection given by the Act. Those provisions should be partly preventive, by way of giving notice to creditors and enabling them to oppose the applicant; and partly punitive, by way of depriving him, whenever he is guilty of bad faith, of the protection which otherwise the Act would afford him.

His Honour the Lieutenant-Governor was not quite sure whether he understood correctly what had fallen from his honourable and learned friend regarding the judicial machinery in the mofussil not being equal to the working of the law of insolvency. His Honour was not quite sure whether the honourable member meant that no cases of insolvency were decided in the mofussil. In some parts of India His Honour was certain they had an insolvency law, but as regards Bengal he ventured to remark that if cases of insolvency arose in the mofussil at a distance from Calcutta, the interests of the creditors required that, as far as possible, these cases should be decided on the spot by the authorities and courts

in the districts where they arose, and that the adjudication of such cases entirely in Calcutta was very much to be deprecated in the interests of the people. It might be that the mofussil courts were not strong enough, but that would be the most cogent argument for making them stronger on the earliest opportunity, so that they might be able to decide these important cases on the spot to the satisfaction of the people and the local interests concerned.

The Honourable Mr. Hobhouse said the law did not at present provide that a person might become an insolvent in the mofussil and his insolvency be adjudicated on in Calcutta; the fact was that there was no insolvent law applicable to the dwellers in the mofussil. Setting aside the recent law enacted for the Punjab, it was only the dwellers in the Presidency towns who had an insolvency law applicable to them. The alteration proposed did not tend to concentrate business anywhere. It was intended to give the courts in the mofussil somewhat larger powers and clearer directions than the present Code gave, so as to enable them to work out the remedy which apparently was contemplated by the framers of the Code of 1859.—*Extract from the Proceedings of the Council of the Governor-General of India, assembled on the 23rd February 1875 for making Laws and Regulations.*

We have considered whether it would be desirable to extend the law so as to enable a person not arrested or imprisoned in execution of a decree to apply to be declared an insolvent. But, on the whole, we think that this change would be too great for the machinery at present available in many parts of India.—*Report of the Select Committee on the Civil Procedure Bill, dated 8th March 1875.*

But while the measures proposed by the Bill for the relief of encumbered estates appears to me to be obnoxious to most vital objections, I should regret that the discussions to which the transfers of land have given rise should not result in curing what I have long felt to be one of the chief defects in our system of civil justice. We have no insolvent law; we have no law which provides for the fair distribution of assets among creditors, nor which protects insolvents from the prosecution of creditors. The task is not easy, but I feel confident a measure could be framed which would do justice to creditors and all classes of debtors, and also relieve the owners of encumbered estates without ruining the credit of land-owners in the market.

The judge of the District Court should, on the application of any embarrassed land-owner, or when the land-owner is indebted to the extent of one moiety of the value of his estate, on the application of a creditor, or the Collector, declare such land-owner insolvent and require him to file schedules of his property and of his debts. The judge should next order the Collector to take charge of the insolvent's landed estates, except such as are held on usufructuary mortgage, and he should at the same time direct the proper officer of his court to take possession of the moveable property, and he should determine what sum should be allowed for the maintenance of the insolvent and persons entitled to claim maintenance from the estate pending final orders. Notices should then be issued to creditors to come in and prove their claims, and in the event of any question arising as to the amount of any claim, or the right of any secured creditor to priority, the judge should have the power to state a case for the opinion of the High Court. Having settled the schedule of creditors, the judge should prepare a scheme for the administration of the estate, and if it were found that after setting aside a sufficient proportion of the income for the maintenance of persons entitled to claim maintenance from the estate, a sum sufficient to discharge at once the claims of creditors could be raised by the mortgage or farm of the whole or a portion of the estate for a term of years, subject to the payment of the Government revenue, and to such charges for maintenance as might be subsisting thereon, the judge should execute a farm or lease to the person who might offer the best price for it. If a sum sufficient to discharge the debts could not be raised by farm or mortgage of the landed estate, subject as aforesaid, the judge should order a sale of the whole, or so much of the estate as would fetch the amount required for the satisfaction of creditors, or, with the consent of the creditors, he might postpone the sale.

Power should be given to the judge to give effect to any compromises which creditors might be willing to accept. No action should be maintainable against the insolvent in respect of any claim for debt or other pecuniary demand which had accrued prior to the final order of the judge. On passing final orders the judge should grant the insolvent a certificate of discharge. If the estate should prove insufficient to satisfy all the debts, the creditor whose claims might remain unsatisfied should be at liberty, on giving proof that assets to a prescribed amount had come to the hands of the insolvent after

his discharge, to apply to the court for an order requiring the insolvent to bring such assets into court for distribution. All orders passed by the judge should be open to appeal.—*Note by the Honourable C. A. Turner, Justice, dated the 14th February 1873.*

The measures already suggested would throw such safeguards round the ownership of land that any further amelioration of the law might seem to be almost superfluous. To give effect to them Sections 280—282 of the Code of Civil Procedure would have to be modified so as to enable an imprisoned debtor to obtain his discharge without giving up his holding and the implements and stock necessary for working it. Then, if the decree were for less than Rs. 100, the court, in ordering his discharge, might absolve him from all further liability. Thus the poorer debtors would seldom, except in cases of misconduct, be reduced to absolute beggary. But a law of insolvency is required both to provide for the cases of a class standing just above the lowest in the social scale, and to prevent the scramble that now sometimes takes place amongst the creditors. It is required, too, supposing laws for the general preservation of landed property be passed, in order to provide for the punishment of criminal recklessness or fraud in incurring debts. It should enable the district courts, notwithstanding these laws, to dispose at their discretion of the debtor's interest in his lands. It should also enable them to deal freely with the several claims on the insolvent according to their nature and origin, in order to place moderate and honourable creditors on an equal footing with those who had obtained unfair advantages, either by unconscientious pressure, or by, what would be still more common, the connivance of the insolvent. They should have power, in cases of marked prodigality, to place such property as might be reserved for the family in the hands of trustees subject to the orders of the court. The connections of the members of a family are indeed too intimate to admit of any arrangement by which the folly or crime of one shall not be the misfortune of all, but something may be done to alleviate the misfortune. Society is interested in getting reckless insolvents punished, and honest ones set to work again as soon as possible, and in procuring a prompt distribution of all available assets. As trade is developed, and the dependence of traders on one another becomes greater, an insolvency law becomes as necessary for the mofussil as for the Presidency towns; its partial operation is a source of hardship. On all

these grounds it seems desirable that *an insolvency law for the mofussil should be passed without delay*. If made effective, it would, to a great extent, answer the purpose of the other protective measures above suggested, supposing these should be thought to go too far. If they should be adopted, it would usefully supplement them. The draft of such an Act for the Province of Sind was lately submitted for consideration, and the remarks made in forwarding that draft have much more than a merely local application. In framing an insolvency law for an Indian community, careful attention should be paid to the native law, the constitution of native society, and the peculiar conditions that it presents as to the relative intelligence of its members. These circumstances make it desirable and even necessary that an insolvency law should expressly direct advertence to be had to the family claims arising under the Hindu and the Mahomedan law, and that it should vest in the courts a liberal discretion for dealing on equitable principle and even by reference to rules of policy, with the claims advanced against an insolvent.—*Extract from Mr. Raymond West's suggestions relating to Land and the Law in India, 1874.*

The object of an English country bank is that the advances it makes shall be re-paid punctually, and a banker will not lend a farmer money unless he thinks that the latter has a fair prospect and a real intention of completing the transaction by re-payment, with interest, at the stipulated date. If this were the case in India, though we might consider the ordinary rate of interest injuriously high, and that the agriculturists are more in the habit of borrowing than is desirable, there would be no justification for Government interference. But exactly the reverse is the case. It is not too much to say that in the majority of instances the lender neither expects nor wishes that the loan shall be re-paid according to the original agreement; his object is that the transaction shall never be completed, and the borrower shall become hopelessly involved and completely in his power.

I will illustrate this assertion by a narrative of the ruin of a ryot, and this will also show the part which the civil courts play in the process. It is in essential the real history of more than one case into which I have inquired officially.

A tolerably substantial ryot, with a holding of 30 acres, assessed at Rs. 50, and with an average annual income of Rs. 400, wants Rs. 200 for a wedding. He goes to a

sowkar and executes a bond for Rs. 200 bearing interest at 2 per cent. per mensem, principal and interest to be re-paid by four half-yearly instalments. If one instalment is not paid, the whole amount of the bond to be immediately recoverable (a very common stipulation). He receives Rs. 175 in cash, 25 being deducted for stamp premium and other expenses. He pays two instalments, but omits to pay the third, as he is not asked for it, and his crop is bad. At the end of the two years it is still not convenient to pay, and, indeed, he has not money to pay his assessment. He goes to the sowkar to ask for an extension. The latter points out that he has made default, and is liable for the whole Rs. 200 with interest, and threatens to sell him up. Finally, as a great favour, the sowkar consents to give him another Rs. 50 (from which stamp is deducted) and to cancel the first bond, on his executing another bond for Rs. 300 with interest at 30 per cent. payable in a year. He is to admit at registration that he has had the Rs. 300 cash. By the end of the year he has managed to scrape together Rs. 190, which he pays. The sowkar then sues him on the bond for the balance, Rs. 200. He cannot but admit the bond, and knowing this, probably does not appear, and a decree is passed with costs on defendant. *The creditor threatening to take out execution, the debtor, to avoid this, signs a third bond for Rs. 300 on the former terms.* At the end of the year he can pay Rs. 100 only; he is sued for the balance, Rs. 290, and the decree partially executed by sale of his household furniture for Rs. 100. The judgment-creditor might now complete execution by sale of the land, and buying it in, probably much under its value, might keep on the ryot as his tenant-at-will. But he would then become responsible for the revenue; he therefore threatens the ryot with sale of his land, and offers at the same time to make him an advance of Rs. 50 to buy back some of his things, and thus induces him to execute a fourth bond, mortgaging his land for a sum of Rs. 400. This amount is entered in the bond as Rs. 220 balance of decree and costs, and the rest cash, but the ryot gets only Rs. 50, the balance being represented to him as premium for the renewal of the loan, and on account of the loss which the sowkar has sustained by his different defaults. The mortgage is fore-closeable at any time, and half the net (*i.e.*, deducting seed and assessment,) produce of the land is to be paid as interest. The ryot is to deal with the sowkar for his necessaries.

The sowkar has thus advanced in all less than Rs. 275 to the ryot and perhaps Rs. 40 more for stamps, &c., and has received in cash about Rs. 532 besides a bond for Rs. 400, on which he receives as interest produce worth on an average Rs. 200 yearly. After a year or two, there is of course a heavy book balance against the ryot for necessaries, for which a *decree is obtained to be held over him in terrorem*. His condition is now quite hopeless, and *he is a mere prædial serf of the sowkar*, who takes from him everything but the barest subsistence. For even if he wished to throw up his land and to begin again as a labourer, the sowkar would prevent this by threatening to imprison him in execution of the last decree.*

His case is by no means an exceptionally bad one. The ryot really made default in payment of the instalments of the original loan. Sometimes payment is tendered and the creditor makes some excuse to evade receiving it, or even he takes the money and does not give a receipt. The ryot received (deducting premium) the sums the sowkar undertook to lend; often a sowkar will evade advancing the whole loan. The ryot did not understand the bonds he executed, very often he signs documents believing them to mean something quite different from their real tenor.

The general rule of procedure I think should then be that the creditor, once having filed a suit, it should rest, not with him, but with the court, to at once complete the process by recovering the decreed amount as far as possible, the judgment-debtor being obliged, if he has not means to discharge the debt in full, to come under the provisions of the bankruptcy law.

If this rule were an absolute one, it would be an improvement on the existing state of things, for *it is better that a debtor should be stripped and set free than that he should be enslaved*.

These alterations in procedure should, I think, clearly be supplemented by a law of bankruptcy. Otherwise, though we have done something towards clearing up the debtor's affairs and preventing him from becoming still deeper involved, we have done nothing to relieve a debtor who is unable to discharge the judgment-debt in full; the creditor will still have a lien on the future returns to his labour, and may come down on him whenever he has acquired enough to make him worth proceeding against. But the true principle on

* The above case was intended for insertion under the headings showing the abuse of warrants of arrest *ante*, but was accidentally omitted.

which, it seems to me, we should base our measures of relief is that the creditor ought to take care not to lend more than the debtor can re-pay, and that *his security should be the existing resources, not the future prospects and capacity for labour of the borrower*. The court then should compel the debtor to give up all (with the exception under the next head) that he has in satisfaction of the decree; if this does not amount to its full value, it is the creditor's own fault for advancing more than the debtor had a reasonable prospect of being able to repay.—*Mr. W. G. Pedder's Note on the indebtedness of the Indian agricultural classes, 1874.*

Two important measures, which I do not propose to treat of in this report, might also be referred to such a commission, namely, the business of framing a Law of Bankruptcy and, perhaps, introducing the *Mont de Pieté* system and of cheapening civil justice.—*Extract from the Tanna Session Judge's letter No. 1639, dated 17th May 1875.*

The court has no power, under the Civil Procedure Code, to make any suitable arrangements for the discharge of his debt. The maxim *vigilantibus non dormiantibus subvenient jura precipitates*, in my opinion, is the ruin of the debtor. The provisions of the Civil Procedure Code giving priority to creditors being based upon this maxim, the moment they see their debtor embarrassed or dishonest to them, they run to the court, get decrees, and attach everything he has, and there being no Insolvent Law in force in the mofussil, the court is not in a position to lend him suitable assistance. Thus the sowkar, who pities the debtor and shows a little forbearance, and is last in coming to the court, is wholly ruined, that is to say, he gets nothing, but in the bargain is saddled with the court expenses.—*Extract from the Tūsgaon Sub-Judge's Report, dated 14th August 1875.*

The above scheme, which we have roughly sketched out, may be supplemented by a general law of insolvency, within the purview of which all classes of persons may come, and on application of a person wishing to be declared an insolvent, we think the court should have power to investigate all claims against him, retaining the same control over them as regards limitation of interest, as we have before mentioned, and taking charge of all his property, whether already attached or not. In proceeding to realize the claims of creditors, the Insolvent Court may have the same power

over the insolvent's property, regarding its valuation, sales, appointment of managers, leases, investigation of titles, or the shares of co-parceners, and the seizure of moveable property, as the ordinary civil court has under the scheme above set forth. The Insolvent Court will be able to take into consideration the circumstances of each particular insolvent, and of each of his creditors, the circumstances under which the loan was contracted, and the means of the insolvent. Vested with plenary powers to grant *interim*, final, absolute and conditional discharges, it will be able to do complete justice in each particular case; and on account of such powers, it may well be able to afford relief to the classes of persons we have above talked of, such as owners of flocks of cattle or bullock carts, horse, carriages, mill-owners, and so on. Such persons may, on such terms as may appear just to the court, be allowed to get their property on condition of paying a sufficient sum of money in court monthly or otherwise, for distribution among creditors. The details of such a measure can only be discussed when the general scheme is agreed upon.—*Memo. by two of the pleaders of the Sadar Court of Kurrachee, 1875.*

8. I proceed to the subject of Insolvency Laws.

Good laws on this subject are important, first and principally, on the score of public morals, which are on no point more under the influence of the law, for good and evil, than in a matter belonging so pre-eminently to the province of law as the preservation of pecuniary integrity. But the subject is also, in a merely economical point of view, of great importance. First, because the economical well-being of a people, and of mankind depends in a special manner upon their being able to trust each other's engagements. Secondly, because one of the risks or expenses of industrial operations is the risk or expense of what are commonly called bad debts; and every saving which can be effected in this liability is a diminution of cost of production; by dispensing with an item of outlay which in no way conduces to the desired end; and which must be paid for either by the consumer of the commodity, or from the general profits of capital, according as the burthen is peculiar or general.

The laws and practice of nations on this subject have almost always been in extremes. The ancient laws of most countries were all severity to the debtor. They invested the creditor with a power of coercion more or less

tyrannical, which he might use against his insolvent debtor, either to extort the surrender of hidden property or to obtain satisfaction of a vindictive character, which might console him for the non-payment of the debt. This arbitrary power has extended, in some countries, to making the insolvent debtor serve the creditor as his slave; in which plan there were at least some grains of common sense, since it might possibly be regarded as a scheme for making him work out the debt by his labour. *In England, the coercion assumed the milder form of ordinary imprisonment. The one and the other were the barbarous expedients of a rude age, repugnant to justice as well as to humanity.* Unfortunately, the reform of them, like that of the criminal law generally, has been taken in hand as an affair of humanity only, not of justice; and the modish humanity of the present time, which is essentially a thing of one idea, has in this, as in other cases, gone into a violent re-action against the ancient severity, and might almost be supposed to see in the fact of having lost or squandered other people's property, a peculiar title to indulgence. Everything in the law which attached disagreeable consequences to that fact, was gradually relaxed, or entirely got rid of: until the demoralizing effects of this laxity became so evident as to determine, by more recent legislation, a salutary, though very insufficient movement, in the reverse direction. The indulgence of the laws to those who have made themselves unable to pay their just debts, is usually defended, on the plea that the sole object of the law should be, in case of insolvency, not to coerce the person of the debtor, but to get at his property, and distribute it fairly among the creditors. Assuming that this is, and ought to be, the sole object, the mitigation of the law was in the first instance carried so far as to sacrifice that object. Imprisonment at the discretion of a creditor was really a powerful engine for extracting from the debtor any property which he had concealed or otherwise made away with: and it remains to be shown by experience whether, in depriving creditors of this instrument, the law, even as last amended, has furnished them with a sufficient equivalent. But the doctrine, that the law has done all that ought to be expected from it, when it has put the creditors in possession of the property of an insolvent, is in itself a totally inadmissible piece of spurious humanity. It is the business of law to prevent wrong doing, and not simply to patch up the consequences of it when it has been committed. The law is bound

to take care that insolvency shall not be a good pecuniary speculation ; that men shall not have the privilege of hazarding other people's property without their knowledge or consent, taking the profits of the enterprise if it is successful, and if it fails, throwing the loss upon the rightful owners ; and that they shall not find it answer, to make themselves unable to pay their just debts, by spending the money of their creditors in personal indulgence. It is admitted that what is technically called fraudulent bankruptcy, the false pretence of inability to pay is, when detected, properly subject to punishment. But does it follow that insolvency is not the consequence of misconduct, because the inability to pay may be real ? If a man has been a spendthrift or a gambler, with property on which his creditors had a prior claim, shall he pass scot-free, because the mischief is consummated and the money gone ? Is there any very material difference in point of morality between this conduct and those other kinds of dishonesty which go by the names of fraud and embezzlement ?

It is, of course, not denied, that insolvencies do arise from causes beyond the control of the debtor, and that, in many more cases, his culpability is not of a higher order ; and the law ought to make a distinction in favour of such cases, but not without a searching investigation, nor should the case ever be let go without having ascertained, in the most complete manner practicable, not the fact of insolvency only, but the cause of it. To have been trusted with money or money's worth, and to have lost or spent it, is *prima facie* evidence of something wrong, and it is not for the creditor to prove, which he cannot do in one case out of ten, that there has been criminality, but for the debtor to rebut the presumption by laying open the whole state of his affairs, and showing either that there has been no misconduct, or that the misconduct has been of an excusable kind. If he fail in this, he ought never to be dismissed without a punishment proportioned to the degree of blame which seems justly imputable to him, which punishment, however, might be shortened or mitigated in proportion as he appeared likely to exert himself in repairing the injury done. It is a common argument with those who approve a relaxed system of insolvency laws that credit, except in the great operations of commerce, is an evil, and that to deprive creditors of legal redress is a judicious means of preventing credit from being given.

But, though it were granted that retail transactions on any footing but that of ready-money payment, are an evil, and their entire suppression a fit object for legislation to aim at, a worse mode of compassing that object could scarcely be invented than to permit those who have been trusted by others to cheat and rob them with impunity. The law does not generally select the vices of mankind as the appropriate instrument for inflicting chastisement on the comparatively innocent; when it seeks to discourage any course of action, it does so by applying inducements of its own, not by outlawing those who act in the manner it deems objectionable, and letting loose the predatory instincts of the worthless part of mankind to feed upon them. If a man has committed murder, the law condemns him to death; but it does not promise impunity to anybody who may kill him for the sake of taking his purse. The offence of believing another's word, even rashly, is not so heinous that, for the sake of discouraging it, the spectacle should be brought home to every door of triumphant rascality with the law on its side, mocking the victims it has made. This pestilent example has been very widely exhibited since the relaxation of the insolvency laws. It is idle to expect that, even by absolutely depriving creditors of all legal redress, the kind of credit which is considered objectionable would really be very much checked. Rogues and swindlers are still an exception among mankind, and people will go on trusting each other's promises. Large dealers in abundant business would refuse credit as many of them already do; but in the eager competition of a great town or the dependent position of a village shop-keeper, what can be expected from the tradesman to whom a single customer is of importance, the beginner, perhaps, who is striving to get into business? He will take the risk, even if it were still greater; he is ruined if he cannot sell his goods, and he can but be ruined if he is defrauded. Nor does it avail to say that he ought to make proper inquiries, and ascertain the character of those to whom he supplies goods on trust. In some of the most flagrant cases of profligate debtors which have come before the Bankruptcy Court, the swindler had been able to give, and had given, excellent references.—*Extract from Mr. Mill's Political Economy. Book V. (on the influence of Government), Chapter IX.*

The Attorney-General said:—The honourable and learned member also expressed an opinion on the subject of after-

acquired property and the extent to which it should be liable. Upon this point he assured the honourable and learned member that the bill went further in the direction of severity than any that had ever before been proposed. Hitherto a bankrupt had been allowed to obtain his discharge, as regarded his future property, without paying any dividend at all; indeed, in the majority of cases during last year, and for some years previously, no dividend whatever had been paid, yet the bankrupts in these cases had obtained their discharge and their future acquired property had been in no respect liable. The Committee of 1865 recommended that a bankrupt should be released on payment of a dividend of 6s. 8d.; in this measure the minimum was fixed at 10s. 6d. If it were resolved to make a bankrupt's future property liable to the extent of 20s., as some honourable member had proposed, before a release were granted, the law of bankruptcy might as well be abolished altogether. It was desirable that the bankrupt should have some inducement for stopping early, before the estate was completely dissipated by unsuccessful efforts to regain solvency; it was desirable to make it his interest to stop when he could pay a dividend, and not to go on until nothing was left; and it was desirable also to give him a fair chance after being declared bankrupt. He would have five years to relieve himself, and if he paid 10s. 6d. in the pound, he would be released from his debts for ever, while if he did not pay that dividend, his after-acquired property would be liable, but at the discretion of the court.—*Debates in the House of Commons on the Bankruptcy Act, 1869.*

OPINIONS AGAINST INSOLVENCY LAWS.

I have not met with any opinions against the enactment of an Insolvency Law in India in any of the records to which my search has hitherto extended.

COURT SALES OF MOVEABLE PROPERTY.

PRESENT AND PROPOSED LAW.

The present law as to what property may be sold in execution is contained in Sec. 205 of the Civil Procedure Code, which says that "all property whatsoever moveable and immoveable belonging to the defendant is liable to attachment and sale in execution of a decree."

The proposed law as to the limits within which moveable property is available, is contained in the following clause of the Civil Procedure Bill :—

215. The following property is liable to attachment and sale in execution of a decree, namely, Property liable to attachment and sale in execution of decree. lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint-stock of any railway, banking or other public company or corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the defendant, and whether the same be held in the name of the defendant or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) necessary wearing apparel :
- (b) books of account :
- (c) mere rights to sue :
- (d) the right to perform the service of an idol :
- (e) stipends allowed to Military and Civil pensioners of Government :
- (f) the salary of a servant of Government :
- (g) an expectancy of succession by survivorship :
- (h) a right to future maintenance.

OLD BOMBAY LAW.

But it is to be clearly understood that if the defendant shall point out any of his property for sale in preference to that specified by the plaintiff, the property so pointed out shall be first sold, and that such implements of manual labour, and such cattle and implements of agriculture, as may, in the judgment of the court from which the process issues, be indispensable for the defendant to earn a livelihood in his respective calling, or cultivate any land that he may hold for that purpose, shall be exempt from attachment.—*Extract from Regulation IV. of 1827.*

ENGLISH LAW.

By the Bankruptcy Act, 1869, section 15, it is enacted that the property of the bankrupt divisible amongst his creditors, and in the Act referred to as the property of the bankrupt, shall not comprise the following particulars:—

- (1.) Property held by the bankrupt on trust for any other person.
- (2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding £20 in the whole.

LAW OF THE PRESIDENCY TOWNS.

By the Insolvency Act Rs. 300 worth of property may be retained by the debtor (*see ante.*)

OPINIONS ON THE SUBJECT.

I respectfully beg permission to add that what is described in the passages quoted above regarding the poverty of the ryots and the artizan classes is but too true. People are often apt to find fault with the civil courts as assisting the hard-hearted and unscrupulous sowkars in oppressing the poor ryots, but they forget that the courts are bound, by stringent rules of procedure, which they have no power to relax, even to meet a case of gross oppression, particularly in the matter of the execution of decrees. When the sowkars obtain money decrees against their debtors, they, as a rule, do not show any lack of diligence in getting them executed as early as possible; but on the contrary, in many

cases it is most painful to see how very merciless they are in enforcing their demands against their poor helpless debtors. It is a matter of almost daily occurrence here that a poor ryot's miserable dwelling hut (which sometimes is not more than Rs. 5 in value) is attached in execution of a decree for about Rs. 10 against him, and his earthen cooking utensils, the stone-mill for grinding corn, a few clothes that are used for wearing and also for bedding, one or two old cots used by children and sick persons to lie on, and everything else that is worth anything is seized and brought to the nazir's office to be sold in satisfaction of the same decree. Although the poor ryot is thus stripped of everything valuable that is found in his possession, and his dwelling hut sold away, it is eventually found that the sale proceeds of the whole of his property, after deducting therefrom the cost of attachment and sale, are not sufficient to satisfy the whole of the decree. What is needed, therefore, under these circumstances is a law which would protect the ryots from being thus stripped of everything valuable they possess to satisfy the demands of their sowkars, and would allow them greater opportunities to pay off such demands as their means might permit, without being involved in utter ruin. The effect of the proposed provision in section 218 to the effect that the holder of a decree for money must do his best to get the whole decree satisfied by presenting a single application for execution, and that a second application with respect to the same decree shall not be entertained unless the court is satisfied that on the former application due diligence was used to procure complete execution of the decree, will be quite the contrary, as it will stimulate the sowkars to be, if possible, merciless in obtaining satisfaction of their decrees.—*Extract from Mr. Chintamon Sakaram, First Class Subordinate Judge's letter to Government, Judicial Department, dated at Khaira, 8th July 1875.*

5. It is extremely hard that everything that a judgment-debtor possesses (except his necessary wearing apparel) should be made liable to be attached and sold in execution of a decree (*vide* section 215). This provision works out great hardships, particularly in the Mofussil. It enables a hard-hearted money-lender to cause the entire ruin of his judgment-debtor. The miserable condition to which a poor ryot or artisan is reduced can easily be conceived when all the property that is found in his possession, including his implements of husbandry or trade, and even the earthen

vessels used for holding water or cooking the daily food for himself and his family, is seized and taken away, and his humble dwelling hut is finally sold, and he with his family is turned out therefrom entirely deprived of every means of satisfying their most immediate wants. All this hardship is inflicted upon the debtor in many cases, simply because he has no immediate means of meeting the demands of his creditor, although he had always been perfectly honest in his dealings with him, and had not contracted the debt through any vicious or immoral habits. There are certain privileged classes in this presidency whom the law protects in all cases from being imprisoned in execution of decrees against them, and their dwelling houses, however grand they may be, are also exempted from being attached and sold; it thus looks extremely inequitable, that the law should be so very harsh against ordinary debtors. The Legislature would confer a blessing upon the class of ordinary debtors, if they were to exempt the following property in all cases from being attached and sold in execution of decrees :—

1. The necessary wearing apparel of the debtor and his family.
2. The necessary implements of trade and husbandry.
3. The necessary implements for preparing and cooking food. (I have used the word preparing to include such articles as stone-mills for grinding corn, &c.)
4. Articles of food necessary for one week's consumption of the debtor and his family.
5. Small houses or huts which are barely sufficient for the dwelling of the debtor and his family.

If these exemptions were granted, it would greatly help to ameliorate the condition of the ryots and the labouring classes.—*Extract from the Khaira First Class Subordinate Judge's letter, dated 8th July 1875.*

The law as to the attachment of property in execution of decrees is also said to work oppressively. At present artisans or cultivators' implements of labour are subjected to attachment without any exemption, which at once brings the judgment-debtor to irretrievable ruin. The old law in this Presidency on this subject, to be found in Regulation IV. of 1827, section 72, clause 2, by which the court could exempt from attachment such implements of manual labour and such cattle and implements of agriculture as it might

consider indispensable for the defendant to earn a livelihood, appears the more equitable.—*Extract from the Dhulia Judge's letter, No. 728, dated 8th August 1874.*

It has been held that necessary wearing apparel cannot be taken in attachment, but I think that this rule might be extended without injustice. It is common to take out a general (mogum) attachment, and then nothing is spared. Surely such things as mill-stones and agricultural implements, and in some cases cattle, should not be liable to attachment.—*Extract from the Khandesh Session Judge's letter No. 580, dated 19th May 1875.*

COURT SALES OF LAND FOR DEBT.

EXISTING AND PROPOSED LAW.

It is not necessary to quote the present law as it is substantially the same as that proposed in the Civil Procedure Bill; the only new provisions are sections 272 and 288.

268. When the property attached is land, if the defendant can satisfy the court that there is reasonable ground to believe that the amount of the decree may be raised by the mortgage of the

Postponement of sale of land to enable defendant to raise amount of decree.

land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the defendant, the court may, on the application of the defendant, postpone the sale for such period as it thinks proper to enable him to raise the amount.

In such case the court shall grant a certificate to the defendant authorizing him, within a period to be mentioned therein, to sell or mortgage the land or to let it on lease.

Where such certificate has been granted, and so long as it remains in force, the provisions of section 233 shall not apply, and the year mentioned in that section, clause (a), shall be computed from the date of the expiry of the certificate.

269. When the property attached consists of debts due

Appointment of Manager when property attached consists of debts or immovable property.

to the defendant or of any immovable property, the court may, if it thinks fit, instead of ordering the sale of the property, appoint a manager thereof, with power to sue for the debts, and to collect the rents or other receipts and profits of the property, and to execute such instruments in writing as may be necessary, and to pay and apply such rents, profits or receipts towards the payment of the amount of the decree and costs.

271. When in any district in which sales of land paying revenue to Government, or of land

When Court may authorize Collector to stay public sale of land.

of which the revenue has been assigned or redeemed, in execution of decrees for money are ordinarily made by the Collector, the property attached consists of such

land or of a share in such land, and the Collector represents to the court that the public sale of the land or share is objectionable; and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the court may authorize the Collector to make provision for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share.

Whenever such authority is given, the court may order that security be taken from the defendant for the amount of the decree.

272. The Local Government may from time to time, with the sanction of the Governor General in Council, make special rules for any territory, imposing conditions in respect to the sale of land in execution of decrees for money; and if, when this code comes into operation in any territory, any such rules are in force therein, the Local Government may continue such rules in force, or it may from time to time modify the same with the sanction of the Governor General in Council.

All rules so made or continued, and all modifications of such rules, shall be published in the local official Gazette or (where there is no such Gazette) in the *Gazette of India*, and shall thereupon have the force of law.

276. If the property to be sold is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Collector of the district in which the land is situate has not been prohibited by the Local Government from selling land in execution of decrees, the sale shall be conducted by such Collector on the requisition of the court.

277. When any property, whether moveable or immovable, is ordered to be sold by public auction in execution of a decree, a proclamation of the intended sale shall be made in the current language of the district. Such proclamation shall specify—

- (a) the time and place of sale ;
- (b) the property to be sold ;
- (c) the revenue assessed upon the estate or part of the estate when the property to be sold is an estate, or a part of an estate paying revenue to Government ;

- (d.) the amount for the recovery of which the sale is ordered ; and
- (e.) any other particulars that the court thinks necessary ;

The proclamation shall also describe, as fairly and accurately as possible, everything which it is material for the purchaser to know in order to judge of the nature and value of the property.

278. The proclamation shall be made on the spot where the property is attached by beat of drum or any other customary mode, and a written notification to the same effect shall be affixed in the court-house of the judge who has ordered the sale, and in some conspicuous spot in the town or village in which the attachment has taken place.

When the property ordered to be sold consists of land or of any right or interest in land, a written notification shall also be affixed in the office of the Collector of the district in which such land is situate and in the court-house of the principal civil court of the district, when the court which ordered the sale is subordinate to such court.

If the court so direct, such notification shall also be published in the official Gazette and in some local newspaper.

279. Except in the case of articles of a perishable nature (which may be sold at once), no sale under this chapter shall take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the notification has been affixed in the court-house of the judge ordering the sale.

280. The usual process for attachment and sale, when the property to be attached consists of any moveable property other than a debt, may be issued either successively or simultaneously, as the court directing the sale in each instance thinks fit.

288. The holder of the decree in execution of which the property is sold may, with the express permission of the court (but not otherwise), purchase the property,

If decree-holder purchase, amount of decree may be taken as payment.

and in such case the amount of his decree may be taken as payment in whole or in part, as the case may be, of the purchase-money.

289. When the land sold in execution of a decree is a share of an undivided estate, if the lot has been knocked down to a stranger, any co-sharer other than the party liable for the amount of the decree may claim to take the share sold at the sum at which the lot was so knocked down :

Provided that the claim be made before sunset on the day of sale and that the claimant re-pay to the purchaser the amount of his deposit and fulfil all the conditions of the sale.

Proviso.

291. Any person whose interest in immoveable property has been sold under this chapter on ground of irregularity may apply to the court to set aside unless substantial injury. the sale on the ground of a material irregularity in publishing or conducting it ;

But no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity.

The purchaser at any such sale may apply to the court to set aside the sale on the ground that the person whose interest in the property purported to be sold had no such interest.

292. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the court shall pass an order confirming the sale.

If such application be made, and if the objection be allowed, the court shall pass an order setting aside the sale.

No suit shall lie to set aside or render void an order passed under this section.

293. When a sale of immoveable property is set aside under section 292,

or when it is found that the property sold did not belong to the judgment-debtor and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money with or without interest, as the court may direct.

OLD BOMBAY LAW. ✓

Whenever a sale of property takes place under a decree, it shall be by public auction, and after not less than 15 days' public notice by proclamation.

The proclamation shall be according to the form in Appendix (N), and shall contain a specific inventory of the articles of property to be sold, and intimation that the sale will proceed at a time and place therein mentioned, unless the same shall be objected to by some person other than the alleged owner, who, within fifteen days from the date of such proclamation, shall establish, to the satisfaction of the creditor or of the court, a right or interest in the property under attachment, or shall engage, under such penalty as may be imposed, to file, within thirty days from the date of the intended sale, a suit in court to establish such right or interest.

A copy of the proclamation shall be fixed up at the place where the property is situated, and also at the most public part of the town or village, and in such other places as the order of the court may direct.

If, before the sale has taken place, any person other than the alleged owner of the property, intimates to the court or to the officer superintending such sale, that he has a right or interest in the property, and either establishes the same, on the one hand, to the satisfaction of the creditor, or of the court or its officer, as the case may be; or engages, on the other hand, to institute a suit within thirty days from the date of the intended sale, for the purpose of establishing it, the court, or the officer superintending the sale, shall, at the option of such claimant, while his demand is unsatisfied, either cause the sale of the property to be stayed until his claim is decided upon, and the attachment to be removed when the claim is established, or cause the property to be sold under an express declaration by proclamation issued as prescribed in Section 66, clause 3rd, at least ten days previously to the sale, exclusively of the period specified in clause 1st of that section, that such property is sold subject to the right or interest advanced thereto by the claimant, provided that the same shall be established in a competent court, as prescribed by the Regulations.

In all cases where a suit is filed to establish a right to property under attachment, it shall be heard and determined as soon after the pleadings are completed as circumstances

will permit without regard to the order in which it stands upon the file.—*Extract from the Regulation IV. of 1827.*

HINDU LAW.

I have not been able to find any *texts* of the Hindu Codes either prohibiting or permitting sale of land for debt in distinct terms.

Native procedure did not enforce, nor did native opinion sanction, nor indeed did native law permit, wholesale transfer of land from the possession or even from the usufruct of the cultivating, to those of the money-dealing classes.—*Extract from the Note by W. G. Pedder, C.S.*

I agree with my honourable colleague that the sale of land for the satisfaction of debt is not opposed to the spirit of Hindu or Mahomedan Law. Laws to which Hindus and Mahomedans ascribed the authority of Divine ordinances, recognised the justice of enforcing the payment of debts and treated all property without distinction as liable for their satisfaction.

In the Shlokas of his sages, the Hindu was taught that he who died in debt would be born again the slave, servant, wife, or beast of burden of his creditor. To relieve the soul of the debtor from the guilt of unsatisfied debt was a necessity which justified a son, in parting with the birthright of his children, and the childless widow in defeating the claims of reversioners to succession, whoever took the estate of the deceased, was bound to pay his debts, and if there were no estates, the same liability in respect of debts contracted for other than certain vicious purposes devolved on the son and grandson.—*Extract from the Note by the Honourable Justice C. A. Turner, dated 14th February 1873.*

The Hindu law commands not to sell immoveable property except under extreme circumstances. Lands and houses therefore were seldom or never sold for debts.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

And now enough has been said of the poverty of the ryots: I must, however, say a word on the causes of this state of matters. Many causes may be assigned, and were mentioned in my letter above quoted, all of which more or less help; but there is one which stands pre-eminent before all in its

power for evil, viz., the oppression and extortion of the money-lender as assisted by our civil courts. Our whole system of civil justice is framed in the interest, as it appears to me, of the rich and educated and against the poor and uneducated, to which class our cultivators almost all belong.

In Batwodi, as the patel and kulkarni, along with 43 cultivators of the village, recently stated before me, although nearly the whole village is deeply in debt, yet only six or seven survey numbers have actually passed to the names of the sowkar. In Athwad, similarly, the patel and kulkarni, along with 29 of the cultivators, unanimously assured me that though all are deeply in debt, yet not a single survey number has yet passed into the hands of the sowkar. How changed all this will be after a few years of our 'civil courts' rule. One and all of the above persons assured me that they wanted to have nothing to do with 'our civil courts' that they have suffered no loss from want of them, but now that they have been established, they will soon suffer much, and their lands be taken from them and given to the sowkars. These few facts speak volumes, and the earnest eloquence with which these simple people express their fears, is worth far more than all theories on the other side. I may add that the little I have seen of the prosperous state of a few Mogalai villages adjoining our own, but not cursed with our civil law system, fully confirms the truth of what these people urged.—*Extract from the Ahmednagar Collector's Administration Report for 1874-75, No. 2132, dated 20th July 1875.*

¶The order of ideas which excluded the possibility of executing a decree against the landed property of the debtor, though modified by the lapse of time, has never quite lost its hold upon the popular mind of India. None of the native law books contemplate such a mode of redress as available to the creditor. Jagannatha, in Colebrooke's Digest, after laying down the general rule that "sufficient effects should be attached to provide for the payment of what is due from a person who has absconded," continues: "But there is a distinction in respect to land;" and after an elaborate discussion of the nature of landed property, he arrives at the conclusion that "if the owner be present, the sale should be made (only) with his assent," just as in the *bonorum emptio* of the Roman law—a true transfer of the *dominium* was held impossible without the consent of the owner.

Even confinement in jail for non-payment, as Mr. Steele remarks, was unknown under the Mahratta Government or even under that of Tippu. Of "attachment in execution" of a debtor's land there is no trace. The feeling of a permanent connection between a family and its estate, on which were founded the extraordinary privileges, as they seem to us of the Mirasdar, still operated to prevent any enforced alienation of land, though the religious views in which that feeling originated had in the course of ages become dimmed or altogether forgotten.—*Mr. Raymond West's suggestions on the Land and the Law in India.*

The Lieutenant-Governor agrees with the Board that the compulsory sale of ancestral property in the division—under the provisions of the Code of Civil Procedure—is an innovation; and, moreover, the debts for which this process is put into action, were incurred under a system in which the lenders had no just ground of expectation that the Regulation system would be enforced for their recovery. Indeed, in respect of old debts, no such expectation could have existed at all.—*Extract from Mr. C. A. Elliott, Secretary to Government, N.-W. P.'s letter, No. 679 A., dated 27th March 1873, to Secretary to the Board of Revenue.*

MAHOMEDAN LAW.

4. The Futawa of Hunifa and his two disciples enjoined the Kazeer to satisfy the claims of the creditor from the estate of his debtor: firstly, disposing of his cash, then of his effects and household furniture, and, lastly, of all his houses and lands.—(Hedaya, Book XXX., vol. 3, Macnaughten's Principles of Mahomedan Law, p. 74). Nor could the estate of a deceased Mahomedan vest absolutely in his heirs until all debts had been discharged. "The debt prevents the estate from being the property of heirs * * * the right of the creditor attaches to the whole property of the deceased."—(Hedaya, Book XXXIX., Chap 4.)—*Extract from the Note by the Honourable Justice C. A. Turner, dated 14th February 1873.*

ENGLISH LAW.

In English law two writs are used in order to obtain execution of a decree for money. The one, called *fiери facias*, is directed to the sheriff, and authorizes him to levy the amount of the decree by the sale of the personal property of the

debtor. Under this writ immovable property, such as a lease for a term of years, may be sold, as such property comes within the definition of personal property.

In order to obtain execution against the real property of the debtor, the usual writ taken out is the writ of *elegit* by which the sheriff is directed to put the creditor in possession of the real property of the debtor. The creditor who has taken out the writ is entitled to retain possession, until the amount of the judgments shall have been recovered by him out of the net income of the property, of which he is bound to show an account to the court.

FRENCH LAW.

Civil Code. ✓

2204. The creditor may sue for ejectment, 1st, from property immovable belonging to his debtor as proprietor thereof; 2nd, from the usufruct of property of the same nature appertaining to his debtor.

2205. Nevertheless, the undivided portion of a co-heir in the immovables of a succession cannot be put up to sale by his personal creditors before the partition of auction which they may demand, if they judge it convenient, or with which they have the right to interfere conformably to article 882 under the title "of successions."

2209. The creditor can only sue for the sale of immovables, which are not mortgaged to him in case of the insufficiency of the property which is mortgaged to him.

2212. If the debtor prove by authentic leases that the net and unencumbered revenue of his immovables during one year, is sufficient for the payment of the debt in capital, interest, and expenses, and if he offer to transfer such sum to the creditor, the suit may be suspended by the judges, saving a right to resume it if any opposition or obstacle occur to the payment.

2217. Every suit for ejectment from immovables must be preceded by a summons to pay, made at the instance of the creditor, personally to the debtor, or at his domicile by the means of an officer.

The forms of the summons and those of the suit in ejectment are regulated by the laws relating to that procedure.

OPINIONS IN FAVOUR OF COURT SALES OF LAND FOR DEBT.

The Vice-President thought that it had better be brought forward as a notice of motion, and the consideration of so important a subject postponed till Saturday next. There might be strong political reasons for the change, but *he (the Vice-President) could only designate a great deal of what had been written on the subject as sentimental nonsense. It was not, in his opinion, contrary to the notions of the natives of India that land should be sold for debt.*—According to the Hindu Law, a person inheriting land had to pay the debts which his ancestor might have incurred upon it, and a Hindu female might sell the land inherited from her husband, in order to pay his debts.

He (the Vice-President) could not see that much was to be gained by passing a law to the effect that people should not pay their debts. He would instance the case of the late Nawab of the Carnatic, for the payment of whose debts a Bill had lately been before the Council, and whose exemption from legal process had only led to more extravagant usury, and to dishonesty and swindling on both sides. It was a question to which the most serious consideration should be given, since any change, such as was now contemplated, might shake credit throughout the country.

Mr. Grant said that it was not his intention to oppose the motion for inquiry. The question appeared to him to be one on which, considering the opinions held upon it by many, whose opinions were entitled to great respect, thorough discussion now would do more good than harm. He, for his own part, however, was inclined fully to concur in what had fallen from the chair.—*He agreed with the honourable and learned Vice-President that a great deal that had been written and talked about the sale of lands for debts under civil process was no better than sentimental nonsense.*

He believed that if any honourable member was to bring in a Bill to carry out what some gentlemen of the North-Western Provinces and others advocated, the proper preamble of the Bill should run:—

“Whereas the sepoys of the Bengal Army have mutinied, therefore, it is right that land in all parts of India shall no longer be a marketable commodity.”

He did not follow this argument, but there were many who took a different view, and the question, therefore, demanded an investigation.

He thought, however, that it would be well if the Council took a little time to consider the proposal of the honourable member before determining upon it, and he should therefore move the postponement of the motion to the following Saturday.

The motion was postponed accordingly.—*Extracts from the Proceedings of the Legislative Council of India, March 5th, 1859.*

The possibility of *future* remedy is a more important branch of the inquiry suggested in Lord Stanley's despatch.

In the 6th and 7th paras. of that paper there are three suggestions, having for their object the prevention, or rather the diminution, in the number of sales in execution of decrees for debt :—

1st.—That the Munsifs be restricted to the trial of suits for "money or other personal property," as before 1831.

2nd.—That the Munsifs be "prohibited from enforcing their own decisions," whereby the permission of the judge to a sale of real property in execution would be made necessary.

3rd.—That "no process either for attachment or sale of real property shall be allowed in cases below a fixed amount."

I do not see how the object in view is to be reached, or even promoted by the first of the measures suggested. Whether, with reference to distinct consideration, it is desirable to restrict the powers of the Munsifs as proposed, is a separate question, which does not call for discussion here. But it seems obvious that the adjudication upon a contested claim to proprietary right in land is a very different thing from the compulsory alienation of such right in execution of a money decree: and that the withdrawal of the authority to make adjudication on such claims cannot have the least effect in reducing the number of sales for the realization of judgment-debts.

The third innovation appears to me inadmissible. I cannot perceive upon what principle the prohibition of sales of real property for the realization of small debts, and the allowance of them in execution of decrees of court for large amounts can be defended. The interest of the judgment-creditor in the one case may be just as important relatively to his means as in the other, and though it must be admitted that the sale of real property for debt, at all times a great evil in this country, is even more to be deprecated in the

case of small debts, where the purchaser would ordinarily enter into a co-parcenary with a joint undivided family. I cannot think that an equitable remedy is to be found in an unequal operation of the law. In all cases the same process of execution should be allowed.

In regard to the second, I am compelled to dissent from the high authority of the Sadar Court, who advocate it to the extent; at least, of requiring that no sale of real property shall be made in execution of decree for debt, - save with the previous permission of the judge. One of two consequences, it seems to me, would inevitably follow; either the judge being made responsible for the issue, would feel it incumbent upon him to satisfy himself as to the justice of the munsif's decision by a laborious examination of the record; or a more laborious re-investigation of the claim, and even then he would be at a loss (the law remaining unaltered) as to the principle which should guide him in determining whether sale of real ancestral property should be permitted or not. Or the reference would be perfunctorily considered, and permission to sell would be given or withheld, as a matter of course, according to the individual views and tendencies of the referee, a distinction probably being for the most part observed between ancestral and acquired property.

Much additional labour would be thrown upon the judge, if he were required to examine each case thoroughly and himself to direct the several processes to be observed in execution, and after all, the law being unaltered, the ultimate issue would probably be the same. And if no such obligation were to rest on the judge, the previous reference to him would be nugatory.

In the papers which will accompany this Minute will be found a great variety of opinion. Some officers advocate the absolute and unqualified prohibition of the sale of lands (whether ancestral or acquired) in execution of decrees for debt. Others strongly oppose the imposition of any restrictions whatever on such sales. Others (and they form a large majority) are in favour of intermediate process being allowed, such, *e.g.*, as temporary transfer or farm for a limited period of years, as now preferentially enforced in the realization of the land revenue.

I must confess that two or three years ago I should have been disposed rather to agree with those who would hold land entirely exempt from sale in execution of money decrees than with any other class; but more recent experience

gained in a larger sphere of action and further reflection have tended very materially to alter my views.

It can hardly be contended that to sell the real property of a debtor for the recovery of a debt, which he is unable otherwise to liquidate, or which he wilfully neglects to satisfy, is in the abstract unjust. The obligation of a debt cannot be denied, and, viewed in the abstract, there is no reason why he who has incurred it should not be held responsible in his real property, as well as in the goods and chattels of which he may be possessed. In point of fact it seems to me that no distinction can be equitably made between the public and private creditor, and that, while sale of proprietary right in land for realization of the Government revenue is allowed, the like process in satisfaction of a judgment-creditor's dues cannot be absolutely denied.

The objections made to such alienations in this country rest apparently on political and economical grounds.

The objections seem to be :—

1st.—That the practice not being in accordance with native feeling, nor with the customs of native governments, produces discontent, and impairs the loyalty and good-will of the old hereditary families.

2nd.—That, under its operation, these influential families are supplanted by interlopers of the mercantile class, who are viewed with dislike by the tenantry, and in times of difficulty are unable to aid the Government in the suppression of disturbances.

3rd.—That indebtedness is encouraged among the people by the ready and adequate security which the land offers.

It seems to me, therefore, that, however true it may be in theory, that the loyalty and good-will of the people must be impaired by "the direct and constant action of Government institutions in depriving them of their ancestral possessions." The events of 1857-58 do not justify the inference that the disturbances in these provinces were aggravated by the operation of that cause.

The second proposition is one that can hardly be denied. It is certain that the old hereditary landholders do exercise an influence in their own villages and in their neighbourhood, such as the new men, belonging to the mercantile classes, can seldom acquire, and that they are consequently better able to support the Government in time of difficulty. In a political sense, therefore, it is for the interest of Government

to protect the old hereditary proprietors in the possession of their ancestral estates, and to maintain in their integrity the co-parcenary communities which are found, more or less, in all the districts of these provinces.

But the question arises whether the Government is warranted in working out a political end by legislation, the justice of which, as it seems to me, can hardly be defended; and this question, I apprehend, can be answered in one way only. If it be a true and a just principle that the whole of a man's property is liable for his *bond fide* obligations, I do not see how the Government can, with propriety, violate that principle, and deprive creditors of the ultimate security for recovery of their loans, in order that the hands of the executive may be strengthened.

Again, whether, in an economical point of view, the transfer, which is gradually going on, of lands into the hands of capitalists is an unqualified evil must be doubted. In theory at least, it must be held to be beneficial to the interests of agriculture and commerce, and to the general prosperity of the country; and many instances, I have little doubt, could be cited in which the improved management and the larger resources of an intelligent and enterprising capitalist have produced very satisfactory results.

Passing on to the third proposition, *I must express my belief to be that, were the sale of lands for recovery of debt absolutely prohibited, there would be no diminution of indebtedness among the people.* The only effect would be a greater recklessness on the part of borrowers and greater rapacity on the part of money-lenders. In the Ságor and Nerbudda territories (Jubbulpore), where the land is not liable to process of attachment and sale, the pecuniary embarrassments of the people are said to be excessive, beyond comparison, greater than those of the landholders in these provinces. There, to use Mr. Reade's words, "recklessness and dishonesty have no bounds. There is no sense of liability. Whatever may be the terms of a loan, they are accepted. The tenure of the land is safe so long as the Government's lien is discharged. The creditor cannot oust, and sooner or later is glad to make a compromise. Thus capital is expended on personal gratification. Agricultural enterprise, if it does not recede, does not pass over traditional bounds. There is no improvement, no progress."

In the district of Neemuch, too, where similarly proprietary right in the land is not recognized, the same state of in-

debtedness among the landholders obtains, and these two instances afford the strongest possible presumption that, were the alienation of land for recovery of debt put a stop to, there would not be one debtor the less among the landholders of these provinces. They would borrow, nevertheless, but at more exorbitant rates of interest than even now are extorted from them.

From what has been said, it will be seen that I am more disposed to concur with those who oppose the imposition of any restrictions on the sale of land in satisfaction of debts than with those who would abolish the practice together. The just principle is that the whole of a man's property is liable for the liquidation of his *bond fide* debts, and it is important that the principle should be maintained. It is on this principle that the land is held to be hypothecated for the Government revenue assessed upon it, and, whatever the intermediate process now preferentially adopted for the realization of the revenue, it is the proprietary right in the land itself which is looked to as the real security, and its sale as the ultimate means of coercion. There is no just ground of distinction between the public and the private creditor, and, unless the lien of Government upon the land for its revenue be relinquished, the sale of land, under whatever conditions, in satisfaction of private debts, must be permitted. The Government, it is obvious, cannot with any prudence or safety give up the security.

But I fail to see how Mr. Muir's proposed limitation of the process of the civil courts to the person and personal effects of the debtor in cases of simple debt is reconcilable with the opinion which he has expressed in the 14th paragraph of his second Minute, dated 20th April 1859, that no "distinction can be justly drawn from the *amount* of the debt." For my part I cannot see that the property of a debtor is less responsible for an unsecured debt than for a debt secured by hypothecation of land. Whether the debt be small or large, secured or unsecured, the obligation incurred by the debtor is the same, the right acquired by the creditor is the same; and I can conceive no reasonable principle on which the application of different processes for realization can be defended.

I would therefore reject the first of Mr. Muir's proposals, although I observe the Sadar Court concur in it.

But in the way of measures preventive of sale it seems to me inexpedient (for the present at least) to go beyond the

provisions of the law which have just been considered. They have not yet been in force for a twelve month, and it is desirable that their operation should be watched, and their effect should be tested. It seems to me advisable only in addition to enact or to prescribe—

1st.—That in the execution of all decrees for money, process shall be in the first instance directed against the moveable property of the judgment-debtor, and that, only in the event of such being ineffective, shall process issue against ancestral property in land or the usufruct thereof.

2nd.—That before putting up a property to sale, the Collector should be required to make a careful valuation of it, and expose it to sale at the upset price of that valuation. If sale should not be effected, he should revise his valuation, and then sell absolutely.

3rd.—That authority be given to the Collector to investigate and decide summarily all claims to lien on the property about to be sold, and that he be required to make such investigation and decision before sale, so as to give to the purchaser a defined and tangible right.

It will be fair, too, as recommended by Mr. Reade, to require every decree-holder, for whose benefit land is to be sold, to deposit a sum not exceeding 10 per cent. on the amount of his decree, to compensate the Government for the expense which it incurs on his account in bringing the land to sale. As Mr. Reade points out, this is the only process of execution which the decree-holder gets for nothing, while in the way of establishments employed and time occupied, it costs the Government a good deal, and there is no reason for this exemption. Such a demand could not be reasonably denounced as an impediment, thrown in the way of execution; it would be merely an equitable payment by the decree-holder for his sole benefit.—*Minute by Sir G. Edmonstoune, Lieut.-Governor, N.-W. P., dated 26th May 1860.*

The proposals in the printed papers contemplate, in the first instance, the exemption of ancestral landed property from liability to be sold in execution of decrees for money only. Sir W. Muir is, however, himself inclined to think that a distinction should not be made between ancestral and other than ancestral landed property, and that there should be no sale of land for unsecured debts. At present a creditor whose debt is secured by the hypothecation of some particular piece of landed property, has a considerable advan-

tage over a creditor whose debt is not so secured, but it is now proposed that the latter should be placed at a still greater disadvantage by being restricted in realizing his debt to the movable or non-ancestral landed property of his debtor. Should this proposal pass into law, it may be regarded as probable that money-lenders in future would refuse to lend money except on the security of landed or ancestral landed property, and that the object of the proposed legislation, which is stated to be the prevention of the alienation of ancestral property for debt, and the maintenance of the hereditary proprietors of land, and of the grantees of land in reward for good service to the State, which is to be held to be ancestral immovable property, in possession of their estates, would be defeated or imperfectly attained.

But I venture to submit that measures which are calculated to encourage dishonesty and improvidence by relieving dishonest and improvident persons from the natural consequences of their conduct, and to emasculate the administration of justice by preventing or impeding the execution of decrees for debts, are at variance with the principles of good government, not to say of morality.

For the reasons above mentioned, and those exhibited in the annexure, the proposals embodied in the printed papers, although they stop short of the complete prohibition of the sale of land in execution of money decrees, appear to me to be similarly objectionable, as being unsound in principle and mischievous in tendency. It is not worth while to criticise their details.

The objection to the sale of landed estates for the realization of arrears of revenue, or in satisfaction of decrees of the civil courts, on the ground that the law of the Hindoos is thereby violated, is one which I have never heard alleged by Hindoos; and if their law only forbids the alienation by a father of immovable ancestral property, without the consent of the sons, *except on proof of necessity*, it appears to me that the cases supposed fall within the exception specified, and that the objection does not lie, as it can hardly be contended that a necessity is not created by the obligation of a debt. Whether or not in the cases supposed the rights of heirs as well as of the debtor are conveyed by the sale is another question, but the circumstance which is mentioned, that in practice ^{at least} we has been regarded as not less absolute in regard to ^{the} interests of heirs than to those of the debtor,

affords a strong presumption that, if the view of the effect of such sale which has obtained in practice without dispute be at variance with any principle of the Hindoo law, the principle so infringed has long been obsolete, and suggests a doubt whether the infringement of it can really have excited discontent. Our courts I believe generally hold that property does not, by passing to heirs, escape from its liens and liabilities, and this principle seems incompatible with that above mentioned.

Another objection to the sale of land for the recovery of revenue balances or private debts is urged on the ground that the practice did not exist under former Governments. This objection implies little more than that such legal forms of proceeding were unknown under Native Governments. It will not, I imagine, be asserted that Native Governments did not oust defaulting zemindars, or that, in their dealings with them, they treated the rights of property with more respect or tenderness than we do. As regards private claims of a civil, or complaints of a criminal nature, they did not usually concern themselves much; and the general insecurity of life and property before the introduction of the British rule is notorious. Sir W. Sleeman, I think, relates that, long ago, some merchants, travelling through the Gwalior territory, who had been plundered, applied for redress to the local authority, who informed them, in reply, that it was his business to collect his master's revenue, not to attend to their complaints. He did not mean that they had made a mistake in addressing themselves to him instead of some other officer specially charged with the administration of criminal justice, for he united in himself, according to the approved theory of the present day, all the various functions of Government. But he was (in other respects, besides this union of Governmental functions, which some conceive to be a source of strength, and, I venture to think, a source of confusion and weakness) an embodiment and a representative of the oriental idea of Government of which the scheme includes only a partial, casual, capricious, and precarious dispensation of justice, and makes no pretension to a regular comprehensive system for that purpose. The oriental scheme, resolving itself in the main practically into "the good old rule, and simple plan, that they should take who have the power, and they should keep who can," is by no means disagreeable to a semi-barbarous people, who prefer license to liberty, and reckon protection from

wrong to be dearly purchased by the loss of the power of wrong doing. Even in the eyes of some educated persons, the simplicity of barbarism has found more favour than the complicated machinery of civilization, which must be owned to be cumbrous, tardy, and costly. The late Mr. C. T. Le Bas denounced the legal action for debt, arguing that a man who lent money to another did so of his own accord and at his own risk, and was not entitled to claim the interference of the constituted organs of society to save him from the consequences of his own want of caution. This argument being equally relevant to all voluntary transactions between man and man, undermines the whole administration of civil justice. The Gwalior official might analogously have vindicated his rejection of the merchants' complaints, and pointed out to them that their journey had been undertaken without any compulsion and with a knowledge of the dangers of the road. In spite of such sophistry, it may be maintained that it is a duty and legitimate function of a Government to support right against might, to compel the fulfilment of contracts, and to punish outrage of all kinds. Much weight, therefore, cannot be attached to the objection which I have been considering, namely, that the compulsory sale of landed property is not in accordance with former custom, unless it can be shown that the practice is unjust or unnecessary for the ends of justice.

The equity of the process cannot plausibly be impugned. If a man fail in the performance of an agreement to pay a sum of money, in repayment of a loan or otherwise, on a fixed date, the law cannot be condemned for assigning to the creditor, or selling in his behalf, any property of the debtor which may be forthcoming of the value due, or may fetch that amount in the market, but would, on the contrary, be chargeable with iniquity if it refused to do so. *There is nothing in the nature of immovable property which renders it less fit than movable property to be applied to the purpose of liquidating debt*; nor is any special hypothecation required to make property generally liable to be applied to that purpose, although such hypothecation may give to a particular creditor a primary lien on particular property. The exemption of one sort of property from this liability confers a peculiar privilege on the owners of that sort of property which, like all class privileges, is obnoxious, as contrary to the spirit of equal justice. But this is not the only mischief arising from the exemption of immovable property from the liability. The exemption

seriously impairs the efficiency of the administration of civil justice. A procedure which provides no other means than the sale of movable property for the execution of money decrees is ridiculously inadequate, and a mere mockery of justice; and in this view of the subject the interests of justice are strongly opposed to the exemption. Nor does the exemption favour the poorer classes. *One would be more disposed to interfere between the creditor and the wretch whose bed and cooking vessels were distrained for debt, than in behalf of the debtor who, possessing in his landed estate a permanent source of income, evaded the claims of his creditors.*

The sale of land under revenue processes or decrees of the civil courts equally involves the principle of responsibility of landed property for debt, but land may be held to be constructively hypothecated for the revenue with which it is assessed, and on this account the public creditor may claim a preference over private creditors. Further than this, a distinction in favour of the public creditor cannot fairly be drawn, and those who object to the sale of land under judicial decrees, cannot consistently advocate the sale of land for revenue arrears. The prohibition of sales of the former kind will, moreover, appear to be futile, unless sales of the latter kind be also prohibited.

There can be little doubt that the loan made to the landowner by the Native banker, which is followed by the civil suit and the sale of the debtor's estate, in execution of the judgment, is commonly made to meet the urgent and inexorable demand of the collector; and one effect of preventing the judicial sale in the last resort on the private creditor's account may be to precipitate the summary sale on the account of the public creditor.

It may be assumed, too, that money-lenders, deprived of the security for debt afforded by land, and exposed more than ever to the contingency of bad debts, will be forced in self-defence to exact a higher rate of interest on loans advanced by them; and as land-holders will be tempted by the same circumstance to contract debts more readily, and to evade the payment of them, the result is likely to be an increased growth of dishonesty and embarrassment.

The withdrawal of land from the processes of the civil courts, with the view of screening land-holders from the consequences of debt, seems like an insane attempt to frustrate that order of things which has prescribed that honest industry and thoughtful prudence shall prevail in the world over reck-

lessness and indolence, by the detrimental means of restricting the free play, the spontaneous movements, the legitimate application of capital in a field so wide and fruitful as that of landed property.

But it is urged that the "extensive transfer of property, by means of public sales, from the hands of the old landed proprietors to those of persons possessing no local influence, proved a source of weakness" to us in the late disturbances, by "arraying against us many persons exercising influence over the tenantry of extensive estates of which not long before they were the hereditary proprietors," while, on the other hand, "the interlopers, being regarded with dislike by the tenantry, look to us for protection in time of difficulty, and are unable to render us any assistance, or actively to co-operate with the Government authorities in the suppression of disturbance."

The fact is undeniable that many ex-proprietors took advantage of the recent anarchy to recover by force the rights which they had lost by legal proceedings, and by so doing committed themselves to the cause of rebellion; and it is analogous to another fact, not less patent, that convicts availed themselves of the same opportunity to break jail, and scoundrels all over the country to perpetrate all kinds of outrages; but the one fact is no better reason for relaxing the laws relating to debt than the other is for relaxing the laws relating to crime. Ruined men and debtors, as well as criminals, have everywhere, in every age, been the enemies of Government; and, though folly and misfortune are not to be confounded with guilt, the former class of persons cannot complain of being coupled with the latter, if they acted in concert with them.

If the action at law for debt, or the processes against landed property in execution of money decrees, without which the former is ineffectual, are believed to breed disaffection or disorganize society, let them be abolished, and let our courts be closed; and, accepting all the logical consequences involved in such a course, let us acknowledge that civilization is a delusion; and let the Government, abnegating its judicial functions, confine its attention in future to the preservation of peace and the collection of revenue. But if a sound, pure, and efficient dispensation of justice is the greatest blessing which a Government can bestow on its subjects; if even such an imperfect and unimmaculate dispensation of it as we are

able, under the disadvantage of our circumstances, to confer on India, is still beyond all price, and that which chiefly makes our position in this country useful and justifiable,—then let us not attempt to conciliate the spirit of barbarism by surrendering any of the valuable and distinctive parts of our civility, because they are naturally antagonist to it, nor fear that the paths of justice will conduct into political ruin. —*Extract from the Minute by the Hon'ble Mr. Justice Pearson, dated the 16th December 1872.*

5. I have referred at length to these doctrines, because I have heard it urged that the satisfaction of debt from landed estates is foreign to the notions of the people of Hindustan. Assuming it to be the case that the practice is unknown in the anarchy which preceded the establishment of the British rule, the argument drawn from these circumstances is, it seems to me, completely answered by the cogent reasoning of my honourable colleague. It is hardly necessary that I should say I agree with him that there is nothing inequitable in the practice, and that to abolish it, would materially impair the administration of justice.

6. I concur to some extent in the statement of Mr. Justice Pearson as to the causes which have contributed to the numerous transfers of land in those provinces; and I yield my entire assent to the principle he asserts, that, ordinarily, no Government, which pretends to administer equal justice and confer equal rights on all classes of its subjects, can with any show of equity invest the members of a class possessing a particular kind of property with a special immunity from the consequences of their voluntary contracts. On most of these points I can add nothing to the exhaustive arguments recorded in the note of my colleague.

While, then, I am bound to admit that I have not, in the spare opportunities I have had of gaining information as to native opinion, heard it urged as a complaint against the British rule, that it sanctions the sale of land in satisfaction of debt. I am not prepared to contend that the legislature would not be fully justified in recognizing the principle of expediency and prohibiting such sales, if it were satisfied, after exhaustive inquiry, that they alienated the affection of the large mass of the people and constituted a grave source of political danger.

54. Many of the objections taken by Mr. Colvin, in the 33rd paragraph of his note, to the prohibition of all transfers of land, apply with equal force to the modified proposals he advocates. The provision that no ancestral immovable property should be sold in execution of a decree for money only on obligations incurred before the passing of the Act, would, at least, induce every creditor to force his debtor to execute a mortgage, and with the distrust of land as a security, which the spirit as well as the provisions of the Bill are calculated to engender, it is more probable that creditors would at once proceed to the courts and obtain and execute decrees. The land market would be glutted, and transfers exceed in number those of any period of which we have had experience, while land-owners, who are at present comparatively solvent, would be everywhere ruined. Such a measure would certainly not be regarded as, or be, a measure of preservation, and any presumption of the time within which it should take effect might mitigate, but could not cure the mischief its enactments would create.

55. The proposal to render ancestral immovable property hereafter unsaleable in execution of decrees for simple money obligations incurred after the passing of the Bill, is equally fraught with injury to the true interests of the land-owner, and calculated to increase rather than diminish the frequency of transfers of land. The law permitting the sale of land in execution of decrees for debt has been in practice for two generations, and probably instances of its operation have occurred in every district. It must, therefore, be known to the agricultural population, that when they incur a simple debt they do not reflect that their property, in case of default, will be held liable for its satisfaction, is an argument against all coercive process for the satisfaction of debt and in every country. Those who incur debt or borrow money are generally sanguine they will be able to discharge the obligation, and give little thought to the well known consequences of default. The force of the argument, founded on the ignorance or thoughtlessness of borrowers, I cannot admit.

56. Practically, I believe very little land is brought to sale in execution of simple money decrees. Before resort is had to sale, the owner has generally exhausted his powers of borrowing on mortgage. The results of the prohibition, with which I am now dealing, will be the following: borrowers who are unwilling to pledge their lands will be

required to pay higher rates of interest than are now demanded; mortgages will be much more frequent—they will be taken not only for monies advanced, but to cover future advances, and thereby a wide door will be opened to fraud.

57. There is yet another ground on which I regard the prohibition of the sale of land for simple debt as extremely mischievous. Commerce has largely increased in these provinces since the mutiny: from causes which are well known commercial morality has, I fear, deteriorated. The native trader formerly employed in his business a portion only of his capital, retaining a large reserve in gold and ornaments. Now, imitating European examples, many native merchants, in those places in which the influence of European trade has been most marked, speculate beyond their means, and create paper capital by the interchange of hoodees with their connections in other cities. Formerly, if unforeseen misfortunes entailed on merchants losses, which their own reserves were insufficient to meet, their relations came forward to assist them. In these days, I am told, firms of members of the same family are established in different cities: if loss arises from speculations in which all are engaged, the connection between them is concealed, and the whole loss thrown on one firm. Some of these firms hold land which would fall at once within the provisions of the Bill, and other land which will, by efflux of time, become ancestral. It is impossible for the majority of commercial transactions to result in other than simple debts, and by the proposed prohibition, either the credit of merchants in these provinces may be impaired, or injustice may be done to foreign merchants ignorant of special law, and whose ignorance may be excused as it is a law opposed to the principles of enlightened legislation.

58. Nor will the exclusion of lands held by traders from the provisions of the Bill be sufficient to cure the evil at which these observations are pointed. The extension of the industrial education of the people, the creation of new industries, should be the first care of a Government with a population so numerous and so poor as is that of these provinces. Already some land-holders engage in manufacture,—for instance, indigo, sugar, and tea,—and there are other industries connected with agriculture which are susceptible of extension. By making land unsaleable for simple debts the legislature would cripple the credit of the land-holder and place an obstacle in the way of his engaging in commerce.

59. The conclusion to which I am forced is, that the prohibition of the sale of land, in execution of decree for simple debts, would be a misfortune rather than benefit to the class for whose protection it is designed. It would not only fail to avert, but conduce to the frequent transfer of property in land, and at the same time it would impede the development of commercial and manufacturing industry.

14. If I may judge from the articles which have appeared in some of the Indian journals, the causes of the extensive transfers, which it is sought to prevent, are supposed to be mainly the operation of the laws which permit the sale of land for the satisfaction of private debts supervening on the unthriftiness of particular class or classes, and the usury practised by overreaching money-lenders.—*Extract from the Note by the Hon'ble C. A. Turner, dated 14th February 1873.*

4. On a careful review of all the arguments on both sides, the Lieutenant-Governor has come to the conclusion that, looking to the long established practice of enforced sale for debt, to the contingent interests and expectations established thereby, and to the depreciation of property which would be occasioned by rendering its transfer difficult; it would not be expedient, at the present late day, to prohibit sale of ancestral property in execution of decrees for debt.—*Extract from the Secretary to Government North-Western Provinces, letter No. 1873.*

OPINIONS AGAINST COURT SALES OF LAND FOR DEBT.

I am of opinion that a material restraint upon these sales may be devised without injustice and in complete conformity with the habits and prepossessions of the people, and that debts may be to a great extent adjusted without resort to sale.

I would not place any restriction on the direct and the voluntary alienation by proprietors of their lands, or on the action of the courts in enforcing deeds of such alienation. But I would confine the action of the courts, so far as causing permanent alienation, strictly to cases of direct and absolute sale.

I entirely concur in the principle proposed in the letter of Government indicated at the beginning of this memorandum. *For all simple debts I would limit the process of our courts to the person and personal effects of the debtor, and entirely exempt land from liability in the execution of decree.*

Houses with gardens or other plots of ground attached to them in cities need not necessarily be classed with landed estates, but might follow the law of personality.

For the execution of decrees on account of debts secured by the hypothecation of land, the following process might be adopted. At the stage when the Collector, under the present system, is directed to bring the property to sale, a precept might issue to the Collector, desiring him to provide for the liquidation of the decree by any disposition of the hypothecated property not extending beyond 15 years. The Collector would thus be at liberty either to transfer the property for a term of years on payment by the transferee of such sum either at once or by instalments as would cover the debt, or to place the decree-holder in possession for such a period as by the usufruct would fairly make good to him his claim.

Supposing the Collector unable to arrange for the adjustment of the debt in this manner, he would make a return to the precept accordingly.

At this stage two courses are open :—

- (1).—The law might either authorize the court to proceed to the sale of the hypothecated property thus irretrievably burdened. This, however, should not, in any case, be done until endeavour has been made to realize the claim from personality of the debtor. A summary inquiry should also precede the sale, as in the Punjab system, to clear away or define the title of other claimants in the property to be sold.
- (2).—Or the case might be treated as one of insolvency, to be adjusted by the best practicable disposal of the debtor's property, including among the assets the usufruct of the hypothecated land for 15 years. Where there may be more than one debt secured by hypothecation of the same property, priority of the transaction might give priority of claim, or priority of registry might confer a preferential right.

I myself would prefer the second course.

I am averse to carrying into effect through our courts the permanent alienation of land, excepting in cases where the terms of the alienation imply a direct, absolute, and perpetual transfer.

18. Where an owner creates a simple lieu, or even a lieve involving prospective conditional sale, I would limit the action of the courts to aiding the realization of the debt from the proceeds or usufruct of the property for a limited

term. I believe that in all such cases nothing more was in the intention of the mortgagor than that the income of the property should, for a term of years, be devoted to the liquidation of the debt. And I would not enforce more by our courts. I believe that this will be quite in accordance with native habits and principles. The lender will feel that nothing short of a direct sale can secure for him more than the usufruct of the lands for a limited term; and he will have to look to his own interests in restricting his loans accordingly.

Where, in addition to creating a recorded lien upon his land, the owner has resigned his land into the possession of the mortgagee, the procedure would be analogous. There would be no foreclosure to be enforced as at present by our courts on the suit of the mortgagee; the only cause of action would then be on the part of the mortgagor to secure an adjustment and restoration to possession. I would admit such suits on the same principles as those above indicated, and would limit the lien of the mortgagee after such suit to fifteen years from the date of the mortgagee's suing.

I have named fifteen years, as the period must of course be arbitrary, and that term is already familiar under the law of farm and transfer under Regulations IX. of 1825 and I. of 1841.

I earnestly hope that some such provisions as those I have ventured to urge will be introduced by the legislature without delay.

It may possibly be objected, in the first place that the design of the Government will be frustrated by the people themselves. Finding they are unable to raise money on simple bond, they will mortgage their lands more frequently than before. They may do so, but they will not therefore be in a worse position than before; they will be better off, because instead of having their estates put up to the hammer for a simple debt, the lien will be followed by an only temporary alienation, the ancestral property again returning to the owner.

But it will be added, even the hypothecation of property will fail to answer the owner's purpose of raising the money; he will be driven to an absolute and irrecoverable sale. Perhaps this may be the result. Perhaps we shall have more direct and voluntary sales than before. But it will be only another form of doing that which was formerly brought about far more frequently by an insidious and deceptive pro-

cess. It is better that a man should sell his property with his eyes open, than be inveigled into parting with it by a process of false and delusive hopes that the transfer is only temporary. It is against human nature to suppose that the permanent transfer of land will be, in any comparable degree, so frequent where the alienation must be made immediate, absolute, and perpetual, than under the present system. And if a man will barter away his ancestral lands knowingly, and with the full consciousness of what he is doing, the law cannot help him further without locking up entirely the right and property in land by a perpetual entail.

It may further be objected that these proposals will reduce the value of land as a collateral security in raising money. They will no doubt do so to some extent. But they will still leave a wide enough margin for all purposes of agricultural improvement.—*Letter of Government, North West Provinces, dated 20th October 1858.*

If it is an object to protect land from sale in certain cases, I cannot see why the law should not be so framed as to render the attainment of that object more effectual; and if lands paying revenue to Government were altogether exempted from sale in execution of civil court decrees, the certainty that they could not be thus sold, would, I think, be even a relief to money-lenders from the suspense and speculation which a multiplicity of provisions, nicely but somewhat ineffectually framed for the protection of lands in certain cases, must give rise to.—*Extract from the Sháhjáhánpur Session Judge's letter, No. 11, dated 5th January 1871.*

In the non-regulation provinces, however, by a special order, sales of land for the satisfaction of decrees is prohibited, except with the sanction of Government, which the Commissioner of the Division represents.

The sales of land or share are of rare exceptional occurrence. Only during the last year (1870) it seems that section 243 has been acted on; but out of 33 cases, sale actually took place in only 16; the rest were arranged for under section 244.

In my opinion the provisions of section 249 are most desirable where the sale of land is allowed to protect the interest of the ignorant land-holders. Speaking for this district I may add that justice as well as policy demand Government interference to ward off such sale.

On ground of justice.

In the first place, it will be found that most of existing debts of the proprietors have been incurred for the payment of balances; and as Government are in a way instrumental in getting them into debt, it is but fair that it should protect them from its evil consequences; secondly, sale of land is an innovation, and sanctioned only under our rule. In ordinary cases, the measure is hard, but its enforcements under the circumstances of enforced debt is particularly grievous, and is felt to be so; lastly, the usual rate of interest (24 per cent.) and the system of compound interest charged, may be allowable where there is actual risk to the lender, but when the estates become liable for the debt, such terms are unfair and against equity on grounds of policy.

It is apparent that the measure tends to replace rapidly the present class of proprietors for that of Mārwaries, and other Māhājans, none of which classes possess any influence with the people of country, nor have any agricultural knowledge to improve the estate. They hold the estate only with the object of profit, and this policy they carry out to extremes, with regard to the welfare of the estate or of its cultivators, thus barring improvement and weakening the hands of Government. It is a serious question how far this alteration in the class of proprietors should be allowed.—*Report of the Jhānsi Assistant Commissioner, J. V. Sturt.*

35. Three measures have accordingly been proposed, and are embodied in the accompanying Bill. In the first place, it is proposed to prohibit in future sales of landed property in execution of decrees for unsecured debts. Should the creditor insist on security at the time of borrowing, the debtor will be at once called on to hypothecate his property, and will have the risk plainly brought before him. Or should the debtor contract a debt at first without pledge of landed property, he will be awake, when the creditor presses for payment of a bond, to a full sense of the obligation he has incurred, and the necessity for providing an escape from the danger which threatens him.—*Extract from Mr. Colwin's Note on the Landed Estates Relief Bill.*

Being ourselves in some degree responsible for what has happened, in that we introduced the law of sale in execution of decrees for debt, and enforced it for arrears of Government revenue for years (which I believe was never done by any Mahomedan Government), and seeing that we have unwillingly done mischief instead of good, we are, I think

bound to repair, as far as we can, the error of which we have been guilty. If the proposed Bill prove successful, we shall have checked the increase of discontent that showed itself so openly in 1857, and have done something substantial towards the protection of the class whose interests are so bound up with our own. In doing this, it cannot be said that we injure an honest capitalist or money-lender. We do, indeed, restrain greed, but not honest dealing, and as long as we do not interfere with the voluntary alienation of lands by private sale, or endanger the satisfaction of secured debts, we shall have no reason to regret that we have at last been bold enough to determine a question that was considered of moment (as I will presently show) in another presidency fifty years ago, as well as in our own.

A measure of a similar character to the one before me was absolutely proposed in Madras as far back as 1820, under authority (I believe) of Sir Thomas Munro. It was said to be the old usage of that country that ancient zemindaris descended entire to the eldest son of the last zemindar, and that they were not liable to be divided nor to be alienated, not even for debt. Sir Thomas Munro was satisfied that the zemindars were being ruined, because the regulations had made them answerable for debts. Mr. David Hill, who was for nineteen years in the Madras Secretariat, and afterwards was examined before the Parliamentary Committee in 1832, framed a regulation for the purpose of protecting these estates from sale and for the payment of existing debts. Mr. Hill was asked—"Should you, then, think it right that there should be any law which should prevent the sale of the landed property of any person to meet the just demands of his creditors," and he replied: "If it would prevent their prodigality it would be a great benefit, and it would have that effect if the creditors could not obtain payment of their debt out of the land. It was intended in the proposed regulation that respect should be had to all existing debts on the estates of the zemindars; provision was to be made for liquidating the debts, not by the sale of the zemindari, but by appropriating the revenues."—*Extract from Mr. Spankie's Note, dated 28th December 1872.*

At the close of the Minute on the Protection of Ex-proprietary Cultivators, I said that the measure would be incomplete without another to prevent the involuntary transfer of their estates from the hands of the old proprietor of the country. The position of the ex-proprietor can be at the best but

very imperfectly protected; and the only effectual remedy is to prevent forced transfers and thus secure the old communities in the proprietary possession of their lands.

2. The subject was much discussed after the mutiny. It had indeed attracted the attention of Government even before the mutiny; and the Honourable J. R. Colvin had called for opinions as to the possibility of limiting the evil arising from the frequent sale of ancestral property by decree of court. The correspondence was lost during the rebellion, but an outline of what was suggested by the Board of Revenue has been preserved in my Minute dated 2nd February 1859. It was proposed to resort, in the first instance, as a rule, to temporary alienation, leaving sale only as a last resort. The suggestion seems to have been referred by Government to the Sudder Court, and on their reply dropped.

3. The subject was again revived after the mutiny by a despatch from the Honourable Court of Directors "as one requiring careful inquiry and consideration, with a view to providing a suitable remedy." In calling attention of the Sudder Court and Board to this despatch, the Governor General (Lord Canning, then administering the North-Western Provinces) "was disposed to think that the law might be so far altered with advantage as to limit the sale of real property to decrees of debt in which such property had been distinctly hypothecated, and to limit the process for the recovery of simple debt to the personal effects of the debtor."

4. A further despatch was received from the Secretary of State, dated 25th January 1859, on the legality, under Hindu Law, of the alienation of ancestral property. Her Majesty's Government, while recognizing the impolicy on general grounds of placing restrictions on the transfer of property, regarded the case as one of an exceptional character, and pressed on the Government of India "the consideration of remedial measures."

5. The discussions gave rise to a variety of opinions. The Sadar Court and the Board of Revenue both advocated a restriction of the transfer of landed property for decree of court such as would exclude ancestral property from its operation otherwise than by temporary alienation for secured debts. Mr. Harrington, and Mr. Edmonstone, Lieutenant-Governor, took the opposite view; and the latter, in an able and exhaustive Minute, came to the conclusion that all that could be done,

in addition to the provisions of sections 243 and 244 of the Civil Procedure Code (which had in the meanwhile been passed) was to provide for primary execution against the personal property of the debtor; (2) to secure better precaution against sale at inadequate prices; and (3) better definition of the property to be sold.

6. The papers just enumerated contain a full discussion of the subject, both as regards the evils and the possible remedies. Notes by the Hon'ble J. D. Inglis and Messrs. H. S. Reid and C. A. Elliott have now been drawn up at my request, stating their views on the question in reference to its present aspect. Besides the general evils which time and the continued action of the sale-law are tending every day to aggravate, a decision is required on the applicability of the system to the division of Jhānsi. In the last annual report the Commissioner has strongly urged the inexpediency of introducing the sale-law, both on economical and political grounds. "Debts incurred" says he, "under a different system, mortgages entered into with a looseness and ignorance of the consequences, which will now only too surely ensue; are being brought into court, and will be carried through to the bitter end. The Marwari (banker) knows no mercy." I can conceive nothing more disastrous for the Jhānsi division than to sanction a system which must end in reducing the powerful and turbulent proprietors of Jhānsi into tenants at the will of a body of non-resident speculators, whose only object will be to squeeze out of them the highest return for their money.

It seems hardly necessary for me to go into the question here on its general merits: That has been done fully in the papers already quoted, and my views on the subject remain as there stated. The provisions of sections 243 and 244, designed to put a check upon the indiscriminate sale of ancestral property have utterly failed of their object. Sale has gone on year by year with the unchanging remark in the annual reports, that those provisions were of no practical avail.

I agree generally in the proposals as to the nature of the remedy in the notes which have now been furnished to me.

I.—As to debts incurred in future. Personal property alone should be liable for unsecured debts.

For debts secured by mortgage of specified property, such property, should be liable to temporary alienation for a period not exceeding, say, 15 or 20 years. The claim in respect of

such debt would then cease. On such a measure being ordered all creditors having similarly secured claims against the same property should be required to bring them forward within a fixed term on pain of losing their title for execution, as against the pledged property.

Mortgages where possession is given to the mortgagor should be treated on a similar footing

In respect of mortgages with stipulation of conditional sale, endeavour should first be made to realize the debt in the same way, *i.e.*, by temporary alienation; failing which, ample opportunity, as under the existing law, should be given to the mortgagors to redeem their property, after which foreclosure should be allowed. [In this respect my present proposals differ from those in my Paper of 1859, for on reflection I do not see that the conditional sale can be fairly evaded.]

The right of private sale will of course not be interfered with.

In respect of debts contracted prior to the passing of the proposed enactment, or to some other date to be notified in its provisions, I agree that a special arrangement must be made.—*Minute by Sir W. Muir, dated 9th August 1872.*

OPINIONS IN FAVOUR OF PARTIAL LIMITATIONS ON THE LIABILITY OF LAND FOR DEBT.

Mr. Currie proposed the introduction of the following new section after section 235 :

“When in any district where land paying revenue to Government is ordinarily sold by the Collector, as provided in section 239, the property attached shall consist of any such land or of a share in any such land, if the Collector shall represent to the court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the court may authorize the Collector to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share.”

He remarked that the proposed section went a step further than the last new section. The Judge of Cawnpore, the Commissioner of Alláhabad, and the Agra Sadar Court objected to the indiscriminate sale of land. Mr. Muir objected to any sale of land at all under civil process. He (Mr. Currie) would not go so far as Mr. Muir: He agreed

generally in what had been said on the subject by the honorable member for the North-Western Provinces. But, even if it were admitted that the transfer of the land from the hands of the old proprietors was an unmitigated evil, still, in the existing state of things, that would be no sufficient reason for a general stoppage of sales.

Something, however, was to be conceded to opinions so strongly expressed and urged by the authorities he had named. The new section which he proposed would enable the revenue authorities to interfere in behalf of old proprietors in all cases in which such interference could be beneficially exercised.

Mr. Ricketts said that, in the course of the preceding debate, mention had been made of the opinion of some of the officers of the North-Western Provinces respecting the sale of lands. He was aware that the very mention of the possibility of a change, in a case of this sort, must do harm, and that if it went forth that there was an inquiry pending on the subject, there was hardly a land-owner or a money-lender in the country who would not be affected by it. Nevertheless, inquiry appeared to be unavoidable. One of the Officers he alluded to, Mr. Muir, was known to be able and experienced. Two years ago he would never have dreamt of any such change, but he had seen for himself and heard the opinion of others. He now recommended immediate alteration of the law. He wrote:—

“The passing of landed estates into the hands of mere speculators, without local influence or connexion with the soil, was always regarded as a serious disadvantage. It ousted from their ancestral lands those who, by their natural position, could best manage them, and be made instrumental in aiding the administration, and it substituted a set of men who were often unable even to maintain themselves in secure possession, and for all administrative purposes were far less responsible and less useful proprietors. In addition to this, we have now had universal proof that the moment the authority of Government is suspended, the old proprietors re-assert their foregone rights and oust the upstart intruders.”

• But, whether regarded by the natives to be right or to be wrong, the practical result of these sales has been equally disastrous. They contributed seriously to the embarrassment of Government, and to the confusion and disorder of the days of anarchy. They proved an eminent source of weakness.

This is a fresh argument against the present system, super-added to the evils that were already felt, to call for the adoption of all possible means for checking the frequency of sales and permanent transfers."

"I entirely concur in the principle proposed in the letter of Government indicated at the beginning of this memorandum. For all simple debts I would limit the process of our courts to the person and personal effects of the debtor; and entirely exempt land from liability in the execution of the decree. Houses, with gardens or other plots of ground attached to them in cities, need not necessarily be classed with landed estates, but might follow the law of personality."

Mr. Thornhill, another officer of much experience in the North-Western Provinces, said :—

"There can, I think, be no doubt that the tendency of our system is to oust the old proprietors, and to transfer the land to men who have made their money by trading upon the vices or necessities of their neighbours, and who possess no local connexion or social position, which could give them influence over their tenants."

"I think that the sale of land in satisfaction of decrees of court might, with advantage, be absolutely prohibited; but if this measure be objected to, at least the same indulgence as is allowed in Clause 187 might be permitted to those landed proprietors who are threatened with a foreclosure of mortgage."

A third, Mr. Batten, was of the same opinion. He wrote :—

"I trust that by some wise legislation involving the consideration of decrees non-absolute and payable by instalments, and of the whole question of pre-emption, entail, and tenure a remedy may soon be provided for the great evil (which, as far as loud Native complaint goes, may be called a "crying evil") of the constant transfer of lands from the agricultural population to the money-lending classes, through the operation of our present system, by which the civil courts make the soil the security for all money debts. A law of limitation, too, for all British India, reducing by at least half the present period for receiving suits for simple debts, damages, &c., is, in my judgment, urgently required. But I suppose, until further legislation takes place in regard to these important subjects as also to the subject of Native insolvency in general, the Code of Procedure cannot afford the remedy which is so much desiderated.

“ I may, however, add my own evidence, as Special Commissioner and Sessions Judge, that the course of agrarian outrages in these Provinces, which followed the subversion of order by the mutineers, has shown that the right to land by execution of decrees has everywhere been treated by the people with utter contempt, and that for a time the ousted parties took the place of the auction purchasers, not without severe suffering, loss of property, and often death to the latter.”

Now these were officers of great experience and penetration and the opinion expressed in another paper, now before the Council in another matter, was confirmatory of their views. He believed that the gentleman he alluded to had now retired from the service, but he could appeal to the honourable member for Bombay for confirmation of his representation when he said that few men had done more for that Presidency than Captain Wingate, who had planned and superintended the survey which was now going on. He wrote—

“ The second remedial measure I have already proposed to Government in a separate report, No. 296, dated 3rd instant, and it is the following :—

“ The exemption of land or other immoveable property from attachment and sale in satisfaction of decrees of civil courts, unless the suit especially refer to such land or property, and its attachment and sale are specified in the decree.

“ The following extracts from the Report just quoted show the grounds of this recommendation :—

“ The compulsory sale of land by civil process in payment of debt not secured upon the land by mortgage or otherwise is, I believe, entirely opposed to Native law and usage throughout India. In our own Presidency the practice is authorized by Regulation, but so incompatible is it with Native ideas, that it has been resorted to, to a very limited extent in the districts where our Regulations have been longest in force, while in others, as in the Southern Mahratta Country and the Deccan, it is to this day almost unknown. Throughout these districts, and I believe generally over the Presidency, the cultivators of fully assessed lands believed their lands belong to Government, and that they cannot be dispossessed of them, unless at the instance of Government. The idea of their lands being subject to sale in satisfaction of a bond debt or a running account with a

money-lender has occurred to few of them, and the contingency, I may safely say, is regarded by these few with dismay and amazement as the very height of injustice and oppression. In Guzerat, I apprehend, that sales of inam land, even in satisfaction of bond debts, have only become frequent of late years, and that sales of Government land on the same account have been wholly unheard of until very lately."

Now this opinion of Captain Wingate was not less decided than the others which he had just quoted. But a letter had just been received from a much higher authority, the Secretary of State for India, pointedly disapproving of sales of land by subordinate judicial officers.

Lord Stanley wrote:—

"It cannot be doubted that the increased powers in respect of suits relating to real property, which of late years have been conferred upon the subordinate civil courts, have greatly promoted the rapid transfer of such property from old to new hands. It was not until the year 1831 that Munsifs were empowered to try any suits but those for 'money or other personal property' (Regulation XXIII, 1814, Section 13, Clause I.), and up to that time those officers were strictly prohibited from enforcing their own decisions and from issuing any process or using any coercive means for that purpose (Regulation XXIII, 1814, Section 49), for which an application to a higher authority was necessary. In that and subsequent years, the powers of the Munsifs were greatly enlarged, and under the law now in force the civil courts of every grade are placed upon the same footing in regard to the description of suits which they are competent to try (subject only to certain pecuniary restrictions) and in regard to the execution of their own decrees. The check imposed by the necessity of a reference to a higher court has been removed, and the number of sales, if I am rightly informed, has lately very much increased in consequence of the exercise by a number of courts in every district of the power of ordering a sale which formerly could be exercised by only one or two. This result is not surprising. The sale of an estate or portion of an estate registered in the Collector's books is the most ready way of enforcing a judgment; it gives the least trouble to both the creditor and the courts, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other, even in the most trifling cases.

"With reference to the foregoing remarks, the question

arises as to the expediency of altering the existing constitution of the Munsif's courts and of reverting to the system under which they were tribunals for the adjudication of suits only for money or other personal property, at the same time enlarging, if thought advisable, their jurisdiction in such cases. A further check might be imposed by providing that no process either for attachment or sale of real property shall be allowed in cases below a fixed amount, and that in suits exceeding that amount, the Munsif shall not be competent to issue such a process without the previous sanction of the judge."

The Right Honourable the Secretary of State for India did not go so far as the officers of the North-Western Provinces, but His Lordship's objection to sales is scarcely less general.

They were not without experience on the effect of sales. Prior to 1834 lands were saleable in the district of the South-Western Frontier.

It was supposed that the sale of lands in those districts was in part the cause of the rebellion, and all executions of decrees by sale of land were prohibited; since then those large districts had been perfectly quiet. Again, in the Sonthal Districts, the same thing had occurred. In those parganas no land can be sold under Rule 26, unless with the consent and sanction of the Commissioner; and those districts also had remained quiet since the laws were altered. He (Mr. Ricketts) would not say that this alteration of practice had alone secured the quiet of these territories; but there were frequent disturbances before the alteration, and there had been quiet since. The result was unquestionable and should not be ignored.

He (Mr. Ricketts) thought then that, although the inquiry he proposed was more or less fraught with inconvenience, it should be made; and he thought that the same plan might be adopted as had been resorted to with regard to the oaths question, and that the Council should, through the clerk, circulate the following questions to all the subordinate Governments:—

1. Is it desirable that land shall be declared not saleable in execution of decrees of court?

2. Should the rule embrace all land, or only estates paying revenue to Government?

3. Should the immunity extend to land which has actually been pledged as security for a debt?

4. *In the event of sale not being allowed, should the courts be authorized to attach land and liquidate the debt from the*

proceeds, or would it be better to rule that landed property shall in no manner whatever be answerable for debts.—Proceedings of the Legislative Council of India, dated 5th March 1859.

That the forced sale of landed property in execution of decrees of the civil courts is accompanied by all the evils described by Messrs. Harrington and Edwards, or that these evils are daily increasing as the trading classes grow more wealthy under the protection afforded by our rule and become more anxious to invest their savings in land, will not, I think, be denied by any one who has mixed much with the people. The past is beyond our power, but we may interfere for the future; the sooner we do so the better, for I am convinced that the subject will ere long be forced on the consideration of Government, and every day's delay adds to the difficulties which surround the question.

I would suggest the following proposals for consideration :

1. *That after a certain date the personal property only of the debtor should be liable for unsecured debts.*

2. *That all holders of mortgages on landed property should be required to register their claims and the amount in the office of the Collector of the district in which the property is before a fixed date.*

3. *That no landed property to which the debtor has succeeded by inheritance, or which was conferred upon him by Government in reward for services rendered in 1857-58, shall be sold in execution of a decree of a civil court on account of a mortgage not registered by the date fixed.*

That all processes against landed property shall be sent to the Collector of the district for execution, who shall—

1. *If the mortgage was duly registered before the date fixed, arrange, if possible, for the satisfaction of the claim by farm or transfer of the whole or part of the property for a period not more than 20 years.*

2. *If the claim cannot be satisfied by farm or transfer, then the whole or part of the property sufficient to discharge the debt to be sold.*

3. *If the mortgage was not registered before the date fixed, then sale to be barred, but the Collector to be required to make the best arrangement in his power by farm or transfer of the whole or part of the debtor's landed property for a term not exceeding 15 years.*

I propose that only property inherited, or received in reward from Government, should be exempt from sale for the

future. I would have said "ancestral property" as distinguished from acquired; but it is impossible now to find out what is really ancestral property. The use of these words would open the door to a mass of litigation and false swearing. I see no reason, however, for protecting purchases made by capitalists during their own lifetime, and would, therefore, confine the exemption to property inherited or conferred in reward by Government.

I think that the grants made by Government for good service in 1857-58 should be protected and preserved, as far as possible, to the parties and their descendants. I should like to see these grants entailed on the heirs of the original grantees, so that a record might be preserved for future generations of the liberal manner in which loyalty in that time of trouble was recognized and rewarded.

I would bar the sale of land for arrears of land revenue; it is a process hardly ever resorted to, and is, I am convinced, unnecessary. The results of a sale for arrears of revenue are the same as those entailed by a sale in execution of a decree. The feeling of the people is as strong against the one as against the other; if it is right and necessary for Government to interfere in one case, it is equally so in the other. Moreover, unless Government gives up its own power to realize its debts by enforced sale, it can hardly require the private creditor to do so.—*Minutes by J. F. D. Inglis, Esq., N.-W.P., dated 16th July 1872.*

With regard to the second question the main point at issue appears to be—"How far can the Government go in prohibiting the sale of landed property in execution of decrees of court, and for the realization of the Government revenue?"

Transfers of landed property which have been effected under former and existing laws cannot of course be touched. But the question in regard to future alienations is a very complicated one. On the strength of the provisions of the existing law, landed property has been largely pledged for the re-payment of money loans, and of the interest accruing thereon—loans which would have been advanced only on far heavier interests in the absence of such security. Where the land has been formally hypothecated, the transaction has been a deliberate one, into which both parties, mortgagor as well as mortgagee, have entered with their eyes open, and with a full knowledge of the consequences which must result on the violation of any of the terms of the agreement.

Even in regard to "simple and unsecured debts," both creditor and debtor have taken into account (in determining

the conditions on which the money has been advanced) the fact that under the law the real as well as the personal property of the debtor may be sold in realization of any balance to which the creditor may be able to establish his claim in a court of law.

I, therefore, do not see how any distinction can be made in the treatment of "simple and unsecured debts" and of "debts secured by the mortgage of landed property," the debts of both kinds having been incurred before the proposed amendment of the existing law. But the Government are competent to legislate in regard to future transactions, and to declare that ancestral landed property shall not be sold in execution of decrees of court for debts, "secured" or "unsecured," incurred after the passing of the Act (or a specified date), or for the realization of Government demand.

But I would advocate with Sir William Muir and Inglis the compulsory temporary alienation of ancestral real property and the liquidation of the judgment debt from its proceeds. When any such rule obtains, the money-lender will not be so ready to advance money, at any rate beyond the limit of the mesne profits of his client's estate, for as many years as the estate shall be transferable by law. Indeed, he would hardly care to allow the reckless borrower to dip so deeply, for there might be other creditors with whom those profits must be shared, or by whom they might be absorbed.

I should wish to see the following principles laid down and embodied in a legislative enactment:—

(1.)—Direct and voluntary alienation of ancestral landed property shall be recognized by law, and deeds of sale of such land shall be enforced by our civil courts. (This is Sir William Muir's view.)

(2.)—Debts, whether simple and unsecured, or secured by mortgage of real property of whatever nature, incurred before the passing of the Act, or up to a specified date, shall be satisfied first from the personal and self-acquired real property of the debtor, and the balance by the sale of so much of the debtor's ancestral estate as shall cover it. Provided that the claim be preferred in the case of "unsecured" debts within one year (? 2 years), and in the case of "secured" debts within 3 (? 5) years of the passing of the Act.

3. Decrees for "simple and unsecured" debts incurred after the passing of the Act shall be enforced against the person and the personal property and self-acquired real property of the judgment-debtor. (To Mr. Inglis' sugges-

tion I have added the words "incurred after the passing of the Act" and "self-acquired real property of the debtor.")

4. Debts secured by mortgage of the debtor's self-acquired real property shall be dealt with under the ordinary mortgage rules.

5. Debts secured by mortgage of the debtor's ancestral estates (estates granted for loyal service in 1857-58 being treated similarly with ancestral estates) and incurred after the passing of the Act shall be satisfied by the transfer of the mortgaged property to the mortgagor for such term, not exceeding 30 years, as may suffice for the liquidation of the judgment-debt with interest from the profits of the estate.

6. Arrears of land-revenue due on ancestral estates (? all landed estates) shall be realized similarly with debts under Rule 5, the term of transfers being limited to 15 years.

7. All process against real property shall be executed through the Collector of the district.

8. Within one year after the passing of the Act all mortgages of real property executed previously to the passing of the Act shall be registered in the office of the Collector of the district in which the property lies.

9. All mortgages of real property shall be registered in the office of the Collector, as in preceding rule, within six months of the execution of the mortgage.—*Minute by H. S. Reid, Esq., N.-W.P., dated 23rd July 1872.*

Mr. Edmonstone, in the powerful Minute he recorded on the 5th June 1860 against this abolition, wrote that such a scheme required to be fully justified on political and economic grounds. It is on these grounds that I think it can be justified even at the eleventh hour of the day.

The political evils caused by the selling up of the landed gentry were brought forcibly to light in the events of the mutiny, and have been fully dwelt on in the papers now before the Lieutenant Governor. But though the mutiny brought them into especial prominence, they are even now felt by every district officer at every turn. It was only in last year's Review of the Board's Administration Report that His Honor wrote:—"Grave political dangers may result from the transfers which exclude old and influential families from their hereditary possessions, and besides this there are obvious economic objections to the spectacle of a pauperized gentry continuing to reside as cultivators on the lands of which they once were proprietors." It is in order partly to remedy this evil that the Committee at present sitting to revise the

Revenue Code has proposed to give the rights of privileged tenants to such ousted proprietors or their heirs as now cultivate in their former villages.

Mr. Edmonstone hoped that the purchasers being men of wealth and energy, would be found to be improving landlords. I appeal to almost universal experience to prove that this is not the case. No case is known to me of a purchasing zemindar laying out capital on the improvement of a village. They seldom or never reside on their purchased estates, many dare not go near them. Not one single duty of the many duties which attach to the position of a zemindar do they perform. They do not assist the Government in police and judicial matters, they do not lead public opinion in the village, they do not help the villagers in time of famine and distress. They are an absolute encumbrance, and so far as they are concerned, the limit Government has placed on its revenue demand, is a pure financial loss to the state. The object with which the limit was fixed is never attained in their case.

These things being so, and the evils of the saleability of land being, as I hold, incontestable, it remains to show (1) that the evils are great enough to justify a great revulsion from all our past jurisprudence and procedure; (2) that we shall not introduce any evil equally great by such a disruption.

If then it is allowed that the evil is of sufficient dimensions to require and to justify a remedial interference, we are met by the argument that any such heroic remedy as the abolition of the right of sale is as great an evil as that which it is sought to remove. Mr. Edmonstone uses this with great force and repeats it more than once: "It is an axiom that all a man's property is liable for his debt, and if you remove that liability, you strike at the roots of conscience and morality." No doubt every care must be taken to prevent any breach of faith; but if that is secured, I cannot see that any injustice to any one would follow from declaring that proprietary rights are not transferable by decree of court. There are many rights that are not transferable, and especially all rights that carry with them liability to public duty. I would insist as strongly as possible that the zemindari right is one of these, and can no more be sold than lumberdarship or a service jaghir.

It may be said that this will lower the value of the proprietary right. I don't see that it would do much harm if

it did, and I do not think it will. It will diminish the zemindar's borrowing power, since he has not the same security to offer; but I believe that a right of which a civil court decree cannot deprive a man will be so much prized that the new rule will increase its value.

I agree to the proposal that a proprietor should still be able to sell his rights by a voluntary deed. But I would not confine the new scheme to ancestral land only. On the argument that the zemindar has duties as well as rights and is in a measure a public servant, I would apply the same rule to all, allowing them to resign their position, but not to be ousted from it. I admit that the evils urged in the earlier paragraphs of this note as attendant on sale of land, belong only to the sale of what we broadly mean by ancestral land; but it is often difficult to draw the line, and I think a uniform rule is preferable. Holding that the rule is a good one in itself, I would apply it to all, even to purchased rights, though it is not for their sake chiefly that I would make an effort to introduce it.

In the protection of existing interests Mr. Reid's rules 2 and 7 seem to me sufficient. I think Mr. Inglis goes too far in saying that simple debts incurred before the new rule becomes law, shall only be enforced against personality. I would say that every debt, whether simple or secured, incurred by a zemindar now, is incurred partly in consequence of his creditor's knowledge that he can always fall back on the land. I would therefore rule that every debt incurred before the Act, and registered within a year of the Act, can be enforced, if necessary, by sale of the debtor's estate (though of course every means would be tried first); *and no debt incurred after the passing of the Act can be enforced by any court by sale of the estate, nor by any process severer than thirty years' farm, the zemindar holding during the farm as a privileged tenant.*—Minute by C. A. Elliot, Esq., N. W. P., dated 28th July 1872.

“ Another crying evil is the indebtedness of these new zemindars. Their creditors find that they are now possessed of a hitherto unknown security, and hasten to make it responsible for claims that would otherwise have had but a doubtful chance of recovery. This subject is forcibly and fully dealt with in Mr. Jenkinson's report. The system, which he describes (para. 447) is not now in force; and the baneful machinery of sale in execution of decree carried out through the mechanical instrumentality of the civil courts,

has been introduced. In this way money-lenders and non-resident speculators having no interest in the soil beyond that of extracting the last farthing from its cultivators, are beginning to supplant the proprietary bodies. The serious evils which these transfers bring with them have been now for some time under the anxious consideration of the Government; and the same subject has simultaneously occupied the attention of other administrations. It is a difficult problem to secure money-lenders in their just rights without transferring the property in land to those who are not qualified to exercise its management, but it is one on which the future welfare of this district will much depend. In a part of the country where sale has been to the present time unknown, it seems to the Lieutenant-Governor that *the executive should have a large discretionary power to stay compulsory sale, and to dispose of claims by temporary alienation or other measures short of sale.*—*Extract para. 39, Resolution No. 1749 A, dated 18th August 1873 (Review of Settlement Report of Jhansie District.)*

SIR,—I am directed by the Lieutenant Governor, North-Western Provinces, to address the Government of India respecting the various schemes which have been propounded to hinder the sale of land for debt by decree of a civil court, and which have during the last two years occupied Sir William Muir's serious attention.

The subject naturally divides itself into three heads according as the schemes related :—

To the more effectual working of the provisions of the present law (sections 243-4 of Act VIII of 1859); or, failing this, to an amendment of these provisions.

To a radical alteration in the law, such as would prohibit the civil court from enforcing a decree for debt by the sale of landed property.

To the more particular application of such a remedy to the Jhansie Division.

With regard to the first head, I am to refer you to the correspondence which has already passed and which is noted in the margin. The Lieutenant Governor is of opinion that if section 244 of Act VIII of 1859 was worked in a manner corresponding with the intentions of the framers, it would afford very considerable remedies against any injurious application of the sale law. But the effect of various rulings of the high court has been to deprive Collectors of any beneficial discretion in the matter, by refusing to allow the payment

of a decree by instalments and also to cut down the "reasonable period" to an impracticable minimum, and so to prevent any such arrangement by mortgage or farm as might obviate the necessity of sale.

As it is understood that a revision of Act VIII of 1859 is now under consideration, the Lieutenant Governor would be glad to see a change made in the law such as would give power to the Collector to interpose and stay the sale, by making satisfactory arrangements for the liquidation of the debt. The Collector would be required to act under such general rules, and under such supervision from his superiors in the Revenue line, as should prevent his authority from being abused to the unnecessary inconvenience of the creditor. *He should be enabled when he sees a reasonable prospect of liquidation, to hold the land direct on the part of Government or to farm it or let it on lease, or to mortgage it, or sell a portion of it (all of which powers are entrusted by section 243 to the Civil Court, though seldom or never exercised.)* He should also be authorised (as in section 243) to postpone the sale till the amount is raised by these means; and to pay off the debt by instalments in cases where he finds it proved that such an order is not contrary to the understanding on which the debt was incurred. In cases of sale also he should have a discretionary power to postpone the sale if a fair price is not bid, or if the attendance is small by reason of a fair, festival, or other similar cause.

With regard to the second head, I am to say that the Lieutenant Governor, after the most careful consideration of the subject, has found himself unable to acquiesce in any of the solutions that have been proposed. *The long prevalence of sale, during nearly three quarters of a century, renders it impossible now to stop the practice, and unless sale were prohibited altogether in execution of decree of court the difficulties in the way of any modified measure seem to be insuperable. Nor if due discretion be given to the Executive does it appear that so violent a remedy would be required.*

In the Jhansie Division, however, the practice of sale is not inveterate, having only come into use since the conferment of proprietary rights under the recent settlement. To place restrictions on the sale of land would not, therefore, injure vested rights, and would prevent money-lenders from obtaining a better security than they are entitled to for money lent to land-holders, at a time they were only "Malgoozars"

and could not alienate their villages. This is the 3rd head of my subject, and I am to forward for submission to His Excellency in Council, copies of the correspondence which has passed between this Government and the Board of Revenue, and the Hon'ble Mr. Inglis regarding the measures which should be taken to give the required relief. The Punjab system, under which the sanction of the Financial Commissioner (here the Board of Revenue) is required for the sale of land, would give practically to the Revenue authorities a large discretion in the matter of such sales; and it is understood that the effect in that Province has been to make the sale of land by auction sale extremely rare, and that it is only there permitted where its action would not be injurious.—*Extract from the Secretary to Government North Western Provinces, letter No. 688 A, dated 5th March 1874.*

Land means land assessed or liable to be assessed, to the payment of land revenue or land revenue whereof has been assigned or released by Government.

No land shall be sold in execution of a decree obtained for a debt incurred after the passing of this Act; and the liability of land attached in execution of any such decree shall be limited to transfer or farm for a period not exceeding 15 years. No land shall be sold, mortgaged, or transferred without the sanction of the local Government.

Provided that nothing in this section shall be held to prevent land being mortgaged on condition that the mortgagee shall repay himself out of the profits of the estate within a term not exceeding 15 years.

In every decree given after the passing of this Act the court granting the decree shall specify therein the sum due on account of debts incurred before the passing of this Act, and the sum due on account of debts incurred after that date. Interest accruing after the date of the passing of this Act shall be deemed to be a debt incurred after such date.

If the property attached in execution of any decree consist of land, the civil court shall require execution to be made by the Collector of the District, who shall proceed under the provisions of this Act.

On receipt of such requisition from the court, the Collector shall cause a valuation to be made of the land, and an accurate rent-roll thereof to be prepared.

If the execution shall be in satisfaction of a decree for a debt incurred before the passing of the Act, the Collector

shall arrange, if possible, for the satisfaction of the judgment-debt, with interest at 6 per cent., by transfer of the land, or of so much of it as he may think sufficient for the recovery of the debt to the decree-holder, for any period not exceeding 15 years; or by farm to another person, for a like period, either on payment of the judgment-debt, or on security being given for its payment by instalments, and in either case, for the payment of the Government revenue due on account of such land.

If the Collector is unable to arrange for the satisfaction of the debt by transfer or farm as above, he shall sell by auction the rights and interests of the judgment-debtor in so much of the land as shall be sufficient to satisfy the decree.

When any land is sold in execution of a decree, the Collector shall forthwith report the sale to the Board of Revenue, with particulars of the price bid and the value and rental of the land, and shall state whether in his judgment the price bid is fair and sufficient or otherwise.

Within one month from the date of sale under section 7, any co-sharer in the estate in which the land sold is situated may claim a right of pre-emption at the auction price; and the rights and interest of the judgment-debtor in such land shall be made over to him by the Collector on payment of such price.

If no claim to pre-emption shall be made by any such co-sharer within the period aforesaid, the Local Government may direct the Collector to pay the auction price, and to take possession on its behalf of the rights and interests of the judgment-debtor in land. In such case the land shall be placed under the management of the Court of Wards, and shall be restored to the owner, whose rights were sold, so soon as the auction price, together with 6 per cent. interest thereon, shall be repaid by him to the Government, or shall be recovered out of the profits of the land remaining after payment of the land revenue and all other charges due thereon. If no claim to pre-emption is made and if the local Government does not direct the Collector to buy the land, the sale shall be sanctioned, and possession given to the auction purchaser.

If the land is attached in execution of a decree for a debt incurred after the passing of this Act, the Collector may transfer the rights and interest of the judgment-debtor in the land or in so much of it as he may deem sufficient for the recovery

of the amount decreed, with interest thereon at 6 per cent. to the decree-holder for such term not exceeding fifteen years as he may consider necessary : or he may farm it, or such portion of it, to any other person on payment of the debt or on security being given for its payment by instalments, and in either case for the payment of the Government revenue due from the land.

If the decree shall be partly on account of debt incurred before the date of the passing of this Act, and partly on account of debt incurred after such date, and the Collector shall not be able to arrange for the satisfaction of the debt incurred before the passing of this Act, by farm or transfer under section 6, sale shall be allowed only of the rights and interests of the judgment-debtor in so much of the land attached as will suffice to satisfy the debt so incurred. The provisions of section 11 shall apply to the remainder of the sum decreed.

During the period of farm or transfer under sections 3, 6 and 11, the proprietor of the land shall have no power to mortgage or transfer such land by sale or otherwise, and after the period of transfer or farm shall have ended the land shall be restored to such proprietor, free of all claims in respect of the decree, in satisfaction of which it was farmed or transferred.—*Draft of a Bill as to the sale of land in execution of decrees, N. W. P., 1874.*

The chief point which has to be noticed is one which has often been brought to notice before, namely, the execution of decrees. There can be no doubt but that an immense amount of oppression is caused by the processes of the different civil courts, and the evil is so great that a remedy is called for. Immoveable property, when sold by auction in execution of a decree, never fetches anything like its real value, and after the property is sold, though the judgment-debtor is often deprived of everything he has in the world, the decree is not satisfied, and he is not free from the creditor's clutches. It is a common thing for all a judgment-debtor's cattle and agricultural implements to be attached and sold, so that he is driven to borrow again from the sowkar to obtain money for bare subsistence. When a house or a field is sold, the judgment-creditor often is himself the purchaser, and he then puts in his debtor as a tenant and, as in most cases, the decree has not been satisfied, the debtor is reduced to a state of slavery.

Creditors also take good care always to keep their decrees alive, so that a debtor against whom a decree has once been passed has often little hope of escape until the uttermost farthing which can by any means be obtained has been squeezed out of him. The judge adds that the fault is entirely on the side of the sowkars, for cultivators often borrow money recklessly, and would cheat the sowkars if they could; but it is to be regretted that the sowkars should be allowed by law to have such power over their debtors as the exercise of it must have a most paralyzing effect upon the industry of the country. I am aware that I am not bringing anything to notice which has not been discussed before, but I do not think I could rightly overlook the present state of affairs. The people of this district are quiet and easily managed, but I cannot, after the recent experiences in the Poona District, close my eyes to the fact that there is a risk, especially in the Western Districts, of judgment-debtors taking matters into their own hands and redressing their grievances either by violence to the person or destruction of the property of their judgment-creditors. I think that a Commission should be appointed to inquire into this question, and report whether any restriction can be placed upon the powers of attachment, which judgment-creditors at present enjoy.—*Extract from the Khandesh Session Judge's letter No. 580, dated 19th June 1875.*

Is no cure to be found for this state of things? Are we content to see our once happy cultivators thus ruined, and have we considered what the result of the changes going on will be? If so, are we prepared to meet them? Government have themselves indicated the cure, viz., the forbidding or restricting the sale of land for debt. This is doubtless a serious step to take; but an evil of such magnitude as that shown to exist, will not be cured without much pain inflicted. The country is suffering from our importing into it laws and institutions fitted only for an educated people; and where the people are not educated, and not likely soon to be so, we must adopt exceptional measures of relief. It does not appear necessary that we should extend the same measures exactly to all classes, or to all parts of the country, or that we should entirely stop the sale of land for debt, but something must be done, whereas at present we are doing nothing except the wrong way; for all this time we are doing our utmost to educate the rich and the money-lender, and

to sharpen their wits, and are doing next to nothing for the cultivator, as will be seen in some following paragraphs of this report. This is not, however, perhaps, the place to discuss what measures of relief should be adopted, and I will, therefore, now only commend the subject to the immediate and most earnest attention of Government.—*Extract from the Ahmednagar Collector's Administration Report for 1874-75, No. 2132, dated 20th July 1875.*

Leaving the general question of the transfer of land just where it is, I would merely exempt a debtor's land from sale in execution of a decree, just as under the old Bombay Regulation, founded, I believe, on Hindu common law, his implements of husbandry are exempt. The debtor would thus be able to take advantage of the provisions of the Bankruptcy Law without the sale value of his land being reckoned among his assets, and could not, therefore, be compelled to give up his land to his creditor by the threat of imprisonment in execution.

When, however, I propose to exempt land from sale in execution, I by no means intend that its profits should not be attachable during the lifetime of the debtor. If a man lets himself become hopelessly embarrassed, there is no reason why he should not suffer for it, and, as I have said, the object of this part of my proposals is not so much the relief of debtors, as to avoid the political and economical evils with which the loss of their lands by the agricultural classes threatens the country.

This question of attachment, however, involves, I should notice, two points, which will require very careful consideration. One is the reservation under decree of a subsistence for the debtor; the other, the mode of ascertaining and accounting for the profits of land under attachment, the practice on which point is now, in my opinion, very unsatisfactory.—*Extract from W. G. Pedder's Note on the indebtedness of the Indian agricultural classes 1874.*

THE MODE OF EXECUTING AGAINST LAND DECREES FOR DEBT.

In considering this part of the subject it is well to distinguish between cases—

- (a) When the debt is greater than the value of the land;

(b) When the debt is less than the value of the land.

(a)—In the first case, it is evident that the decree cannot be satisfied otherwise than by stripping the debtor of the whole of his landed estate. This might be done in 4 ways :—

- (1) By transferring the debtor's land to the creditor.
- (2) By selling the interest of the debtor in the land, leaving the creditor to find out whether that interest is full ownership or *nil*.
- (3) By selling the interest of the debtor in the land, but first making a formal judicial inquiry into the nature and extent of that interest, without however guaranteeing the title.
- (4) By selling the land itself, any claims against the land being payable out of the purchase-money.

In England the first course is followed under the writ of *elegit*. The second course is that which prevails in India at the present time, and by the new code a slight modification is proposed, by directing the Court to give a description of the property to be sold. If this is to be given after a formal enquiry, then the proposed law would follow the third mode of sale abovementioned. The third mode is that followed in England when sales of land are ordered by the Courts ; such sales are never ordered for simple debt. They are, however, frequently made for other purposes. The fourth mode of sale is followed by the Encumbered Estates Court in Ireland (see 12 and 13 Vic. ch. 77). It was also the old Bombay law (see Reg. IV. of 1827 *ante*.)

(b)—In the second case it is evident that there is no necessity for taking the land away entirely from the debtor. Accordingly in England the method adopted is to transfer the debtor's land to the creditor until the income satisfies the debt. In England the

creditor has to give an account to the Court of the profit he makes; in India the court is authorized to allow the debtor time to raise the money by mortgage or otherwise. It is also authorized to enable the Collector to satisfy the decree by a temporary alienation. The Court may sell the land unless the money can be recovered within a reasonable time. Such sales extend only to the interest of the debtor, and although the estate may really be more than sufficient to pay the debt, the amount realized under the system appears to be as a rule much less than the real value. The chief reason given for this is that purchases at court sales are of a very speculative character. From the Bombay Administration Report 1872 (Appendix page 94) it appears that 4,329 suits arose out of execution sale of land and houses, while the total number of suits for such property was only 6,020.

Section 277.—Connected with this section is a point of considerable difficulty. The corresponding section of the code, namely, section 249, directs that nothing is to be sold but the right, title and interest of the defendant in the property described as put up for sale. It would seem that the seller could not, if he wished, sell anything more specific. And it has been decided with reference to section 258 of the code that if the judgment-creditor makes a mistake and puts up for sale the property of an entire stranger, and the purchaser concludes the purchase under that mistake, he cannot, when ousted by the true owner, recover his purchase-money; but that the judgment-creditor who has sold him nothing is entitled to keep the money. The combination of these two rules seems calculated to introduce a speculative character into execution-sales which must be very damaging to the property sold. We understand that in fact it is very common for land to be sold at an undervalue at such sales. To avoid this mischief we have proposed two alterations. In this section 277 of the present draft, we say that the best practicable description shall be given of the property to be sold. And in section 393 corresponding with section 258 of the code, we say that the purchaser may recover his purchase-money if the property put up for sale

is that of a stranger and he is ousted from it. We shall be glad to know of those who are familiar with the subject whether the fact really is that property is apt to be sold at an undervalue in execution-sales, and if so, to what cause they impute it, what they think of the alterations now proposed, and whether any remedy has occurred to them by which more security can be given to purchasers with the view of obtaining better prices for land.—*Report of the Select Committee on the Civil Procedure Bill, dated 8th March 1875.*

It seems to me advisable to enact that authority be given to the Collector to investigate and decide summarily all claims to lien on the property about to be sold, and that he be required to make such investigation and decision before sale, so as to give to the purchaser a defined and tangible right.—*Minute by Sir G. Edmonstoune Lieut.-Governor N. W. P., dated 25th May 1860.*

Sections 262, 263, and 278.—These sections refer to the attachment and sale of immoveable property in execution of a decree. They are almost a word for word reproduction of the sections 235, 236 and a part of section 249 of the present Civil Procedure Code. I have always found that the provisions of these sections are greatly defective, and afford facilities for carrying out sales of immoveable property in a secret manner to the prejudice of the interests of the judgment-debtor.

The object of reading the order aloud at some place on or adjacent to the property can certainly be no other than that of informing the defendant, as well as the public of the locality where the property is situated, of the fact of the attachment; but in a majority of cases of attachment of lands used for purposes of agriculture this object can scarcely be expected to be attained in the manner provided in the section. Lands used for purposes of agriculture are often situated at a considerable distance (sometimes even more than two miles) from the village to which they are assigned. During certain seasons of the year such lands are seldom visited by any of the villagers, and it often happens that when a field is attached there is nobody present when the order of attachment is read except the judgment-creditor or some one who goes on his behalf to point out the field. I seriously doubt whether the officer making the attachment does really, and in such circumstances, read the order. Judg-

ment-creditors are always most anxious to secure to themselves the immoveable property of their debtors, and it is evidently to their interest to have the attachment made quite secretly, so that there might be as little competition as possible at the ensuing sale, and they might thus be able to have the property knocked down to themselves at as low a price as possible. This defective provision affords facilities also for attaching and putting to sale lands not belonging to judgment-debtors, and throws obstacles in the way of those interested to get the attachment raised by making an application to the court in proper time: Fixing copies of the written order of attachment in the court-house or in the office of the Collector of the district does not add much to make the matter more public. In a court-house there are upwards of fifty such orders and notices fixed at a time on the notice board; so also are they, I believe, in the Collector's office.

It would certainly be an improvement if it were provided that a copy of the order should be affixed in the office of the Mámlatdár of the taluka instead of that of the Collector. I propose, therefore, that section 263 be amended as follows:—

“The order shall be read aloud at some public place, between the hours of sunrise and sunset, in the town or village within the limits of which the property is situated, and a copy thereof shall be fixed up at such place and also in a conspicuous part of the court-house.

“When the property is land, or any interest in land, a copy of the order shall also be posted up in the office of the Mámlatdár of the taluka in which the land is situate.

“The copy to be fixed in the court-house or the Mámlatdar's office shall be fixed there only during regular hours of business and not on a close holiday or Sunday, and shall be read aloud before being fixed.”—*Extract from Mr. Chintaman Sakharam Chitnis' Suggestions on the Civil Procedure Bill No. III.*

The Lieutenant-Governor is not the less of opinion that the checks on unnecessary sale provided by sections 243, 244 of the Civil Procedure Code are insufficient, and that larger powers should be exercised by the executive to save from the hammer landed properties which are capable of liquidating the claims upon them by good management within a reasonable period.

6. The enclosed draft of a bill is drawn with the view of providing a remedy, and the Lieutenant-Governor trusts that its provisions may meet generally with the approval and support of His Excellency the Governor-General in Council.

8. The bill contemplates the following procedure :—First no decree involving sale of landed property can be executed but through the Collector. On receiving any such application the Collector is, in the first instance, to make a summary inquiry, when, if he finds the judgment-debtor's estate hopelessly involved, sale will be proceeded with.

9. If, on the contrary, there appear to be hope of extricating the estate from its difficulties, and it appear otherwise expedient to interfere on behalf of the proprietors, the Collector will enter upon its management with the powers of a Court of Ward, and will make a regular inquisition into the claims; and if it should still appear that there is a possibility of liquidating them within (say) twenty-five years, a schedule to that effect will be drawn up. A Register of the debts will then be forwarded to the District Judge, who will declare the order to be observed as to priority of payment.

10. Should sale be resorted to, power is taken to purchase on the part of Government, in the expectation, that it may sometimes be expedient to purchase an estate, with the view of its being eventually freed (or if part be sold to reduce the debt, still some considerable portion freed,) and, after Government has recouped itself in the entire sale price, restored to the original owners.

11. Power is also taken to apply the same procedure and remedies on the application of the proprietor of any encumbered estate.—*Extract from the Secretary to Government North Western Provinces, letter No. of 1873.*

Lands and other immoveable property sold at the instance of the civil courts are ordinarily purchased by the decree-holder (see question 9).—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

8. In this division the civil judges exercise revenue functions, and in their revenue capacity can ascertain all they care to know about the circumstances of the shareholder and his share. In submitting their requisition for sale under section 248, they are instructed to report all particulars of the said requisition and report. I call for further information from the Revenue Office (if necessary) before I allow the sale to proceed.

9. Thus, you will observe that no sales are effected until the revenue officers have thoroughly satisfied themselves that sale is not only advisable but necessary.

10. I am of opinion that this amount of interference on behalf of the Revenue authorities is very advisable. Sales are no longer practically prohibited, and will increase in number year by year (for our execution files are heavy); but shares will not be lightly or needlessly sold, and as judgment-debtors realize that their creditors can force on the sale of land, they will no doubt exert themselves to save (by private alienation) their estates from coming to the hammer.—*Extract from the Jhansie Deputy Commissioner's letter, No. 30, dated 9th February 1871.*

When immoveable property of judgment-debtor is put to auction, the creditor usually purchases it, often for nominal price. In my humble opinion the tricks and frauds of judgment-debtor, as well as some defect in the Civil Procedure Code, lead mainly to the above result. Section 249 of the Civil Procedure Code provides that only right, title, and interest of the judgment-debtor in the property are sold. Men in the Mofussil are generally illiterate. They often find it very difficult to ascertain what interest the debtor has in the property. Distinction is also taken between private sales and court sales, and that which is no burden in private sale is considered as one in court sales. When it turns out that the judgment-debtor had no interest in the property sold, the purchaser gets nothing for the money; he pays on the principle of *caveat emptor*; while at a private sale, if it turns out that the vendor had no interest whatsoever in the property sold, the vendor is entitled to receive back his purchase-money and is under certain circumstances entitled also to damages. Such is not the case with court sales. Here the purchaser loses his money, and is in addition put to many other expenses which will be presently shown. Thus, a purchaser, at a court sale, has a greater risk to run.

I have explained above while dealing with the eighth question, that in most cases when the creditor goes to the extreme of selling the lands of his debtor, the latter is most irritated and is determined not to give a pie to the creditor. He therefore, as before observed, often executes antedated, or colorable and fraudulent conveyances of all the property he had to his friends and relatives either before or after the sale. The purchaser, at a court sale, has thus always to con-

tend with relatives and friends of the debtor, and has sometimes to incur the very expenses of suits, appeals and special appeals. It is often very difficult to adduce legal evidence to show that a particular deed is collusive and colorable; though the purchaser knows it for certain that it is so, the consequence is that there is always great fear of justice being miscarried, and sometimes *it is miscarried*. Some persons have actually deposed that they had some years ago conveyed their property under a colorable deed simply to save it from being sold in execution of a particular decree. That decree is now time barred, and therefore there exists now no reason to conceal it from the court. Witnesses have thus grown so shameless as to depose that they once committed forgery and perjury in order to save their property from being sold in execution of a decree, and thus practised deception upon this as well as upon the Appellate Court. It is hence very plain at what risk the property at a court sale is purchased. Even when the purchaser is fortunate enough to prove that a particular deed of sale set up against him is collusive, his troubles are seldom at an end. There being usually no sufficient evidence to justify proceeding criminally against such nominal obstructors, it often happens that when the objection of one is removed and the purchaser is ordered to be put in possession, he is sure to be obstructed by some other friend or relation of the debtor. In short, there are many cases in which the purchaser is thus delayed for many years and put to very heavy expenses before he obtains the possession of the property he purchased. It is this conduct of the debtors joined with the above alluded defect in the law which deters strangers from purchasing anything at the court sale, and it is also for the same reason that the property at a court sale usually fetches nominal price. Sometimes a property may be sold for a nominal price by any tricks conducting the sale, or by reason of its being previously mortgaged, but such cases are rare. If there is any treachery in conducting the sale, and if on that account it be shown that the property fetched nominal price, that can be set right by setting aside the sale. But there is at present no certain and sure remedy for what I have stated above, unless we somehow or other succeed to bring these malefactors to justice and stop the progress of this evil. From the above it is clear that when no one bids for the property put to auction, the creditor is obliged to purchase it. Still he seldom obtains actual pos-

session of it. He is put to more troubles than when a stranger is the purchaser. He is often threatened that his house or ऋ (a stack of hay or karaba) will be put on fire, or that some other wrong will be done to him. If it is the house which he has purchased, he finds no tenants to live in it. If it is land, no one takes it for cultivation. In short, even after he has obtained possession of the property, he finds it very difficult to turn it to any account. He, therefore, either resells the property to the debtor, or allows him to enjoy it as his tenant. In fact when the creditor purchases the property for a nominal price, one in a hundred cases he is allowed to enjoy it; or in other words, out of a hundred pieces of lands purchased by a creditor for nominal price, he is not in actual enjoyment of one.—*Extract from the Tásgaon Sub-Judge's Report dated 14th August 1875.*

The greatest number of sales of immoveable property was 857 in the year A. D. 1872, and the least 537 in A. D. 1869. The opinions of the officers of the district as to the character and results of those sales of immoveable property appear from the following extracts:—

Cases of the sale of debtors' immoveable property are, the subordinate judge of Nariad reports, of daily occurrence, and in nine cases out of ten when immoveable property is put to auction by the court, the creditor himself buys it at a merely nominal price.

When lands and houses, says the subordinate judge of Umreth, are put up to auction, they are frequently purchased by the judgment-creditor and for a nominal value.

In Borsad, the attachment and sale of the debtor's property are much more frequent than private purchase or mortgage; and both in this and in the Mehmadaabad subdivision, the experience of the subordinate judge is that the judgment-creditor is generally the purchaser of the immoveable property at nominal rates.

In the Anand sub-division alone this practice is said not to be common.

The reasons why property sold at public auction fetches inadequate prices, are thus stated by the subordinate judge of Nariad:—

1. Very low paid clerks (on a salary of £1-0-0 per mensem) are at present employed on the important work of selling immoveable property. It is the easiest thing, he adds, for a creditor by a small bribe to gain such a man over to his side.

2. The principle of *caveat emptor* which obtains in all such sales.
3. One and the same property is given in mortgage, *san*, to many persons, and consequently the purchaser is not able to know beforehand how many liens upon the property he will have to satisfy.
4. In some cases, people of the village in which the property is situated do not bid for the property out of feelings of sympathy for the debtor.
5. Proclamations of sale of immoveable property are made one month before the day fixed. The sale is not notified to the people of the village on the day it is to take place. Bidders do not therefore get proper notice of the sale.—*Extract from Note on the Kheda Money-lending.*

6. A crying evil in the working of the courts, but which unfortunately it seems impossible to remedy, is the great hardship inflicted on judgment-debtors in the attachment of their immoveable property; fields or houses, that may be worth hundreds of rupees, are put up to auction and are bought at a mere nominal price, as persons cannot be forced to bid and will not bid unless it suits them. The courts cannot assist the judgment-debtor in the matter of the sale; they must accept the highest bid no matter how low that may be.—*Extract from the Dhulia Judge's Letter No. 728 dated 8th August 1874.*

The lands are generally sold at an under value.—*Extract from the Sholapur Subordinate Judge's Letter No. 9, dated 27th March 1874.*

JURISDICTION AS TO SALE OF LAND FOR DEBT.

IN ENGLAND, the Superior Courts alone are authorized to execute decrees against real property. A County Court decree has to be transferred to the Superior Court if execution is desired against land.

In the PRESIDENCY TOWNS the High Courts alone have jurisdiction to sell land.

In the MOFUSSIL, Small Cause Courts have no jurisdiction to sell land. Their decrees have to be sent to the sub-judges if execution against land is desired;

all sales of land are made by the sub-judges. The District Court is not authorized to sell land, as it has no original jurisdiction, except in Government suits, and decrees are not transferred to the District Court for execution against land.

It has been proposed to give the Collectors jurisdiction to sell land. If they are to have power to inquire into and decide what estate in land the debtor has, it is difficult to see why the Collector should be considered qualified to do so. Such an inquiry necessitates a knowledge of nearly every branch of law. To decide what the title of a land-holder really is, it is generally necessary to decide points of law on one or more of the following subjects:— marriage, divorce, minority, inheritance, adoption, mortgage sale, hire of land, partition, &c., &c.

Considering the number of the enquiries that would be necessary, it is probable that the Collector would have to devote his whole time to the work. The number of attachments of immoveable property in Bombay in 1872 was 25,543. The following letters of the High Court on the subject show the opinion of their lordships in the matter. Other opinions will be found *ante*.

No. 1130 OF 1875.

HER MAJESTY'S HIGH COURT OF JUDICATURE.

Bombay, 14th October 1875.

To

THE HON'BLE E. W. RAVENSCROFT,

Acting Chief Secretary to Government,

JUDICIAL DEPARTMENT.

HON'BLE SIR,

I have the honour, by direction of the hon'ble the Chief Justice and Judges of Her Majesty's High Court of Judicature, to acknowledge the receipt of your letter No. 5395

dated the 22nd ultimo, stating that, under the power vested in His Excellency in Council by section 248 of the Code of Civil Procedure, Government has, as an experimental measure, directed the Collector of Kaira to conduct all sales under decrees of civil courts of land paying revenue to Government, within his district, and requesting that the High Court may issue the necessary instructions on the subject to the district and subordinate courts concerned.

2. In reply, their lordships direct me to inform you that they consider it desirable to call the attention of Government to the provisions of section 248 of the Code of Civil Procedure which appear to contemplate the performance by the Collector himself of the functions therein indicated, not the delegation of that function to subordinate members of his department. The rule, their lordships observe, was intended probably to be applied to the case of sales of the zemindaris and other considerable estates in which Government is greatly interested, and under orders applicable to particular cases as they arise and appear to call for that special procedure, and was never intended to be applied to the whole of any district, without reference to the nature and extent of the properties to be disposed of. Questions may therefore possibly arise as to the legality of any sales conducted otherwise than by the Collector in person on a requisition addressed to him by the subordinate judge, whose decree has to be carried into execution.

3. Their lordships consider it sufficient on the present occasion to refer only to the legality of the course proposed to be taken by Government. The expediency of that course seems to be still more doubtful than its legality, and may involve both the Collectors and suitors in very great difficulty and expense.

4. Their lordships have directed me to subjoin for the information of His Excellency in Council, a copy of certain rules passed on the 16th of March 1875, with reference to execution sales, in which it will be seen that the interests of the judgment-debtor have received all due consideration from the honourable the Chief Justice and Judges. These rules are as follows:—

vi.—As respects all sales of immoveable property, the Court in fixing the place of sale, should consult the wishes of the parties; a preference being given to those of the judgment-debtor. In the absence of any expression of a desire on the subject by the

parties, the sale should be held where the property is situated, except in cases in which, in the opinion of the Court, some particular advantage is to be obtained by holding it at the court-house.

vii.—All such sales, when held at the court-house, should be conducted by some responsible officer of the Court, and should take place on some fixed day of each week,* which the Court should make generally known. Care should be taken that the time and place is correctly specified in the proclamation of the intended sale, and that the sale does not take place till at least 30 days after its notification (Civil Procedure Code, section 249).

viii.—The practice which exists in some districts, of sales being begun at the place where the property is situated and completed at the court-house, should be discontinued.

5. Their lordships in conclusion direct me to suggest that it would be desirable and convenient, previously to making such an order as that, the subject of the letter under reply, that the High Court should be consulted as to the legality and policy of such a measure.

I have, &c.,
 (Signed) A. C. WATT,
 Registrar.

No. 161 of 1875.

HER MAJESTY'S HIGH COURT OF JUDICATURE,

Bombay, 9th February 1875.

To

THE SECRETARY TO GOVERNMENT,

Judicial Department.

SIR,

In reply to your letter No. 6192 of the 22nd November 1874 to the Prothonotary, with which was forwarded a let-

* Note.—When there is a weekly bazar it will probably be found most convenient to fix on the bazar day for these weekly sales.

It is also desirable that sales of moveable property should be fixed for the same day, except when this will cause some special inconvenience.

ter No. 1312 of the 22nd October 1874 from the Under Secretary to the Government of India, enquiring whether any necessity exists in Bombay for the measure, proposed by the Madras Government and the High Court of Madras, to enable the small cause courts in the presidency towns to take and sell in execution of their decrees the immoveable property of debtors, I am directed to state that, in the opinion of the honourable the Chief Justice and Judges, it is not only unnecessary but highly inexpedient that any such measure should be extended to Bombay.

2. The occasions, on which resort is had to the High Court by means of actions upon judgments, recovered in the small cause court, to enforce those judgments by sale of immoveable property, are very rare. For instance, in the year 1874, there were only four such actions brought in the High Court. Nor does the fact that the High Court can enforce its own decrees against immoveable property induce creditors having claims under Rs. (1,000) one thousand, frequently to sue in the High Court rather than in the small cause court, which can proceed only against the person and moveable property of the debtors. In 1874, there were, besides the four actions already mentioned, only twelve actions brought in the High Court for amounts not exceeding Rs. 1,000. This statement shows that there really is not *any necessity* for taking a step so important as to extend the jurisdiction of the court of small causes by empowering it to take immoveable property in execution.

3. Furthermore, their lordships believe that any such step would create very extensive dissatisfaction throughout the town and island of Bombay.

The sale of immoveable property for the payment of debtors, during the lifetime of the possessor, was rarely or never enforced by the Native Governments on this side of India. Any unpopularity with which the civil courts established by the British Government may be affected is, in the opinion of the Chief Justice and Judges, mainly attributable to the power conferred upon (and largely exercised by them) to attach and sell for debtors, unsecured, by mortgage or deed of conditional sale, immoveable property. Even where there were mortgages, creditors had considerable difficulty in the times before British rule, in compelling a sale of the property mortgaged. Were any legislation to be now undertaken, with respect to judicial sales of immoveable property, it would be a serious question, for the considera-

tion of the legislature, whether such legislation should not proceed rather in the direction of limiting than of extending the right of the creditor to sell, and whether the limitation should not be to cases in which the debtors had been secured on immoveable property. Without giving any final opinion upon that point, their lordships do not hesitate to say that it is not desirable that the power to attach and sell immoveable property should be extended to the court of small causes.

4. The creditors, who sue there, mainly look to the personal credit of the debtor, or to his moveable property as sufficient security for the debtor at the time of its being contracted. The amounts at stake are for the most part far too small to warrant the legislature to confer the increased power suggested on the creditors, of whom a very large proportion are Marwaris or other money-lenders of the most usurious and rapacious type, who would make havock of the petty house-holders and other small proprietors of immoveable property.

5. Moreover, the lands and houses throughout the town and island of Bombay are the subject of numerous mortgages and other incumbrances, which render the execution of decrees against immoveable property one of the most difficult, onerous, and important duties which the High Court in the exercise of its original jurisdiction has to discharge. Most complicated questions, as to the relative priority of incumbrances and on other points, constantly present themselves, and demand considerable experience on the part of the judge and knowledge of the law relating to immoveable property, as it variously affects the multifarious communities forming the population of Bombay; not only Hindus and Mahomedans, but also Parsis, Armenians, Jews, East Indians and Europeans.

Their lordships believe, and in fact know, that the required knowledge is not possessed by the major portion of the judges, who constitute the small cause court, to enable them to deal with such questions at all satisfactorily.

6. Hence, their lordships believe that the extension of such a power as that contemplated by the Madras Government to the small cause court of this Presidency town, would largely impair titles, and thereby affect injuriously the price of immoveable property, and would raise an amount of discontent, which would render it imperative on Govern-

ment speedily to retrace its steps and to repeal any such measure.

7. In conclusion, I am to suggest that it may be worthy of the consideration of the legislature whether the bringing of actions upon judgments of the small cause court in order to enforce them against immoveable property should not be forbidden.

I have, &c.,

(Signed) JOHN JARDINE,

Acting Registrar.

LIMITATION.

I.—EXISTING LAW OF LIMITATION. ACT IX. OF 1871.

4. Subject to the provisions contained in Sections 5 to 26 (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

20. (a). No promise or acknowledgment in respect of a debt or legacy shall take the case out of the operation of this Act, unless such promise or acknowledgment is contained in some writing signed, before the expiration of the prescribed period, by the party to be charged therewith, or by his agent generally or specially authorized in this behalf.

(b).—When such writing exists, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the promise or acknowledgment was signed.

21. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent generally or specially authorized in this behalf,

or when part of the principal of a debt is before the expiration of the prescribed period, paid by the debtor or by his agent generally or specially authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made.

Provided that, in the case of part-payment of principal, the debt has arisen from a contract in writing, and the fact of the payment appears in the handwriting of the person making the same, on the instrument or in his own books, or in the books of the creditor.

SECOND SCHEDULE.

PART VI.—THREE YEARS.

✓ Description of Suit.	Time when period begins to run.
56. For money payable for money lent.	When the loan is made.
58. For money lent under an agreement that it shall be payable on demand.	When the demand is made.
65. On a single bond where a day is specified for payment.	The day so specified.
87. For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.	The time of the last item admitted or proved in the account.

✓ PART VII.—SIX YEARS.

117. On a promise or contract in writing registered.	When the period of limitation would begin to run against a suit brought on a similar promise or contract not registered.
132. For money charged upon immoveable property.	When the money sued for becomes due.

II.—LIMITATION UNDER ACT XIV. OF 1859.

The law of limitation under that Act was substantially the same as that under Act IX. of 1871 above quoted. The main object of passing the latter Act was, as stated in the proceedings in Council, to reduce the 1,100 or 1,200 decisions passed upon Act XIV. of 1859 to a single Act. The main distinction of importance in regard to money debts is contained in clause 58, where it is laid down that the date of the *demand* is the date from which limitation begins to run. Under the English rulings the date of the agreement to pay on demand is the date from which the computation is made. The effect of this clause and of clause 21 relating

to interest will have the effect of considerably extending the period of limitation formerly allowed under Act XIV. of 1859.

III.—OLD BOMBAY LAW OF LIMITATION.

3. 1st.—In all civil suits for debts not founded upon, or supported by, an acknowledgment in writing, and in all suits for damages other than those specified in the preceding section, it shall be a sufficient defence that the cause of action arose more than six years before the suit was filed.

2nd.—But in the case of running accounts, the time shall be reckoned from the date of the last transaction.

4. In all suits not falling under any of the limitations in the preceding sections of this chapter, it shall be a sufficient defence that the cause of action arose more than twelve years before the suit was filed.

7. 1st.—If, however, a defence be rested on any limitation of time heretofore specified in this Chapter, and the claimant prove that the defendant, or person from whom he derives right, had admitted the justice of the demand, then the time of limitation shall be reckoned from the date of such admission, provided that if the demand be founded on a written acknowledgment of any sort, the admission, if it shall have been made subsequently to the date which shall be fixed for the commencement of the operation of this Regulation, must also be in writing.

IV.—OPINIONS AS TO THE EFFECTS OF THE LAW OF LIMITATION.

“It is singular that the general objects of the law of prescription, which is one of the driest and least inviting branches of the law, should have been stated to the world at large by nearly the greatest of Irish orators in the most perfect and poetical image that he ever employed: ‘*Time*’ said Lord Plunket, ‘*holds in one hand a scythe, in the other an hour-glass. The scythe mows down the evidence of our rights; the hour-glass measures the period which renders that evidence superfluous.*’

“That law is at present embodied, for the most part, in Act XIV. of 1859, upon which, in the course of twelve years, there have been between 1,100 and 1,200 decisions of the courts. The main object of the Bill is to reduce this mass

of matter to a single Act.—*Extract from the Proceedings of the Council of the Governor-General of India, assembled on the 24th March 1871.*

The Limitation Law, a statute of peace made for the purpose of protecting obligers, is practically *an engine of extortion* in the hands of obligees. When a bond is approaching the age of three years, it is usual for the creditor to threaten proceedings, and so induce the debtor to pass a new bond, of which the principal and interest of the old bond, and sometimes a premium form the consideration.—*Extract from the Tanna Session Judge's letter, No. 1639, dated 17th May 1875.*

It is also a common thing to take bonds for old debts so that the provisions of the Limitation Act are often nullified while an exorbitant rate of interest is charged.—*Extract from the Khandesh Session Judge's letter, No. 580, dated 19th June 1875.*

The general opinion is that the present law of limitation tends greatly to increase the difficulties of the ryots. Most ryots have a running account with their sowkar or money-lender, and when money is lent, no specific agreement or bond regarding repayment is made, and therefore the debt becomes barred by the law of limitation after three years. This leads to suits being brought every three years, and the debtor has to pay costs and thus sinks deeper in the mire. This is such a common complaint now that there must be a good deal of truth in it.—*Extract para. 14 of a Report by Mr. H. N. B. Erskine, C.S., Collector of Násik, No. 2518, dated 27th July 1874.*

The Subordinate Judge of Sangameshwar considers that litigation has been greatly on the increase, that the new Limitation Act for shortening the period for instituting suits has multiplied suits and caused hardship to the lower classes, in that they are sued before they have sufficient time to pay the debts.

14. I do not understand the remarks of the Subordinate Judge of Sangameshwar on the new Limitation Act. I should imagine that its effects would be the opposite of that described by him.—*Extract from the Ratnágiri Acting Judge's letter, No. 966, dated 13th July 1875.*

On the 10th of Chaitra Shudha Shaké 1788, Shidu bin Piraji, a cultivator of Tásgaon, borrowed of Ravji Malhar Bidkar, a money-lender at Tásgaon, Rs 17 on a personal bond which stipulated for interest at Rs. 37½ per cent per annum. Out of this sum borrowed, Shidu paid Rs. 14 to Bidkar on the 11th of Bhadrapad Wadya Shaké 1789, on which date the account was stated as follows :—

	Rs.	a.	p.
The principal sum borrowed being	...	17	0 0
Interest from the date of the bond	...	9	8 0
		<hr/>	
Total	...	26	8 0

Payment...	...	...	...	...	14	0 0
Balance	...	...	...	...	12	8 0

and for the balance of Rs. 12-8-0 a new bond was executed. On the 4th of Magha Wadya Shaké 1792, that is about the time when this new bond was about to be time-barred, the creditor called upon the debtor to pass a new bond to him ; the account was therefore stated as follows :—

	Rs.	a.	p.
Principal in the second bond...	...	12	8 0
Interest	...	12	8 0
		<hr/>	
Total...	...	25	0 0

Payment made in Ashwin of 1792...	...	5	0 0
Balance...	...	20	0 0

For the balance of Rs. 20, the debtor executed a third bond. On the 10th of Kartik of Shaké 1795 the account was again stated, and the debtor was obliged to pass a fourth bond for the balance struck. At the time when this fourth bond was executed the account stood as follows :—

	Rs.	a.	p.
Principal as in the third bond	Rs. ...	20	0 0
Interest	... ..	13	0 0
		<hr/>	
Total...	...	33	0 0
Total of the payments made from time to time	... ..	15	0 0
Balance...	...	18	0 0

After the execution of this last bond the debtor paid Rs. 2 in Shaké 1796 and Rs. 2 in Shaké 1797. The account between the creditor and the debtor is in fact as follows :—

	Rs.	a.	p.
Principal originally lent	17	0	0
Total of the interests abovementioned ...	35	0	0
Interest since the execution of the last named bond	7	4	0
Total...	59	4	0
Total of payments	38	0	0
Sum still outstanding...	21	4	0

—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

The debtor annually pays something to his creditor, which unfortunately for him does not cover even the interest. Bad harvest and sundry other things come in the way. Thus the interest goes on accumulating of which the illiterate debtor is rather unconscious. It amasses to something perceptible at the end of some years. The law of limitation here comes into play, which compels the creditor to call upon his debtor either to pay the amount or to pass a new bond for the principal and the accumulated interest. The poor debtor is obliged to pass, though reluctantly, a new bond, lest the creditor would sue him and put him to greater expenses. Here the seed of discontent and discord is sown. The creditor since the date of the new bond counts his interest on the principal written in it, while the debtor counts it on the old one, he being under the impression that the new loan is simply passed to please the law, but it has made no other change in his liability. He, however, soon sees himself deceived in his calculations. He learns, though indignantly, that *by passing a new bond he has incurred a greater liability*, and that he must put up with it because the law requires it of him. This boils his blood, but he has no remedy. The interest goes on accumulating, he not being able to pay it as it accrues. In this way three or four years run when the Limitation Act again forces the creditor to have his bond renewed. Here the debtor often refuses to renew the bond. A suit is thus brought on it, and the debtor is put to more expenses. After the decree is obtained the

debtor has no alternative but either to pay the decree or to pass a bond for the amount including costs of the court. Money, as a matter of course, he has not, and, therefore, he is obliged to pass a new bond for it. The creditor now perceives that his debtor is in danger of being insolvent, and therefore refuses to lend him anything more. This refusal on the part of the creditor, when the debtor is labouring under the pressing want of food, offends the latter, and thus widens the breach between them. Here he begins to distrust his creditor, and calls him merciless and usurious. He is not then the submissive and servile debtor of yore. His ways of thanking are now changed. He is led to think that his creditor has been much paid, and still his thirst for gold is not allayed. Whatever was produced in his field during the last six or eight years he paid him and retained nothing for himself. But now, while he is in sore want of food, the ungrateful sowkar forsakes and refuses to lend him money or grain. He thus ceases to respect his creditor and to make any payments to him. The creditor is therefore obliged to go to the court. The debtor when he comes to the court with his irritated feelings to answer to the plaintiff, he usually charges his creditor with want of patience. He calls him a (खाता पिता सवकार), which literally means one who has much eaten and drunk, or, in other words, who is paid much in shape of interest, and he therefore ought to have granted him time. Full of sorrow, he then begins to tell his story. He says he borrowed, say, for instance, rupees one hundred of the sowkar, for which he paid two hundred rupees, and still the creditor demands of him two hundred rupees more. That he in addition to it ploughed his field last year, tended his cow, gave him vegetables now and then, and did sundry other things for him for which he is not paid; and that, in spite of all this, the sowkar had the audacity to come to the court and sue him for two hundred rupees. Strictly speaking, he says, nothing is now due to the creditor. This, he thinks, is a sufficient defence to defeat the claim of the plaintiff. Here it must be remembered that the creditor is charged with no unfairness, but for want of patience and forbearance. Because the creditor when examined admits all these facts. He says, it is true that he lent a hundred rupees some eight or ten years ago, and that he has received two hundred rupees. He also admits that the debtor assisted him in ploughing a particular field; his cow was also tended by him; and that he also received vegetables

now and then; but he pleads that all these form but very insignificant items and that when he did all this he expressly said that he wanted no remuneration for it. However, in consideration of all this, small sums, he says, were now and then remitted by him when the bonds were renewed. After hearing in this way both the sides, the debtor to his still bitter disappointment is told that what he has told constitutes no defence, and that the sum sued for is found due by him to the creditor, and therefore must be paid. The debtor hears the decree of the Court, and goes home with the determination not to pay anything to the ungrateful creditor.—*Extract from the Tásgaon Sub-Judye's Report, dated 14th August 1875.*

*Again our limitation law compelling the renewal of a bond every three years, if it is to be continued in force, is a fresh engine for oppression in the hands of the Sowkar, who on occasion makes the renewal of the bond an excuse for taking it for a sum one-quarter more than the amount of the former bond, and thus the ryot's debts amount up faster than ever to fabulous sums that he has never borrowed and can never hope to pay, and thus the whole body of the ryots are fast becoming nothing else than the bondsmen and slaves of the Sowkar.—*Extract from the Ahmednagar Collector's Administration Report for 1874-75, No. 2132, dated 20th July 1875.**

FRAUDS, AND LAWS FOR THEIR PREVENTION.

I.—INDIAN LAWS FOR THE PREVENTION OF FRAUDS.

(a).—*Registration Act.*

The principal of these is the Registration Act, which provides for the compulsory registration of documents relating to immoveable property only, and only where the value exceeds Rs. 100. Other documents may be registered voluntarily.

(b). *Rules for Public Notaries in Oudh.*

The following is taken from Mr. Campbell's Non-Regulation Laws :—

1. Qualified and trustworthy persons will be appointed public notaries in towns, bazaars, and places of resort of the rural population. If possible there will be at least three or four such notary officers in each tehsil. Notaries will be nominated by the Deputy Commissioners, and the sanction of the Commissioner will be required to each nomination.

2. They will be required to give security for good conduct either in their own property or by others. Amount of security will be fixed according to circumstances when we see how far the appointments are sought for by responsible people.

3. They will be remunerated by fees. The rates are fixed experimentally at 2 annas for every deed up to Rs. 10 ; 4 annas up to Rs. 50 ; 8 annas up to Rs. 100 ; and 8 annas for every additional 100 rupees. Four annas being charged for social contracts, &c., not expressed in money ; two annas each for cultivator's pottahs, without reference to the amount of rental ; one anna per page will also be charged for copying all documents exceeding half a page.

4. Notaries will fix their offices at places to be approved by the Deputy Commissioner, and they will conduct their business publicly, at specified hours.

5. The notary will register all agreements and transactions, either written or verbal, provided either the trans-

action has taken place, or one of the parties is resident within the notary's circle, and provided that the subject of the agreement does not exceed in amount or value Company's Rs. 500.

6. In case of verbal agreements, he will first reduce their substance to writing in the most concise terms, as—"A receives from B Rs. 25 in my presence, and agrees to repay in one year with interest at one per cent per mensem;" or, "A agrees to marry his daughter Motee to B at the end of three years;" and he will obtain the attestation of the parties to the correctness of the agreement.

7. Parties who have long deeds will have the option of reciting the contents in brief and registering the same, in the same way as a verbal agreement by a note of the notary.

8. No deed or agreement will be registered by a public notary in which the parties who bind themselves do not appear. An agent who has power to act for a banking firm may sign an agreement as he would in his own shop, but his own name also should be stated as "Buldeo Dass and Co. per Ganesh Gomastah." No mookhtarnamah or other special power to execute the agreement will be admitted.

9. The notary will be held personally responsible for the identity of the parties, which he must ascertain before registering.

10. The entry respecting all agreements in excess of Rs. 20 is to be attested by two respectable witnesses (besides the notary), whose names are to be entered in his book, with their signature or marks. They are to sign in the presence of the obligers and of one another.

11. On the original agreement, when it is in writing, or on the note made by the notary, when it is verbal, the notary will mark the date, time, and place of registration, and the number of his book, and will return the paper, certified with his seal and signature, to the party or parties.

12. He will register the same in full in his book, and make a duplicate copy for deposit in the tehsil.

13. For this purpose bound and paged books will be supplied from the Deputy Commissioner's Office. They will contain two detachable slips thus—

Copy to remain for	| 1 copy for tehsil	| 1 original nota.
record.		

On one of which will be written the substance of the agreement, to be torn off and given to the parties; on an-

other, copy for transmission to the tehsil; while on the remaining portion the copy for record will be made.

14. The duplicate copies will be transmitted to, and filed in, the tehsil each month. As soon as they are filed, the tehsildar will write his name across each page, and paste them in a book.

15. In every registry the name of the parties, name of their father's age, residence, caste, profession, must be stated so clearly as to leave no doubt of their identity.

16. The registers shall always be open to inspection on payment of a fee of one anna.

II.—OTHER LAWS.

1. *Registration.*

The Code Napoleon, Article 2127, provides that a mortgage can only be made by a deed passed before two notaries, or before one notary and two witnesses.

Article 2134 further provides that all liens on immoveables take order only from the date of registration.

Article 2154 provides that registration keeps alive the lien or mortgage only during ten years.

Registration of all sales and other liens of immoveables is made compulsory by the following Codes, namely, Austria, Holland, Russia, Ionian Islands, Prussia, the Roman States, Sardinia, Belgium, Baden, Hamburg, Saxony, the United States, the Cantons of Vaud, Geneva, Valais, Saint Gall and Soleure, Louisiana, Haiti, Bolivia, Germany, Bavaria, Greece, &c. In Denmark, Norway, and Sweden, they must be read publicly in court and recorded.

2. *Notaries.*

The Code Napoleon, Article 1341, provides that every transaction (*acte*) relating to all things exceeding 150 francs in value must be made before a Notary or by a writing under private signature, and oral evidence is not admissible to prove such transactions.

Article 1325 provides that acts under private signature which contain synallagmatical agreements are not valid, unless there has been made a number of originals equal to that of the parties having a distinct interest.

Article 1326 provides that an act under private signature by which one single party binds himself to pay a sum of money, or a thing capable of being valued, must be writ-

ten throughout in the hand of the subscriber, or he must besides his signature write the word *bon* or *approuvé*, and the sum or quantity of the thing in full, except in the case of tradesmen, artisans, labourers, vine-dressers, day-labourers, and servants.

Several codes follow the Code Napoleon in excluding oral evidence as to transactions. In Sicily deeds relating to property of the value of 50 ducats must be in writing. In Sardinia the value is 300 livres, in Modane 500 livres, in the Ionian Islands £4, in Bolivia 500 francs, in Holland 300 florins, in the Canton of Vaud 800 francs, in Fribourg 200 francs, in Valais 300 francs, in Neuchatel 1,000 francs. In England Section 17 of the Statute of Frauds provides that contracts for the sale of goods of the value of £10 must be in writing, or that part of the goods shall have been accepted by the purchaser, or part-payment made, &c.

Section 4 provides that no action shall be brought on a promise to answer for the debt of another, or on an agreement in consideration of marriage, or for the sale of lands, or any interest in lands, or on an agreement not to be performed within the year, unless such agreement, &c., is in writing and signed.

Section 1 provides that certain leases, estates, &c., shall have the effect of leases, estates, &c., at will only, unless put in writing by the parties, and signed by them.

Several codes provide that certain contracts can only be made by means of a deed before a Notary. Thus in Parma, it is provided that a mortgage can only be so made. In Russia leases of immoveables, contracts to furnish, loans, and contracts of service, must be made before a Notary, who is bound to keep a register, and is provided with a seal. If the contract of loan is not certified by a Notary, the lender loses his right to interest, and his claim is postponed to that of other creditors.

3. *Illiterate persons.*

Several of the codes make special provision for parties who are unable to read and write. Thus in Sardinia, it is provided that a deed by a person who cannot read or write is invalid unless signed by three witnesses, two of whom can write. In the Codes of Bolivia, Denmark, and Lucerne, it is provided that there must be two witnesses who must read the document and explain its contents to the debtor. In Russia if the party cannot sign, he must get the deed signed

by his confessor or agent. By the Code of Fribourg any party to a contract can claim that it should be reduced to writing, and where the other party cannot write that it be made before a Notary.

III.—EVIDENCE AS TO THE FRAUDS COMMITTED.

2. I am of opinion that Section 9 and Schedule II, Clause 5, of the General Stamp Act, which enable signed balances of account with only an adhesive stamp to bear interest, and to be sued on, is greatly used, especially in the Northern Division of this district, to enable the people to avoid the payment of the higher rate which may be charged on bonds, and in several cases where the debtor cannot read or write has been used to father on account on him of which he has no knowledge whatsoever. Such balances of accounts are often written on odd pages of exceedingly irregular kept account books, and of course can be forged at any time.—*Extract from the Hyderabad District and Session Judge's letter, No. 424, dated 30th July 1874.*

Many of the money-lenders, while admitting that they have a trade of Rs. 12,000 or so, deny that they ever keep books, and never produce them in court.—*Extract from the Pátas Subordinate Judge's letter, No. 27, dated 31st March 1875.*

There are a few Mahratta cultivators, among them a few patels who act as money-lenders indifferently to their own villagers as well as other villagers. They ape the Marwari in all their dealings, and it is impossible to distinguish them, except that I hear fewer complaints against them for cheating, such as not giving credits for past payments made.—*Extract from the Pátas Sub-Judge's letter, No. 27, dated 31st March 1875.*

The creditors, as a rule, hardly pass receipts for moneys received in liquidation of debts. The onus of proving the payment lies on the defendant, who, being unable through ignorance and other reasons to prove the contention, is often obliged to pay his creditors again. The mortgager sometimes receives the consideration money for the mortgage after the document is registered, though he is persuaded by the mortgagee to declare before the registrar that the consideration money has been received; and when the statement is once made, the poor man is at the mortgagee's

mercy.—*Extract from the Talegaon Subordinate Judge's letter No. 22, dated 14th June 1875.*

Others still, who deal in money-lending alone, and especially the small lenders, keep neither books nor memoranda. Their bonds are their memoranda, and if honest, they put down the sums received from their debtors on the backs of the debt bonds. The evil disposed lenders find this practice convenient, for when they have no books or memoranda, they are better able to carry on their course of receiving money without making entries thereof, and are thus able to lessen the chances of the proof of payment.—*Extract from the Talegaon Subordinate Judge's letter, No. 22, dated 14th June 1875.*

The unfair practices which the money-lenders are generally charged with are :—1st, not passing receipts for moneys paid in liquidation of debts before the institution of suits, and not acknowledging these receipts in the plaints; 2nd, not allowing the defendant to have sufficient notice of the institution of suits; 3rd, not passing receipts or acknowledging the payment of moneys paid after decree and before or during execution; 4th, pouncing upon the debtor on marriage or festive days; and 5th, arranging with the subordinate officials of the court at the time of the service of summonses or of execution of the decree.—*Extract from the Talegaon Subordinate Judge's letter, No. 22, dated 14th June 1875.*

But when a debtor makes a payment to his creditor, without securing even a tittle of evidence, oral or written, and simply relies upon the honour of the latter, he places himself beyond the assistance of the civil court.—*Extract from the Mádhá Subordinate Judge's letter, No. 21, dated 5th April 1875.*

What revelations a midnight search of the sowkar's duffars might bring to light it is idle to conjecture: it would probably form a sensational chapter in Mahratta history, and might lead to a desperate longing to try some of the antiquated remedies of the Middle Ages.—*Extract para. 11 of a Report by Mr. A. Wingate, C. S., Supernumerary Assistant Collector in charge First Assistant Collector's Office, No. 58 of 1874.*

The third class of sowkars, as well as some of the second class, not only keep no good accounts, but refuse to give

receipts for the small sums they receive from their debtors. This creates a distrust about them in the mind of the latter when any disagreement arises between them. The poor debtor being illiterate often pleads that he has paid the creditors small sums from time to time for which he asked receipts, but they were refused him, and though he now does not recollect the exact amount he has actually paid, yet he says he has paid so much that he thinks he owes now nothing to the creditor. The creditor in some cases gives credit to whatever little he receives, but there is nothing to convince the court of the *illiterate* debt or, even morally, if not legally, that he has certainly given credit to all the sums he has received. To remedy this evil there was a provision in the Stamp Act of 1862, and that provision with some amendment is still preserved in the General Stamp Act of 1869. It declares the refusal on the part of the creditor to give receipt for the sums received, an offence, and is punishable with a fine not exceeding Rs. 100. But as far as my information goes it has proved a dead letter. I think in many cases the second and third class creditors positively refuse to give receipts for the sums they received, but no steps are taken against them. The debtors usually make partial payments while the whole is due; and therefore, whenever they insist to have a receipt for what they give, the creditors refuse to accept the partial payment and demand the whole. The poor debtor, unable to pay at once the whole amount due, puts up with this inconvenience. He asks no receipt for what he gives, but requests the creditor to accept the partial payment and give him time for the payment of the balance. This is, I may submit, one of the causes that creates or widens the breach between the creditor and the debtor.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

The cultivators generally borrow a very small quantity of grain from time to time. If, therefore, the quantity borrowed be changed into money, and a bond be passed for the sum, two annas' stamp is usually found sufficient; while, when the corn is not changed into money, eight annas' stamp, it is said, is invariably required for it. To avoid this higher stamp the grain borrowed is usually changed into money, either the market rate or any arbitrary rate, and for this money a certain fixed sum or quantity of grain is agreed to be paid at the harvest time. This agreement, however, is never acted upon. The real agreement is to pay the

sowkar the corn in kind with wadha at 25 per cent, or so. Hence the corn in kind is usually paid and accepted by the sowkar when he is on good terms with his debtor; but when a disagreement arises between them the creditor sues on the bond, which is often so worded, that the sowkar is in many cases a gainer.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

Then commences the business of the shrewd and cunning "bond-writers," who are generally kulkarnis and most of them are debtors. They come to his aid and advise him to execute an antedated collusive, colorable bond, or a deed of sale to a relative or a friend of his, and convey everything that he has to him. The debtor usually submits to this device, which he finds the only remedy to save himself from the impending inevitable ruin. Thus a field for perjury and forgery is opened, about which I will speak hereafter. Some intelligent, cunning debtors, however, learn a strange lesson from this. They find that mere vague pleas of payments are of no avail and do not serve the purpose in the court of law. They then resort, if possible, to the forging of a receipt or plead payments which they have not made, but which they think by means of suborning witnesses they could easily prove. Here the irreconcilable discord between the debtor and his creditor takes its root.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

In conclusion, I am of opinion that the real professional sowkars very seldom or never sue on a false bond, and also very seldom sue on bonds for which no consideration is given. They also very seldom fail to give credit to the sums paid to them; what the debtor therefore usually charges his sowkars with, is want of patience and forbearance. That while he sees with his eyes that his debtor has no means of paying him, he drags him to the court, puts him to unnecessary expenses, sells his bullocks, and implements of husbandry and everything else, even the very clothes which he wears, and thus reduces him to sheer destitution. It is this conduct of the creditor which irritates the debtor most.

In short, claims on false bonds are very seldom brought, though by the advice of either bad legal practitioners or other men, such pleas are sometimes set forth. As an illustration I may state that during the last three years, out of 3,430 cases decided by me, there were only three suits

brought upon really false bonds. But the obligees of these bonds, it must be observed, were not professional sowkars.—*Extract from the Tásgaon Sub-Judge's Report, dated 14th August 1875.*

They say that the money-lender fails to pay them the full amount he enters in the bonds; that their creditors refuse to explain to them how their account stands; that payments made in liquidation of a debt are either not credited at all, or if entered in the accounts they appear as payments in satisfaction of some old time-barred claim; and that, finally, creditors bring ruin upon whole families by entering in the bond as sureties the name of each member of the household. Adopting the plan of often recovering small payments of interest and trusting to his influence over his debtor, backed up too by the ever-ready threat of the civil court, the money-lender is said to realize the greater part of his claim without having recourse to legal proceedings.—*Extract from the Note on Kheda Money-lending.*

The means adopted by debtors, to evade the payment of the liabilities they have incurred, have scarcely been noticed in the answers received from the local officers. Certain devices seem however to be practised. Sometimes, says the Subordinate Judge of Borsád, the debtor manages to make a fraudulent transfer of his property to some friend or relation to save it from the grasp of his creditors. Again, he says, Kolis conceal the grain required for seed in places beyond the reach of their creditors. It will be seen also from the account of the Parsatej Kolis appended, that some of the cultivators, who have allowed themselves to sink hopelessly into debt, still seem to succeed in evading the attempts of their creditors to gain possession of their property.—*Extract from the Note on Kheda Money-lending.*

24. The judge is disposed to think that the action of the civil courts often bears very oppressively on the debtor. He says he received some time ago a piteous complaint numerously signed by the peasants of Borsád, which was strongly endorsed by the Rev. J. Taylor, who lives among them and is conversant with the district. They complained that the money-lending class corrupted the peons and subordinate officials of the court, so as to obtain decrees *ex parte*, manipulate auctions, and purchase property for a mere song, &c. On the other hand, the money-lenders, in their

turn, complain of violence on the part of debtors, forcible rescue of attached property and the like.—*Extract from the Ahmedabad District Judge's letter 459, dated 31st May 1875.*

The occasional outbursts which I have referred to arise partly from a sense of being cheated not in the terms, but where part payments are denied, or where a decree is executed and realized more than once, or where after the renewal of a bond the old bond is preserved and sued upon and realized, notwithstanding the new bond. These complaints are but too true, partly from a sense of his hopelessly insolvent condition, with which he vaguely connects the sowkar.—*Extract from the Pātas Subordinate Judge's letter No. 27, dated 31st March 1875.*

A third result of the action of the courts has been pointed out by the Sub-Judges of Broach and Balsar, that the peasantry are being induced to resort to fraudulent practices so as to defeat their creditors.

If such a result become general, the good relations which ought to exist between bankers and their clients, if the latter look to receiving any accommodation at reasonable rates in time of need, must be seriously altered, and the scarcity of money to borrowers will have a pernicious result besides lowering the value of cultivable land.—*Extract from the Surat Acting Assistant Judge's letter, dated 27th July 1875.*

These sowkars, patels, and others would rather lend to a Bheel than to an educated person, for the simple reason that the ignorant Bheel is entirely at their mercy; he cannot read accounts, nor can he get any person who does read that he can trust; the kulkarnis and other writers all being on the side of the rich lenders: thus although his small earnings are yearly snapped up, the debt still remains, though in reality it has been paid over and over again. It would take up too much paper for me to give details of many cases that have come before me; suffice it to say that it is perfectly sickening to sit and listen to them, besides which I could not put the story of the Bheel on paper as he tells it. The system is as follows:—

“A Bheel borrows a certain amount of grain from a patel, wani, or sowkar, and a bond is taken from him for a certain sum. After gathering his crops, the Bheel pays back as much grain as he can; but the holder of the bond declares there is still some due: the Bheel then

pays more, or perhaps the balance (false) has to stand over until next harvest, when an immense quantity is demanded, and so year after year the man's crops are eaten up."

I had a case a few days back in which a patel had given a Bheel one rupee's worth of grain and taken a bond from him for twenty rupees.

It must be understood that the sowkar or other lender *never* by any chance passes a receipt to the Bheel for the instalments he pays, and his invariable answer, when questioned on this point, is that the Bheel did not demand one, thus taking an unfair advantage of the ignorant. * * *

A Bheel came before me and said he owed a sowkar a small sum, and that this man had cleared off every thing he possessed. I sent for the sowkar, and he at first put in a claim for Rs. 600, towards which the Bheel's property, amounting to Rs. 400, had been taken. On going into the accounts I proved to the sowkar on his own books that he had robbed the man of much, and he was obliged to admit it, and gave the Bheel back a pair of bullocks, cart, cow and three calves besides his field, which he had got written on his own name. Had this case not come before me, the Bheel would have been deliberately robbed of the above property.—*Letter of Captain Wise, Bheel Agent, Khandesh, dated 19th April 1874.*

To show the extent to which Bheels are cheated of their just shares of produce by their Guzur partners, the patel's accounts for the current year, as entered in his books, and that as subsequently stated by him when questioned by the Bheel before me, are contrasted below :—

As entered in Ramdas Patel's account.		As admitted by Patel before me.	
Rs.	Value per maup.		
25	15½ maups wheat.	11	maups wheat.
32	1 maup grain.	2	maups grain.
19	1 maup linseed.	1	maup linseed.
21	2 maups tur.	5	maups tur.
6½	2 maups ainseed.	2	maups ainseed.
	60 bundles tobacco.	80	bundles tobacco.
16	... ..	11	maups bajri.
16	... ..	3	maups rica.
12	... ..	7	maunds hemp.

—(*Extracts of Instances appended to Mr. C. Pritchard's Report, No. 135, dated 1st July 1870.*)

* * I have no hesitation in saying that false accounts and false bonds are the rule, and not the exception in the dealings of the Guzur and sowkar with the unfortunate and ignorant Bheels.

The rate of interest charged varies from 75 to 200 per cent. The Munsiffs are all well aware of the state of affairs, but can do nothing.* * * * * The expenses attending civil cases is alone a denial of justice to the Bheels. When our highly civilized method of procedure can be made use of by one class of the community, sufficiently acute to do so, practically to oppress and enslave others so ignorant as to become the easy dupes and victims of the former, I think that it would be most just and human to provide by law that no so-called written acknowledgment of debt in the shape of bond or signed account should be held valid in a court of law, unless it could be proved to have been passed in presence of some public functionary specially appointed for the purpose, who could vouch for the consideration having been given in his presence or the whole of the circumstances having been clearly explained to the person passing it, before his signature was attached. As it would be clearly impracticable to draw the line for such cases so as to apply only to the members of particular castes, it might include all persons incapable of reading and writing what was put before them. Such a law, too, should be general and not restricted to this or any other district.—*Extracts of Report to Government, No. 255, dated 17th January 1871, from Mr. A. Rogers, Revenue Commissioner, N.D.*

IV.—OPINION AS TO REGISTRATION LAW.

The main objects of the registration system, established by the Acts of 1864 and 1866, were the attainment of a complete record of rights and interests in immoveable property, and the prevention of fraud in transactions regarding its conveyance from one person to another.

His Honour the Lieutenant-Governor thought that, in many respects, it might be more proper that he should give a silent vote on this Bill, because he had not had the opportunity of seeing the Bill till yesterday. Still he had been for such a long time connected with the subject of registration and had taken so great an interest in it, that he was unwilling to let his vote pass without explaining that he knew little about this Bill itself beyond what had fallen from the

Honourable Mr. Cockerell. His Honour had heard with great satisfaction that the main object of the Bill was to reduce the charges, and facilitate the practice of registration in India. He believed that he was the earliest public officer that introduced a general system of registration in an Indian province, namely, Oudh, where the system was extremely popular. Village registry offices were brought home almost to every man's door; and although the system established in Oudh was very imperfect, he did look upon the subject with very great interest.—*Extract from the Proceedings of the Council of the Governor General of India, assembled on the 24th March 1871 for making Laws and Regulations (Indian Registration Bill).*

COURT FEES.

One of the complaints frequently made is that the Civil Courts are used by Government as a source of revenue. This course, according to the opinions quoted, affects the debtor in three ways. In the first place, by adding about a quarter of a million annually to the embarrassments of the ryots; secondly, by creating an unintelligible barrier, which meets and baffles him at every turn; and thirdly, by the delay and general inefficiency of the courts caused by the insufficient number of Judges, officers, and court-houses, &c.

Comparative Table of the work done and the cost of the Original Courts in the Regulation Districts of the Bombay Presidency during the year 1872.

Abstract.

Regulation Districts.	Income of Courts from Fees, Stamps, and all Sources.	Expenditure of Courts, including salaries of Judges and all Officers attach- ed to the Court.
	Rs. a. p.	Rs. a. p.
21 District Courts ...	1,39,136 12 0	5,46,005 4 2
88 Subordinate Courts .	16,89,744 12 5	6,90,717 2 7

—*Extract from the General Report on the Administration of the Bombay Presidency for 1872-73, Chapter III. (Appendix B., Civil Justice).*

Lastly, we ought, I think, as far as possible, to cheapen civil justice. The costs of litigation in the Regulation Dis-

tricts of Bombay (inclusive of costs in execution and in appeal) amounted in 1872 to almost £225,000, or about 16 per cent on the total value. As the value of money suits is over 80 per cent of the total value of all suits, as less than 3½ per cent of suits are finally decided in favour of defendants, as the unsuccessful suitor is almost always mulcted in full costs; and as the cost of stamps on the bonds sued on and of registration is always paid by the borrower, it is evident that *the demands of the revenue and the costs of law add annually somewhere about a quarter of a million sterling to the embarrassments of the indebted classes of Bombay.*

The more expensive litigation is, the greater advantage have the wealthy over the poor, the creditors over the debtors. And though the principle that those who make litigation necessary should pay for it, is doubtless a sound one, yet in India it is by no means the unsuccessful suitors alone who make litigation necessary: great part of it arises from the fraud or chicanery of plaintiffs. In some places, the courts are really the only machinery money-lenders use for collection of their debts, and in such cases the courts should exercise the power the law now gives them and decree costs on the plaintiff.—*Extract from the Note by W. G. Pedder, C.S.*

A cultivator may suffer the most glaring injustice, or be deprived in broad day-light of his clearest and most cherished rights, yet he cannot take a single step towards getting justice done him of himself. *Our stamp laws meet and baffle him at every turn. He cannot possibly understand them, and for every step he has to pay and consult a vakil, whose dishonesty and cheating is often second only to that of the sowkar. This in itself is almost certain ruin to him.—**Extract from the Ahmednagar Collector's Administration Report for 1874-75, No. 2132, dated 20th July 1875.*

We fostered the introduction of professional vakils, and, what was worse than all, we made justice so expensive, tedious, and difficult to obtain, as to make it practically denied to the poor. And here I may make a remark. It has been said that it is necessary to make justice dear in this country to prevent wanton litigation. But this could easily be stopped by giving Judges power to fine vexatious suitors, just as Magistrates daily fine persons who bring needless complaints. It is also urged that it is right that the suitors of the country should pay for their own suits; but this surely is a monstrous idea. The people who do not bring suits are

protected by the Law Courts just as much as they who do, so why should they not help to pay for the protection they enjoy?—*Report of Mr. James, Deputy Collector, Sind, 1874.*

The establishments are greatly overworked and underpaid, and the public is not served in the manner it has a right to be, considering the fees levied. This has been represented repeatedly, and yet another year has passed without the process serving establishment being created and the ordinary establishments revised. A great injustice is being suffered by a large and deserving body of public servants, who, for a number of years, have witnessed their fellow servants in other Departments of Government enjoying the benefits of revised salaries.—*Extract from the Poona Session Judge's letter, No. 775, dated 28th May 1865.*

Of the total number disposed of, 595 were contested, and the average duration of these contested suits in the courts in the Poona Collectorate was 237 days against 180 days in the Sholapur Collectorate. If the figures are reliable, it appears to me that there is room for improvement as to the time taken for the disposal of this class of cases.

With regard to the arrears of applications for execution for decrees, Government is aware of the insufficiency of the establishments, &c.; the arrears are entirely attributable to this cause.—*Extract from the Poona Session Judge's letter, No. 775, dated 28th May 1875.*

In the Administration Report of last year very severe strictures have been passed upon the working of these Subordinate Courts, more especially in the matter of their effect on the indebted state of the agricultural population. It seems to me that a great part of their shortcomings in this respect would be overcome if they were provided with more efficient and more trustworthy establishments. It is therefore much to be regretted, in my opinion, that the revision of establishments has not yet been sanctioned. The language of Mr. Naylor's Annual Report last year, on the subject, is unfortunately equally applicable this year. Mr. Naylor says: "Another year has passed without the long-promised revision of sub-establishments having been carried out. The kárkuns and peons have hoped against hope for many years past, and have now almost begun to despair of ever getting any improvement. The present rates of pay are, as is universally admitted, utterly insufficient, and every establishment is underhanded. It is, I think, under these circum-

stances a matter of congratulation, that our work is as well done as it is, and that so few cases of dishonesty occur. Nevertheless, there is no question that justice is very much delayed owing to the want of proper establishments to cope with the work, and in many instances delay means absolute denial of justice."

5. I trust that this will be the last year in which it will be necessary to make such observations as these on this subject, and I hope that next year there will be a commencement at least of a more expeditious and more trustworthy administration of justice in its ministerial department, in consequence of the improved class of officers which we shall be able to obtain when their emoluments are made more consistent with their duties and responsibility than they are at present.—*Extract from the Sholapur District Court Judge's letter, No. 327, dated 14th April 1875.*

It seems to me, however, that the portion of the work of the Subordinate Courts which is least satisfactorily performed is not that which relates to the trial of money claims so much as to that which relates to the trial of suits connected with immovable property and other suits. The trial of this class of suits is in Bombay Island entrusted to the Judges of the High Court, and it is hardly to be expected that the Subordinate Judges receiving, as they do, such comparatively small salaries, should be able to discharge this part of their duty with equal satisfaction to the public.—*Extract from the Sholapur District Court Judge's letter, No. 327, dated 14th April 1875.*

But the arrears of the Dápoli Court have gone steadily increasing. Seventy-one villages were added to its territorial jurisdiction at the time of the above distribution, so that may be the reason of the increasing pressure of work. On account of the condition of the file in that Court, Mr. Hunter found it necessary to make a further pressing representation to Government, the result of which was that a Subordinate Judge was transferred from the Belgaum District to assist the Subordinate Judge at Dápoli; that officer, however, did not join his appointment until after the close of the year under report. It is to be hoped that his assistance will reduce the file to its normal state. But as his appointment here has been sanctioned only temporarily, his services will not be available for assisting any other courts in this district.

4. The condition of the file in the Málwan Court seems to call for some remarks. Both as regards the number and the difficult nature of the suits, the work in that court is unusually heavy, and the arrears have accordingly increased. During the year 1874, the Subordinate Judge of Rájápur was sent to Málwan to assist for four months; at the close of which time, though doubtless many old and difficult suits had been disposed of, little impression was found to have been made upon the numerical state of the file. Now, however, Government by their Resolution No. 3203, dated 3rd ultimo, have sanctioned the re-distribution of the territorial jurisdiction of the Subordinate Courts in the Southern Division. Thirty-one villages have been taken away from the Málwan jurisdiction: and this measure will, I hope, give great relief to that Court, without unduly pressing on any other.—*Extract from the Ratnágiri Acting Judge's letter, No. 966, dated 13th July 1875.*

7. A comparison of the return of the past year (1873) with that of this year (1874) indicates an unsatisfactory result, both as regards the file and the arrears of darkhasts of the year 1874. The cause of this was pointed out by Mr. Hunter in his report last year, and the same cause is still in active operation. I myself inspected the three southern courts this year, and I found that the evil had reached such a point that it has become almost intolerable. A decree in many cases becomes useless from the great difficulty and delay in executing it. I made a report on the subject to Mr. Hunter on my return from circuit. However, as orders are daily expected relating to the revision of establishments, I feel it is unnecessary to do more than merely refer to the subject in this place.—*Extract from the Ratnágiri Acting Judge's letter, No. 966, dated 13th July 1875.*

The Subordinate Judge of Chiplun considers that the better education of the more recently appointed vakils is a great assistance to the Court; that the present establishment is utterly inadequate to the work.—*Extract from the Ratnágiri Acting Judge's letter, No. 966, dated 13th July 1875.*

The Subordinate Judge of Rájápur considers that his establishment is too short-handed to cope with the work.—*Extract from the Ratnágiri Acting Judge's letter, No. 966, dated 13th July 1875.*

The Subordinate Judge of Málwan complains that his establishment is inadequate.—*Extract from the Ratnágiri Acting Judge's letter, No. 966, dated 13th July 1875.*

10. The number of suits compromised was 2,803, being less than the number for the previous year. This is still a large number, and favours the suspicion that some of the compromises may be due to delay in the court.—*Extract from the Surat District Judge's letter, No. 1702, dated 6th August 1875.*

3. The temporary appointment of a Joint Subordinate Judge for the District for 12 months was applied for in the course of the year by both my predecessor and myself, but Government thought the appointment unnecessary. It was held that the new distribution of territory, which was brought into partial operation from 1st November 1873, would be a sufficient measure of relief if aided by the transfer during a portion of each year of those Subordinate Judges who had too little to do, to assist those who had too much. But I beg respectfully to remind Government that these transfers *have been* made for some years past, and that though the new distribution when completed will in course of time diminish their necessity, yet no measures for equalizing work can be appreciated until past arrears have been materially reduced. Excluding the dormant file from consideration, the arrears have increased during the year by 320, although the suits filed were 195 less than in 1872, and the suits decided were 256 more than in 1872.—*Extract from the Ratnágiri District and Session Judge's letter, No. 1291, dated 11th August 1874.*

6. The ministerial establishments have long been found to be too small, too inefficient, too ill-paid, to be able to cope with the large amount of execution work that devolves on the courts. A very early remedy for this is confidently expected in the arrangements proposed by the High Court, and recently sanctioned by Government for the appointment of special process establishments.—*Extract from the Ratnágiri District and Session Judge's letter, No. 1291, dated 11th August 1874.*

3. Another year has passed without the long promised revision of sub-establishments having been carried out.

The kárkuns and peons have hoped against hope for many years past, and have now almost begun to despair of ever getting any improvement. The present rates of pay are, as is universally admitted, utterly insufficient, and every establishment is under-handed. It is, I think, under these circumstances a matter of congratulation that our work is as well done as it is, and that so few cases of dishonesty occur. Nevertheless, there is no question that justice is very much delayed owing to the want of proper establishments to cope with the work, and in many instances delay means absolute denial of justice.—*Extract from the Sholápur District Judge's letter, No. 228, dated 11th March 1874.*

4. The Judges of this District have had to struggle through another year with establishments altogether insufficient for the work they are called upon to perform. About half the work in each court is done by section-writers, who earn a miserable pittance out of fees paid by suitors for copies of documents. The plan pursued is to lump together the monthly receipts from fees, and the amount is distributed equally among the section-writers, who are looked upon as a part of the establishment of the court. They are employed upon the regular work of the court, which should be performed exclusively by the establishment. The only duties they do not perform are those relating to the execution of decrees; and the reason for this is, of course, obvious. The establishments, besides being numerically of about half the required strength, are also very much under-paid. Government is well aware of these facts. On the 13th February, 1863, a scale of efficient establishments was called for (*vide* Circular 301 of 1863), and ever since that date the establishments have been in course of revision. In the meanwhile, the revenue establishments have been revised, and throughout the country the Mámlatdárs and Subordinate Judges' establishments may be seen working together at the same places; the former enjoying adequate pay and performing a reasonable amount of work, whilst the members of the judicial establishments are under-paid and greatly overworked. I forbear to draw any conclusions from such a state of things, for the natural results may be patent to every one.—*Extract from the Poona Session Judge's letter, No. 1562, dated 3rd October 1874.*

The large arrears in some of the courts still give cause for dissatisfaction to the people. The evil is most felt in the

town of Surat. The present staff of Subordinate Judges is numerically insufficient for the work of the district, and it is to be hoped that the additional court, which the Government of India has been asked to sanction, may soon be established.—*Extract from the Surat District Judge's Report for 1874.*

Suits ought not to remain long pending on the files. There ought not to be more cases filed in any court than the Judge can, by ordinary industry, dispose of with satisfaction to himself and suitors. It ought never to be necessary for a Judge to adjourn a suit for a long time, because for many weeks to come he has more work on his file than he is physically able to dispose of. When a Judge has made a decree, there ought to be every facility for its execution. It seems almost a truism to say that these conditions are essential to the proper administration of justice in any District. Judged by such simple tests as are here indicated, the working of our courts must, I fear, be pronounced to be defective. Much has been done of late, and with general success I think, to improve the quality of our judicial officers. Every care is taken in the selection of Subordinate Judges; but more Subordinate Judges are wanted, in this district certainly, and better paid and stronger establishments have been urgently wanted for the last twelve years at least. Last year the hopes of all members of the judicial department were raised by the circulation of the Government scheme for a revision of establishments. As I reported my opinion at length on the proposals of Government in my letter No. 2137, of the 18th October 1873, it is unnecessary for me to discuss the question here. But I have thought it right to refer to it again now, for the reasons already stated, that some explanation is requisite of the heavy arrears and delays in the disposal of cases which disfigure these returns. I am satisfied that an improvement will be seen, when the courts are supplied with better establishments.—*Extract from the Surat Judge's letter, No. 1856, dated 15th August 1874.*

The four Subordinate Courts of Sangamner, Kaira, Newása, and Ráhuri, have a great deal more work to perform than they can do properly. Their establishments are very insufficient, and are badly paid. The Sub-Judges have to do a great deal of clerical work that could be better performed by

clerks of the court. The consequence of this state of things is that in a suit of any difficulty a day some six months after the filing of the suit is fixed for the framing of the issues, and the suitors are fortunate if their cases are decided within a year. I have repeatedly brought the inadequacy of the Sangamner Nazir's establishment to the notice of Government, and asked for an extra establishment, but my representations have been in vain.

12. I have not made any tour through my district during the year under report. It is a mere waste of money and of time for me to go to the different Subordinate Courts, and point out the delays that take place in deciding suits or executing decrees ; for the answer is stereotyped. The Sub-Judges answer that they have too much work, and that their establishments are insufficient and badly paid. I trust that the Government of India will see the justice of considering the cost of decently and expeditiously administering justice, the first charge on the enormous stamp revenue.—*Extract from the Ahmednagar Sessions Judge's letter, No. 489, dated 16th June 1874.*

29. The state of the appeal filed in this district has been the means of shutting out many appeals, which, had the file been heavy, would have been made by defendants merely to gain time and prevent the execution of decrees against them. So long as an appeal is heard within two or three months after the original decision is passed, it is not thought worth while to appeal, and the number of appeals filed is therefore less, when the file is light, than when several hundred cases are on it, some of which will not be likely to be taken up for a year or two.

30. This shows the advantage of strengthening the hands of the District Judge by always keeping an assistant here, and it is to be hoped that such will always be done.—*Extract from the Satara District and Session Judge's letter of 1874.*

If appeals could be more promptly decided, fewer would be filed, since filing an appeal to postpone execution, which is more frequently done would then become comparatively a rare occurrence.—*Extract from Mr. M. W. Scott's letter, No. 986, dated 2nd September 1874.*

13. The duration of suits of any difficulty is in Sangamner and Ráhuri often more than a year, and sometimes two years.

14. The work in the Sangamner and Ráhuri Courts is greatly in arrear, and I have represented to Government through the High Court the urgent necessity of employing an extra Sub-Judge with a suitable establishment for two years in order to clear off those arrears.—*Extract from the Ahmednagar Session Judge's letter, No. 308, dated 12th March 1875.*

The suits are of small value, but the costs are disproportionately large.—*Extract from the Ratnágiri Acting Judge's letter, No. 966, dated 13th July 1875.*

6. The enormous expense to which litigants are now subjected in court fees, seems to entitle the public to better accommodation in the way of court-houses and their usual adjuncts. The court fees collected in this district during the past year amounted to upwards of two and half lakhs of rupees, while the court establishment, including that of the houses themselves, amounted to one lakh and a half; yet even the court-house of the District Judge at Dhulia has insufficient accommodation. The accommodation for the establishment is very limited, and several kárkuns have nowhere to sit, but in the court-room itself. The Assistant Judge has no court-room at all, properly so called; a space, a few feet square, at the top of the staircase, does duty for one. The Nazir has not room enough for the property he holds under attachment, and the record-room is altogether too small.

It is well known to one member of Government (the Honourable Mr. Gibbs) what sort of court-houses the Sub-Judges have in this District. I hope that I have secured, as a temporary measure, for the Sub-Judge of Bhusáwal, the Mámlatdár's kutcherry recently vacated at Warangaon, which will suffice until a court-house can be built at Bhusáwal. I much regret to remind Government that the court-house at Erandol has not yet been begun, though it is urgently needed; and the Government sanction for it was asked for so long ago as 1869.—*Extract from the Dhulia Judge's letter, No. 728, dated 8th August 1874.*

11. The income and expenditure of the courts during this and the preceding year are as shown below :—

1872.		Rs.	a.	p.
Income from fees, stamps, and from				
all other sources		2,80,839	0	0
Expenditure		1,87,858	0	0
Net Profit...		92,981	0	0
1873.				
Income from fees, stamps, and from				
all other sources		2,97,184	0	0
Expenditure		1,96,588	0	0
Net Profit...		1,00,596	0	0

These figures show an increase of Rs. 7,615 in the income of the year under report against that of 1872, and suggest the possibility of Government being now in a position to provide suitable court-houses for the Assistant Judge and the Subordinate Judges of this district. The Assistant Judge's Court and the courts of most of the Subordinate Judges are very unsuitable, some being little better than cattle-sheds. The Honourable Mr. Justice Gibbs, on the occasion of visiting this district a few years ago, is said to have complained of inability to stand upright in one court-room.—*Extract from the Tanna Judge's letter, No. 2040, dated 29th May 1874.*

6. *Up to 1827 there were no courts nor any definite rules of procedure in cases; complaints of civil nature were made to the Government; and so the parties had not to pay any court expenses until then. In the days of the Rájás of Satara the litigants were charged with "harkigunhegari (हरकी गुन्हेगारी). But it was to be recovered from the person who failed, and was charged on the difference between what the plaintiff claimed and the defendant admitted; so that in a case where the defendant admitted the whole claim, no harkigunhegari was charged (see the *hukumnama* or *decree* issued by Pratap Sive, the Rájá of Satara). Had there been such a rule as this now, and had it been well interpreted

to the ignorant debtors, seventy out of a hundred debtors might have availed themselves of it, and exempted themselves from the payment of the court fees. The truth of this statement will be apparent by comparing the *ex-parte* decisions of each court with the contested ones.—*Extract from the Tasgaon Sub-Judge's Report, dated 14th August 1875.*

“Their Lordships, in a judgment necessarily so long, have thought it right to take no notice of several matters, important in themselves, but not affecting their decision; they have now disposed of the various points relevant to that decision, and which were urged by the learned counsel for the appellant with their usual zeal and ability, but they cannot pass from this case without the expression of their surprise and deep regret, that such a case should have been possible under the system of jurisprudence prevailing in any country under the British dominion.

“ ‘——— *pudet hæc opprobria nobis,
et dici potuisse et non potuisse refelli.*’

“The subject-matter of the original suit, a debt, it should seem, undisputed, or at least as to which, in substance, no serious dispute was possible, where the plaintiff's difficulty had not been to establish his right to the judgment of the court in which he sued, but to make that judgment available when obtained, though the funds were ample for the purpose. By fraud and chicanery, by every possible abuse of the forms and procedure of law, by force and violence, even, it is to be greatly feared, to the shedding of blood, justice was evaded and defied for fifteen years, from 1830, when the decree was pronounced, to 1845, when the final sale took place. The original plaintiff, wearied out with the long delay and expense, fain to sell the benefit of his decrees, the unhappy man who had been substituted for him losing his life while vainly striving to realize its fruits. And now, in 1862, their Lordships have been called on to dispose of a suit in which it is sought to invalidate that whole proceeding as against a purchaser for value, the second in succession from the execution creditor, against whom, or the party from whom he immediately purchased, no fraud, no collusion, no knowledge of the supposed defects in the title is alleged. They have had to deal with a record of nearly three hundred pages in folio, setting out more than three hundred documents and depositions. Their Lordships do not intend hastily to cast censure on any individual; the materials are

not before them for that purpose, nor is it within their province to do so: but it is useful to point out that a system under which all this is possible loudly called for amendment, and administered as it here has been, defeated the very object for which it was instituted."—*Judgment of the Privy Council.*

ADMINISTRATION REPORT, 1873-74.

Statement showing the General Result of the Trial of Civil Suits in Sub-Judges' Court.

	Suits remaining from last year.	Instituted.	Contested.
Ahmedabad	4,567	18,670	1,638
Surat	6,846	16,258	1,472
Tanna	6,021	21,691	3,716
Ratnagiri	2,853	7,637	1,638
Khandesh	7,539	22,800	2,143
Ahmednagar	3,248	10,490	1,357
Poona	2,998	16,014	2,262
Satara	5,178	12,883	1,575
Belgaum	958	8,173	1,345
Dharwar	526	2,408	546
Kanara... ..	636	3,209	1,026
	41,420	140,233	18,718

Statement showing the Business of the Civil Appellate Courts of the Province of Bombay in the year 1873.

Class of Court.	Remaining.	Instituted.	Contested.
Ahmedabad	107	281	173
Surat	75	178	113
Tanna	1,082	515	830
Ratnagiri	166	423	371
Khandesh	315	239	155
Ahmednagar	154	249	281
Poona	594	431	653
Satara	268	312	379
Belgaum	245	332	377
Dharwar	157	261	160
Kanara... ..	133	197	108
	3,286	3,423	3,600

TECHNICALITY AND WANT OF EQUITY IN THE CIVIL COURTS.

104. Up to the time of which I am writing, civil disputes had been decided by the Executive Officers of Government. One advantage of this was, that they were, as a rule, intimately acquainted with the people of the district, their customs, means, and circumstances. Justice was administered in a rough and ready way, on tour, in the same way that magisterial cases are disposed of now. There was no time for them to draw up proceedings and minutes, with the elaborate preciseness of regulation-districts. *Cases were heard and decided on their merits, and not on the arguments of the vakils.* It being, moreover, desirable that the people should continue prosperous and payers of revenue, arrangements used to be made by which debtors could pay their dues by instalments, so that while the creditor got his money, the debtor recovered his credit, retained his property, and continued a contented subject of Government.

105. There were no complaints of injustice against these courts. No man failed to obtain his rights from them. How comes it, then, that those persons who replaced the revenue officials in the administration of civil justice are looked upon as a pestilence by all but one section of the population? How is it that, merely because this branch of the ruler's duties have been entrusted to a special body of men, that ruin has spread over the land? The question is easy to answer. *The new Judges have given the people the dry bones of law and procedure; instead of the life-giving meat of equity and justice.*

106. Under the present system, before a man can get justice, he must have a handsome sum of money at his command. He must be able to pay down 10 per cent of the value of the property he claims before he can even sue. He must pay a vakil to draw up his plaint in the terms of the Code of Civil Procedure. He must pay down the expenses of all his witnesses, and finally hire a vakil to speak for him in court. This last is a *sine qua non*. After all this is done, and the suit heard, *his complaint may be thrown out for the merest technicality in law or procedure;*

although he be admitted to have the right on his side. Even if he gain his cause, he has perhaps lost more than he obtains, and he goes home a sadder and wiser man.

107. *The law administered by the civil court delights in technicalities. It is no part of the Judge's business, nor does he consider it so, to see that right is done.* He has merely to listen to the arguments of contending vakils, and see that right procedure is carefully followed. As for discouraging extortionate vakils, endeavouring to get over his business with despatch, trying to reconcile contending parties, all these are matters from interference in which he is precluded by the traditions of his office.

108. The above applies to disputed cases. By far* the majority of suits, however, are decided *ex-parte*, or on a defendant's admission, being actions for debt on written contract. In these the Judge is a mere tool, a machine to be put in motion at the will of the money-lender. The ignorant cultivator knows that he has signed an agreement on stamped-paper. He does not know what it contains, save, perhaps, that after having paid double or treble the amount of the original debt, the sum entered as due in the latest bond he has renewed is equal to just as much again. He considers it useless and a mere waste of money to try and dispute the amount, for *he knows that if he admits the bond, nothing more is required*; so he does not attend the court, and allows a decree for the full amount, with heavy costs, to be given against him. Then, of course, *he is like a hooked fish; the Bania can play him as he pleases, can extort renewed bonds for fictitious amounts from him, can sell him up, or can put him in Jail. The debtor is utterly helpless.*

120. I beg to state that in all I have written on this matter, I am not guilty of alluding personally to any Judge of the Sehwan Court. They are the creatures of a system which they are bound to carry out. The present gentleman who holds the office personally regrets much to see an abuse made of his court, and when a suit is defended by a zemindar, he always desires to frame a decree so as to give the

* I notice that in the Bombay Presidency (excluding Sind) there were tried in 1869-70, 127,419 original suits, of which no less than 110,884 were for debts on written contract; and though I have not the figures by me, I am confident it will be found that nearly every one of them was decided *ex parte* or on admission of the bond. The state of things in Sind is, I believe, worse than this.

debtor time and opportunity for satisfying it, instead of selling him up at once. *But after all, what good can the Judge do? He has no power, no discretion; he must do as the banias tell him, and assist daily in consummating the ruin of the agricultural population.—Report by H. E. M. James, Esq., Assistant Commissioner, Sind, dated 23rd May 1872.*

It will perhaps be asked if there are no courts of justice in the district, and why the Bheels do not resort to them? There is the court of the Second Class Subordinate Judge at Nandurbár, which is the engine of all the oppression I have described. It is presided over by a native gentleman who sits in the full forensic costume of Westminster Hall minus only the wig. Mr. Pritchard in his 8th and 9th paragraphs has shown how utterly impossible it is for a Bheel to obtain justice in a court so constituted. *A court where the merits of the case are made entirely subordinate to the strict letter of the law and to certain traditions of the court.* The very presence of a Bheel would be considered offensive to the Brahmin judge and vakils of the court, and would require certain ceremonies of purification to be performed. I have conversed with the Second Class Subordinate Judge on this subject; *he is quite aware of the inequitable nature of many of his decrees, but he is not a court of equity; he is bound to administer law, not justice, and is powerless to protect the ignorant Bheels.—Report of Mr. Ashburner, Collector of Khandesh, dated 24th July 1870.*

The indebtedness of the people throughout the district is a matter of serious regret. It is perhaps the remains of old ways which prevailed in the Raja's time, and the rigid action of our civil courts tells heavily against them.—*Extract para. 14 of a Report by Mr. J. B. Arthur, C.S., Collector and Magistrate, Satara, No. 4636, dated 14th August 1874.*

16. The general opinion is that *our Civil law, while very suitable to an intelligent, well educated people, possessed of moral courage and good principles and highly civilized, is altogether unsuitable to an uneducated, ignorant race, who will spend all the money that they can get out of deference to caste, customs, and the opinions of their fellows, and who are at the mercy of a cunning and grasping race, the Marwaris.—Extract from the Ahmednagar Sessions Judge's letter, No. 308, dated 12th March 1875.*

30. That the action of the civil courts is principally chargeable with the present condition of the Bheels is shown by the civil returns. It appears that in the years 1867, 1868, 1869 A.D. (I have not later statistics) of 775 suits filed against Bheels in the Nandurbár Civil Court, no less than 594, or more than 76 per cent, were decided *ex-parte* for the plaintiffs.

Nothing more is required as to Nandurbár to demonstrate the inefficiency and mischievousness of the action of our civil law on the Bheels. Our ordinary judicial procedure is as destructive to a semi-barbarous community as a hot house is to a winter out-door plant.

31. To effect the desired object it would be necessary to obtain an Act of the Council of the Governor General, enacting retrospectively, for a certain number of years, that the execution of past decrees of the civil courts is to vest in the Bheel Agents, and that from the date of the Act receiving the confirmation of the Governor General, the cognizance of suits against Bheels in the territories designated be excluded from the jurisdiction of the civil courts, and vested in the Bheels' Agents.

32. *I have more than once heard the opinion expressed that Legislation is unnecessary, because a remedy is already at hand; if the civil courts will only relieve against the law by administering "equity," this opinion is evidently founded on a misapprehension of the meaning of the word "equity" when used in a judicial sense. It is a maxim of jurisprudence that "equity follows the law." Equity will relieve against the harshness of the law in degree, but will follow the intention and scope of the law, and will not act in opposition to it, it clearly does not provide an efficient remedy in this matter.*

33. I foresee considerable difficulties in determining the local limits of Bheel Agents' jurisdiction, but doubt not that they are surmountable.

34. The selection of Bheel Agents properly qualified will doubtless offer considerable difficulty to Government. Good intentions and a knowledge of the Bheel dialect are not alone sufficient qualifications; temper, much common sense, and some knowledge of the law of contracts, would also be necessary. An inefficient or crotchety agent armed with the proposed powers would be worse than the civil court, as King Stork was worse than King Loy.—*Extract from the*

Tanna Session Judge's letter No. 1639, dated 17th May 1875.

Then, in court again, everything is against him ; in his folly and ignorance he is sure, before being brought into court, to have been *duped into signing a bond* for five or ten times the amount he ever borrowed, and to have admitted execution, and thus the court is left powerless.—*Extract from the Ahmednagar Collector's Administration Report for 1874-75, No. 2132, dated 20th July 1875.*

The extent of the evils complained of having been authoritatively ascertained by statistical and other facts, amongst the principal remedial measures that will have to be considered, will be whether the law relating to interest should not be altered ; *whether the courts should not be bound by equitable considerations, and should not pass decrees on the mere admission of the execution of a bond* ; whether the law of compulsory registration should not be extended ; whether the value of the bonds should not be paid in the presence of the registration officer ; and whether the system under which the execution of decrees takes place should not be reformed.—*G. R. No. 4634, dated 29th August 1874.*

It is curious to observe that out of a total number of 155,283 suits disposed of before the Subordinate Judges, only 21,822, or 14 per cent. were contested ; that 10,919, or 69·5 per cent, were decreed on confession or decreed or dismissed *ex-parte*, and that in only 3,365 contested cases was judgment given for the defendants. These facts tend to show that the defendants in these cases, who as a rule are ignorant cultivators, suffer most from the action of these courts ; that the mere admission of the execution of a bond is generally regarded as a ground for a decree, no matter what be the circumstances under which the bond was executed ; and that the debtors, as a rule, have so little hope of deriving any help from the courts that in 69 cases out of a 100 they make no defence.—*Administration Report, 1873-74.*

“ There is little doubt that ignorant cultivators are frequently induced to sign bonds for much more than they borrowed ; that when the day of reckoning comes they are glad, for the sake of staving off immediate pressure, to sign a new bond for an enormously increased sum ; and the admission of the execution of such bonds is regarded by the civil courts as a ground for a decree. Government are not unmindful of the danger of interfering with free-trade in

money ; but when the contest is between a shrewd class on the one hand and an ignorant one on the other, there seems no reason why rules which are made for people capable of looking after their own interests should not be relaxed, and in particular the courts should in such cases be bound by equitable considerations.—*Summary of Administration Report, 1873-74.*

ACTION OF THE CIVIL COURTS GENERALLY.

To

HIS EXCELLENCY THE HONOURABLE

SIR PHILIP EDMOND WODEHOUSE, K.C.B.,

Governor and President in Council.

Her Majesty's High Court of Judicature,

Bombay, 26th July 1875.

HONOURABLE SIR,

We have the honour to acknowledge receipt of Your Excellency's letter No. 4074 of the 16th instant, with accompaniment, relating to the recent disturbances in the Ahmednagar and Poona Districts. In compliance with Your Excellency's desire, we have instructed the District Judges to arrange that Mr. J. B. Richey may have full access to the records of the Subordinate Judges' Courts, both at those courts and at the district courts where the records in original suits are now sent for permanent custody.

While thus gladly affording the requisite aid to the inquiry, we deem it to be within our province, as the controlling judicial authority, to advert to the reason for this investigation of judicial records as stated in Your Excellency's despatch of the 21st June last to the Secretary of State in Council—"because it is believed by district officers of great experience that the action of our law courts has really had a most important bearing on these recent occurrences. The action of the law courts is the only cause indicated as the real underlying ground for the dissatisfaction and disturbances, as distinguished from the superficial causes mentioned in paragraph 3, viz., the habits of lavish expenditure and the charges of exorbitant interest, which have been customary "from the time the country came into our hands." While we concur with Your Excellency in believing that the records of the Mofussil Courts will afford evidence of transactions between lenders and borrowers, and of the manner

in which the courts apply the law to these dealings, we doubt whether an investigation can result in conclusions of any great weight or value if conducted solely by an officer, how able soever he may be, without experience of *the working of civil-courts, apparently the chief matter to be inquired into.* The action of the law courts being determined by the laws in force, cannot be estimated without knowledge of those laws: unless this is borne in mind the inquiry may change into a criticism of the Legislature instead of confining itself to the working of the civil courts. The fact that the two topics are so intimately blended, affords, to our minds, a reason for inferring that the examination of either can best be performed by an officer familiar with both.

We may illustrate this dependency of the courts on the action of the Legislature by a few common examples bearing on the subject of inquiry. The Modern Indian Limitation Acts, fixing the period of three years as the limit for suits for money lent, supply a more cogent motive to the money-lender to make his claim than any action of the courts. The evidence admitted in such suits is very much regulated by the Stamp and Registration laws as well as by the Evidence Act. Where there was no express stipulation, usage, or course of dealing, Regulation V. of 1827, Sec. 10, allowed the courts to award interest not exceeding 9 per cent per annum: Act XXXVIII. of 1855 which repealed that provision gave the courts increased latitude. The High Court

has however, in a series of decisions,* held that the latter enactment does not abrogate the rule of Hindu Law called *Damdput*, whereby amongst Hindus the creditor cannot at any one time recover, as interest, more than an amount equal to the principal.

We are aware that the phrase "*action of the law courts*" may, in a particular sense, imply the function of interpreting the law as in the above example, if the examination of the effect of case

* 1, B.H.C.R., page 47, A.C.J. In re Dhondu Jagannath v. Narayan Ramchandra.

3, B.H.C.R., page 23, A.C.J. Khushalchand Lalchand v. Ibrahim Fakir.

3, B.H.C.R., page 25, A.C.J. Ramkrishnabhat v. Vithoba bin Maharji.

7, B.H.C.R., page 19, O.C.J. Hakma Manji et al v. Meman Ayab Haji et al.

9, B.H.C.R., page 83, A.C.J. Narayan and others v. Satvaji and others.

made law is to be part of the duty of the special officer; and we think it can hardly fail, considering the nature of the decisions, to be a very important part. We apprehend that any but a judicial officer will have some difficulty in at-

taining a competent knowledge of the subject, within the short time allowed for completing the investigation. Some of the decisions to which we allude have had a material effect on the rural population. We may instance that passed in Special Appeal 299 of 1864 (*Ramji vs. Chinto*, I. H. C. R., p. 199), which applied to mortgages the doctrine of English Courts of Equity that "whenever an instrument though in terms transferring an estate, is originally intended between the parties as a security for money, it shall always be considered as a mortgage redeemable on payment of the amount it was given to secure"; thus reversing the doctrine of the *Sadar Dewáni Adálat*, which was much less favourable for the debtor, regarding the right of redemption as extinguished and the right of property absolutely transferred the moment the fixed time of payment had expired.

The equitable doctrine applied in 1864 has since been adhered to in a number of cases of *gahan lahan** mortgages partly collected in the decision in Special Appeal 608 of 1871 (IX, B.H.C.R., p. 69) and has had a most extensive influence in limiting the final

alienation of ancestral land. For a more general application of equity to the circumstances of the *Mofussil*, we may refer to the decision in Special Appeal No. 530 of 1865 (III, B. H. C. R., p. 11, A. C. J.) which among other points ruled that "inadequacy of consideration when found in conjunction with any other such circumstances as suppression of true value of property, misrepresentation, fraud, surprise, oppression, urgent necessity for money, weakness of understanding or even ignorance, is an ingredient which weighs powerfully with a Court of Equity in considering whether it should set aside contracts, or refuse to decree specific performance of them." The wide scope of this ruling in all matters of contract need hardly be adverted to. It is of course binding not only on the ordinary courts, but on the Courts of Small Causes which the Government has created in the *Poona* and *Ahmednagar* Districts to dispose of suits by Summary Procedure and without appeal. Other decisions of importance second only to those already noticed might be mentioned, if need were, e. g., the rulings on references from the Judge of the Court of Small Causes at *Poona* in 1869, reported in 6, *Bombay High Court Reports*,

NOTE.—*These are mortgages with a clause of sale if the money borrowed be not paid within the time named in the mortgage. They are generally described as conditional sales, and are very common in the *Mofussil*.

pp 7 and 8, A. C. J., in which a heavily increased rate of interest, stipulated to be paid on failure of payment of an instalment, was held to be a penalty against which equity would give relief.

As however we do not doubt that, in the close and thorough inquiry into the underlying causes of the recent disturbances which Your Excellency in Council has directed, the policy of the legislature and the tendency of decisions will be compared, and carefully considered in estimating the action of the Subordinate Courts, we have less diffidence in offering our suggestion that for this part of the inquiry the officer selected should be associated with an officer practically acquainted with the existing law and familiar with its working, and who might be selected from the Judicial branch of the service.

We shall esteem it a favour if Your Excellency will order that copies of this letter be now sent to Her Majesty's Secretary of State in Council and to the Government of India in connection with Your Excellency's despatch of the 21st June, and we request that we may be furnished an at early period with any report which may be made by the officer or officers appointed to conduct the inquiry.

We have the honour to be,

Honourable Sir,

Your most obedient Servants,

(Signed) M. R. WESTROPP.

” L. H. BAYLEY.

” C. G. KEMBALL.

” J. PHILIP GREEN.

” ROBERT H. PINHEY

” NANABHAI HARID/

” JOHN MARRIATT.

” DEH. LARPENT.

It is possible (I do not say it is probable) that had th been left to themselves, the zemindars might have paid in time, but a new calamity which came upon them i 1866-67, the season now under consideration, completel effaced all hope or chance of it. It was a calamity from which there was no escape, such as the zemindars had never known of before, and were wholly unprepared to meet. It was a calamity from which nothing could protect them,