
REPORT
OF THE
DECCAN AGRICULTURISTS' RELIEF ACT COMMISSION,
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Bombay, 14th September 1912.

From

THE HONOURABLE MR. S. R. ARTHUR, I. C. S.,

President,

•Deccan Agriculturists' Relief Act Commission ;

To

THE SECRETARY TO GOVERNMENT,

Judicial Department,

Bombay.

Sir,

With reference to Government Resolution No. 979, dated the 2nd February 1912, appointing Mr. V. M. Bodas and myself to enquire into and report on the working of the Deccan Agriculturists' Relief Act in the Bombay Presidency (including Sind), I have the honour to submit the following report. It represents our joint views except in reference to points on which Mr. Bodas has written a separate note (appended).

2. To enable us to place before Government a report which could be regarded as in any degree reliable on the working of the Act under the totally dissimilar conditions prevailing in different parts of the Presidency, it was obviously necessary for us to make our tour as comprehensive as the limited time at our disposal would permit. A statement* is appended shewing our movements with dates, and on the attached map† my tour is marked in red ink and Mr. Bodas' in black. Mine was necessarily the wider of the two, since Mr. Bodas was appointed after the completion of my tour in Sind. I have visited every district in the Presidency (including Sind) except the Thar and Párkar, Upper Sind-Frontier, Kolába and Kánara Districts. The officers in charge of the two first mentioned districts met me and discussed the Act at Hyderabad and Sukkur respectively. Other witnesses from Jacobabad were also called to Sukkur, since time did not admit of my visiting Jacobabad. Kánara was not visited because the Commission could only have gone there in the height of the monsoon, when Kárwár was difficult of access and the journey from Belgaum to Kárwár and back would have occupied a time out of all proportion to the amount of evidence available there. The Collector pointed out that it was impossible at that time of the year to call witnesses from out-stations and suggested that he and the District Judge should obtain the evidence of the witnesses to be consulted and submit it with their own remarks, a proposal which the Commission accepted. Kolába is a small district whose conditions approximate to those in Thána on one side and Ratnágiri on the other. Its District Court is at Thána and witnesses from Kolába gave evidence before the Commission there. Mr. Bodas' tour was the same as mine except that he omitted the Panch Maháls, Kaira and Jalgaon. None of these districts contain a District Court and the main point of a visit to them was a discussion of the Act with the Collectors and other Revenue Officers. It is only necessary to add that at the suggestion of Government we spent three weeks at Mahábaleshvar during the Judicial Vacation, in which time we discussed the Act with Judicial Officers on leave there.

* Appendix A.

† Appendix B. Not printed.

3. Certain specific points, enumerated in a *précis* attached to the Government Resolution appointing us, were referred to the Commission. These vary in importance, but questions 10 and 12 involve the whole principle and working of the Act, and we decided that it would best conduce to a thorough enquiry if we invited the widest criticisms, excluding no opinions or recommendations though totally inimical to the Act. In view of the great divergence of the views expressed on points of cardinal importance, we feel sure that Government will approve our not having limited the scope of the enquiry. We have therefore attached more importance to the general questions put to us than to any of the special points raised; indeed, we have found that some of the latter could not be properly considered without the perspective afforded by a thorough examination of the working of the Act as a whole.

4. We have received the statements of 523 witnesses, of whom we have orally examined 457, while the remainder have sent us their views in writing. The witnesses include the Honourable Mr. Justice Heaton, the Honourable Mr. Curtis, Commissioner, Central Division, the Honourable Mr. Pratt, Inspector-General of Registration, Mr. Hayward and Mr. Crouch, Additional Judicial Commissioners of Sind, the Collectors and Judges of the districts visited, Deputy Collectors, Sub-Judges, Mámlatdárs, Pleaders, Conciliators, Village Munsiffs, Inámdárs and other private gentlemen, money-lenders and agriculturists. Representative men of all classes were selected for us by the Collectors and Judges, and we would take this opportunity of expressing our thanks to these officers for the trouble they took in the matter, the care which they exercised in the selection of witnesses and the complete arrangements they made for the work of the Commission. At the same time we would express our gratitude to the Judges of the High Court who have assisted us. My special thanks are due to the Honourable Mr. Justice Heaton, who gave up several days to discuss the Act in detail with me.

We have considered carefully the question in what form the evidence should be submitted to Government. It is obviously necessary in so important an enquiry that the whole material on which we have formed our conclusions should be placed before Government, and therefore we append all the evidence which we have recorded. Since, however, this evidence is voluminous, we attach for ready reference a *précis** of the views of the Revenue and Judicial heads of districts and other high officers whose opinions should carry weight, grouping them under each of the most important points in the Act that arise for consideration.

Many officers have put in writing their views under the different heads specially referred to us and have also given oral evidence. In these cases the written evidence is attached to the oral. Some witnesses have given oral and some written evidence only.

The question of the keeping of accounts by money-lenders is of the first importance. On these accounts the whole fabric of the Act rests, and since the provisions relating to them have become a dead letter, we have made them a special branch of our enquiry and have invited opinions separately on them from the heads of districts and others. We submit the circular letter on the subject and the replies received in Appendix G. The replies in full are forwarded with the rest of the evidence.

5. We are placing before Government only those statistics which are absolutely necessary to make a point clear, or which strongly support a conclusion on which we wish to lay stress. Since the abolition of the post of Special Judge under the Act in 1907 there has been no detailed annual report on the working of the Act and the collection of many figures would make a great deal of work in many offices, which we considered justified only where there was special reason, as

* Appendix H.

for instance in the case of conciliation, in reference to which the percentage of agreements to applications has a direct bearing on the decision to be arrived at regarding the retention or otherwise of the system.

6. Less than half the Act as it stands now is in actual use. Of the remainder, part has been found unworkable and part has been rendered unnecessary by recent amendments of the ordinary law. Almost all the sections that are in use require careful examination to ascertain whether their operation is beneficial and, if so, whether any improvement is possible. We have come to the conclusion that there is so much of the Act that is inoperative and so much that requires remodelling that the best course is to repeal it and replace it by a much shorter enactment, reproducing the valuable portions in an improved form with necessary additions and omitting the remainder. Since the subject is a large one, and we desire to place our conclusions before Government in an intelligible form, it is important to deal separately with the main principles of the Act and with matters of detail. We therefore propose to divide our report into two parts. The first part deals with the main principles of the Act and gives our opinion how far the objects in view when it was passed have been attained, how it has worked and is working now, what have been its economic and moral results, what are its tendencies, what portions should be retained as part of the law, what improvements can be made in those portions, what additions are required, and what portions should be repealed. In the second part we shall discuss the various sections in detail.

7. The object of the Act as stated in the preamble is "to relieve the agricultural classes in certain parts of the Deccan from indebtedness," and, as stated in the "Objects and Reasons," to "put the relations between agriculturists and money-lenders on a better footing." The "Statement of Objects and Reasons" proceeds to formulate the methods by which this result is to be attained, as follows:—

(1) by the provision of safeguards against money-lenders committing frauds in their accounts and obtaining from ignorant peasants bonds for larger amounts than are actually paid to, and due from, them;

(2) by arranging disputes by conciliation as far as possible;

(3) by requiring the Courts in contested suits against agriculturists to investigate the entire history of the transactions between the parties, and do substantial justice between them;

(4) by restricting the sale of the rayat's land in execution of a decree and by providing an insolvency procedure more liberal to the debtor than that of the Code of Civil Procedure.

The principal safeguards against frauds by money-lenders referred to in (1) above were

(a) the appointment of village registrars before whom every written obligation for the payment of money should be registered; and

(b) the provisions requiring money-lenders to give receipts to agriculturists for all payments made by them, to render accounts, and to give the agriculturist client a pass-book.

Of the above-stated methods by which the objects of the Act were to be attained, all except those consisting in action by the Courts have admittedly failed. Village registrars were found to be hopelessly corrupt; the writing of documents by them or under their superintendence and the payment of consideration in their presence were found to constitute no safeguard whatever to the agriculturist, and Government, while not repealing the sections of the Act providing for registration by them, have in effect rendered them inoperative by ceasing to make appointments; the provisions regarding receipts and

All except action by the Courts ineffective.

accounts have remained a dead letter; conciliation, where the system is in force, has not been a success; and the insolvency procedure provided by the Act has never been utilized. Thus the high hopes entertained of the advantages to accrue to agriculturists from these subsidiary measures have not been fulfilled, and the only really effective part of the Act has been that pertaining to the work of the Courts. It is to this part of the Act that we refer below in describing its results.

8. It is important to discriminate carefully between the immediate effects of the Act, when first applied to any part of the Presidency, and the after-effects. The immediate effect was greatly to improve the position of the agriculturist. Under the provisions empowering the Court to investigate the past history of his debts, to reduce exorbitant interest, to disallow compound interest, to set aside previous settlements and adjustments, and to fix instalments for the payment of what should be found due, the agriculturist found himself freed from a position which was in some cases almost hopeless, and either relieved of debt altogether or placed in a position in which he had every hope of paying it off. Again, under the redemption clauses he regained possession of land which he had mortgaged up to the full value and which would otherwise have been lost to him for ever. These advantages to the agriculturist debtor were obtained at the expense of the money-lender, who lost heavily by provisions of law which he had not foreseen and which were brought to bear on his past transactions. In this process, while the Courts swept away many unfair contracts and reduced much usurious interest, they probably also disallowed many genuine debts which the money-lender was not able to prove because he had not anticipated that he would have to prove them. The agriculturists were naturally delighted with a law which freed them from debt and restored to them their land and the *sáokárs* were correspondingly depressed. Then came the after-effect, which was profoundly to alter the relations between creditor and debtor, to drive the best of the *sáokárs* out of a business which had ceased to pay when honestly conducted, and to compel those who continued their business to resort to dishonest methods to make it successful. It is with the after, or permanent, effects that we are now principally concerned, and on these that it has to be judged. The present moment is admirably suited to an examination of the working of the Act, since it has been in force for over a generation in the four districts to which it was first applied and for a few years only in the rest of the Presidency. Thus its immediate and later results can be observed simultaneously. It is noteworthy that, while the cultivating class were loud in praises of the Act on its first introduction when they saw debts cut down and land redeemed, it has lost some of its charm now that they realize that it restricts their credit and disadvantageously affects the terms on which the money-lender is willing to make advances.

9. We will now examine the working of the main provisions of the Act which deal with administration by the Courts, taking them under two heads, those relating to debts and mortgaged land respectively.

The Act provides (i) for the investigation of the entire history of the transactions between the parties with the purpose of doing substantial justice, (ii) for cutting down exorbitant interest, and (iii) for payment by instalments with or without future interest.

10. As matters stand at present the taking of history is a process which is equally unsatisfactory from the point of view of the Court, the money-lender, and the agriculturist. Frequently no accounts at all are produced by the money-lender, who alleges, for the most part falsely, that he does not keep them. Where accounts are produced, they are the evidence of one party only, the money-lender; on the side of the borrower there is no evidence whatever. What then is the Sub-Judge to do? He has to come to some decision. He

may be morally convinced that a statement that no accounts are kept is false, but he cannot compel their production and, where accounts *are* produced, he has no means whatever of testing their accuracy. In the majority of cases he is reduced to guessing. Most Sub-Judges will admit that this is the case, and one Sub-Judge openly says so in a judgment of which the Dhárwár District Judge has given us a copy: "I have to depend," he says, "on guess-work and fix on some arbitrary figures in that connection in the best way I can." All they can hope to do is to arrive at a rough compromise by deducting something from the claim of the creditor and making liberal allowance for mis-statements on the part of the debtor. It is obvious that, where conditions are such that the Court is admittedly at a loss, the position of neither party can be a happy one. The money-lender knows that, when it comes to taking history, his account will probably be cut down and he meets this in advance by making false entries or false statements of principal, by entering false consideration in bonds and by omitting entries of repayments, whether in cash or kind, made by the debtor. Further when he finds that a certain Court "guesses" that a paper loan of Rs. 200 is really a loan of Rs. 100, he is likely another time to enter Rs. 300 or 400. The debtor's *role* is equally clear; in order that the guess-work to be performed by the Court may be as favourable as possible to himself, it is to his interest to deny or understate loans actually received and to invent or overstate repayments which he has made, and when he sees that the Court seeks the happy mean between his statement and that of the money-lender, it is obvious that the more dishonest he is in his statements, the more favourable to himself the decision is likely to be. Under such a system honesty is not the best policy, and where dishonesty will certainly be assumed, either party will lose by not practising it. The system indeed must tend to ever-increasing demoralisation.

11. Having thus arrived at the transactions between the parties, the Court has the power to vary the rate of interest agreed on between them if it deems it unreasonable. (ii) Variation of rate of interest. It further has the power to order payment by instalments with or without future interest, instead of immediate repayment in full. While it is desirable that the Courts should have such powers, their injudicious use may operate very hardly on the creditor. For instance, in judging whether a certain rate of interest is reasonable or not, the Court should take into consideration the normal rate of interest in the locality and the credit of the debtor. A rate which is reasonable in the Deccan, where the normal varies between 12 per cent. on secured loans and 18 to 24 per cent. on unsecured, may be quite unreasonable in Guzerát where the rate approximates to half the above figures. Again, interest which will yield the money-lender a fair return in the case of A, a steady-going and trustworthy cultivator, may entirely fail to remunerate him for the risk he runs in lending money to B, a well-known spendthrift, and if the Courts do not discriminate and if they cut down the interest on the loan to B to a figure which would be reasonable in the case of A, it is not unnatural that the money-lender should discount his risks in the only other way possible, namely, by entering a higher figure than the actual loan as principal.

12. Similarly in the case of fixing instalments for payment of debt and in the granting or withholding of interest, while it is desirable that the Courts should have wide powers to enable them to deal with a Shylock, they should use with discretion provisions of law which are permissive and not obligatory, and should not penalize one *sáokár* because another is rapacious. It would seem that there are some Sub-Judges who consider that the Act *requires* them to grant instalments and to refuse future interest, in short, that they must favour the "agriculturist," whether he be a poor struggling cultivator, or a spendthrift, or a well-to-do and thoroughly astute person of a class for whose protection the Act was not intended. (iii) Fixing of instalments with or without future interest.

13. Under the united operation of the provisions of the Act for the taking of history, the variation of interest and the fixing of instalments the money-lender is liable to very severe handling. Take for instance the case of a debt United operation of the provisions dealing with debts.

which, after "history" has been taken and principal and interest have been cut down,—whether fairly or unfairly the Sub-Judge himself often does not know—is found to amount to Rs. 1,000. Let us suppose that the Court orders the payment of this sum in twenty yearly instalments of Rs. 50 each without interest. The creditor will, if he is lucky enough to get all the instalments paid, receive each year what he would have received as interest if he had put his money in a thoroughly safe investment, and at the end of twenty years he will have lost his capital. Can it be expected that anyone will lend money on such terms? Even if, taking the same debt, ten instalments of Rs. 100 each are fixed for payment, the creditor will receive only 10 per cent. per annum and will at the end of ten years have lost the whole of his capital. Instances such as the first are not unknown, while instances such as the second are comparatively common. Under such conditions the money-lender has two alternatives: (1) to give up lending money to agriculturists, (2) to resort to dishonest practices. The evidence before us shows that a large number of *sáokárs*, including of course the best, have wound up, or are winding up, their business with agriculturists, while those who continue can only make it pay by dishonesty and perjury, in which practices there is little to choose between them and their formerly honest clients.

II. Mortgaged Land. 14. We will now consider the working of the main provisions of the Act relating to mortgaged land. These are:—

(i) Section 22, which exempts immovable property from attachment and sale unless specifically mortgaged;

(ii) Section 15A, which entitles a mortgagor to a decree for redemption though the time fixed by the mortgage has not arrived and the debt has not been paid;

(iii) Section 15B, which empowers the Court to direct payment of the amount due from the mortgagor in instalments with or without interest, and which further requires the Court, except for reasons to be recorded in writing, on failure to pay an instalment, to order the sale of such portion only of the property as may suffice for its realization;

(iv) Section 15C, which empowers the Court to order payment by instalment of a debt due under a mortgage even before the mortgagee has been placed in possession of the mortgaged land;

(v) Section 10A, which admits evidence of a contemporaneous oral agreement to prove that an ostensible sale was in reality a mortgage.

15. Section 22 is in force only in the four districts, Sátára, Poona, Ahmednagar and Sholápur, to which the Act was originally applied.* There is considerable difference of opinion as to whether the provision is advantageous to the agriculturist or the reverse, but there is no difference of opinion as to its economic result, namely, to put a stop almost entirely to unsecured loans and thereby to diminish the agriculturist's borrowing power.

The result of sections 15A, B and C is greatly to diminish the value to the money-lender of a mortgage with possession. At any moment he is liable to be ousted by the order of a Court, entirely different terms being substituted for those stated in the bond. His debt may be made repayable in instalments, probably without future interest, and he will not obtain even those instalments without having to go to Court for the recovery of each.

16. We have then section 22, which makes it so difficult for the money-lender to recover hand-loans that he is compelled to take security, and sections 15A, B and C, which greatly reduce the value of a mortgage. The result of these sections working together is the ostensible

United operation of the provisions relating to mortgaged land.

* Where the term "the four districts" is used henceforward in this report, these districts are referred to.

sale, which, while it was not unknown before the Act came into force, is now becoming more and more common. We have had voluminous evidence in the course of our tour from the agriculturist, who says "The *sáokár* will not lend to me without my executing a sale-deed," and from the *sáokár*, who says "My money is not safe and I *cannot* lend without a sale-deed."

17. Lastly to prevent the Act being evaded the legislature was compelled to pass section 10A, which enabled the agriculturist to prove that an ostensible sale was really a mortgage. Controversy has raged and will rage round section 10A. We will in a later paragraph discuss the arguments for and against it. Here our point is rather to show the *general* working of the Act and how it affects the people, and it will suffice to say that there can be little doubt that in its present form it tends to demoralise the agriculturist, to flood the Courts with false evidence, and to render titles to land insecure.

Section 10A. The ostensible sale-deed.

18. To summarise our conclusions as to the result of the present administration of the Act :—

Summary of conclusions regarding the administration of the Act by the Courts.

It is a contest of dishonesty, in which that side is likely to gain the upper hand which is prepared to go furthest in perjury and in the production of false evidence. Witness after witness has testified to this demoralisation. Distrust has been engendered on both sides. The honest *sáokár* and honest cultivator suffer alike, since in their dealings with one another they have to allow for the judgment of a Court which will presume dishonesty on both sides. Hence it is that an Act whose main object was to put the relations between agriculturists and money-lenders on a better footing is actually having an opposite effect.

We do not wish it to be inferred from our above remarks that we desire to pass any condemnation on a hardworking body of men, who spring from a class generally allied in interest rather to the creditor than to the debtor, and who must frequently have done violence both to their feelings and to their sense of justice in carrying out what they conceive to be the policy of the Act by penalizing the former and favouring the latter. It must even be admitted that under the *régime* of the Special Judge they were to some extent encouraged to do this, the latter officer possibly fearing that the atmosphere of strict legality in which they had previously worked would militate against their successful administration of an Act which in many respects runs counter to some of our ordinary legal principles. In the face of great difficulties arising out of the incomprehensibility of the Act itself they have worked very conscientiously, and, where they have gone wrong, it has been in the direction in which the Act itself led them to suppose they ought to go. Indeed much of the criticism we pass on the working of the Act is based on material given us by them. We are concerned however rather with the question *how* the Act has operated than *why* it has so operated, and we are forced to state clearly conclusions of the accuracy of which the combined testimony of witnesses of all classes throughout the country leaves no doubt.

19. Finding then throughout the Presidency that the relations between money-lender and agriculturist are becoming more strained and that both parties are becoming increasingly dishonest in their dealings, we have endeavoured to ascertain the result of this state of things on the condition of the people. The cultivator unquestionably finds his borrowing power diminished; in many cases, especially in the four districts in which section 22 is in force, he cannot get hand-loans at all, and often, when he wants money, he has to pass a sale-deed of his land to get it, the consideration stated being lower indeed than the value of the land, since the transaction is in reality a mortgage, but very much higher than the actual amount lent to him by the *sáokár*, who has to safeguard himself, as mentioned above, against probable loss by the operation of the Act. The questions then arise: Does the cultivator do without money which he would borrow if his credit were better and, if so, is this detrimental to him? Is his standard of

Results on the condition of the people of the strained relations between money-lenders and agriculturists.

Restriction of the agriculturist's credit.

comfort lower, is any of his land going out of cultivation, or is he cutting down only his unnecessary expenditure? Does he go to anyone else to borrow money instead of the money-lender? What is the money-lender doing with his available capital? It is probable that some of the results of the working of the Act counteract other results. The agriculturist gets harder terms from the money-lender than of yore, but he borrows less money from him. He would formerly, when he could get cash easily, run up a long account of hand-loans without a thought, and would only realize his position when it had become hopeless. Now, the *sáokár* knows that, if he lends money to an agriculturist without security, he may lose it altogether and that, if he takes a mortgage, the land may be redeemed at any moment. He therefore generally demands a sale-deed, and since, under the operation of section 10A, even that is not safe and may be treated as a mortgage, he exacts terms which will guarantee him against the losses he may incur in Court, and enters as consideration a fictitious amount, often double or more than double what he has really lent. The cultivator thinks twice before he passes a sale-deed of his land and the terms exacted undoubtedly do tend to make him less reckless in borrowing. The evidence placed before us in Guzerát

Diminished ceremonial expenditure in Guzerát.

leaves no doubt that the expenditure of the cultivating classes on marriages and funerals, especially the latter which are the heavier of the two in that province, have greatly decreased. In the Deccan the people are less well-to-do than in Guzerát, and their ceremonial expenses are not such as they can cut down to a great extent, but we have evidence on many sides that the contraction of their borrowing power is making the people more thrifty. We have no

Increase of thrift in the Deccan.

evidence of any tendency for land to fall out of cultivation; indeed, the poorest part of the population in the country, the Deccan *rayat*, seems, in spite of a cycle of bad seasons since 1897, to be better off than he was, more independent, less rooted to the soil. This

Improvement in the condition of the Deccan *rayat* due to causes other than the Deccan Act.

improvement in his condition is of course mainly due to causes outside the scope of our enquiry. The increase of industrial activity everywhere, the greater demand for labour in the docks of Bombay and Karáchi and elsewhere, combined with the depletion of the labour market by the ravages of plague, have given the cultivator the means of supporting himself through a famine year and of supplementing his agricultural profits during the non-cultivating season in a good year. I may quote an instance of this from my personal experience. In 1904, a year of total loss of crop in the east of Sátára District, of which I was then Collector, judging by the experience of former famines I should have expected 30,000 or 40,000 persons on relief. The event proved that the numbers on relief-works placed in the centre of the affected tract never reached even 2,000. Of the worst *táluka*, *Mán*, two-thirds of the whole population emigrated in a body to Bombay and other labour centres. This increase of demand for labour, combined with the readiness of the cultivating class to take advantage of it, have revolutionized the condition of a part of the population of this Presidency, whose means are proverbially precarious and regarding whom thirty years ago it was a trite saying that they lived on the border-line of starvation. We lay stress on this great improvement in the well-being of the population of the Deccan and the reasons for it, because it cannot fail to strike anyone who visits the Deccan now, especially in a year of crop failure, and compares the conditions with those of 30 years ago, and it is important that an improvement which is due mainly to other causes should not be credited wrongly to the working of the Deccan Relief Act. The Act did of course help the man who was relieved of debt or redeemed his land by its early operation and who was wise enough and industrious enough so to supplement his agricultural income as to become independent of the money-lender.

In the Konkan, comprising the Ratnágiri and Kolába Districts, the material prosperity of the people depends in quite a secondary degree on agriculture, and therefore the results of the working of the Deccan Act are not so obvious as in the Deccan. The Collector of Ratnágiri tells us that half the able-bodied population of the district go every

year to labour in Bombay City, from whence three lakhs of rupees are transmitted every month to the district by money-order. Another disturbing factor in the rural economics of this tract is the khoti tenure. The actual cultivator is generally the tenant of a khot, who finances his agriculture as does the zamindár that of the "hari" in Sind. There is thus little direct dealing between peasant and money-lender. It is interesting to note from the administration report of the District Deputy Collector, Ratnágiri, for 1911-1912, that Mahomedans, who have returned home after making money in South Africa, lend to their poor neighbours at very low interest, endearing themselves to the Kunbi agriculturists and compelling the old money-lenders to reduce their rate of interest.

In Khándesh there has been an increase of prosperity due to the extraordinary prices ruling for cotton in the last few years. Mr. Simcox, Collector of East Khándesh, gives striking instances of this. He notes that 5-8ths of a total land revenue of 30 lakhs is collected at the time of the first instalment and that land is sold under the new tenure for anything up to 500 times the assessment. He further quotes cases of small villages subscribing 7,000 rupees for land to extend their gáothan and 10,000 rupees for a pumping installation to bring in water by pipes. Where there is such wealth, it is difficult to gauge the economic effects of the working of the Deccan Act.

In Guzerát too the material prosperity of the people has greatly increased of recent years. Mr. Painter, Collector of Ahmedabad, says: "Taking the present year of scarcity and comparing it with the beginning of the famine of 1899, the people shew that they have more resources and a great deal more commonsense. The present year is very nearly, but not quite, as bad as 1899-1900 from the point of view of failure of crops and fodder. When the rains failed I thought we should soon be in the same state as in the corresponding time of the last famine, whereas, as it has turned out, we have not even had anyone on a test-work. I think the causes contributing to this are (1) the experience of 1899-1900 which came on the people as a surprise, (2) the fact that this bad year was preceded by a fair one and a very good one successively, (3) the high prices realized by cotton, (4) the high rate of wages and (5) the difference of Government policy in dealing with famine in spending money freely in tagái and getting in grass. I think it is reasonable to assume that the people have learnt to economize a bit all round."

The increase of material prosperity both in the Deccan and Guzerát have served to make the cultivating classes far less dependent on the money-lender than was formerly the case, and thus the strained relations now existing between the two classes, of which we have ample evidence throughout the Presidency, have not prejudicially affected the agriculturist to nearly the same extent as they would have done under former conditions. A class of agriculturist money-lenders has sprung up both in the Deccan and Guzerát and is steadily increasing in numbers. In the Southern Marátha Country this class was already in existence. The Lingayat is often agriculturist, trader and money-lender combined. In Kánara there is no money-lending class at all. Agriculturists do the lending as well as the borrowing. We give (Appendix C) a comparative table shewing the sales and mortgages of land to agriculturists and non-agriculturists respectively. This table is interesting as proving the transfer of money-lending business into the hands of agriculturists. Looking at the figures for 1910-1911 we see that there were 37,981 sales and 14,067 mortgages with possession by agriculturist to agriculturist against 15,603 sales and 7,582 mortgages with possession by agriculturist to non-agriculturist. The process cannot but be regarded with satisfaction in view of the fears which were expressed some years back of the total extinction of the peasant proprietor. It is the growth of this class of agriculturist money-lender

which has greatly influenced the Bombay Government in withdrawing a recommendation to the Government of India for the restriction of alienation of land by agriculturists in the Presidency.

A word may be said here of the merits of the agriculturist mortgagee and landlord as compared with the older class of professional money-lender. He may of course be as grasping and as usurious as the latter, and in cases of ostensible sale some witnesses have told us that he is less willing than they to stand by a contemporaneous oral agreement to return the land on repayment of a loan, but he is subject to a powerful check in the public opinion of the village community of which he is a member, he springs from a class of whose difficulties and troubles he has intimate knowledge, he is more on a level with the debtor as regards intelligence, and, in the last resort, if the small holder's land does pass to him, the transfer is of no political moment, the cultivation is likely to be more expert and the debtor is relieved sometimes from a hopeless position and set free to earn his living otherwise. It is probable that the check to the power of the *sáokár* caused by the introduction of the Deccan Act has combined with the somewhat sudden access of prosperity to the agricultural community to open to the latter a field which was previously closed to it.

Conditions in Sind are entirely different from those in the Presidency proper. Sind is dependent for its crops on its canal system fed by the Indus flood, not on the rainfall as in the Deccan; famine is unknown and the people are generally better off than in the Presidency proper, though they are thriftless and always in need of money till the harvest time. The borrowing classes consist of (1) zamindárs, (2) *haris* or tenants-at-will, financed by the zamindárs, to whom they pay rent in the shape of a share of the crop. The *haris* and some of the zamindárs are very ignorant and might easily be taken advantage of by the money-lender but for the protection of the Act. The *mofussil* money-lenders are not a good class.* They are Hindus and have nothing in common with their clients, mostly Mahomedans, whom they fleece to the best of their ability. The agriculturist *sáokár* is unknown. In Sind as elsewhere the Act has diminished the borrowing power of the cultivators and has led to the use of the ostensible sale-deed.

20. It remains for us to consider more in detail the position of the money-lending classes under the modern conditions which have resulted from the introduction of the Deccan Act. Hatred of the "usurious money-lender" and sympathy with the "poverty-stricken debtor" have been traditional in all countries and in all ages. The feeling originates in a natural and generous sympathy with the weak against the strong, but it may be carried too far. Justice is due to the creditor as well as to the debtor, but he has not always received it, and it is a well known fact, which comes out most clearly in the evidence given to us by Judges and Sub-Judges as well as by money-lenders all over the country, that the latter have lost heavily by the drastic treatment which they have received under the Deccan Act and that many of them have closed their business. We have taken some pains to ascertain what use these have made of their surplus capital and we learn that in the Deccan they are taking to shop-keeping, cloth-selling and in many cases to cultivation, mostly of course through servants or tenants, while in Guzerát, where there is more industrial development, they invest their money in banks and mills and in some cases lend at very reasonable interest to Co-operative Credit Societies. It is to be noted that the money-lender is by no means always as black as he is painted. In many parts of the country he has lived amicably in the past side by side with the agriculturist, whom he has pulled through many bad seasons. The amassing of large fortunes has been the exception and not the rule, and very frequently his means have been decidedly scanty. Those who cry out against him for high interest and for selling up an agriculturist debtor sometimes forget the risks he must always run and the number of his bad debts.

* See evidence of Mr. Crouch, Additional Judicial Commissioner of Sind.

Money-lenders may be divided into 3 classes—the big capitalist, the small village money-lender and petty dealer, and the middle-man who lends on borrowed capital. Many of the first two classes are honest in their dealings and considerate to their clients; their retirement from business will be a genuine loss to the cultivator, especially if they are replaced by a class who will resort to any trickery and dishonesty to make their business pay. There is little loss to anyone in the disappearance of the money-lender who lends on borrowed capital, and, if the Act had this result only, there would be little to be said against it. The fact that in Guzerát the Baniás are ready to lend money at a low rate of interest to Co-operative Credit Societies is interesting as shewing that the high rates sometimes charged are generally due to the risk incurred and that, where there is reasonable security, *sáokárs* will lend money on moderate terms.

21. In our criticisms on the working of the Act we are far from suggesting that it has not done good in the past. Should the Act remain in force? Indeed, we have specifically stated the contrary. It was designed to meet conditions which have in the course of a generation been considerably modified, and if it has in its working to some extent overshot the mark and has hit the money-lending class heavily it has also been the means of revising many outrageous contracts and of saving many poor and ignorant cultivators from the clutches of the usurer. The question now however is, not whether the Act has done good or harm in the past, not even whether on *à priori* grounds such a law is desirable at present; the question is whether, being already law, its retention is desirable, and, if we considered that in the present condition of the people the arguments for the Act were more than balanced by those against it, we should, before advising its repeal, have to consider carefully whether its demerits were such as to justify the disturbance of the contractual relations between money-lender and agriculturist and the general feeling of uncertainty which constant changes in the law necessarily involve. The Act has been in force for a generation in the four districts and for a few years only in the rest of the Presidency. In the latter the parties concerned have barely adapted themselves to the new conditions brought in by this Act; in the former all contracts of the past 30 years have been based on those conditions. In either part of the country a change is obviously undesirable unless proved necessary on grounds which cannot be controverted.

Is it however desirable, *even on à priori grounds*, to repeal the Act? There is unquestionably a large and influential body of opinion that it is doing no good but a great deal of harm, that it is demoralizing the people, that it is destroying their credit and forcing them, when they are compelled to borrow, to do so on far less favourable terms than they otherwise would, and finally that, so far from saving their land, it is forcing them to sell it outright. There is much in the present working of the Act to justify this view, but the bad results noticed on all sides are due much more to the manner in which it has been worked than to anything obnoxious in its provisions. Most of the main provisions are permissive and not obligatory. Yet the Courts generally read them as if they were obligatory, and extreme instances have been quoted to us, such as the fixing of small instalments for payment of a debt of an "agriculturist" with an income of Rs. 1,000 a year! Redemption is always granted under section 15A, though the Court may be conscious of great injustice in decreeing it. Where instalments are fixed, future interest is seldom, if ever, allowed, although hardship is thus caused to the creditor. There is nothing inherently inequitable in the main provisions of the Act referring to the work of the Courts, if they are used with discretion to protect agriculturist debtors who are not capable of meeting their creditors on equal terms. It is a fault in the Act that the definition of "agriculturist" is so wide that many who in no way require protection come within it; but it is the fault of the Judge if he utilizes powers,—originally conferred in order to enable him to redress obvious injustice, to revise nefarious contracts and generally to protect the weak against the strong,—in such a manner as to enable these spurious "agriculturists" to evade their just obligations. With the definition of "agriculturist," we shall deal below, but, taking the class for whose protection the Act was designed, there is

nothing inequitable in empowering Courts to substitute in their case fair for unfair contracts and reasonable for unreasonable rates of interest, and to fix instalments by which they may be enabled to pay in course of time debts which would otherwise overwhelm them. To enable the Courts to effect this however three conditions must be fulfilled :—

(1) the definition must be revised so as to restrict the operation of the Act to the genuine agriculturist class ;

(2) the investigation of past transactions on which the main working provisions of the Act hinge must be rendered possible by requiring money-lenders to keep proper accounts ;

(3) the Act must be administered with common sense and discretion.

If these three provisions be fulfilled, the Act is only a wider application for agriculturists of the principle already accepted in the ordinary law of revising nefarious contracts and reducing exorbitant interest. No one denies that interference with contract is of itself an evil and, if that evil must be faced to avoid the greater evil of one party to a contract being put at the mercy of the other, it is of the first importance that the contract substituted by the Courts for the original one should be just to both parties. Granted that this can be secured we think, with one exception to which we shall refer in the following paragraph, that the application of the Act to the Presidency is justified even on *à priori* grounds, while the fact that it is already part of the law greatly strengthens the case for its retention.

We therefore devote our criticisms and suggestions to cutting out what is useless or undesirable, and to such amendments and additions as will conduce to its smooth working and render the language so clear that those entrusted with its administration may not misconstrue it.

22. In view of the strong reasons given by Mr. Monteath, Collector of Kánara, and Mr. C. C. Boyd, Judge of Poona, who knows the Kánara District intimately, we recommend its exclusion from the operation of the Act, except that part which has been handed over to Dhárwár for purposes of civil litigation and which is practically part of Dhárwár. The people of Kánara are not recklessly improvident ; there are no professional money-lenders ; borrowers and lenders are of the same class and both are generally cultivators ; the district is poor and the people want all the credit they can get ; cultivators are generally shrewd and well able to take care of themselves and the rate of interest is low. Mr. Boyd notes further : " A large tract of country above gháts (and some below) is cultivated by the spice gardeners who are almost all the same caste, Hawik Bráhmíns. With some exceptions they are very fairly well off, are intelligent (though mostly uneducated), hard-working and very skilful. Nothing should be done to restrict their credit. They need it and have not enough." It would, we submit, be making a fetish of uniformity if we were to recommend the retention of the Act in a district where it is doing actual harm for no other reason than to maintain a uniform law throughout the Presidency. To justify the application of the Act anywhere it is necessary to show that the borrower and lender do not meet on equal terms. In Kánara clearly they do meet on equal terms, and therefore the borrowing class do not need special protection.

23. Some witnesses, among whom may be noticed Mr. Hayward, Judicial Commissioner of Sind, and Mr. F. J. Varley, Judge of Khándesh, have urged that special protection, if given at all, should not be confined to agriculturists but should be " extended to the relief of all persons not shown to be in a position to deal at arm's length with their money-lender in matters of account and alienation of land." There is much to be said for this view, and we specially commend the remarks of these officers to the attention of Government, but we think the suggestion not free from objection. Mr. Hayward proposes that the burden should lie on all creditors to prove that their debtors are not in a position to require special protection, and in default to require the special procedure for ensuring substantial justice to be followed

Exclusion of Kánara District from the operation of the Act.

Should the Act be extended to poor and illiterate non-agriculturists ?

by the Courts. We consider that this proposal is open to the very serious objection that the money-lender would not know up to the time of the hearing of a suit whether a given client was or was not entitled to special protection. We have shown that the money-lender now exacts terms from his agriculturist clients to discount the action of the Courts. No legislation can prevent his doing this. It is the inevitable result of a special law, but we think that any uncertainty as to who is, or who is not, to be protected is likely undesirably to curtail the credit of borrowers generally. It must be remembered that the special protection given to agriculturists originated in agrarian disturbances, and one of its principal objects was to meet the political danger involved in their expropriation from their land. No such question arises in the case of other debtors and we think that they must be left to the protection of the ordinary law which is generally wide enough for the purpose.

24. We will now take consecutively the main provisions of the Act, stating the alterations which we consider desirable. Questions of detail will be dealt with in the second part of our report.

It is most difficult to find a definition of the term "agriculturist" which shall include those who require the protection of the Act while excluding others. There is no doubt whatever that the present definition is far too wide. It is absurd, for instance, that a rich Marwari money-lender, a Thákor, a scholarship-holder and a Bráhmín Kulkarni, who wrote his own bond,* should all be able to appear in Court as "agriculturists." The difficulty is fairly exemplified in the diversity of views expressed in the evidence we have recorded. Some witnesses, while admitting that the present definition includes persons who do not require protection, think that it cannot be improved on; others would exclude those who cultivate through tenants; others would exclude all who do not themselves follow the plough; others favour enumeration by caste; others desire to exclude those who have an income from non-agricultural sources sufficient for their maintenance; others would have a fixed limit of income from all sources. In order to arrive at the best possible definition for the purposes of this Act it is necessary to keep carefully in mind what class of person it is the object of the law to protect. Shortly stated, it is those tillers of the soil who are unable to deal with the money-lender on equal terms. Now clearly there are many persons who come within the present definition, such as wealthy landlords, Inámdárs, mortgagee money-lenders, income-tax payers and literate persons generally, who are perfectly able to hold their own. Protective legislation is not required by these classes, nor do they benefit by it, since it must of necessity contract their credit and compel them to borrow on less favourable terms.

After weighing carefully the evidence before us we are of opinion that the operation of the Act should be restricted to those who personally cultivate the soil, or who would do so but for age, sex or bodily infirmity, and that there should be a further proviso that no one shall be deemed to be an agriculturist whose non-agricultural income exceeds Rs. 300, or whose income from all sources exceeds Rs. 600 per annum. The main definition will restrict the operation of the Act to the class for whose protection it was primarily intended and the proviso will exclude those whose means are such as to render it improbable that they are either so deeply indebted as to require the help of special provisions to extricate them, or so ignorant as to be unable to meet the money-lender on an equal footing. Incidentally, the proviso will prevent well-to-do persons of other professions from posing as agriculturists by making a pretence of engaging in cultivation, a possibility which has induced the Commissioner, Central Division, to prefer caste classification to definition by occupation. We would retain with a slight alteration of wording the present explanation (a), which prevents the exclusion of an agriculturist who temporarily ceases to earn his livelihood by agriculture or who is prevented from doing so by age or bodily infirmity.

We think that those who cultivate solely through servants, or solely through tenants, do not for the most part require protection and that the inclusion of such classes must infallibly bring under the Act persons whom it is desirable on every ground to exclude.

* For the last three instances see evidence of the District Judge, Belgaum.

Our objection to caste classification is that it can never be thoroughly satisfactory. For instance, there are Bráhmíns* and Parsees who cultivate land and there are Marathas and Lingayats with a large money-lending business. Maratha money-lenders especially show a decided tendency to increase in numbers, while among Lingayats will be found cultivators, labourers, traders and money-lenders.

We would exclude all who do not come within the definition at the time of the suit whether or not they were agriculturists as defined by law at the time of the transaction in suit. Further, in common with many witnesses who have appeared before us, we think it desirable to exclude the agriculturist assignee of an equity of redemption from a non-agriculturist mortgagor, and therefore we propose that it should be provided that in order to come within the definition of "agriculturist" a person must not only come under the definition now but he, or the person through whom he claims, must have also been an agriculturist at the time of the transaction to which the suit relates. No one should be in a more advantageous position than the person from whom he derived his right.

It is true that the proposed definition will exclude many persons who came within the then definition of agriculturist when they entered into certain transactions. This cannot be helped. To provide otherwise would perpetuate for an indefinite time a faulty definition. The question is whether a given person requires a special law for his protection at the time of a suit, not whether he *was* entitled to special protection at some past time. We can see nothing inequitable in withdrawing from certain persons protection which they do not require. Further an attempt to consider past status according to a former definition will produce undesirable anomalies. In reference to a transaction, for instance, which took place in Násik district prior to the introduction of the Act, looking to the *then* status, no one in the district was an "agriculturist" at all. If, on the other hand, looking to the then status, a man be regarded as an agriculturist who would have been an agriculturist if he had lived in the adjoining district of Poona, one of the spurious "agriculturists" whom it is the object of amendment to exclude, will get the benefit of a faulty definition which did not even apply to him when he entered into the transaction in question! The only means of avoiding such anomalies is to make the revised definition retrospective. The following draft definition embodies our views. It has been drawn up in consultation with Mr. Boyd, District Judge of Poona, to whom we desire to express our acknowledgments:—

† "Agriculturist" shall be taken to mean a person who ordinarily engages personally in agriculture in British territory within the limits of the Bombay Presidency, provided that his yearly income from sources other than agriculture does not exceed Rs. 300 and that his aggregate net income from all sources does not exceed Rs. 600.

Explanations.

(a) A person who is a female or minor member of the family of an agriculturist as above defined and who has, as such, a right either to be maintained by him or to participate in the family agricultural income shall be deemed to be an agriculturist for the purposes of this Act.

(b) A person does not cease to be an agriculturist within the meaning of the definition if he is prevented from cultivating land by age or physical infirmity, or if he temporarily ceases to do so owing to necessity or reasonable cause. Absence in the military service of His Majesty the King-Emperor shall be deemed to be reasonable cause within the meaning of this explanation.

(c) A person otherwise coming within the definition shall not be considered to be an agriculturist in reference to a certain transaction unless he or the person through whom he claims was also an agriculturist, as hereby defined, at the time when the transaction took place.

* e. g., the Hawiks in Kánara and the Anawlas in Broach.

† In part I of our report we are avoiding details generally, but since the definition of "Agriculturist" is not a detail but the most important point in the whole Act, we deal with it fully here.

(d) A party to a suit, who is not described as an agriculturist in the decree of the original Court which tries the suit, shall be barred, during any proceedings consequent on that decree, from claiming the status of an agriculturist. The words "proceedings consequent on that decree" shall include any appeals, miscellaneous applications and execution proceedings.

Note 1 on explanation (a):

Explanation (a) supplies an omission in the present definition. It is obvious that a female or minor member of an agriculturist's family should have the same status as he has.

Note 2 on explanation (b):

This explanation prevents a real agriculturist from ceasing to come within the definition because for any reasonable cause he does not actually follow the plough at the time of the suit. It is purposely drawn up in wide terms to enable the Court so to interpret it as not to exclude any genuine agriculturist. The narrowness of the proposed main definition prevents undesirable latitude.

Note 3 on proviso as regards income.

We have purposely omitted the condition that the income of the agriculturist must be derived wholly or principally from agriculture. This condition which stands in the present definition has never worked well. Most Courts go into an exact calculation and, if a man's income be found to be Rs. 201 from agriculture and Rs. 200 from other sources, they find that his income is derived *principally* from agriculture; if the figures are the converse, they find him to be a non-agriculturist. Now besides the trouble to the Courts involved in this calculation a *genuine* agriculturist under *any* reasonable definition may be excluded under the present one. Suppose a cultivator gets an income of Rs. 80 a year from agriculture, and suppose that in the non-cultivating season he supplements his means by working as a dock-labourer or mill-hand,* whereby he earns Rs. 100 a year, or more than his agricultural income, he should obviously not be penalized for this by exclusion from the status of agriculturist. The main definition with the income limit prevents the inclusion of bogus agriculturists.

Note 4 on explanation (d):

It has been ruled by the High Court that a party can claim the status of an agriculturist at any time. Even if not described as such in the decree, he may claim the status in execution proceedings (say a year or two later) and ask for instalments or for the benefit of section 22 of the Act. If the point is found against him in one darkhást, that does not prevent his raising it again in another darkhást (say a year later); for the law, as now interpreted, is that if he becomes an agriculturist at any time he can claim the benefits of his status at that time. This latitude gives much trouble to the Courts and does not benefit any *bond fide* cultivator. It merely enables a litigious person to cause delay and obstruction.

25. Chapter II, with the exception of section 7 which applies to the whole Presidency, is in force only in the four districts. In its present form it is open to many objections. It maintains provisions for these districts which, without any adequate reason, differ from those in force in the rest of the Presidency. In certain suits, for instance, there is a right of appeal in Násik but no appeal in Ahmednagar. Section 3, the most important section of the Chapter, includes in two of its sub-clauses suits in which agriculturists are not parties; we consider this anomalous in a law for the protection of agriculturists. Again the said section, though not applied to the Presidency outside the four districts, is referred to in subsequent sections which are of general application. Of section 7, regarding which a question is put us by Government, the first clause is

* A dock-labourer or mill-hand can earn 10 or 12 annas a day in Bombay;

unnecessary, since when a plaint of any kind comes before a Court, whatever the suit, the Court, as a practice under the ordinary law, summons "for issues" or "for final disposal," as may be required by the nature of the plaint. The second clause, which is the important one, can be amalgamated with section 12 by a slight alteration of wording. The two sections at present give confused directions on the subject of the examination of the defendant. It may be added, to show the difficulties of this Chapter and the complications which piecemeal legislation involves, that at present section 7 is applied outside the four districts without the remainder of Chapter II. Is it then governed by section 3 which classifies the suits to which the Chapter applies? Legally it cannot be governed by a section which is not applied, but in that case the section applies to *all* suits, including for instance those for injunction and for the restitution of conjugal rights, in which there is no reason why an agriculturist should be treated differently to any other litigant. Indeed the whole scheme of this Chapter is clumsy in the extreme. We recommend that it should be repealed and a simple section substituted enumerating the classes of suits to which the Act should apply. This will eliminate the differential treatment of the four districts and unify the law throughout the Presidency. We find ourselves in hearty accord with the following remarks of the Honourable Mr. Justice Heaton:—"The Court sections ought to be as simple and direct as possible. The object of the Act is the relief of the agricultural classes. Then let its provisions be confined in their operation to the agricultural classes. If that be done there is no need to have the jurisdictional complications and atrocities of section 3, clause (b), and section 4." In Part II, paragraph 44 below we deal with the different sections of the Chapter in detail.

26. Chapter III is the main working Chapter of the Act. It provides that an agriculturist shall be sued where he resides, Chapter III. it requires his presence in Court for examination,* it empowers the Court to set aside agreements between parties, to investigate the transactions between them from the beginning, to cut down unreasonable interest, and to order payment by instalments with or without future interest; it provides for redemption of the debtor's land and permits him to sue for an account; it exempts an agriculturist from arrest and imprisonment for debt, and exempts his immoveable property from attachment, unless specifically mortgaged; lastly, where he has passed a sale-deed of his land, it permits him to give evidence of a contemporaneous oral agreement to show that the transaction was really a mortgage.

The evidence given before us shows that, in the investigation of history, the Courts are often required to do what is absolutely impossible, since in many cases no accounts are produced on which they can place the smallest reliance. In considering the part of the Act dealing with accounts we shall make proposals which we hope will remedy a state of things under which the administration of justice is reduced to guess work, and we shall propose an amendment of the section relating to the taking of history, so that it may no longer be obligatory on the Court to do the impossible. The provisions enabling Courts to vary the rate of interest and to fix instalments for payment are necessary, but we are not satisfied that they are now worked always with justice to the creditor, and we propose to make some alteration in the wording as a guide to the Courts in this matter. If the instalments fixed are excessive and no future interest is allowed, the money-lender suffers immediately and the agriculturist suffers in the long run.

We consider that under the sections relating to the redemption of mortgaged lands by an agriculturist the mortgagee is liable to very unfair treatment. He may be deprived of possession immediately after a mortgage-deed has been passed in his favour, and may find the debt for which the land was security made payable to him in instalments with or without future interest. If the instalments remain unpaid, he is put to the trouble of applying to the

* How and when his presence is to be secured is a detail discussed in Part II, paragraph 45.

Court for each several payment. We propose to amend the Act so as to make it clear that a decree for redemption is to be passed only where it is fair to both parties, and to provide against the debtor intentionally making default in payment of instalment after instalment by empowering the Courts to insert a default clause in the decree, which under a recent ruling of the High Court they cannot do at present. The injudicious use of the sections relating to redemption in the long run does the agriculturist more harm than good, since it drives the money-lender to demand a sale-deed instead of a mortgage. The following instance may be quoted of the injustice which may be done under the present law. A mortgagee, having the usufruct of a certain piece of land for a term of years, makes a "pán" garden there. He incurs considerable expense and the land yields nothing for three years. It then begins to pay handsomely. The mortgagor, seeing this, goes to Court and sues for redemption and under section 15A the Court generally passes a decree in his favour. If the law be so amended as to make it discretionary and not obligatory on the Court to pass a decree for redemption, such cases of hardship will be obviated.

The sections which enable an agriculturist to sue for an account are
Suits for account. nowhere made use of and may be repealed without detriment.

Though the ordinary law now only permits arrest and imprisonment for
Arrest and imprisonment. debt where the debtor will not pay, though well able to do so, we favour the retention of the section exempting agriculturists therefrom. The objections may now be more sentimental than real, but the subject is one on which there has been a great deal of feeling among agricultural classes in the past and, if the agriculturist debtor has the means to pay his debts, we think that they can and should be recovered by methods other than imprisonment.

27. Section 10A,* which admits evidence of a contemporaneous oral
Section 10A. agreement to prove that an ostensible sale was really a mortgage, is the most debated section in the Act. Unquestionably it admits a good deal of false evidence and leads to a general insecurity of title, since a sale can be challenged up to 60 years†; at the same time there is no doubt that the difficulty of recovering unsecured loans and the uncertain tenure of lands mortgaged with possession owing to the redemption sections have driven the money-lender to require his client to pass a sale-deed of land as security for a loan. Indeed so common is the practice that, when the parties go to Court, the vendee often admits immediately that the transaction was not a real sale. We have ascertained that in the last three years there have been 2,799 cases in which the plea has been raised that an ostensible sale was really a mortgage, and that in 1,192, or 42 per cent. of these, mortgages have been held proved. The question is one of peculiar difficulty and may be argued on either side with almost equal force. The opinions we have taken are very much divided. On the one side it is said that the section is demoralizing the country, on the other that its repeal would render the Act useless. To limit the time in which a sale may be challenged will mitigate the evil of the insecurity of titles to land, but it will not stop the bringing forward of false evidence. To repeal the section would cause great hardship; indeed it was at the instance of the High Court that it was passed to prevent wholesale evasion of the Act. As a matter of fact, while the Courts often do find sales to be mortgages, they practically never do so on the oral evidence regarding the actual agreement, which Sub-Judges unanimously tell us is invariably false; it is always on such surrounding circumstances as the inadequacy of the price, the fact that possession did not pass, that the parties occupied previously the position of creditor and debtor, etc. The Honourable Mr. Justice Batchelor, a strong opponent of the section as it stands, remarks‡ that the exclusion of the false oral evidence of verbal agreements with which the Courts are now flooded will meet his objections to the section.

* Section 10A comes under Chapter III of the Act, while section 10 is included in Chapter II.

† One Sub-Judge has at this moment three suits on his file challenging sales which took place prior to 1860.

‡ In conversation with me, not in writing.

The following then is the position :—

(1) Ostensible sales, which are really mortgages, do take place and, when challenged, are often proved to be mortgages.

(2) The evidence given by the challenging party is of two kinds—

(a) direct oral evidence of a contemporaneous agreement at the time of a sale,

(b) evidence, oral and documentary, of surrounding circumstances to disprove the genuineness of the sale.

The former kind of evidence is always false and the Courts place no reliance on it. The latter is frequently true and is believed. The question then is—can the former be excluded while the latter is admitted? If so, a necessary provision is retained and the main objection to it disappears. In Part II, paragraph 45, of our report we put forward a possible amendment. We confine ourselves here to saying (1) that in our opinion a provision must remain in the law to admit proof that an ostensible sale was really a mortgage, and (2) that, if possible, the law should exclude a class of evidence which is always false, while admitting the evidence on which the Court can come to a decision. We propose further to restrict the time within which the validity of a sale may be challenged to 12 years.

28. We have already alluded to the important economic effects of section 22 (first clause), which exempts an agriculturist's immovable property from attachment and sale, unless specifically mortgaged. That there is much to be said both for and against this section is evidenced by the fact that opinions are greatly divided as to the desirability of its retention in the four districts to which it is applied and of its extension to the rest of the Presidency. There can be no doubt that it tends to put a stop to unsecured loans. The question on which witnesses differ is whether this curtailment of credit is desirable or the reverse. Some hold that the rayat ought to be able to get money easily, others that this power tends to reckless borrowing. It is argued that the rayat, who can get money when he likes without security, will run up a large account, perhaps in small sums, without counting the cost and only learns his real position when he loses his property; while, if he cannot obtain money without security, he will think twice before incurring debt. Seeing that the object of the Act is "to relieve the agriculturist from indebtedness," and that prevention is better than cure, we think that on the whole the section wisely restricts his borrowing power in the districts in which it is already in force and we would recommend its retention in those districts. In the rest of the Presidency there is a great deal to be said on the other side. In Gujarát, in the Southern Marátha Country and in Khándesh, the agricultural classes are far better off than in the four Deccan districts. In the former areas many officers think that the Act should not have been applied at all and they strongly oppose the extension of a section which will further restrict the agriculturists' borrowing power. Witnesses in Gujarát have told us that the application of this provision would put a stop altogether to the money-lender's business. Our conclusion then about this much debated section is to advise the adoption of the principle *Quieta non movere*. The section should stand where it is already in force, where the people are accustomed to it, and it makes them think before they borrow money. In other parts of the Presidency it should be applied only if, and when, the local officers show good reasons for its application. We admit that we should like to see the Act uniform throughout the Presidency, and that the course proposed regarding this section runs counter to this principle, but uniformity may be driven too far and, where good reason can be shown for differentiation, especially where differentiation already exists, we would not negative a proposal otherwise desirable simply for the sake of uniformity.

29. The provisions of the Act regarding insolvency have remained a dead letter in the four districts to which alone they were applied. Figures for five years ending December, 1911, were called for and the replies given show that not a single application

has been made in that period in any district. Since their enactment the Provincial Insolvency Act (III of 1907) has become law, and the evidence recorded by us, both in the four districts to which this Chapter applies and elsewhere, is unanimous to the effect that there is no necessity for the incorporation of clauses relating to insolvency in the Act. The ordinary law meets all requirements. The truth is that the debtor is generally most unwilling to be declared insolvent and that it does not pay the creditor to get him so declared. One Sub-Judge has brought to our notice that the creditor *might* evade the provisions of the Deccan Agriculturists' Relief Act by presenting an insolvency petition against an agriculturist debtor, and getting his property divided among the creditors after adjudication under section 16, but, since no creditor has yet done so, it is safe to assume that it is not to his interest. Should the Provincial Insolvency Act be put to such a use in the future, a small amendment to that Act will render this impossible. It is undesirable to clog an Act for the relief of agriculturists with useless provisions and we recommend that the Chapter be repealed.

30. There is a wide divergence in the views both of Government officers and of private persons on the utility of Village Munsiffs. The opinions expressed may perhaps best be summarized in the words "They do not do much good and they do not do much harm." Since their jurisdiction is confined to suits up to the value of Rs. 10, it may be said that it does not much matter whether they are retained or not. Since however they deal with all classes of suits, and not only those in which agriculturists are parties, and since the witnesses who most favour their retention do so on the ground that they are useful to take such petty suits off the shoulders of Sub-Judges in industrial centres, it does not seem logical to include provisions for their appointment and jurisdiction in the Deccan Agriculturists' Relief Act. Indeed the *raison d'être* of Village Munsiffs is rather for the relief of Sub-Judges than for the relief of agriculturists. Further, they enable creditors to recover small debts which would otherwise remain unpaid, since they are not worth the trouble and expense of a law-suit. If therefore it is decided that they should be retained, we think that the provisions relating to them should form part of the ordinary law. We strongly support the principle that a special Act should embody only provisions in furtherance of its special purpose. On the whole we favour their retention, but we do not think that the experience gained of the work done by Conciliators gives that confidence in an unpaid agency which would justify the enhancement of the powers of Village Munsiffs which some witnesses before us have recommended.

31. The object of the Conciliation provisions of the Act was that the agriculturist should have a friend living in his neighbourhood who would be ready to mediate between him and his creditor, to get him as favourable terms from the latter as he would get if he went to Court, while saving him the time, trouble, and expense involved in legal proceedings, and to effect a settlement mutually satisfactory to both parties who would thus part as friends. At the same time it was believed that Conciliators would relieve the Courts of a good deal of work. Such a scheme is excellent in theory, but in practice it has failed completely. The Judges throughout the Presidency are unanimous in saying that it is impossible to find men combining the necessary qualifications who are willing to undertake the task. To be a successful Conciliator a man must be fair-minded and disinterested, he must have some slight knowledge of law, he must be possessed of sympathy with the agriculturist, and he must have the moral influence in the neighbourhood which will induce parties to accept his decisions. Retired Government officers of the standing of Sub-Judge or Deputy Collector, Native officers retired from the Army, or independent gentlemen known to, and respected by, the agriculturists of the neighbourhood should make good conciliators. Experience shows however that suitable men are not willing to undertake duties which will take up a good deal of their time and involve considerable trouble, and that the post is sought only by men of lower calibre whose motive is self-aggrandisement or self-interest. Thus we find that a good many money-lenders are themselves Conciliators—an obviously

unsuitable arrangement. Many witnesses tell us that the selection is faulty, but, where all are unanimous in saying either that it is impossible to get men of the right stamp at all, or that it is impossible to get them in sufficient numbers, the blame cannot fairly be laid on selection. Some witnesses would restrict the number of Conciliators by appointing only those who are unquestionably fit, but it must be remembered that the whole idea of conciliation is that parties should have a friend near at hand, whom they know personally, to settle their disputes for them, and the main advantages are lost if the parties have to go a long distance to appear before a Conciliator with whom they are not acquainted. The system, besides being condemned by the Judges, is disliked generally both by agriculturist and money-lender, and, were it tomorrow made optional, it would forthwith cease to exist.

We will endeavour to trace some of the reasons why conciliation is unpopular and ineffective. One main reason is the small percentage of cases in which an agreement is effected. The statement given in Appendix D shows in detail the number of applications and the number of agreements filed in five years in all the Conciliation Courts of the Presidency. The total figures are 544,267 applications and 64,435 agreements. In other words conciliation has been effected in 11 per cent. of the cases. In the remaining 89 per cent. the parties have been put to useless expense, inconvenience and waste of time in having to go before a Conciliator. Indeed going before a Conciliator has generally come to be regarded as simply a means of obtaining a certificate to enable the plaintiff to take proceedings in a Civil Court. Then, too, there is no doubt that many Conciliators take bribes and illegal fees. Against some, criminal cases have been brought; others have been forced to resign their posts. Conciliators generally favour the money-lender; many of them are totally ignorant and in practice delegate their powers to their karkuns, who are men on pay which is not a living wage for an educated man, who are on no permanent establishment and who seek to supplement their means by illegal gratifications. One strong point against conciliation must not be forgotten. There are genuine disputes which go before a Conciliator which may or may not be settled; there are also a large number of applications in which the applicant knows that a plaint in a Court of law would not stand for a moment. In these cases, if conciliation fail, he goes no further. If it is successful, he gets from the defendant what he is not entitled to, and would not get in a Court of law. Mr. Boyd, Judge of Poona, gives the following estimate of the percentage of such cases: "Taking 100 cases before a Conciliator there may be 10 kabulayats, and certificates may be issued in 40 cases. In the remaining 50 nothing further happens, which shows that in these cases either the plaintiff has so poor a case that he does not think it worth while to go on, or that his bringing the application before the Conciliator has enabled him to put the screw on and get something out of the debtor. Most of these cases would not be taken into Court at all."

One argument used in favour of the system is that it saves the time of the Courts. We cannot agree with this view. We hold that the saving of time which would be taken up in trying the small percentage of suits in which agreements are effected is discounted by the time lost in superintending and scrutinizing the work of Conciliators.

The system is not in force in Sind, and its application is generally deprecated by the officers serving in the Province.

We concur then in the view of the Honourable Mr. Justice Heaton and of the Judges of all districts in which the system is in force that conciliation has been a total failure and we concur in the emphatic opinion of Mr. Justice Heaton and the large majority of the Judges that it should be abolished and parties should go direct to Court. We cannot quite understand the point of view of the small minority of the Judges who, while agreeing that the system has worked badly, wish to retain it. They admit that the number of Conciliators will have to be reduced and they suggest Boards of Conciliators at head-quarter stations, but they seem to overlook the fact that the whole idea of conciliation was that the agriculturist should have a *friendly mediator at hand* to settle his disputes for

him. If he is to travel a long distance and appear before an unknown person, that person should be the Sub-Judge, and the law uselessly hampers both parties by requiring them first to go through the farce of an attempt at conciliation.

Some witnesses, including the Honourable Mr. Justice Heaton, have suggested that, if conciliation is abolished, parties might be encouraged to settle their differences out of Court by being given a partial remission of Court-fee if they come to terms prior to the first hearing. The suggestion seems worthy of the consideration of Government if the object seems to justify the loss of revenue. It is to be noticed that, where the conciliation system is not now in force, parties have to go to Court direct and receive no concession of this kind. The Judges whom we have consulted are not unanimous in supporting the suggestion and it would require careful consideration before it is carried into effect. Seeing that the abolition of the conciliation system is not yet decided on, it would be premature for us to make any definite recommendation either way about this suggestion and we confine ourselves to noticing that it has been made.*

32. We have been asked to consider the appointment of Conciliators' kárkúns. In view of the very decided opinion we have expressed in favour of the abolition of the system and the unanimity of the Judges in condemning its working, it scarcely seems necessary to say much on the subject. It has been found impossible even in Government service to get men to serve honestly on a stipend of Rs. 12 per annum: how much more so where they are not Government servants, have no prospects and work under very little, if any, control? If they are brought on the cadre of the clerical establishment in the Judicial Department, as some witnesses suggest, their numbers will tend greatly to block promotion in the lowest grades. We think it sufficient to remark that the question is a difficult problem which it is a waste of time to discuss, in the event of Government deciding to abolish conciliation. We shall be glad to give our views, should Government at any time in the future desire them.

33. This chapter deals with the inspection, supervision and control by the District Judge of the proceedings under Chapters II, IV and VI of the Act, of Subordinate Judges, Village Munsiffs and Conciliators. If our proposals be accepted, the three chapters mentioned will disappear from the Act, and with them the necessity for supervising their working. The abolition of Chapter II will restore the right of appeal in the four districts in all suits in reference to which it exists under the ordinary law.

34. Chapter VIII of the Act has practically ceased to become operative in the four districts to which alone it had been applied, because all appointments of village registrars have now been abolished. We need not go over again in detail the ground traversed in the correspondence underlying Government Resolution No. 9969, dated 3rd November 1910, or waste the time of Government by a lengthy discussion of the arguments in favour of the abolition of village registration. Suffice it to say that the *personnel* was found to be so hopelessly corrupt that registration before a village registrar was no protection whatever to the agriculturist and that the principal cause which led to the introduction of the system 30 years ago, namely, the difficulty of getting the agriculturist to travel any distance from his village, had, under the altered modern conditions to which we have already alluded, ceased to operate. Lastly, the extension of the Transfer of Property Act to the Bombay Presidency in 1893 and its amendment in 1904 made the registration of sale-deeds and mortgage-deeds of immovable property valued at less than Rs. 100 compulsory. Yearly and longer leases of immovable property are compulsorily registrable under section 107, Transfer of Property Act. Thus, the only documents relating to property which are not compulsorily registrable under the ordinary law are leases for less than one year and money-bonds. We think that the abolition of village registration was imperatively called for by the low *morale* of the village

* There is already remission of half the institution fee, in a few Courts only, in cases in which one of the parties is an agriculturist, where the Court passes a consent decree at the first hearing (G. N. No. 4650 of 10th September 1889, as subsequently amended).

registrars and by the change in the habits of the people, that nothing but good has come of the action of Government in carrying out this measure and that the time has come when the chapter should be repealed. The system is dead and we can conceive of no circumstances which could justify its resuscitation. Should it turn out in the future that any further registration is desirable, provision should be made for it in the ordinary law and under no circumstances should low-paid agency again be utilized for work which is important, which is carried out under little or no supervision, and which gives many opportunities for peculation.

35. Now that Chapter VIII has become inoperative, the retention of Chapter VIIIA, containing section 63A, is anomalous.

Chapter VIIIA.

It is proved that the writing of a document by, or under the superintendence of, a village registrar constitutes no safeguard to the agriculturist, and since the object of this chapter was to bring the procedure regarding instruments executed by agriculturists before sub-registrars in the four districts into line with that regarding those executed before village registrars, its principal *raison d'être* has vanished. It is now obviously desirable to maintain a uniform procedure regarding registration by sub-registrars in the whole Presidency. The Inspector-General remarks regarding the special procedure before sub-registrars in the four districts that it "is lengthy and laborious and greatly increases the work of sub-registrars in the four Deccan districts only. There is no need to maintain a special procedure in the four Deccan districts for the registration of documents executed by agriculturists when it is not applied and not found necessary in other districts This procedure entails considerable extra expense on Government in the four districts in the busy season. I would put that expense at about 4,000 rupees per annum. I think that cultivators would be equally well off if they brought their documents already written to the sub-registrar as in other districts. In a way they would be better off since there would be less delay in the registration of documents." We concur in the above remarks and advocate the repeal of the section.

36. We think that the Registration Act should contain a provision that every document executed by an illiterate person should, before being registered, be read and explained to him by the sub-registrar, who should satisfy himself that the said person understands the meaning of the document.

*Proposed amendments to
Registration Act.*

1. Document registered by illiterate person should be read over and explained to him by the sub-registrar.

We would like also to refer briefly to a further point connected with registration which, though not strictly within the scope of our enquiry, since it is a matter connected with the general law, is not devoid of importance. It is drawn

2. Documents should have priority from date of presentation for registration, not from date of execution.

attention to by the Honourable Mr. Curtis, Commissioner, Central Division, who says in his evidence: "As registration law stands at present a period of four months is given after execution within which a document must be registered, and priority goes by execution. The result is that the *rayat*, having executed a deed with one *sáokár*, can go off to another and collusively ante-date a deed. When both deeds come before the Court there is great danger of the bogus transaction having preference over the real one Priority should be from date of registration and not execution, as in the case of every registration system in the world." We agree with this suggestion with the slight difference that we would prefer date of presentation for registration to date of registration. We think that such an alteration of law would prevent many frauds which are now easy of accomplishment.

37. Referring to the Statement of Objects and Reasons for the Deccan

Chapter IX.—Receipts and
Statements of Accounts.

Agriculturists' Relief Act, we see that the first means by which the objects of the Act were to be attained was the provision of some safeguards against money-lenders committing frauds in their accounts and obtaining from ignorant peasants bonds for larger amounts than are actually paid to or due from them.

The chief frauds were thus enumerated in the report of the Riots Commission which led to the passing of the Act :—

“By creditors—(1) forging bonds; (2) withholding the consideration mentioned in bonds; (3) obtaining new bonds in satisfaction of old bonds and of decrees and nevertheless enforcing the latter; (4) not giving credit for payments; (5) refusing to explain or wrongly representing their accounts to debtors. By debtors—(6) tendering in evidence false receipts and false evidence of alleged payments; (7) pleading that bonds are false when they are really genuine.” Sir Theodore Hope, in his opening speech, said: “Chapter VIII of this Bill is intended to meet the first three and the last mentioned kinds of frauds. It provides that every instrument to which an agriculturist is a party shall be written by or under the superintendence of a Village Registrar, executed in his presence and attested by him; instruments not so executed will be invalid. By these means every rayat should at least know what he signs and both parties should receive due protection. Chapter IX, directed against the remaining three kinds of frauds, provides under a penalty for the grant to rayats on demand of written receipts, annual statements of their account and pass-books, and for the latter being written up from time to time and attested by the money-lender.” We quote the extract from the speech of the Honourable Mover to show the stress laid on these provisions. They were the foundation on which the whole Act was based, but they have failed utterly, and it is this failure which is to a great extent responsible for the present unhappy relations between money-lender and client above referred to. Village Registrars have ceased to exist. Chapter IX has remained a dead letter, in spite of the stress laid on it by Government and in spite of the fact that for years every Sub-Judge in the four districts was required to report annually what use had been made in his jurisdiction of these sections. We have already seen that the taking of history of transactions by the Sub-Judge is frequently little more than a farce. It cannot be otherwise until money-lenders are bound by law to keep proper accounts. We consider that the legislature has rightly provided that, in the case of debtors who cannot deal with the money-lender on equal terms, the Court should enquire into the history of the transactions between them, but it is quite useless to do this without ensuring that there shall be reliable evidence of those transactions and we would urge on Government that it is absolutely necessary, if the relations of money-lender and agriculturist are to be put on a better footing, that the money-lender should be compelled to keep an account of his transactions with each client and that the client should have a copy of that account. If this is done, not only is there far less likelihood of disputes arising, but if they do arise and the parties take them before a Court of law, the Court has some means of doing justice. To provide an elaborate scheme of account-taking by the Court without requiring that written accounts shall be kept is to build a house on sand. The Act itself and the order in which its various measures are placed in the speech of the Honourable Mover, namely, (1) provisions regarding accounts and bonds, (2) conciliation, and (3) investigation of history by the Court, show that it was not intended to provide the third measure without the first, which could alone render it efficacious. It is the failure of the account provisions of the Act which has put the Courts now in the position of having to attempt the impossible, and to find out what the real transactions were with no means of doing so. As matters stand at present not only is a premium put upon dishonesty, not only are the relations between money-lender and client steadily deteriorating, not only are honest men being driven out of a business which, when honestly conducted, cannot pay under present conditions, but the administration of justice is being brought into contempt.

Reason for failure of the provisions of Chapter IX.

It is necessary then to see why the account provisions of the Act have failed and how they can be rendered effective.

They are—

(1) that a written receipt shall be given to an agriculturist for any payment of money in liquidation of a debt whether he demand the same or not (section 64);

(2) that he shall on demand receive from his creditor an up-to-date statement of account (section 65);

(3) that he shall be entitled to receive a pass-book and to require from time to time that his account shall be written up and signed by the creditor (section 66).

Of these provisions the second and third become operative only on the demand of the agriculturist, while the first, though obligatory in all cases in the four districts to which alone the Chapter has been applied, is generally ignored by money-lenders, because the party for whose protection it exists seldom or never brings a complaint. The provisions are excellent in themselves; all that is wanted is the motive power to make them operative and it is this motive power which we propose to supply. It is useless to expect the agriculturist to complain against a man on whose good-will he is dependent. It must be made the interest of the *money-lender* to keep proper accounts and this can be done in a simple manner by refusing him the aid of Courts of law if he fails to do so. This is also logical. He should certainly have access to the Courts to recover his dues but, where his arrangements are such that the

Proposed legislation. Court has no means of ascertaining what those dues are, it is quite proper to deny him its aid. The law should then in our opinion provide as follows:—

“Every money-lender shall keep a separate account in duplicate of his dealings with each agriculturist client. All transactions between them shall be entered in both copies and shall be attested by the signature of both parties. One of these copies shall remain with the money-lender and one with the agriculturist concerned. No plaint brought by a money-lender shall be entertained by a Court without an extract from the account being attached to it and the account itself shall be produced at the time of hearing.”

Effects of the system. We submit that the effects of such a system will be—

- (1) to reduce the work of the Courts in taking history to certainty instead of guess-work;
- (2) to secure the position of honest parties on both sides and thus encourage honesty of dealing;
- (3) to remove one of the chief grievances of the debtor class, that they do not know, and cannot find out, what the lender has written in his accounts;
- (4) greatly to reduce the amount of false evidence produced in Court;
- (5) to educate people to look after themselves;
- (6) in the end to reduce considerably the number of suits.*

Note 1.—In claiming that the system will reduce the taking of history to certainty instead of guess-work, we cannot of course guarantee that there will not be misstatements entered with the assent of both parties. No law can be devised to prevent this. The entries will however show what the parties at the time of the transaction agreed to enter.

Note 2.—The advantages claimed cannot of course all come into immediate operation. This law, if introduced, can only affect future transactions; in reference to past accounts the Courts will still have to face the difficulties which confront them at present.

It will be seen at once that the proposed system is practically what the law as it stands in the four districts now enjoins, with the difference that it will be compulsory in all cases and not dependent on the will of the agriculturist borrower. The only proposed addition is the signature of both parties below

* I have not stated in the body of the report the grounds on which a considerable reduction in the number of suits is anticipated. It seems clear that when both parties have evidence of their transactions in their own hands there will be little possibility of disputes to be dealt with by a Court (as strikingly exemplified already in the case of the large business of Ráo Bahádúr Wárad to which reference is made below) and with regard to those that are taken to Court the work of the Court will be greatly simplified. The time of the Courts will thus be saved both as regards the number of the suits and their complexity. I lay great stress on the reduction of litigation which the scheme will bring about.

the several entries. This addition we consider an important one. If each party to a transaction or series of transactions is to have in his possession proof of what actually took place—and this is the essence of proper account keeping—his copy of the account should bear the signature of the other party showing the correctness of the entries.

In view of the extreme importance of the question of accounts, in view of the fact that the law as it stands is admittedly a failure and that the successful working of the Act, especially the important provisions regarding the taking of history, is absolutely dependent on a proper system being introduced and made effective, we have consulted three High Court Judges, the Commissioners, all Collectors and Judges and a certain number of private gentlemen on the scheme above outlined. We append (Appendix G) copies of the circular letter on the subject and of my further letter to the District Judge of Poona, with a *précis*, of the replies received up-to-date.* Analysing the replies received, we find that 42 including all three High Court Judges, are favourable, 18 are unfavourable or partially so, while 3 give no decided opinion. Of the adverse opinions, 8 are from officers serving in Sind and 2 from officers serving in Kánara, in both of which areas there are special reasons against the system which do not apply elsewhere. Excluding these, together with 2 favourable replies from Sind, we find for the rest of the Presidency 40 replies favourable and 10 adverse, while 3 are indeterminate. Of the 10 classed as adverse, it may be noted that some are by no means unqualifiedly so. One of them, the Honourable Mr. Barrow, notes that the scheme is already in force in parts of Guzerát and observes that the people will themselves adopt it if they find it efficacious; he objects only to its compulsory introduction. Another, Mr. Palmer, objects only on the same point, while approving the scheme and advising that it should be recommended to *sáokárs* as likely to prevent friction between them and their clients. A third, the Honourable Mr. Karandikar, regards a proper system of accounts as a reform to come in the future after education has spread. We feel sure that on a perusal of the replies Government will agree with us that the weight of opinion is on the side of the proposed amendment of the law. Those who are against it have no alternative to suggest, nor do the majority of them allege that, if it is introduced, the agriculturist will be any worse off than he is now; they merely contend either that it will do no good, or that, though it is desirable, it should not be made compulsory. Apart from this correspondence we have discussed the scheme with a large number of witnesses who have appeared before us. I have also visited several villages in different districts and have talked over the matter with villagers and money-lenders. We find generally a remarkable unanimity of opinion in favour of the proposals. Money-lenders see at once that it will greatly simplify their position in Court and guarantee the recovery of just debts, while villagers welcome a scheme under which each will have in his own hands a statement of his transactions. We have met with no objections even from illiterate money-lenders, who admit that they will have no difficulty in getting such accounts written for them.

It should be noted that the system (without the signatures beneath the entries) was maintained at Sholápur by the late Ráo Bahádúr Warud with all his agriculturist clients† with the result that, during the 25 years it was maintained, there was never a dispute between him and a debtor. He had a business of 2 or 3 lákhs of rupees and his trustees stated before us that there was no difficulty in getting clients to keep their copies. The system is working too in parts of Guzerát, including the districts of Surat, Broach and Kaira; also in the Aundh State, regarding which the Kárbhári (letter No. 45) writes: "I was surprised yesterday to find it practically in the form suggested by Mr. Arthur already in existence in Aundh among a few of the *sáokárs*, who say that it has worked between them and their debtors most satisfactorily and has

* The letters in original are also forwarded with other evidence.

† *Vide* the evidence of Ráo Bahádúr Warud's trustees attached to my Circular Letter No. 54, dated 29th June 1912.

obviated the necessity of going to the Civil Court." The Collector of Kaira (letter No. 26) notes that the system is useful both to *sáokárs* and agriculturists.

We were disposed, in first considering the scheme, to recommend that accounts kept in this manner, with entries signed by both parties, should carry more than their ordinary evidentiary value as documents. We were chiefly actuated in this proposal by the desire to exclude from the Courts a great deal of false evidence, but on further consideration of the matter, especially in the light of the weighty opinions given in the letters on the subject, we would drop this proposal. It is, we admit, out of keeping with the general tenor of the Act; and it would certainly be anomalous, after educating the agriculturist for years to regard his written bond as of no account, to suddenly turn round on him and exclude all other evidence. In practice the accounts will in the long run tend to the exclusion of false evidence, for when they are properly kept up in duplicate and signed by both the parties they will seldom be successfully impugned.

Three main objections to proposed system.

We will now consider the main objections which can be raised. Two of them have been stated in my circular letter inviting opinions, namely—

(1) that the agriculturist who wants money will attach his signature to entries in accounts of double the amount he receives as readily as he now makes a similar admission before a Sub-Registrar;

(2) that he will lose repayments in money or kind which remain unentered, either through his own laziness or the *sáokár's* dishonesty.

As regards the first objection we have nothing to urge except that the person in question would suffer in any case and it is unlikely that he will lose more than he loses at present. The only difference will be that the fact that he is acting against his own interest will be forced on his attention at the time that he puts his signature, and when he comes to Court even *his* intelligence will grasp the fact that he has suffered through his own folly. No agriculturist of good credit takes money on such terms as the above, which mean that the money-lender ensures himself against the risk involved in lending. This view is corroborated by the evidence we have had that a given *sáokár* will in the case of one client take a deed for the amount actually lent, in the case of others $1\frac{1}{2}$ times, $1\frac{2}{3}$ times, double or even more than double that amount, the principal entered being obviously carefully graduated according to the risk.

As regards the second objection, also, we would point out that the man who neglects to get his payments credited in his account has no evidence of those payments as matters stand now. Proclamations will be posted in every village *chávdí*, stating the object of the law which requires duplicate accounts to be kept, and warning villagers that they must see that proper entries are made. District officers will also warn them both in the course of village inspection and through their village officers at the time of *jamábandí*. If they do not attend to these warnings and if they are so careless as to make payments without credit entries they must learn by bitter experience. The main point is that the law will be on lines encouraging honesty and will have great educative value. If a man loses through accounts in his own keeping being incorrectly written, he will be compelled, when he goes to Court, to recognize that it is his own fault. At present in Court it is a question simply of who can produce the greatest amount of false evidence and if an agriculturist loses a suit, the lesson to him is to produce more next time.

A third objection raised is that, where the *rayat* is illiterate, the money-lender will be able to enter what he pleases in the latter's duplicate account. We cannot agree to this. We think it may be taken as certain that false entries will be made only with the knowledge of both parties. However ignorant the client may be, the money-lender will not dare to make a false entry in an account book which the client takes away with him and which he can get read over to him by the first literate person he meets. Money-lenders, even where sufficiently unscrupulous, are too clever to play so dangerous a game.

To pass now to subsidiary proposals on which opinions were invited. Some of these were put forward with a view to getting alternative suggestions and not as implying that we favoured them. We do not desire either the licensing of money-lenders or the inspection of their accounts by District Officers. The former system would drive out of the business a large number of those whom it is desirable to encourage, namely agriculturists; the latter would throw an unnecessary extra burden on an already overworked body of men and would be an unjustifiable interference in people's private affairs with little or no corresponding gain. Nearly all the officers consulted are against both proposals. For the issuing of account books, paged and sealed, from Government offices, there is more to be said. This would render impossible the common device of inserting or removing leaves in account books, but it is not a necessary part of the scheme, it would throw heavy work on the Government offices from which the books would be issued and it might tend to check the business of agriculturist *sáokárs*, who would dislike the trouble of these formalities where their dealings were inconsiderable. Further, the gist of the whole scheme is to teach the *rayat* to look after himself and we wish it to remain as simple as possible. If the accounts are properly kept and entries are signed by both parties the additional safeguard is not needed.

The Honourable Mr. Curtis, Commissioner, Central Division, suggests* the addition to the accounts of a receipt to be given by the money-lender for every payment by an agriculturist client in cash or kind, the former keeping a counterfoil. He urges that the agriculturist may have left his account-book behind when he makes a payment, and that the money-lender should be left no excuse for not giving an immediate receipt. Although this proposal makes a slight addition to the clerical labour of the *sáokár*, that labour is insignificant and the proposal has the additional merit that the system is in force already and is working well in the case of land revenue. If the main scheme is introduced this proposal should be carefully considered. If it is accepted, it will be desirable to make it clear that a receipt is not a substitute for proper entries in accounts.

We have considered carefully whether illiterate money-lenders should be included in the scheme or not. On this point attention is invited to the remarks of the Honourable Sir Narayan Chandavarkar (No. 2), Mr. E. Maconochie (No. 4), Khán Bahádur Jacob Israel (No. 45) and Mr. Shepherd (No. 50); also to my letter No. 82 of 5th August 1912 to the District Judge, Poona, and the latter's reply. In these the question is dealt with in detail. We are of opinion that illiterate money-lenders should not be excluded for the following reasons (to quote my letter above referred to):—

- (1) The proportion of illiterate to literate money-lenders is small and will steadily decrease with the spread of education.
- (2) Of that proportion there are some whose transactions are on such a scale that they keep a *kárkún* to write their accounts.
- (3) The remainder have to get their bonds written and can presumably get their accounts written too. If the transactions are small, the labour of writing ledger and pass-book is small too. Writing is cheap in India and the *sáokár* can get his accounts written for a small consideration.
- (4) In the whole country there are few villages which do not contain a single literate person, and such villages are unlikely to contain many *sáokárs* who would go to Court to obtain payment of their debts, since money dealings in such villages are generally friendly.
- (5) It is not worth while for the sake of this very small minority
 - (a) to lose uniformity of system;

* Not in writing but in conversation with me.

(b) to open the door to *benámi* transactions and false pleas of illiteracy ;

(c) to encourage illiteracy among a class for the proper conduct of whose business writing is essential.

It is to be remembered that there is nothing to prevent anyone who wishes to do so from lending money without keeping accounts. The question is whether he should have the assistance of Courts of Law to recover it.

It may be desirable, as suggested by the District Judge of Poona in paragraph 8 of his letter No. 7A of 7th August, to exempt small cash loans of Rs. 10 or less without security; also petty purchases of grain and groceries on credit. These are details which may be left for consideration after the approval of Government is accorded to the main scheme. Repayments in kind from debtor to creditor must of course be entered with their price, since they are most common and the accounts will be very imperfect if they are excluded.

The question whether the illiterate agriculturist's attestation of entries should be by his signature (entered on his behalf together with the signature of the writer) or thumb-impression is also a question of detail, though rather important detail. Since it is likely that in many cases a thumb-mark would be taken so badly as to be useless for evidentiary purposes and since it is very important that the system of thumb-impressions should not be discredited, it is perhaps better to trust to signatures and to run the risk of a certain amount of forgery. After all, forged entries are unlikely if the debtor's copy is properly kept up, while, if it is not properly kept up, a doubt will immediately be thrown on the creditor's accounts which is likely to prejudice his case in Court.

Before closing our remarks on the important question of the proposed duplicate account system, we must refer to the interesting letters we have received on the subject, many of which well repay careful perusal. We would specially draw attention to those of the Honourable Mr. Justice Batchelor, the Honourable Sir Narayan Chandavarkar, Mr. Crump, Mr. Leggatt, Mr. Mountford, Mr. C. C. Boyd (two letters), Mr. E. Maconochie and Khán Bahádur Jacob Israel (letters Nos. 1, 2, 4, 5, 7, 7A, 9, 10 and 45). Space does not admit of our quoting our correspondents at length and we will only here note a few prominent considerations raised by them.

The Honourable Sir Narayan Chandavarkar (letter No. 2) thinks that the present is the psychological moment for a step forward in the shape of the proposed system of duplicate accounts, that the Legislature should take the responsibility and impose an obligation, and that there is no necessity to discriminate between the literate and illiterate money-lender, since the keeping of accounts will not press hardly on the latter. This testimony from such an authority is strong.

Mr. Leggatt and Mr. Mountford both lay stress on the educative value of the proposed system. Mr. Leggatt (letter No. 5) notes that while in some cases payments by agriculturists will not be entered when the law first comes into force, the latter will soon learn to insist on accurate entries being made when they begin to understand their probative value; further, that the ease with which a money-lender will prove his case if both copies of the accounts tally will induce all honest *sáokárs* to insist on the production of the duplicate account by his client in the case of every dealing. Powerful incentives will thus, as Mr. Leggatt shows, be at work to induce both money-lender and client to see that the accounts are properly kept.

Mr. Mountford (letter No. 10) expresses in other words the educative value of the proposed accounts. He remarks: "When the Court asks the debtor under the new system to produce his account-book, he will lose if he has not had a

repayment written up. He will tell his friends in the *chávdi* why he failed and he will not be caught again in this way, nor will other villagers when they hear of the importance attached to their account-books." We agree with Mr. Leggatt and Mr. Mountford. The rayats conceal a good deal of shrewdness under a stolid exterior. They well know that under the Deccan Act, as it stands, they can deny anything, and they take full advantage of the fact. In the words of Mr. Baker, Collector of Násik (letter No. 36), "there are not really so many fools as there appear to be under the present haphazard system, which makes it pay to pretend to be a fool when one is really only a knave."

The second advantage in the proposed system on which Mr. Leggatt lays stress is the encouragement of honesty on both sides.

Encouragement of honesty. Much is heard of the "protection of the rayat against himself," but the protection of the very foolish or thoroughly dishonest rayat against himself is dearly purchased when the action of the Courts is such as to drive honest and substantial *sáokárs* out of the business, when the entry in bonds and accounts of double the principal of a loan becomes in many parts of the country the general rule, when distrust and fraud on the one side lead to distrust and fraud on the other, and when decisions of Courts of Law are by the admission of able and experienced Judges reduced to guess-work.

It may be said that such a heavy condemnation argues for the abolition of the Act. We agree that the Act is unworkable as matters stand. It is true that its essence is not strict law but substantial justice, but if substantial justice means guess-work the decisions of the Courts are essentially inequitable. Either therefore the Courts must be enabled to enquire into the history of transactions on a sure basis or the Act must be repealed. [We entirely agree on this point with Mr. Varley, Judge of Khándesh, who argues it powerfully in his evidence before the Commission and in his letter on accounts (No. 34).] Given this sure basis however, enquiry into history by the Courts is reasonable and unobjectionable. I have discussed the question with many *sáokárs*, illiterate as well as literate, in many towns and villages, and they say that they will gladly accept a system that gives them certainty in their dealings. It is our opinion that a sure basis for the administration of the Act will be obtained by the introduction of the enforced duplicate system of accounts. We would invite attention to the words of Mr. Maconochie, Collector of Dhárwár (letter No. 4): "Our aim must surely be to bring back into circulation the capital of the honest and substantial *sáokár*, and the opinion of Ráo Sáheb Venkatesh Naik, an eminently worthy representative of that class, is deserving of attention. He believes that the duplicate account system will have the desired effect and I see no reason to disagree with him."

It may be of advantage to conclude our remarks on the proposed system by an analysis of its effect on the various combinations of creditor and client. We will consider successively the honest and the dishonest *sáokár* in their dealings with agriculturists who are

- (1) honest and fairly shrewd,
- (2) dishonest,
- (3) foolish and ignorant.

(i) *Honest sáokár and honest agriculturist.*

In this case, fraud being *ex hypothesi* out of the question, the proposed system of accounts obviously guards against mistakes or misunderstandings, and its advantages cannot be questioned.

(ii) *Honest sáokár and dishonest agriculturist.*

This combination was rare in former days—the days when the rayats of a Deccan village burnt all the *sáokár's* accounts but paid him his just dues when he had no possible means of enforcing payment. The rayat has now become

far more sophisticated, and we regret to add that the operation of the Act has taught him to repudiate his obligations; so that the combination is by no means rare, and it is often the *sáokár* who wants the protection which the duplicate account system will give him, and without which he is driven from the field. We believe that in a case of doubt as to whether an agriculturist debtor has lost, or purposely made away with, his account or whether he has or has not falsified it, the production by the *sáokár* of accounts systematically kept and the evidence of other clients, whose duplicate accounts agree with his, will go far towards establishing the integrity of the *sáokár* and securing his position.

(iii) *Honest sáokár and foolish and ignorant agriculturist.*

This combination is a difficult one for the Court to deal with under present conditions. The agriculturist frequently has not the smallest notion what he has borrowed and what he has repaid, and he is probably convinced, and may convince the Court, owing to his obvious lack of intelligence, that the *sáokár* has defrauded him, when he has really done nothing of the kind. The *sáokár* needs protection against him just as much as against the dishonest client, and the duplicate account will give it.

(iv) *Dishonest sáokár and honest and fairly shrewd agriculturist.*

We now come to the dishonest *sáokár*,—and it is only fair to admit that there are many such who have been driven to dishonesty by the action of the Courts and who may return to honest methods when they can be more certain of fair treatment. Classing all such together for present purposes, let us consider the combination of the dishonest *sáokár* and the honest and fairly shrewd agriculturist. The latter, if literate, will have a perfect guarantee in his duplicate copy of his account; if the money-lender insists on making false entries or omitting to make true ones, he will close his account and go to another *sáokár*; a man of this type will not have any difficulty in finding one. If illiterate, he will probably check the entries made by the *sáokár* by taking a literate friend to witness the transaction and make his signature. If he cannot sufficiently trust the witness, he will ask other literate persons to satisfy him afterwards as to the entry. With his duplicate account he can hardly fail to be aware of non-entry of a repayment by himself and, if the *sáokár* persists in his refusal to record it, he will raise such feeling in the village against the *sáokár* that the latter will find honesty the best policy. In this case, as in cases (ii) and (iii), the operation of the duplicate account will be to protect the honest party. It may be objected that villagers are equally at liberty at present to raise feeling against the dishonest money-lender. They do not, however, discover his dishonesty at the time, and, if one client finds it out years later on going to Court, it is a case of his word against the money-lender's, and his own neighbours even will not know which is true. Under the proposed system everyone will know *at the time* whether his account is written up or not. A given *sáokár* has generally many clients in one village. They will be making their payments to him in cash or kind at harvest time and strong public opinion will be brought to bear on him in case of crooked dealing. In the words of Mr. Mountford, Collector of Sátára (letter No. 10), "the tendency under the proposed system will be for the dishonest *sáokár* to be ostracised."

(v) *Dishonest sáokár and dishonest client.*

Where both parties are dishonest, the duplicate accounts will give each such a strong weapon of defence that there is at least a hope that both will run straight of necessity. If they do not, it may safely be said that no system in the world would force them to do so.

(vi) *Dishonest sáokár and foolish and ignorant agriculturist.*

The last combination to consider is that of the dishonest *sáokár* and the foolish and ignorant agriculturist. It must be admitted that this combination offers the least promising field for the proposed system; but it does seem that the possession of a copy of his own account will give the second party the best and only chance of looking after his own interests. If he *will* not do so and if he *will* still sign his name to anything, *no* system will help him and it is unfair

and politically inexpedient, in a vain endeavour to save him, to penalize his more sensible and substantial neighbours on one side and honest sáokárs on the other.

The question of account-keeping in Sind presents special difficulties. The system in force there is tersely described as "rotten" by Mr. Webb (letter No. 57), who as Manager, Sind Encumbered Estates, has had special opportunities of studying it. At the same time the difficulty of script, the intense ignorance and carelessness of the cultivating class, who will not even keep their own revenue receipts, and the high percentage of illiteracy among sáokárs form objections to the introduction of a compulsory system of duplicate accounts which the Commissioner and the District Officers generally regard as insuperable. We are certainly not in a position to question the justice of their conclusion. Sind is fifty years behind the Presidency, and it would be a great mistake to argue that a system suitable for the Deccan is necessarily also suitable for Sind. At the same time we cannot but attach weight to the fact that the two District Judges in Sind—Mr. Murphy and Mr. Wild—favour the introduction of the proposed system of duplicate accounts. In our judgment therefore the question whether improvement of admittedly unsatisfactory conditions is possible, and if so what form it should take, is one for careful local investigation.

We have already recommended the exclusion of Kánara District, except the part which for judicial purposes belongs to Dhárwár, from the operation of the Act. It follows from the arguments on which that conclusion was based that the introduction of a compulsory account system there is inexpedient.

Some officers have suggested tentative experimental introduction of the new system in one or two districts or tálukás. We strongly dissent from this view. It means perpetuating a very undesirable state of things for an indefinite time in the greater part of the Presidency.

The accounts we propose are simple in the extreme; they are welcomed generally by all classes in the districts in which we have discussed them; they are approved by the large majority of the Revenue and Judicial Officers in charge of districts, while those who disagree neither suggest that they will do any particular harm nor put forward any alternative. We therefore fully agree with Mr. C. C. Boyd who says (letter No. 7A): "I am very strongly against the idea of trying the system for a short time in a few tálukás or districts. If the thing is right (which I firmly believe) it should be done. We shall never make progress if we introduce reforms timidly and tentatively In far more important matters we do not introduce reforms tentatively;" and with Mr. Rieu, Secretary to Government (letter No. 12), who expresses the same opinion. We recommend the introduction of the proposed system immediately throughout the Presidency, except in Sind and Kánara, which should be excluded for reasons already stated. "Account-keeping," as the Honourable Sir Narayan Chandavarkar remarks, "forms part of the genius of Hindus and the proposed system will be but reviving that genius."

38. The matters dealt with in Chapters X and XI of the Act will be considered in detail in Part II of our report. If Village Munsiffs are retained, it is desirable to forbid the appearance of pleaders before them and therefore that part of section 68 referring to Village Munsiffs may be preserved. Section 69 has remained a dead letter. Two important matters are dealt with in Chapter XI—interest and the law of limitation. We have dealt already with the question of the power of the Court to fix interest. The law of limitation is an arbitrary matter; there are arguments for and against any period that may be decided upon, and the main *desideratum* is that it should be fixed and should not be subject to constant alteration. Since section 72 applies in the four Deccan districts and not in the rest of the Presidency, where the ordinary law is in force, we have at present the anomaly that there is a different law in adjoining districts. We

should like to see uniformity throughout the Presidency. At the same time we dislike interference with the law of limitation when it is once fixed. The choice of evils involved in maintaining differential treatment of the four districts in this respect or, as an alternative, upsetting the existing law in the four districts is one of policy on which we have not been specially consulted and on which it is for Government to decide.

39. We have now discussed the principles and the main provisions of the Act and have given our views on most of the points referred to us by Government. There remain questions 15, 16 and 17, with which we will now deal shortly.

Many witnesses have been so much impressed by the fraudulent use of arbitration awards to evade the provisions of the Deccan Act that they advocate the prohibition of the filing of awards. The filing of bogus awards, relating to no genuine dispute between parties, simply with the object of excluding transactions from the operation of the law by obtaining for the awards the force of a decree, has been resorted to in various parts of the country, especially in Sind. Circulars, of which we append copies (Appendix E), were issued by the Bombay High Court and by the Court of the Judicial Commissioner of Sind, directing that every Court before filing an award should satisfy itself that the award relates to a genuine dispute, which has really been referred to an arbitrator, and that the award represents the decision of the arbitrator in the matter. These circulars have checked the evil brought to notice. We admit that the use of arbitration may bring about a certain number of one-sided agreements and enable a certain number of creditors to obtain from their debtors terms such as they would not get in Court. At the same time we are loth, now that we have strongly recommended the abolition of conciliation, to do away with all non-official agency for the settlement of disputes, and we do not recommend the prohibition of the filing of awards where one party is an agriculturist. We agree however with a great number of witnesses who have appeared before us that it is desirable that the Court, to which an application is made to file an award, should be given the power, which it has now in reference to conciliation agreements, to scrutinise it and to satisfy itself that the agreement is a legal and equitable one, finally disposing of the matter. We recognize that such a power interferes with the ideal of arbitration, the main principle of which is absence of outside interference. We are not however dealing with ideals but with the question how best to protect the agriculturist against unfair treatment, while giving him every reasonable facility for settling his affairs himself. Here, as elsewhere, it is a case of balancing *pros* and *cons*, and we consider that on the whole it is best that the Courts should be given the power to scrutinize awards and to see that they are legal and equitable before filing them. The avoidance of *unnecessary* interference is a matter of judgment which must be left to the Courts.

40. In question 16 we are asked to consider whether it is possible to find suitable means by which village officers or the Revenue Establishment may assist agricultural debtors to obtain evidence of payments and adjustments out of Court of decrees, especially those relating to leases and mortgages. On this question we agree with the large majority of those whom we have consulted in replying in the negative. No suggestion has been made to us of any practicable scheme for the above purpose. The total failure of the village registration system is a warning which should not be neglected. If "Revenue Establishment" is to mean a highly paid officer, *e. g.*, a Mámílatdár, it is obviously out of the question for him to supervise private payments in villages. If it is to mean one of his establishment, *e. g.*, a Circle Inspector, there is no reason whatever why the latter should prove any more reliable than the village Registrar, while any such arrangement would involve an enormous increase of establishment. Payments either in the presence of low-paid Government servants or of village officers would necessarily involve petty exactions and would provide no real safeguard. We consider it much more practicable that the law should insist on payments

Question 15. Filing of arbitration awards.

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Question 16. Assistance to agriculturist debtors by village officers or Revenue Establishment.

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by debtor to creditor being entered there and then in accounts of which a copy is to remain with each. No Court could desire better evidence than these will afford, and such a system will teach the agriculturist to become self-reliant.

41. In question 17 we are asked—"Is it not proper in the present condition of the agricultural classes in the Bombay Presidency to cancel altogether the remission of Court-fees granted by para. 29 of the Government of India's Notification No. 4650 of 10th September, 1889, in the case of suits for the redemption of mortgage property, when the plaintiff, or any one of the plaintiffs, is an agriculturist? If not, is it desirable to extend the exemption to suits for the recovery by sale or otherwise of mortgage debts, where the defendant or any one of the defendants is an agriculturist?" Our answer to the first question is that in our opinion there is no longer any need for remission of Court-fees in agriculturists' favour in redemption suits. The plaintiff always employs a pleader, and, if he can afford this, he can afford to pay the proper fees to Government. Further we consider that the remission of fees tends to encourage the putting forward of false claims which would otherwise never be brought, and we think that Court-fees would form a salutary check on these. The first question then being answered in the affirmative, it follows that the reply to the second is in the negative.

We give in a separate statement (Appendix F) the figures of present loss from remission of fees and of prospective loss if the remission be extended. The totals are :—

Present loss	... Rs. 98,671	} approximately.
Prospective loss	... Rs. 2,28,970	

Thus it will be seen that if the remission be cancelled, as we think it should be, there will be a saving of nearly a lakh of rupees, provided there be no diminution in the number of redemption suits; while, if there is a diminution, it will be in respect of the false claims referred to above and the time of the Courts spent in hearing them will be saved.

42. Leaving details for consideration in the second part of our report, we have now discussed the Act generally and we have, we hope, justified the conclusion, mentioned in para. 6 above, that there is so much that is inoperative and so much that requires remodelling that the best course is to repeal the Act. Looking back, it will be seen that out of its twelve chapters we have recommended the repeal of Chapters II, IV, V, VI, VII, VIII, VIII-A and X, while we have shown that Chapter IX is inoperative and should be replaced by workable sections. We consider that piecemeal legislation and piecemeal application of the law to different parts of the Presidency have led to inconsistencies and anomalies, and we are of opinion that the retention in force of an Act so mutilated and altered as the Deccan Agriculturists' Relief Act will be, if our proposals are accepted, will make confusion worse confounded. It is for this reason that we recommend its repeal and the introduction of a short Act in its place which will, with one or two exceptions, apply to the whole Presidency, and which will embody such portions of the old Act as experience has shown to be useful, with necessary additions and alterations.

PART II.

43. We have in the first part of our report given our opinion on the Detailed provisions of the working of the Act as a whole. We shall now Act. consider the chapters and sections in detail.

Conditions have so greatly altered since the Act was first introduced that, if it is to be recast, a new title and preamble are necessary. The Act should be entitled "An Act for the protection of agriculturists in their dealings with money-lenders." The preamble and first section might run :—

"Whereas it is expedient to protect agriculturists in the Bombay Presidency in their dealings with money-lenders, it is hereby enacted as follows."

Section 1. "This Act may be cited as the Bombay Agriculturists' Relief Act and it shall come into force on It extends to the whole of the Bombay Presidency."

We consider that the Local Government should have power from time to time, with the previous sanction of the Governor-General in Council, to exclude its operation from, and extend its operation to, any part of the Presidency.

Section 2. We have already proposed a definition of "agriculturist" and given our reasons for it.

The 2nd rule of section 2 may be omitted.

The 3rd rule might run "An agriculturist shall be deemed to reside where he engages in agriculture as aforesaid."

The 4th, 5th and 6th rules which contain the definitions of "money," "lease" and "standing crops" might stand.

Section 2A might stand. At the present moment it is not required anywhere in the Presidency but it might be needed in the future.

44. In paragraph 25 above we have given in general terms our reasons for recommending that this chapter should be repealed and should be replaced by a simple section enumerating the classes of suits to which the Act should apply. We will here deal with the sections in detail. Chapter II and Chapter VII, which must be read with it, maintain a different procedure in the four districts from that in the rest of the Presidency in the hearing of suits in which the subject-matter does not exceed Rs. 500 in amount or value. In the four districts there is no appeal against the decree of a First Class Sub-Judge; nor is there an appeal against the decree of a Second Class Sub-Judge except in suits in which the subject-matter exceeds Rs. 100 in amount or value and the parties have not consented to the application of the provisions of this chapter. All these decrees are, however, subject to revision by the District Judge. In the rest of the Presidency, where there is no distinction in reference to the amount or value of the subject-matter and where Sub-Judges generally are invested with Small Cause Court powers, those of the First Class up to Rs. 500 and those of the Second Class up to Rs. 200, there is an appeal against every decree except in cases which come within the Small Cause Court jurisdiction of the trying Judge. We can see no reason whatever for such a differentiation. Either Chapter II and Chapter VII should be extended to the whole Presidency or they should be repealed in the four districts. Of the two courses we have no hesitation in coming to the conclusion that the latter is preferable. The evidence we have received outside the four districts gives no indication, or even suggestion, that the hearing of money suits against agriculturists by Sub-Judges in the exercise of their Small Cause Court jurisdiction and the exclusion of the right of appeal in those cases have caused any hardship or inconvenience, and the whole weight of evidence given before us favours the adoption of one law throughout the Presidency, namely, that which exists now outside the four districts.

Section 3. We would further criticise section 3 as including under sub-clauses (w) and (x) suits in which agriculturists are not parties. We consider it anomalous that a law for the protection of agriculturists should contain provisions not restricted to them. The same criticism applies to section 7. Further, while section 3 is not applied to the greater part of the Presidency, the enumeration of suits which it contains is referred to in later sections (11 and 12) which are applied.

Section 4. As regards section 4 we are not aware of the existence in any district of the Presidency of a Court of a First Class Sub-Judge and a Court of a Second Class Sub-Judge in the same local area, where, but for this section, a suit could be

instituted in either indifferently. One local area has one Court in which all suits have to be *instituted*, though there may be more than one Sub-Judge with power to *try* them. The section may be repealed.

Sections 6 and 7 are out of place in this part of the Act. Section 6, which contains a useful provision, might be transferred to the chapter headed "Miscellaneous." On the question regarding section 7 put to us for consideration by Government we have given our opinion in paragraph 25.

Sections 5 and 10.

If our above-stated views regarding jurisdiction are accepted, sections 5 and 10 must disappear.

The conclusion then of our remarks on Chapter II is that it should be repealed and replaced by a simple section stating the classes of suits to which this Act should apply. They should in our opinion be those falling under section 3 (w), (x), (y) and (z), but it would probably be well to substitute for this classification one taken from the Limitation Act. We put this point forward as a suggestion only. Our duty is confined to pointing out as clearly as possible what we consider should be done. The rest is the work of a draftsman.

A few words are necessary as to the proposed inclusion of suits of the kind mentioned in 3 (x). These do not at present come within the scope of Chapter III, *i. e.*, the main provisions of the Act. One instance will suffice to shew the necessity for their inclusion. It is an instance cited by Mr. Desai, Sub-Judge of Jambusar, Broach District. At the beginning of the agricultural season, A, an agriculturist, wants money for seed, cattle, etc. He approaches B, a *sáokár*, who, in consideration of a loan of Rs. 100, gets a contract from him to sell him Rs. 100 worth of cotton at Rs. 3 per *dhadi*,* the market price of cotton being Rs. 6 per *dhadi*, six months after the date of contract. Thus B stands to receive cotton worth Rs. 200 at the end of six months in payment of a loan of Rs. 100. In effect the *sáokár* lends Rs. 100 at 200 per cent. interest per annum and does it in such a way that the interest cannot legally be cut down by the Court under the Deccan Act. Here the Sub-Judge found that he could not legally deal with the two cases of this kind which were filed in his Court; he effected a judicious compromise by the exercise of personal influence. His statement that there were 400 or 500 similar plaints to be filed on the disposal of these two cases shew that such contracts must come within the Act, if its provisions are not to be evaded.

As regards section 3 (a), we do not propose to include suits for account in the Act as redrafted, for reasons which we shall state in our remarks on sections 15D, 16 and 17.

Section 3 (a).

45. In part I, paragraph 27, we have shewn that ostensible sales, which are to take effect as mortgages, are common and are frequently proved to be mortgages; that of the evidence put forward by the challenging party the direct evidence of a contemporaneous agreement is invariably false, while the evidence of surrounding circumstances proving mortgage is frequently true. The following note, kindly given us by the District Judge of Poona, shews what these circumstances are:—

Chapter III, section 10A.

"Points to be considered by the Court when an apparent sale is said to be a mortgage.

(1) Is price utterly inadequate? Under this head consider (a) area, (b) assessment, (c) nature of soil, (d) are tenants easy to find, (e) was it a year of famine, (f) is there a well on the land, etc., (g) was the land sold or leased before the sale in question and if so for how much?

(2) Were there former dealings between the parties?

(3) Did the sale purport to cancel all former debts?

* 1 maund and 10 seers.

(4) (In case of a conditional sale) does the deed provide for payment of interest before re-entry of vendor? (This is a sign of an existing debt and points to mortgage.)

(5) Were the parties related to each other? If so, some probability in favour of mortgage.

(6) At time of sale did possession pass to vendee?

(7) Was *kháta* changed?

(8) Who paid assessment after sale?

(9) Has vendee improved land or built on it since sale? If he has (to any great extent), this fact is against mortgage.

(10) Was the land leased (after sale) to vendor, though other tenants were available?

(11) If so, is the amount of rent about equal to interest at about 15 per cent. on sale price? (This is a sign of mortgage.)

(12) Had vendor other lands?—If he had, not so unlikely that he would sell this one. Also apply *vice versa*; generally a man won't sell his *only* land, unless his cattle are dead. (An important point often omitted.)

(13) Did vendee live in the village where the lands are?

(14) Did vendor leave the village soon after the sale?

(15) Was vendee better educated or more clever than vendor?

(16) Direct oral evidence about contemporaneous oral agreement of mortgage."

It is clear that consideration of such points as the above is necessary in order to arrive at a decision in such a case, and oral evidence on these points must not be excluded, while it is desirable, if possible, to exclude direct oral evidence of the contemporaneous agreement.

We would suggest the following as a possible alternative to section 10A :—

"Notwithstanding the provisions of section 92 of the Evidence Act, when it is alleged at any stage of a suit or proceeding to which an agriculturist is a party that, at the time of any transfer of immovable property or of the right to enjoy such property by an agriculturist, there was an oral agreement that the said transaction should take effect as a mortgage, the Court may declare the transaction to be a mortgage if, upon examination of the parties to the suit and upon consideration of circumstances preceding, attending and following the alleged sale, which circumstances may be proved by oral or documentary evidence, it is satisfied that there was such an agreement."

Illustration—

"A sues B to recover land upon a sale-deed. B sets up a contemporaneous oral agreement to regard the sale as a mortgage. It appears that the sum paid would be grossly inadequate as the sale price of the property, that possession remained with the vendor, that the parties previously occupied the position of creditor and debtor, or that other circumstances existed from which a mortgage can be inferred. Upon these facts and upon examination of the parties to the suit the Court may, if so satisfied, declare that the ostensible sale was in fact a mortgage."

We wish, as stated in Part I, paragraph 27, to add a proviso limiting the period in which the genuineness of a sale may be challenged to 12 years.

Since the application of the Act to the whole Presidency, section 11 has by no means the importance which attached to it when (1) the Act applied to four districts only and (2) agriculturists could with difficulty be induced to leave their villages. However we still think it desirable, especially in view of the narrowed definition proposed, that agriculturists should be sued where they reside.

Under the proposed alteration and generalization of section 3 the irritating reference in section 12 to sub-clauses of a section which is not even applied in the greater part of the Presidency will disappear, and the section will apply to all suits under the Act.

The main clause of the section as it stands at present is not satisfactory. It confuses the appearance of the parties for the framing of issues with their appearance for trial. It alludes first to the examination of the parties as witnesses, *i. e.*, at the time of trial, and lower down to the enquiry with a view to ascertaining whether there is any defence to the suit on the ground of fraud, etc., an enquiry which must take place at the hearing for the framing of issues.

The section has two objects :—

- (1) To direct that the parties shall be examined, if possible,
- (2) to provide for enquiry into the history and merits of the case with a view to taking account.

The questions for consideration in reference to attendance of the parties are :—

- (1) When should the parties be required to be present ?
- (2) How is the attendance of the defendant to be obtained ?

On the first of these points we think with Mr. Justice Heaton that they should be required to appear—

- (a) in cases fixed for final disposal at the hearing ;
- (b) in other cases at the hearing for the settlement of issues.

In the former case no difficulty arises. In the latter the question arises whether the defendant should again be required to appear at the trial. We think that he should be allowed to appear or not as he pleases. The point to be aimed at by the legislature is that the defendant should appear before the Court in order that the Court may hear what he has to say. This the Court does by questioning him at the hearing for the settlement of issues, and questions are often put to him at the suggestion of the other party. If he wishes to attend at a subsequent hearing he can do so; if the other party requires him, it can call him at its own expense; otherwise there is no necessity to insist on his appearance.

The second question is how the attendance of the defendant is to be obtained. Till recently it was usual for the Court to take from the plaintiff the necessary expenses, but this practice has been put a stop to by a ruling of the High Court. (10 Bombay Law Reporter 1163.) The arrangement was the most convenient one and should in our opinion be legalized. For the rest it would seem that the Court is armed with sufficient powers to obtain the presence of the agriculturist-defendant. It can summon him and, if he does not appear, can issue a warrant. It can also order his prosecution for non-appearance. We do not think it desirable to fetter the Courts' discretion. They should deal with each case as circumstances may seem to require. Some witnesses would do away with the compulsory examination of the agriculturist-defendant. We are however of opinion, that the legislature rightly lays stress on his being present in Court and that the qualifying clause is sufficient to enable the Court to dispense with his attendance where it is clearly unnecessary. Some provision should be made to meet a case in which it is impossible for the defendant to appear. The section might then run somewhat as follows, replacing the present section and the second clause of section 7 :—

“The Court shall examine both the plaintiff and the defendant, unless, for reasons to be recorded by it in writing, it deems it unnecessary or impossible to do so.

“If the amount of the creditor's claim is disputed, it shall enquire as far as possible into the history and merits of the case out of which the suit has arisen from the commencement of the transactions between the parties or the persons, if any, through whom they claim.

“The plaintiff shall bear the costs necessary for procuring the attendance of the defendant.”

Mr. Justice Heaton's criticisms on section 13 which form the basis of question 6 (a) referred to us for consideration are fully borne out by the statements of many Sub-Judges, who say that the taking of history is very frequently guess-work; they are met by the proposals put forward in our remarks on Chapter IX for the compulsory keeping of accounts by money-lenders.

The following clause might be added to the section :—

"To enable the Court to make this enquiry the creditor shall produce accounts kept in the manner hereinafter prescribed, which shall record all transactions between himself and the debtor that shall have taken place subsequent to the passing of this Act.* With reference to transactions, if any, which took place prior to the passing of this Act, he shall submit with the plaint a statement of account between himself and the debtor showing, to the best of his knowledge and belief, the advances made, the repayments admitted and how the sum claimed is arrived at."

Some witnesses, notably Mr. Crump, Judge of Belgaum, and Mr. Leggatt Judge of Dhárwár, comment on the difficulty caused to the Courts by the absence of plain directions regarding the incidence of the burden of proof, and point out that this enhances the difficulty of taking history. We admit that is so and we have already stated in our general remarks that the taking of history is often an impossible task, but we hope that the proposals we have made above regarding the keeping of accounts will mitigate, if not entirely remove it. According to the practice of most Courts the burden of proof does to a large extent fall on the creditor, and, while we think this just, we fear that any definite provision of law on the point might result in cases of very genuine hardship to the creditor. We therefore hold with the Government of India Commission of 1891-92 (*vide* paragraph 40 on page 43 of their report) that the Court should be empowered to base its decision on such evidence as is available; at the same time we propose provisions which we trust will ensure that in all cases some evidence will be available and will render the guess-work of which Sub-Judges reasonably complain a thing of the past.

In question 6 (b) we are asked "should section 13 be modified so as to allow a Court discretion to award principal only in the case of a usufructuary mortgage without taking an account of profits?" The mortgage in question is that under which the mortgagee is to receive interest in the shape of profits on the land. Opinions differ greatly on the question; some witnesses answer it in the affirmative; others say "No. Such a discretion would afford an excuse to a lazy Sub-Judge to shirk his duty in taking history of profits." The case supposed is that in which it appears to the Court *prima facie* that the profits have been about the equivalent of a fair rate of interest. It seems to us that the Court must look into the profits in order to satisfy itself that this is the case. Further the modification proposed seems to us out of keeping with the spirit of the Act. It is intelligible policy to maintain the contract between the parties; it is intelligible policy to tear that up and require the Court to make up an account between them, calculating profits on land as nearly as may be. We cannot see any middle course between the two. The question is rather academic than practical since, if the section stands as it is, the calculation of profits on land in past years *can* only be rough and if the section is altered in the manner contemplated the Sub-Judge must make some rough calculation to satisfy himself that the profits approximately equal a fair rate of interest. We see no advantage in the proposed modification of the section.

Section 13A:

Section 13A is in our opinion unobjectionable and should stand.

Regarding section 15A a definite question is put to us as to whether it should be amended so as to allow a Court discretion to refuse a decree for redemption before the expiry of

Section 15A.

a mortgage or before five years. On this point our opinion is most decidedly in favour of discretion being given to the Court. As it stands the law may operate exceedingly harshly on a mortgagee, as noted in our general remarks above. At present the mortgagee may lose possession immediately after a mortgage has been executed and may find his debt made payable by instalments without future interest. It is this section which has been the chief factor in producing the "ostensible sale." We do not however think that there should be any specified period such as five years. The Court should have discretion to decree redemption immediately, or after a certain time, or not till the expiration of the mortgage period, as it may think equitable and fair to both parties.

Section 15AA is now covered by section 7 (c), Order XXXIV, First Schedule, Civil Procedure Code, transferred to the Civil Procedure Code from the Transfer of Property Act. The latter Act was not in force in the Bombay Presidency in 1895, when section 15AA was passed. The section may be repealed.

Section 15B (1) may stand. The reference to section 3 (y) and (z) will of course disappear if our recommendations regarding Chapter II are accepted, and the words "under this Act" may be substituted for the words "of the descriptions mentioned in section 3, clause (y) or clause (z)." We would add the following provision: "Where the Court decides that an amount due by a mortgagor should be paid in instalments, it shall fix such instalments as may seem equitable. It shall further allow future interest at a moderate rate unless, for reasons to be recorded in writing, it deems it unnecessary to do so. Instalments shall not extend over a period exceeding 8 years unless the Court thinks necessary for reasons to be stated in writing." Our reasons for this recommendation are as follows: We have received complaints from almost all the money-lenders who have come before us as witnesses that the Courts treat them unfairly by fixing unreasonably small instalments and allowing no future interest. There is no doubt, as stated above in our general remarks on the Act, that many money-lenders are being compelled to close their business and that others, in order to make it pay, are resorting to dishonest practices. In the long run this recoils on the head of the agriculturist, who gets harder terms and has to obtain his loans from a more unscrupulous class of money-lender. The evidence of some Sub-Judges shows that it is widely held among them that the law requires that the debtor should be favoured at the expense of the creditor. We propose to introduce the above clause to correct this misapprehension.

Section 15B (2) forms the subject matter of question 8 put to us for consideration. The expert evidence before us is practically unanimous to the effect that the provision is satisfactory neither from the point of view of the creditor nor of the debtor. Revenue Officers generally say that in the case of small holdings the sale of a portion only seldom fetches an adequate price. Therefore the provision often harms the person it is intended to benefit, while it also sometimes bears very hardly on the creditor. It cannot be too often insisted on that the hard measure which the latter receives from the Court in the case of mortgages drives him to the ostensible sale-deed and to the recital of fictitious principal.

The plain truth is that the fixing of instalments is useful to the debtor only where his means are such that there is a reasonable prospect of instalments extricating him from his difficulties. Where his position is a hopeless one they are a cruel kindness, even looking at the immediate results. For him they only postpone the inevitable loss of his land and keep him on it when he would be much better employed in seeking a livelihood elsewhere. From the money-lender's point of view they are less satisfactory still. The mortgagor sues for redemption often with no intention whatever of paying the instalments which may be fixed. The money-lender, besides the loss involved in having repayments spread over a term of years, has generally the trouble of applying to the Court for each separate payment, and though the debtor may default in respect of every successive instalment he can obtain an order only for the amount over-due, and execution is sometimes unduly delayed by the Revenue Officer responsible for it.

We are of opinion that the present system is a direct encouragement to the debtor to withhold payment of instalments due from him. It is true that under a recent ruling of the High Court (12 Bombay Law Reporter, 1024) a default clause in the decree is no longer legal, but we think that if, after everything possible has been done for the debtor, he shows a consistent determination to evade payment of his dues, he should no longer have any consideration. The law should therefore in our opinion provide that, where he defaults in respect of the payment of two instalments, unless for reasons beyond his control, such as two succeeding years of famine,* the Court should have power to recover the whole debt immediately. We therefore recommend the repeal of section 15B (2).

We see no objection to the retention of section 15B (3) and (4). There is however so little difference in their purport that we think with the Judge of Dhárwár that in redrafting the Act they might well be amalgamated in one clause.

If section 15A, as it stands, is inequitable, section 15C is more so. Under this section the mortgagee may never get possession of land mortgaged to him. This section, like section 15A, tends to discourage mortgages and to drive the money-lender to demand a sale-deed. We agree with the Government of India Commission of 1891-92 (see paragraph 45 of their report) in advising its repeal.

Sections 15D, 16, 17 and 18 lay down the procedure to be followed where a debtor brings a suit for an account of a secured or unsecured debt under section 3, clause (a). This procedure is never now utilized. Full account is taken where a creditor sues to recover a debt or a debtor sues to redeem a mortgage. The fact that the sections have fallen into desuetude throughout the country gives a fair indication that they are not needed. We are in agreement with the great majority of the witnesses before us in recommending their repeal. Further if, as we recommend, remission of Court-fees in redemption suits brought by agriculturists be no longer granted, the retention of suits for account is likely to lead to loss of revenue. Under their provisions, when the extent of a debt is determined, either party may, without payment of Court-fee, require the Court to give the further relief to which he is entitled. It is likely then that suits for account will be instituted instead of suits for redemption simply with the purpose of evading payment of Court-fee.

Section 19 having been already repealed, the words "or the portion of the same which it directs under section 19 to be paid" should be excluded. Section 20 may then stand with the addition of the following clause: "Where such an order is passed, the Court shall fix such instalments as it may consider equitable, and shall allow future interest at a moderate rate, unless for reasons to be recorded in writing it deems it unnecessary to do so. Instalments shall not extend over a period exceeding 8 years unless the Court thinks necessary for reasons to be recorded in writing." This addition is on the lines of the addition to section 15B (1) above proposed and is desired for the same reason.

As regards arrest and imprisonment for debt it is true that under rule 40, Order XXI of the First Schedule, Civil Procedure Code, the provisions of the ordinary law are put in force only where the debtor can pay and will not pay. "Where it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may . . . make an order disallowing the application for his arrest and detention, or directing his release, as the case may be." In view of this provision there is by no means the necessity for section 21 which existed at the time when it was enacted. However on the whole, especially in view of the curtailment of the definition of "agriculturist" which we advocate, we favour its retention.

* In such cases hardship can be avoided, and is now avoided, by the Collector delaying execution.

We have already given in Part I, paragraph 28, our conclusions regarding the important provisions of section 22, clause 1. Section 22. The second clause of the section has never been utilized and may in our opinion be excluded.

The retention of section 23 depends upon the decision which may be arrived at regarding Village Munsiffs. If they continue to exist, whether under the amended Act or under the ordinary law, this section should stand. Section 23.

Chapter IV.—Insolvency. 46. We have already fully stated our reasons for recommending the repeal of Chapter IV.

We have discussed in the first part of our report the pros and cons of the retention of Village Munsiffs and have nothing to add here. Chapter V.—Village Munsiffs.

We are strongly of opinion that the conciliation system should be abolished, and we have given above our reasons for that opinion. Chapter VI.—Conciliation.

Chapter VII will disappear with Chapters II, IV and VI, on which it depends. It is only in force in the four districts. Chapter VII.—Superintendence and Revision.

We have stated fully our reasons for recommending the exclusion of Chapters VIII and VIIIA from the Act and we have nothing to add. Chapters VIII and VIIIA.

We have nothing to add to our remarks on this Chapter in Part I of our report. Chapter IX.

Of the provisions of Chapter X, section 69 has never been in use and we see no object in its retention. Of section 69, that part which relates to cases before conciliators should be excluded if it is decided to abolish the conciliation system. The retention of the part relating to cases before Village Munsiffs depends upon the decision which may be come to regarding the latter. Chapter X.

Chapter XI, section 70. We are of opinion that section 70 should stand.

Section 71 should stand. The wording will need alteration since section 258, Civil Procedure Code, is now Order XXI, rule 2, clause 3. Section 71.

We approve the principle of the section, but we think that Sub-Judges should have some guide in the law as to what is reasonable. We would therefore propose to substitute for the word "reasonable" at the end of the section the words "equitable, taking into consideration the nature of the security, if any, and the normal rate of interest prevailing in the locality." The last words are inserted on account of the great variation in the rate of interest in the different parts of the Presidency. Section 71A.

Section 72. We have nothing to add to the remarks we have already made regarding the law of limitation.

We have already recommended the repeal of the two sections, 22, clause 2, and 29, on which section 73A depends. This section would therefore also disappear. Section 73A.

Sections 74, 74A, 75 and 76. Sections 74, 74A, 75 and 76 may stand.

I have the honour to be,

Sir,

Your most obedient servant,

S. R. ARTHUR,

President,

Deccan Agriculturists' Relief Act Commission.

NOTE BY MR. BODAS.

(1) Explanation (d) to the definition of "agriculturist."

We are agreed that a party to a suit shall not be permitted to allege that he or any of the other parties has acquired, since the decree, a status different from that given to him by the decree. The suggested explanation (d), however, is not sufficiently comprehensive, in that, while it bars the party "who is not described as an agriculturist in the decree" from claiming that status for himself, does not similarly preclude him from alleging and proving a change in the status of the opposite party. If, for instance, you put it out of power of the non-agriculturist debtor to contend that he is not liable to be arrested or imprisoned, because, since the decree he has acquired the status of an agriculturist, you ought also to preclude the creditor from applying for the agriculturist debtor's arrest or imprisonment on the ground that the latter has lost his status since the decree, and is now a non-agriculturist. Then, the words "who is not described as an agriculturist in the decree of the *original Court*," and the inclusion of "any appeals" in the expression "subsequent proceedings," give one an idea that one of the objects of explanation (d) is to render the Court's decision as to whether or not a party is an agriculturist, final. But I am sure we do not wish at all to suggest the revival of the provision of section 73 which was repealed by the amending Act VI of 1895. I would therefore propose that explanation (d) should be something like this:—

"A question of status raised and decided or withdrawn at any stage of the suit, or not raised at all though it could have been raised, cannot be re-opened or raised after the final decree in the suit, in proceedings connected with execution of that decree."

(2) Proposed Explanation (e).

I would also add the following as one more explanation to the definition:—

(e) "The statement in an instrument as to the occupation of the person executing the same shall be conclusive, unless and until he or those claiming under him prove that such statement was made and inserted in the instrument through fraud of the other party thereto."

Note 5 on explanation (e)—

It so happens sometimes that a person executes a simple money bond or a mortgage, describing himself as by occupation a non-agriculturist, and the instrument is either not registered, or registered in the manner provided by the General Registration Law. If, when the obligee sues on it, the debtor pleads that he was an agriculturist at the time of its execution, and the plea is held proved, the Court finds that the paper is inadmissible in evidence either because not registered under the Village Registration system then in force, or, if registered, not registered in the manner provided by law, and therefore ineffectual for any purpose (*vide* section 63A of the Deccan Agriculturists' Relief Act), and dismisses the suit.

In the majority of cases disposed of in this manner, the fact would be that the creditor was not in any way responsible for misdescription of the occupation. He had to rely on what the debtor chose to say regarding himself, and it might also be that he had known of some older documents which the latter had similarly passed. If that was so, it is evident that the false description came to be written owing to stupidity or fraud on the part of the debtor alone.

It is desirable to prevent as far as possible injustice being thus done to the creditor. It has been suggested that, so far as the particular suit goes, the debtor may be compelled to stick to his own admission, but this cannot be done on the face of the High Court Ruling (Indian Law Reports 17, Bombay 227) that a mere statement like the one in question does not operate as an estoppel.

Anyhow, the burden of proving that his real occupation was different is on the debtor, and that being so, if an explanation like the above is added to the definition, it will prevent injustice being done to the creditor, by permitting the instrument to go in, unless he himself was guilty of fraud.

Then, since the registration of simple money bonds has ceased to be compulsory by abolition of the Village Registrar's posts, instances of fraud of a different kind have occurred, and are likely to occur in future. Suppose, *A* passes an unregistered bond for Rs. 200, describing himself therein as an agriculturist. Relying on the longer period of limitation provided by section 72 of the Deccan Agriculturists' Relief Act, the creditor sues on it five years after accrual of the cause of action. *A* contends that he is now, and has always been, a non-agriculturist, and that therefore three years' period provided by the Limitation Act governs the case. If he succeeds in proving his plea, the Court is bound to dismiss the suit as time-barred. The above suggested explanation will prevent injustice being done in some of the cases of this type.

Then, if our explanation (*c*) is adopted, the question as to the debtor's status at the time the liability was incurred is likely to be raised in more cases now than before. Explanation (*e*) is likely in many cases to help the Court in coming to a speedy conclusion and in avoiding unnecessary and useless labour.

(3) Section 10A.

As for this section, I would leave it as it is, with certain modifications, rather than give it the proposed new shape. If, notwithstanding anything stated in section 92 of the Evidence Act, evidence to prove the alleged contemporaneous oral agreement is to be admitted, why, while admitting *indirect* evidence, shut out *direct* evidence of the existence of the fact itself? It may be that the direct evidence is oftentimes found to be not true, but, with knowledge of the fact that sales with oral agreement to give effect thereto as mortgages do take place in large number, it is hazardous to say that it is false in every case without exception. Admitting whatever relevant evidence parties may give, the Court may be left to decide each case on its own merits. If the concession as to remission of the institution fee on plaint in redemption suits is withdrawn, and it is provided that the impeachment of a sale on the score of its being really a mortgage shall not be permitted unless sought within a given time, a sufficiently effective check on the making of doubtful and stale claims in which there is the greatest possibility of direct evidence of the agreement being not true, will have been put.

The modifications which in my opinion are called for are these:—

(*a*) A nominal sale or *vishvashkaredi* is mostly a creature of the special provisions as to mortgages in the Deccan Agriculturists' Relief Act. Before the Act, there was apparently no necessity for not calling a transaction by its true name. It seems, therefore, proper to restrict the operation of section 10A to those transactions only which have taken place since the Act, by inserting "at any time after the 1st November 1879" between "entered into" and "by such agriculturist" in the first paragraph.

(*b*) There is no doubt that the provisions of this section have rendered every title based on a sale by an agriculturist very much insecure. Of sales that take place in a year, a certain percentage are true and *bona fide* ones, but they, too, cannot be considered safe for an unduly long period of time. One effect of this is that the purchaser does not care to make improvements in the land, such as digging wells, planting trees, etc. Another effect is that anyone who has spare cash to invest in land considers it hazardous to purchase any from an agriculturist, or from one who has derived his title thereto by purchase from an agriculturist. In fact, purchase at an execution-sale is now considered to be the only mode of acquiring a safe title. While conceding that some such provision as section 10A has become necessary for the protection of the agriculturist, the necessity of leaving it permissible for him to take advantage of that

provision at any time within so long a period as sixty years cannot be admitted. Experience has shewn that, in suits in which the Court has to determine whether a sale was really a mortgage, there is oftentimes an amount of hard-swearing on both sides. The difficulty in coming to a conclusion is enhanced when both parties to the transaction are dead and the suit is between their heirs. Having regard to all these considerations, it seems desirable to require the person wanting to challenge a sale to do so within a shorter period, when true evidence is likely to be available. As to what the shorter period should be, I am inclined to consider six years from date of the vendor's *actual dispossession* more to the purpose than twelve or fifteen years from date of the transaction as advocated by some. It is just possible that the vendee may let the vendor remain in actual possession under a nominal rent-note or *kabuláyat* for any length of time, and the latter may, all that time, consider that the land is his property as it before was. But, when he is actually dispossessed, he will realize his own position, and six years from dispossession are more than sufficient time for him to expose the real character of the sale. I would, therefore, insert some such provision as the following in place of the third paragraph:—

“ provided further: that the matter 'comes, or is brought, before the Court in a suit instituted, or a proceeding commenced, within six years of the date on which the person complaining, or the person through whom he claims, was actually dispossessed of the property affected by such transaction by the other party thereto or his representative, or within two years of the date on which this Act comes into force, whichever be the longer period.”

(c) There is no reason why, if the transaction is held by the Court to be a mortgage, the agriculturist should not be allowed to redeem it, like any other mortgage, at any time within the period allowed by law. I propose, therefore, to leave it open to him to obtain a mere declaration as to the real nature of the transaction, and then, at his convenience, to sue for consequential relief. Something like the following may, for this reason, be added to the section as its last paragraph:—

“ provided also that, notwithstanding anything stated in the Code of Civil Procedure or any other law for the time being in force, a suit for a mere declaration only of the real nature of the transaction shall lie, and that such declaration shall not affect the right to bring a subsequent suit for consequential relief in reference to such transaction.”

(A) Section 15A.

We have suggested an amendment in the first part of this section. In my opinion the second part, which provides that the Court shall not refuse to pass a decree for redemption “on the ground that the mortgage-debt has not been completely discharged,” should be repealed altogether. It is this part which, the High Court has held, gives power to the Court to dispossess the mortgagee and transfer possession to the mortgagor before the whole or any portion of the debt has been discharged (P. J. 1888, page 287). Now, under the general law, a possessory mortgagee is entitled to retain possession of all securities till the last farthing of the debt is paid off. I think it is inequitable to dispossess the mortgagee of his security, simply because the mortgagor happens to be an agriculturist. Without dispossessing him, the Court can do justice to the mortgagor by having recourse to the provisions of section 15B (3) and (4).

The Government of India Commission of 1891-1892 say in their comments on section 15A: “ But the Commission do not understand the second part of the section. As it stands it appears to be simply declaratory of the ordinary law that a Court can decree redemption subject to a payment. The clause can hardly be supposed to mean (though from isolated cases it would appear that certain Subordinate Judges interpreted it in that way) that a Court can oust a mortgagee before the mortgage is paid.”

(5) Section 22.

Section 22 is in force in the four Deccan districts only. The question as to it is whether it should be repealed or extended to the remaining districts also in the Presidency. We are agreed that the latter course is not at all advisable. I hold strongly that the section should be repealed.

The Honourable Mover of the Bill, which afterwards became the Deccan Agriculturists' Relief Act, is reported to have said that one of the objects of the measure was "to give both sides fair play." If after the drastic treatment the creditor receives under the process known as "taking of accounts" in the Court, is he given "fair play," one may take leave to enquire, if no reasonable facilities are given him to recover his money? An endeavour to recover an unsecured decree debt can be made by applying for (a) arrest and imprisonment of the debtor, (b) attachment and sale of his movable property, (c) attachment and sale of his immovable property. In the case of an agriculturist debtor, (a) is prohibited by section 21. It is notorious that the agriculturist has generally got no valuable movable property except his field cattle, and these cattle and some other movables are exempted by the general law. So, (b) too is hardly worth while being resorted to. Of his immovable property, his house is exempted by the general law, and so, what remains is his land only. If you make it not liable you make the decree almost a waste paper. It is true, crops standing in the land can be attached and sold, but those who have actually worked the Act in the first instance for some years can tell how much that course proves in the long run paying to the creditor. In the majority of cases it is discovered that there is already an attachment subsisting by revenue authorities for recovery of assessment due on the land, and, perhaps, for *tagáí* also. The creditor has got to pay those charges, if he cares for the continuance of his own attachment. Then it is found in some cases that the debtor has already parted with his ownership to the crops by selling them away to third persons. The attachment in these cases proves infructuous. In the few cases in which it remains subsisting, when the costs the creditor incurs for watching, tending, and, if necessary, watering the crops till harvest time, are deducted from the amount afterwards realized by sale, it is found that a small margin, if anything at all, is left to go towards reducing the decree debt.

The object of exempting land from attachment is evidently to leave some means of support to the agriculturist. But, if effectual attachment of the standing crops is made methodically year after year, what good is the land to him of? Only to raise crops for being attached and taken away by others?

If the land is exempted from attachment for his unsecured debts, is there really a chance of his retaining it for himself for any series of years? He is always in chronic need of borrowing, but few will advance him anything, unless he mortgages or sells his land therefor.

If the agriculturist is not in a position to pay his way, it is a cruel kindness to keep him forcedly, perhaps in name only, on his land. Once he is divorced from it, he will know where he is, and take to other means of earning a livelihood.

VAMAN M. BODAS,
Member, Deccan Agriculturists' Relief Act Commission.

APPENDIX A.

Statement of movements of the Deccan Agriculturists' Relief Act Commission.

20th November 1911	...	...	Left Bombay.
22nd " "	...	...	Arrived Karáchi.
23rd " "	...	...	Left Karáchi and arrived Hyderabad.
24th and 25th "	...	...	Halt at Hyderabad.
26th " "	...	...	Left Hyderabad and arrived Lárkána.
27th November to 1st December	...	...	Halt at Lárkána.
2nd " "	...	...	Left Lárkána and arrived Sukkur.
3rd to 18th " "	...	...	Attended the Coronation Darbár.
19th to 21st " "	...	...	Halt at Sukkur.
22nd " "	...	...	Left Sukkur.
23rd " "	...	...	Arrived Sujáwal.
24th December to 1st January 1912	...	...	Halt at Sujáwal.
2nd January 1912	...	...	Left Sujáwal.
3rd " "	...	...	Arrived Karáchi.
4th " "	...	...	Left Karáchi.
6th " "	...	...	Arrived Bombay.
7th " "	...	...	Halt in Bombay.
8th January to 29th March	...	...	Absent of duty in Calcutta.
30th March to 9th April 1912	...	...	Halt in Bombay.
10th to 13th April	...	...	Examined witnesses at Thána.
14th " "	...	...	Left Bombay.
15th " "	...	...	Arrived Surat.
16th to 18th "	...	...	Halt at Surat.
19th " "	...	...	Left Surat and arrived Broach.
20th " "	...	...	Halt at Broach.
21st " "	...	...	Left Broach and arrived Godhra.
22nd " "	...	...	Left Godhra and arrived Ahmedabad.
23rd to 28th "	...	...	Halt at Ahmedabad.
29th " "	...	...	Left Ahmedabad and arrived Kaira.
30th April 1912	...	...	Left Kaira.
1st May 1912	...	...	Arrived Bombay and left for Poona.
2nd " "	...	...	Halt at Poona.
3rd " "	...	...	Left Poona.
4th " "	...	...	Arrived Mahableshwar.
5th to 24th "	...	...	Halt at Mahableshwar.
25th " "	...	...	Left Mahableshwar.
26th " "	...	...	Arrived Bombay and left for Ratnágiri.
27th and 28th "	...	...	Halt at Ratnágiri.
29th " "	...	...	Left Ratnágiri.
30th " "	...	...	Arrived Bombay.
1st June 1912	...	...	Left Bombay and arrived Násik.
2nd to 5th "	...	...	Halt at Násik.
6th " "	...	...	Left Násik and arrived Dhulia.
7th and 8th "	...	...	Halt at Dhulia.
9th " "	...	...	Left Dhulia.
10th " "	...	...	Arrived Jalgaon.
11th " "	...	...	Halt at Jalgaon.
12th " "	...	...	Left Jalgaon.
14th " "	...	...	Arrived Ahmednagar.
14th " "	...	...	Left Ahmednagar.
15th " "	...	...	Arrived Bombay.
17th " "	...	...	Arrived Ahmednagar.
18th " "	...	...	Left Ahmednagar and arrived Sholápur.

19th to 24th June 1912	...	...	Halt at Sholápur.
25th	„	...	Left Sholápur and arrived Bijápur.
26th to 28th	„	...	Halt at Bijápur.
29th	„	...	Left Bijápur.
30th	„	...	Arrived Dhárwár.
1st July to 8th July 1912	...	...	Halt at Dhárwár.
9th	„	...	Left Dhárwár and arrived Belgaum.
10th to 14th	„	...	Halt at Belgaum.
15th	„	...	Left Belgaum.
16th	„	...	Arrived Sátára.
17th to 21st July 1912	...	...	Halt at Sátára.
22nd	„	...	Left Sátára and arrived Poona.
23rd July to 15th August	...	...	Halt at Poona.
16th August	...	...	Left Poona and arrived Bombay.
19th	„	...	Left Bombay and arrived Poona.
20th, etc.	...	...	Halt at Poona.

S. R. ARTHUR,
 President,
 D. A. R. Act Commission.

APPENDIX C.

*Statement showing Sales and Mortgages with and without possession
in each district of the Bombay Presidency during*

No.	District.	Between Agriculturists.									
		Sales.			Mortgages with possession.			Mortgages without possession.			
		No.	Area affected.	Value.*	No.	Area affected.	Value.*	No.	Area affected.	Value.*	
1	2	3	4	5	6	7	8	9	10	11	
PRESIDENCY PROPER											
I.—GUJARAT.											
			Acres.	Rs.		Acres.	Rs.		Acres.	Rs.	
1	Ahmedabad	1908-09 ... 1909-10 ... 1910-11 ...	200 201 279	1,940 1,122 1,887	82,673 60,749 1,26,049	121 91 140	789 1,351 563	86,942 52,218 33,991	10	63	1,468
2	Kaira	1908-09 ... 1909-10 ... 1910-11 ...	677 648 787	2,346 1,792 1,692	3,69,608 2,18,296 2,74,720	1,402 610 861	2,467 1,247 1,430	4,73,700 1,80,586 2,36,278	65	161	15,918
3	Panch Mahals	1908-09 ... 1909-10 ... 1910-11 ...	61 73 62	203 216 212	10,616 14,790 14,334	23 18 27	92 84 73	3,777 2,408 6,388	2	5	200
4	Broach	1908-09 ... 1909-10 ... 1910-11 ...	1,066 782 942	6,853 4,652 5,919	5,19,890 4,77,205 5,34,804	332 330 428	1,850 1,201 1,462	93,549 95,146 1,45,329	16	230	26,184
5	Surat	1908-09 ... 1909-10 ... 1910-11 ...	1,724 1,438 1,644	6,859 4,550 4,884	4,07,744 4,96,235 5,11,920	108 83 87	372 330 383	29,132 24,042 27,524	4	16	614
II.—DECCAN.											
6	West Khândesh	1908-09 ... 1909-10 ... 1910-11 ...	620 1,045 1,206	10,646 11,289 12,967	2,20,220 4,09,593 6,60,398	174 182 100	1,800 1,982 1,650	50,461 66,792 85,395	40	572	11,171
7	East Khândesh	1908-09 ... 1909-10 ... 1910-11 ...	2,588 2,593 2,928	20,172 21,283 25,224	15,21,018 13,71,109 19,39,150	599 683 705	4,913 5,129 5,071	1,57,327 1,77,052 2,09,670	291	2,587	1,11,639
8	Nasik	1908-09 ... 1909-10 ... 1910-11 ...	1,837 1,722 1,824	17,718 16,020 17,076	5,15,510 4,24,669 5,07,608	289 321 371	2,461 2,817 2,623	54,808 59,542 80,282	56	567	15,428
9	Ahmednagar	1908-09 ... 1909-10 ... 1910-11 ...	3,879 3,521 2,875	28,619 28,247 28,874	5,50,969 5,75,369 6,16,642	2,337 2,429 1,609	18,068 19,898 19,562	2,18,128 2,51,508 2,06,725	991	7,787	62,995
10	Poona	1908-09 ... 1909-10 ... 1910-11 ...	6,126 5939 4,430	31,890 30,706 23,282	9,84,552 8,78,192 9,35,703	3,514 2,788 2,136	11,074 9,426 8,539	3,32,767 3,06,261 2,69,328	985	5,594	1,04,167
11	Sholapur	1908-09 ... 1909-10 ... 1910-11 ...	2,513 2,600 2,426	35,211 31,621 29,208	3,40,528 3,89,452 4,42,227	609 730 632	6,707 9,631 8,460	56,742 80,445 76,583	729	3,119	67,808
12	Sátara	1908-09 ... 1909-10 ... 1910-11 ...	4,995 4,433 3,636	15,108 13,634 12,957	8,32,531 8,41,701 7,92,318	5,118 5,315 3,639	6,692 8,634 6,853	5,55,336 6,09,310 5,43,300	2,508	6,995	2,23,631
III.—KARNATAKA.											
13	Belgaum	1908-09 ... 1909-10 ... 1910-11 ...	1,635 1,463 1,589	11,946 11,146 12,110	5,92,200 5,69,229 6,29,948	839 768 675	5,145 4,933 4,046	2,01,404 1,81,547 1,71,207	302	2,324	77,123
14	Bijapur	1908-09 ... 1909-10 ... 1910-11 ...	2,637 2,079 2,062	28,784 21,260 20,389	10,61,569 5,32,394 5,78,021	33 194 178	440 2,721 2,371	6,764 60,195 52,489	163	2,525	45,808
15	Dhárwar	1908-09 ... 1909-10 ... 1910-11 ...	1,963 1,677 1,747	15,585 12,705 13,999	6,87,940 6,20,805 7,61,794	415 309 235	3,662 2,752 1,854	90,548 71,399 87,035	225	2,249	62,405

* Value, i. e., amount of considera-

Note.—(1) Figures for mortgages without possession
(2) The above information relates to

DIX C.

between agriculturists and from agriculturists to non-agriculturists
three years 1908-09 to 1910-11 (year ending 31st July).

By Agriculturists to Non-agriculturists.									Remarks.
Sales.			Mortgages with possession.			Mortgages without possession.			
No.	Area affected.	Value.*	No.	Area affected.	Value.*	No.	Area affected.	Value.*	
12	13	14	15	16	17	18	19	20	21
	Acres.	Rs.		Acres.	Rs.		Acres.	Rs.	
355	2,177	1,39,598	285	2,617	61,815	100	968	90,498	
361	1,374	72,741	162	1,349	47,622				
232	1,414	87,001	184	616	37,327				
380	897	1,72,000	493	1,001	1,51,169	115	289	21,073	
252	614	65,007	329	716	72,697				
293	646	94,412	343	713	82,014				
191	730	54,999	92	277	16,140	91	1,461	7,957	
194	949	43,712	45	122	7,243				
196	689	45,292	115	367	18,475				
275	1,790	1,40,227	165	1,043	66,155	436	2,292	53,361	
223	1,765	1,25,689	188	652	46,579				
224	1,504	1,08,531	173	1,048	70,032				
1,096	5,365	3,49,337	167	1,195	83,975	60	300	13,750	
644	3,357	2,03,672	260	1,017	71,071				
611	3,545	2,94,036	134	898	48,759				
883	10,709	4,43,002	200	2,234	67,217	1,833	23,925	2,13,943	
614	7,248	3,19,217	186	2,008	76,097				
543	6,131	3,72,913	154	2,339	92,353				
1,620	15,733	12,69,166	576	5,908	2,40,888	3,669	37,968	7,20,022	
1,105	11,250	7,92,109	421	4,167	2,29,727				
961	10,109	8,18,485	343	3,269	1,90,303				
1,618	16,738	5,39,974	677	6,005	2,13,424	1,654	23,247	1,69,803	
1,298	12,869	4,25,166	510	6,000	1,49,264				
1,286	12,385	4,28,867	593	6,141	1,62,697				
1,299	11,117	2,40,882	1,891	18,672	2,50,619	2,272	22,594	2,48,913	
1,150	11,294	2,36,044	1,798	17,772	2,67,916				
1,021	10,775	2,61,831	1,308	16,518	2,75,841				
1,027	11,660	4,16,827	1,915	2,544	2,68,017	3,763	46,623	3,63,372	
2,100	11,054	4,49,976	1,855	9,320	2,72,087				
1,874	11,311	4,28,612	1,311	6,361	2,21,605				
437	6,254	91,299	191	2,597	34,028	2,966	61,670	1,60,136	
472	6,319	1,00,321	214	2,809	36,393				
421	6,031	1,70,515	153	2,546	36,193				
834	2,901	1,73,895	750	1,731	1,09,127	1,420	5,329	1,69,708	
798	2,902	1,73,914	722	1,751	1,00,216				
625	2,625	1,54,185	559	1,459	1,02,309				
574	5,102	2,69,892	334	2,636	95,855	221	3,154	92,212	
467	3,772	2,39,953	311	3,339	93,632				
345	2,853	1,89,749	285	1,989	64,323				
508	9,006	4,10,733	40	763	10,490	166	3,336	44,630	
461	7,204	1,24,332	68	1,202	12,127				
320	6,736	1,31,980	72	1,283	17,690				
790	6,908	2,17,731	130	949	34,025	446	5,836	95,092	
664	5,905	2,05,470	73	672	22,975				
510	4,474	2,71,003	69	536	20,932				

tion for area affected.

are not available for 1909-10 and 1910-11
Government land only.

No.	District.	Between Agriculturists.									
		Sales.			Mortgages with possession.			Mortgages without possession.			
		No.	Area affected.	Value.*	No.	Area affected.	Value.*	No.	Area affected.	Value.*	
1	2	3	4	5	6	7	8	9	10	11	
	PRESIDENCY PROPER— continued.										
	IV.—KONKAN.		Acres.	Rs.		Acres.	Rs.		Acres.	Rs.	
16	Thána ...	1908-09 ...	1,395	5,002	2,98,420	89	816	23,336	76	667	26,540
		1909-10 ...	1,694	7,790	3,32,014	181	674	90,838			
		1910-11 ...	1,805	8,323	4,90,725	300	1,632	1,08,645			
17	Kolába ...	1908-09 ...	1,237	3,548	2,80,504	239	968	43,071	153	453	3,004
		1909-10 ...	1,342	3,735	2,85,989	224	883	71,787			
		1910-11 ...	1,852	3,675	3,08,612	235	1,404	58,511			
18	Ratnágiri ...	1908-09 ...	1,237	7,904	3,49,638	1,169	6,592	3,16,486	176	1,568	60,902
		1909-10 ...	1,160	6,138	3,38,698	1,160	10,878	2,94,580			
		1910-11 ...	1,380	6,372	3,71,871	1,151	6,717	3,22,372			
19	Kánara ...	1908-09 ...	1,319	4,684	4,43,334	236	668	60,229	327	1,308	94,808
		1909-10 ...	1,300	4,027	4,51,050	229	896	53,631			
		1910-11 ...	1,329	4,020	4,38,914	224	668	70,041			
	Sind.										
20	Karáchi ...	1908-09 ...	167	6,254	1,03,992	2	211	3,290	9	295	11,823
		1909-10 ...	196	17,645	1,84,718	5	66	7,206			
		1910-11 ...	188	15,389	1,23,876	4	268	1,700			
21	Hyderabad ...	1908-09 ...	537	7,648	2,33,112	28	661	5,547	60	3,643	19,725
		1909-10 ...	619	8,850	3,16,461	36	569	8,437			
		1910-11 ...	763	15,101	3,65,558	42	1,693	21,696			
22	Sukkur ...	1908-09 ...	345	2,244	1,52,356	43	524	15,667	91	1,234	30,928
		1909-10 ...	399	2,749	2,08,375	64	882	45,792			
		1910-11 ...	439	3,454	1,59,674	45	319	13,402			
23	Lárkána ...	1908-09 ...	1,791	6,361	6,95,621	109	2,265	29,173	172	1,455	78,729
		1909-10 ...	2,033	9,069	8,96,186	93	1,778	26,309			
		1910-11 ...	1,814	7,231	7,12,611	36	911	14,861			
24	Upper Sind Frontier ...	1908-09 ...	157	4,652	1,86,616	8	233	4,510	27	2,053	15,018
		1909-10 ...	204	10,951	3,84,949	13	3,890	20,160			
		1910-11 ...	206	4,600	2,67,307	121	9,171	65,535			
25	Thar and Párker ...	1908-09 ...	44	4,432	21,950	1	17	200
		1909-10 ...	74	6,592	1,15,656	1	10	80			
		1910-11 ...	65	2,638	50,701	2	112	970			
	Total ...	1908-09 ...	40,760	293,457	1,17,10,190	17,611	83,634	28,73,102
		1909-10 ...	38,200	297,537	1,14,96,509	16,939	92,342	27,66,300			
		1910-11 ...	37,981	292,163	1,28,44,817	14,067	83,060	28,34,997			

* Value, i. e., amount of considera.

DIX C—continued.

By Agriculturists to Non-agriculturists.									Remarks.
Sales.			Mortgages with possession.			Mortgages without possession.			
No.	Area affected.	Value.*	No.	Area affected.	Value.*	No.	Area affected.	Value.*	
13	13	14	15	16	17	18	19	20	
	Acres.	Rs.		Acres.	Rs.		Acres.	Rs.	
873	4,863	2,65,532	81	433	23,348	310	1,520	63,844	
859	5,562	2,63,012	169	1,232	35,514				
968	9,748	3,26,293	182	1,079	93,197	409	1,919	1,02,038	
885	10,393	3,32,874	205	1,412	63,892				
949	3,405	3,82,000	208	1,164	58,462				
1,084	5,222	9,51,406	240	981	61,355				
655	3,478	1,75,188	627	9,306	2,09,872	210	1,777	66,499	
582	2,605	1,82,102	663	4,700	1,83,074				
572	2,177	2,01,894	540	4,012	1,76,446				
427	1,519	1,95,751	124	418	38,077	351	1,959	50,030	
431	1,851	2,10,310	88	319	24,552				
439	1,376	1,95,281	123	293	31,426				
76	1,044	1,26,589	10	497	5,665	22	481	4,725	
63	1,484	53,407	15	710	3,035				
73	2,477	69,945	8	272	4,340				
430	6,295	2,58,149	140	4,204	40,358	364	47,157	1,33,797	
407	6,391	2,02,995	178	5,567	61,363				
432	6,068	2,57,598	181	5,303	64,934				
578	2,606	1,93,647	217	3,310	68,337				
531	2,223	1,69,090	249	3,045	57,332	381	11,895	2,42,773	
643	2,621	2,61,140	214	4,282	56,042				
379	3,983	3,06,436	165	3,254	40,148				
628	4,713	4,14,444	172	3,795	43,788	349	9,651	3,03,089	
1,408	5,503	6,56,627	274	5,995	64,653				
86	2,123	97,535	46	3,071	32,243	98	7,768	66,574	
183	2,651	1,82,547	44	1,221	12,847				
156	3,067	1,38,923	78	8,080	53,783				
55	6,172	64,161	31	8,023	23,042	30	7,344	8,185	
73	5,143	51,933	22	4,317	13,311				
74	2,405	50,049	27	4,296	25,815				
17,943	149,431	71,52,226	9,633	94,291	22,08,400				
15,901	123,627	59,53,967	8,778	78,216	20,05,934				
15,903	123,952	69,23,484	7,582	64,171	21,11,630				

tion for area affected.

S. R. ARTHUR,
President,
D. A. R. Act Commission.

APPENDIX D.

Conciliation Work during the 5 years ending December 1911.

					Number of applications.	Number of agreements filed.
(1) Thána—						
	Murbád	...	...	...	1,261	99
	Bhiwndi	...	...	...	3,800	468
	Dáhánu	...	...	...	5,519	542
	Thána	...	...	...	.....	.....
	Kalyán	...	...	...	1,908	413
	Bassein	...	...	...	2,584	260
(2) Surat—						
	Olpád	...	...	...	4,670	1,541
	Bulsár	...	...	...	10,294	1,739
	Surat	...	...	...	4,809	693
(3) Broach—						
	Jambusar	...	...	...	10,611	2,030
	Broach	...	...	...	5,603	922
	Ankleshwar	...	...	...	6,762	1,084
	Vágra	...	...	...	6,588	1,022
(4) Ahmedabad—						
	Ahmedabad	...	...	...	6,589	1,074
	Dholka	...	...	...	5,195	1,258
	Dhandhuka and Goga	...	...	...	3,627	525
	Viramgám	...	...	...	3,694	1,003
	Kaira	...	...	...	5,752	861
	Umreth	...	...	...	6,941	875
	Nadiád	...	...	...	8,882	705
	Borsad	...	...	...	13,109	485
	Kapadvanj	...	...	...	2,138	424
	Godhra	...	...	...	4,590	1,519
	Dohad	...	...	...	3,301	1,157
(5) Ratnágiri—						
	Ratnágiri	...	...	...	2,305	258
	Rájapur	...	...	...	3,437	281
	Vengurla	...	...	...	2,568	495
	Málvan	...	...	...	2,160	283
	Devgad	...	...	...	4,080	340
	Sangameshvar	...	...	...	4,448	102
	Dápoli	...	...	...	1,493	44
	Chipiun	...	...	...	1,107	24
(6) Násik—					<i>Nil</i>	<i>Nil</i>
(7) Khándesh—						
	Bhusával	...	...	...	11,661	1,238
	Shirpur	...	...	...	10,475	878
	Yával	...	...	...	21,196	1,325
	Erandol	...	...	...	13,418	1,683
	Jalgaon	...	...	...	20,976	3,178
	Chálisgaon	...	...	...	17,732	2,532
	Dhulia	...	...	...	16,655	1,788
	Nandurbár	...	...	...	14,103	1,904
	Amalner	...	...	...	8,682	1,248
(8) Ahmednagar—						
	Ahmednagar	...	...	...	5,448	754
	Párner	...	...	...	8,167	366
	Sangamner	...	...	...	11,322	1,991
	Shevgaon	...	...	...	5,773	613
	Ráhuri	...	...	...	3,733	145
	Kopargaon	...	...	...	5,591	302
	Nevása	...	...	...	6,195	605
	Jánkhed	...	...	...	740	70
	Karjat	...	...	...	4,717	517

APPENDIX D—continued.

					Number of applications.	Number of agreements filed.
(9)	Sholapur—					
	Bársi	...	...	...	.....	.....
	Sángola	...	...	...	.....	.....
	Sholapur	...	...	...	2,645	281
	Málsiras	...	...	...	.....	.....
	Mádha	...	...	...	8,354	493
	Karmála	...	...	...	4,019	557
	Pandharpur	...	...	...	1,739	206
(10)	Belgaum—					
	Belgaum	...	...	...	4,704	176
	Athni	...	...	...	6,678	403
	Bail-Hongal	...	...	...	7,227	127
	Chikodi	...	...	...	10,057	262
	Gokák	...	...	...	5,071	336
(11)	Kárwár—					
	Sirai	...	...	...	7,571	1,422
(12)	Dhárwár—					
	Gadag	...	...	...	5,035	606
	Hubli	...	...	...	5,027	412
	Dhárwár	...	...	...	8,836	863
	Haveri	...	...	...	10,043	553
(13)	Bijápur—					
	Bágalkot	...	...	...	9,089	831
	Bijápur	...	...	...	9,633	929
	Muddebihál	...	...	...	6,486	488
(14)	Sátára—					
	Vita	...	...	...	7,343	345
	Wái	...	...	...	5,429	1,239
	Karád	...	...	...	9,249	738
	Pátan	...	...	...	5,575	1,210
	Khatáv	...	...	...	4,726	329
	Islámpur	...	...	...	9,932	342
	Sátára	...	...	...	8,393	1,176
	Tásrav	...	...	...	5,882	861
	Rahimatpur	...	...	...	6,154	553
	Dahivádi	...	...	...	1,432	141
(15)	Poona—					
	Poona	...	...	...	.....	.....
	Haveli	...	...	...	9,024	1,020
	Vadgav	...	...	...	4,703	863
	Talegaon	...	...	...	.....	.....
	Sásvad	...	...	...	5,508	746
	Baramati	...	...	...	6,752	904
	Khed	...	...	...	11,420	1,511
	Junnar	...	...	...	9,122	872
Total					544,267	64,435

S. R. ARTHUR,
President,
D. A. R. Act Commission.

APPENDIX E.

CIRCULAR.

No. 2121 of 1909.

*His Majesty's High Court of Judicature,
Appellate Side,
Bombay, 21st September 1909.*

To

THE DISTRICT JUDGE OF SURAT.

Sir,

It has been brought to the notice of the Honourable the Chief Justice and Judges that in some parts of the Presidency certain classes of money-lenders are in the habit of lending money to impecunious Military and Civil officers and to poor agriculturists not on bonds or promissory notes but on arbitration awards and that the loan, the amount of which is usually much less than the amount stated as advanced in and payable by the award, is not advanced until after these arbitration awards are actually filed in Civil Courts and decrees passed thereon. The object of this procedure is apparently to oust the jurisdiction of the Civil Courts and prevent them from inquiring into the terms of the transaction. It has been found that some judges have been in the habit of ordering these so-called arbitration awards to be filed and passing decrees thereon without enquiring into their nature. Their Lordships therefore desire to impress upon the judges that it is the duty of every judge before he allows arbitration awards to be filed in Court to satisfy himself that there has been some point of real difference which was submitted to arbitration and that there was an arbitration on that point of real difference.

I have, etc.,
(Signed) R. E. A. ELLIOTT,
Acting Registrar.

No. A-11496 of 1910.

*Court of the Judicial Commissioner of Sind,
Kardchi, 29th November 1910.*

CIRCULAR.

It has been brought to the notice of the Judges of the Court of the Judicial Commissioner that many so-called awards, sought to be filed in Subordinate Courts, are mere colourable documents, obtained not in a genuine arbitration after the reference of a dispute previously existing but for the purpose of inducing the sanction of the Court to a claim which the Court would not otherwise enforce. The object is to oust the jurisdiction of the Court and especially to prevent its enquiring into the equity of transactions with agriculturist debtors.

The Judges of this Court desire to impress upon all Subordinate Courts the necessity for strictly enforcing the condition laid down in Schedule 11, paragraph 21 (1), of the Code of Civil Procedure. Even though no objection is raised or opponents do not appear, no document purporting to be an award should be filed unless the Court is satisfied that it is an award, *viz.*, that there has been a matter in difference between the parties, that such matter has been really referred to arbitration, that the arbitrator has acted in the arbitration and that the document represents the decision of the arbitrator in that matter.

By order,
(Signed) LILARAM W. L.,
Registrar.

To

The District and Subordinate Judges in Sind.

(True copies.)
S. R. ARTHUR,
President,
D. A. R. Act Commission.

APPENDIX F.

				Present loss.	Prospective loss.
				Rs.	Rs.
(1)	Khándesh	...	...	6,006	27,291
(2)	Násik	...	...	13,307	13,994
(3)	Ratnágiri	...	...	7,349	8,677
(4)	Thána	...	...	5,926	12,510
(5)	Poona	...	...	2,750	76,555
(6)	Sátára	...	...	4,329	33,955
(7)	Sholápur	...	...	8,584	1,641
(8)	Ahmednagar	...	...	4,131	5,601
(9)	Ahmedabad	...	...	6,557	8,375
(10)	Surat	...	...	2,320	5,611
(11)	Broach	...	...	7,591	1,798
(12)	Dhárwár	...	...	13,178	1,527
(13)	Belgaon	...	...	7,645	5,865
(14)	Kárwár	...	...	1,831	4,301
(15)	Bijápur	...	...	5,617	4,379
<i>Sind.</i>					
(1)	Karáchi	...	...	.....	1,000
(2)	Sukkur	...	...	1,340	8,000
(3)	Hyderabad	...	...	215	5,890
Total ...				98,671	2,28,970

S. R. ARTHUR,
President,
D. A. R. Act Commission.

APPENDIX G.

Circular letter No. 54 of 29th June 1912 from the Honourable Mr. Arthur on a proposed system of duplicate account-keeping by money-lender and agriculturist client [also supplementary letter to the District Judge of Poona on the subject of the treatment of illiterate money-lenders, etc.] with pre'cis of replies received.

No. 54.

Bijapur, 29th June 1912.

From

THE HONOURABLE MR. S. R. ARTHUR,
on Special Duty ;

To

ALL COLLECTORS AND DISTRICT JUDGES.*

Sir,

I have the honour to request the favour of your giving the Deccan Agriculturists' Relief Act Commission your views on the subject of Chapter IX of the Act and the difficult question of receipts and accounts in reference to transactions in which one party is an agriculturist.

2. The provisions of this Chapter, requiring—

(1) that a receipt shall be given to an agriculturist for payment of money in liquidation of a debt (section 64) ;

(2) that he shall on demand receive from his creditor an up-to-date statement of accounts (section 65) ;

(3) that he shall have his accounts made up from time to time in a pass-book (section 66) ;

and providing a penalty for contravention of these sections, have been in force only in the four districts to which the Act was first applied and have become practically a dead letter in those districts, in spite of the stress laid on them by Government and in spite of the fact that for years every Sub-Judge in the four districts was required to report annually what use had been made of these sections in his jurisdiction.

3. The reasons for the failure of these provisions of the law are not far to seek. Sections 65 and 66 become operative only on demand of the agriculturists, while Section 64, though obligatory in all cases, is generally ignored by *sáokárs* because the party for whose protection it exists seldom or never brings a complaint. There is then at present no obligation on *sáokárs* to give receipts for payments outside the four districts to which the Act was originally applied while *in* those districts, where the obligation *does* exist, it is successfully evaded.

4. What then is the result of a system of money-lending under which accounts either are not kept at all or are kept on one side only, that of the creditor, and are often unreliable? The Deccan Act has three main objects in respect of debts—

(1) to ascertain the amount due from debtor to money-lender ;

(2) where necessary to fix such instalments for repayment as will make it possible for the debtor to pay, while giving the creditor a reasonable return for his money ;

(3) to see that the interest is not exorbitant.

The basis of the whole successful working of the Act is the taking of history between the parties in order to ascertain the amount actually due, and yet, as the Act is worked at present, most Sub-Judges will admit that the taking of history is, in nine cases out of ten, a pure matter of guess-work. The tenth case is that of the money-lender with large transactions who keeps regular accounts which the Court can believe. It may then be asked how the Courts decide where there is no reliable evidence. The tendency naturally is to find a middle course, to attach full credence to the statement of neither party and to cut down the account to some extent. Such action of the Court, almost inevitable as it is now, puts a premium on dishonesty. A *sáokár* having a debt of Rs. 150 due from an agriculturist may well argue, "If I say in Court that the sum due is Rs. 150 there is no chance of my getting it. It will certainly be cut down. I may as well enter Rs. 200 in the claim and there will be some chance of my getting my money back." Exactly the same line of reasoning impels the debtor to make a false statement on the other side. The result is a contest of falsehood and a probability that the more unscrupulous party will get the advantage. Such a system cannot but be demoralizing to the community. The honest man, whether *sáokár* or agriculturist, must lose ; indeed there is, I fear, reason to think that in some parts of the country the honest money-lender has now given up or is giving up all money-lending business with agriculturists.

5. The Commission will be glad to have your view of the feasibility of the introduction of the following system. Every money-lender should keep a separate account in duplicate of his dealings with each agriculturist client. All transactions between them should be entered, when they take place, in both copies and attested by the signature (or the thumb-impression if illiterate) of both parties. One of these copies should remain with the money-lender and one

* The letter was sent also to other officers and private gentlemen.

with the client concerned. No plaint should be entertained by a Court without an extract from the account being attached to it, and the account itself must be produced at the time of hearing. No evidence should be admissible in variation of entries attested as provided above by the parties. No proof of payment by money-lender to client should be admitted unless entered in the accounts and attested. No evidence of payment in cash or kind by client to money-lender should be admitted after the expiry of 30 days from the alleged payment.

6. The obvious and immediate effects of such a system will be

(1) to reduce the work of the Courts in taking history to certainty instead of guess-work ;

(2) to secure the position of the honest money-lender so far as the taking of history is concerned ;

(3) to exclude from the Courts a mass of false evidence ;

(4) greatly to reduce the number of suits.

7. From the point of view of the creditor it is difficult to see any objection whatever to the proposal. It will favour the honest man and give him a guarantee that the Courts will not cut down his dues in taking history. The only class of money-lenders who can possibly object will be those who resort to dishonest practices.

8. From the point of view of the debtor the system is more debateable. It may be said

(1) that the man who wants money will attach his thumb-impression to entries of double the amount he receives as readily as he now makes a similar admission before a sub-registrar ;

(2) that he will lose repayments in money or kind which remain unentered either through his own laziness or the sáokár's dishonesty.

(i) To the first objection it may well be replied :—

(1) Are you going to maintain a system which puts a premium on dishonesty in order to attempt to protect the fool from the results of his folly ?

(2) The proportion of cases in which the Court will accept oral evidence in variation of a man's written deed must of necessity be small : is it worth while to allow the Courts to be flooded with false evidence for the sake of that small proportion, especially when in the long run the protection of people who will not protect themselves is impossible ?

It would seem that if the system is to be introduced at all it is necessary that his signature on an account should be accepted as conclusive against debtor as well as against creditor. A one-sided arrangement by which one party alone should be bound by his own attestation is scarcely possible.

(ii) For the second objection there is more to be said. Will the average cultivator, when he has learnt, as he must do in a very short time, that after one month evidence will not be taken if repayments not entered in the accounts, insist on entries being made in all cases ? The question is whether this is too rigorous or whether evidence of such payments should be accepted at a subsequent date and with what limit if any. The arguments in favour of the exclusion of this evidence seem to be

(1) that when parties believe that oral evidence will be accepted they will not see that entries are made in accounts but will trust to luck ; whereas if they know that oral evidence will be excluded there is at least a considerable inducement to see that their proofs are in writing ;

(2) that even now this class of evidence seldom obtains credence in Court and in practice the cultivator will not be in a worse position than at present, while honest money-lenders on the one hand and cultivators who possess some measure of intelligence on the other will have absolute proofs of their transactions.

9. In this connection it is noteworthy that the average agriculturist is by no means in the hands of the sáokár to the same extent as the previous generation of agriculturists. Sometimes the debtor is a very smart person indeed and just as ready to overreach the money-lender as the latter to overreach him. It may be noted also that the tendency is for the agriculturist to become less and less subservient to the money-lender as time goes on.

10. If you think it would be too strong a measure to make the duplicate accounts conclusive proof of the entries, do you think that the system might still be introduced, the accounts being regarded as presumptive evidence ? Again, if such a system be introduced, do you think it can be made obligatory on all money-lenders, literate or illiterate, or only on those who are literate ?

11. The main object would seem to be to put the law on lines which will put a premium on honesty and not on dishonesty, and in this connection it is arguable whether it is not the better policy to let the minority who insist on acting against their own interests suffer, as they usually do suffer in the long run already, and to guarantee those who act honestly and straightforwardly, whether sáokárs or agriculturists.

12. I would request you to consider the proposed system of duplicate accounts and to give me your view of it after consulting such officers or private persons in your district as you think desirable.* The Commission will of course be glad to have any alternative suggestions you may have to offer. The question of accounts is beset with difficulty, and after thinking over the matter for some time I must admit that I see no solution which is not open to objection.

13. If you approve of the proposed system of accounts the Commission would like to know whether in your opinion they should be kept in books paged and sealed and issued from a Government office or whether the attestation of entries would be sufficient without further safeguard.

14. It seems worthy of consideration whether to encourage honesty among money-lenders and to diminish the risk of loss to agriculturists it would be well to introduce a system of registration and license of money-lenders, to allow only those registered and licensed to lend money legally to agriculturists and to revoke a license immediately on fraud being proved against a given money-lender.

15. If the proposed system is introduced, whether the accounts be treated as conclusive proof or as strong presumptive evidence, much greater weight will necessarily attach to them than attaches to any documentary evidence at present. The Commission will be glad to have any suggestions as to possible checks, such as inspection of a certain number of rayats' accounts with *sáokárs* by Assistant Collectors and *Mámlatdárs* at the time of village inspection.

16. I append an extract from the evidence of the trustees of the late *Ráo Bahádúr Warud* of *Sholápur*, which shews that a system of duplicate accounts was maintained by him with his agriculturist clients for 25 years and worked well.

17. Since the time of the Commission is very limited I request that a reply to this letter may be sent to me (addressed to Poona) to reach me by the 30th July.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) S. R. ARTHUR,

on Special Duty.

P. S.—Since writing the above letter I have learnt today from Mr. G. G. Desai, Deputy Collector, *Bijápur*, that the proposed system of accounts has been generally in force in *Bhávnagar* where it has worked excellently and in parts of *Guzerát*. I shall be glad to hear from Collectors, especially in *Guzerát*, to what extent, if at all, it has existed in their districts.

Extract from the evidence of the trustees of the late Ráo Bahádúr Warud of Sholápur.

Account keeping.

The late *Appa Saheb Warud* had money-lending business to the extent of 2 or 3 *lákhs* of rupees and the debtors were mostly agriculturists. Besides the regular *kird* and *kalávní* books he kept a separate book for each debtor, to whom also he gave a corresponding book. All payments received or made were entered in both books. By keeping accounts in this way *Appa Saheb* was never compelled to sue any person, nor was there ever a dispute between him and any debtor as to the fact or the amount of payments made, on either side. There was one book for cash payments and one book for field produce.

There was no difficulty whatever in keeping these accounts or in getting clients to keep them. *Appa Saheb* would not lend money unless they brought their books. This practice was going on for 25 years and we still carry it on. *Appa Saheb* died in January last year. (To question) If such a system is in force throughout the Presidency there will be no room for disputes between money-lender and client. This system was in force only in his dealings with agriculturists. In his dealings with other traders, as they had their own accounts, there was no necessity for the system.

We think that there will be no difficulty whatever in the introduction of the system generally. There will be no room for disputes and good understanding between money-lenders and clients will be restored.

True copy.

V. S. JOGLEKAR,

Head Clerk to the D. A. R. Act Commission.

* Any opinion which you may consider of special value may kindly be appended to your reply.

Council Hall,
Poona, 5th August 1919.

From

The Honourable Mr. S. R. ARTHUR,
on Special Duty;

To

C. C. BOYD, Esquire, I. C. S.,
District Judge, Poona.

Sir,

I have the honour to acknowledge, with thanks, receipt of your letter No. 1504* of the 23rd ultimo regarding the proposed system of duplicate account keeping by money-lenders.

2. As regards the totally illiterate money-lender, whom you propose to exclude, the following considerations occur to me :—

(1) The proportion of illiterate to literate money-lenders is small.

(2) Of that proportion there are some whose transactions are on such a scale that they keep a kárkún to write their accounts.

(3) The remainder have to get their bonds written and can presumably get their accounts written too. If the transactions are small the labour of writing ledger and pass-book will be small too. Writing is cheap in India and the sáokár can get his accounts written for a small consideration.

(4) In the whole country there are few villages which do not contain a single literate person and such villages are unlikely to contain many sáokárs who would have to go to Court to obtain payment of their debts.

I would ask whether it is worth while, for the sake of this very small minority,

(1) to lose uniformity of system;

(2) to open the door to *benámi* transactions and false pleas of illiteracy;

(3) to encourage illiteracy among a class for the proper conduct of whose business writing is essential.

3. Is it not reasonable for the legislature to lay down that it is the duty of money-lenders to keep accounts and to make their doing so a condition of their using the Courts to recover their debts?

4. I would request information whether you are so firmly convinced of the efficacy of the proposed new system of accounts that you would recommend its introduction generally throughout the Presidency or whether you would introduce it tentatively in one or two districts.

5. If you advise its general introduction I request your opinion whether the conditions in Kánara are so different to those in the rest of the Presidency that the district should be exempted from the system on the grounds

(1) that there is no special money-lending class: that the same class both lend and borrow: that both are often illiterate and therefore go to Court on equal terms;

(2) that the people instead of being collected in villages live in scattered homesteads and that the writing of accounts where money is lent would be a matter of great difficulty.

I address you specially on the subject of Kánara since you know it probably better than any officer now serving in the Presidency, and I have before me a note of yours written in 1908 regarding the special local conditions.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) S. R. ARTHUR,

on Special Duty.

[* Re-numbered for convenience No. 7.]

*Précis of replies received.**

I cordially approve of the suggested system. Am impressed by the observation that the average agriculturist is by no means in the hands of the *sáokár* to the same extent as the previous generation of agriculturists. My judicial experience fully confirms the further remark that, in some cases, the debtor is just as ready to overreach the creditor as the latter to overreach him.

1. The Honourable Mr. Justice
BACHELOR.

All measures of detail which the scheme involves as logical or practical concomitants should be accepted without demur. I support suggestions :—

(1) that the only account books used should be paged, sealed and issued from a Government office ;

(2) that persons desirous of lending money to agriculturists should be licensed ;

(3) that entries should be checked by superior officers.

The time has come to take a step forward in giving protection to rayats under the Deccan Agriculturists' Relief Act by embodying in it the proposed system of accounts. The education of the parties has reached a certain point: it should now go further; the present is the psychological moment. The legislature should take the responsibility and impose an obligation, not leave the matter to the choice of the parties. The accounts should at first be presumptive evidence, not conclusive proof. We must move forward by stages.

2. The Honourable Sir NARA-
YAN CHANDAVARKAR.

The proposed system will not toll hardly on illiterate money-lenders and petty traders. Account keeping, in some form or another, forms the genius of Hindus. The proposed system will be but reviving that genius.

Assuming that the proposed system will not bring about the disappearance of the small village lender I favour it, and would apply it to all money or grain lenders, literate or illiterate. The latter must employ a literate assistant. I would make the entries conclusive proof in the case of literate and presumptive in the case of illiterate debtors.

3. The Honourable Mr. Justice
HEATON.

I hold strongly that thumb-impressions do more harm than good unless taken by a trained person.

Registration of money-lenders, sealing and paging of account books by a Government officer and inspection by Government officers are theoretically good, but the effect of these might be to discourage the money-lenders too much.

A system on the general lines suggested offers great possibilities for good. The system of duplicate accounts should be introduced and made obligatory on all money-lenders, literate or illiterate. Entries attested by thumb-impressions should be conclusive proof. No suit should be entertained if such duplicate accounts are not forthcoming. Account books should be paged and sealed and issued from a Government office. The licensing of money-lenders and inspection of accounts are impracticable and an unwarrantable interference with the liberty of the subject.

4. Mr. E. MACONOCHE, Collec-
tor of Dhárwár.

I agree with Ráo Sáheb VENKATESH NAIK that the duplicate account system will bring back into circulation the capital of the honest and substantial *sáokár* which has been driven out of the market.

A vast amount of nonsense is talked about the illiterate *sáokár*. In these days no village is wholly illiterate except small jungle hamlets. If a man is sufficiently intelligent to put the machinery of the Civil Courts in motion against his debtors, he can surely be compelled to observe certain simple formalities in the conduct of his monetary transactions.

I am most decidedly in favour of the proposed system with some modifications and restrictions. We must keep two ends in view—the encouragement of honesty on both sides and the education of the ignorant that they may learn to look after themselves. The proposed system of duplicate accounts will help towards both these ends. To a certain extent it will be true at first that payments by agriculturists will not be entered and that the money-lender will force the agriculturist to make false admissions; but when agriculturists begin to understand the probative value of the accounts, they will soon learn to insist on accurate entries being made. Again, the ease with which a money-lender will prove his case if both copies of the accounts tally will induce all honest *sáokárs* to insist on the production of the duplicate by the agriculturist in the case of every dealing.

5. Mr. LEGGATT, Judge of
Dhárwár.

The accounts should be presumptive evidence, not conclusive proof. I make suggestions calculated to exempt the casual money-lender who lends to oblige a friend.

* The replies are printed *in extenso* in a separate volume.

The account system should extend to sales and purchases of grain and groceries. If necessary, petty retail purchases might be exempted.

All money-lenders should be licensed. The accounts should be kept in books paged and sealed and issued from a Government office.

6. Mr. SWIRTS, Collector of Poona. I generally favour the proposal.

For inspection purposes a specialist Officer should be appointed. When payments in kind are made by an agriculturist, their cash value according to the prevailing rate should be entered. I do not favour registration of money-lenders.

I approve of the proposed system of compulsory accounts for all money-lenders whether literate or not. I strongly approve the suggestion that the debtor should have a counterpart book. It will do away with the latter's grievance that he does not know, and cannot find out what the lender has written in his accounts. In future they will almost always be able to know, if they get their books written up and get a friend to read them out. This is a matter of very great importance. It will only very rarely happen that the lender's book will differ from the borrower's. That trick might occasionally be tried but would be very risky; for the lender will be responsible for the contents of the borrower's book and if the two differ, the lender might be prosecuted for fabricating false evidence.

7. Mr. C. C. BOND, Judge of Poona (two letters with intervening letter from Mr. Arthur).

"Hath Pawatis" should be given for payments when the borrower fails to bring his book.

I am very strongly against the idea of trying the system for a short time in a few talukas or districts. If the thing is right (which I firmly believe) it should be done. The Courts are quite tired of people who refuse to bring accounts and want findings of fact based on no solid foundation. We shall never make progress if we introduce reforms timidly and tentatively In far more important matters we do not introduce reforms tentatively.

The system should not apply to very small cash loans without security.

Thumb impressions should not be compulsory. A badly taken thumb impression is of no use and may lead to trouble.

The system of compulsory accounts will be good for debtors and for fairly honest lenders. At present we often ask for accounts and get none, as the lender (really having them) pretends to have none. Under the proposed system he will have to produce some; and a good many people who do not scruple to swear falsely in words are not so ready to keep false accounts for special use in Courts, which is a much more risky proceeding and involves imprisonment if detected. I approve inspection of accounts by Assistant Collectors. I do not approve of licensing sáckárs.

I have consulted Mr. Mackie, Assistant Collector, Ráo Bahádur Artal, District Deputy Collector, and Mr. Manerikar, Government Prosecutor, Belgaum, and all agree with my view that the proposed duplicate system of accounts is unobjectionable and should be brought into force.

8. Mr. BROWN, Collector of Belgaum. The rayats with their Government revenue receipt-books are well used to the procedure now proposed and will at once take to the proposed safeguard of their interests. They have advanced greatly since the date of the Deccan Act.

The accounts should be conclusive evidence. Failure to comply with the law regarding the accounts should be punished by imprisonment. The proposal to license and register money-lenders is not supported by myself or those I have consulted.

I fully approve of the proposal to compel money-lenders to keep accounts and to furnish their clients with copies. The accounts should not be conclusive proof or have a higher evidentiary value than under the existing law.

9. Mr. CAUMPTON, District Judge, Belgaum.

The Courts should refuse relief if accounts have not been properly kept and copies have not been given to the debtors.

I would exclude illiterate money-lenders and those who make occasional loans.

It is not necessary for Government to provide books paged and sealed. Forms of accounts should be prescribed and rules laid down for their authentication and for giving copies.

I can see nothing that can possibly be lost by the system of duplicate accounts. If a man declines to have his debts and payments written up on his own book he would equally be unable to prove such debts and credits if he had no book. The tendency under the proposed system will be for the dishonest savkar to be ostracised. The accounts will have a most important educative value. When the Court asks the debtor under the new system to produce his account-book, he will lose if he has not had a repayment written up. He will tell his friends in the Chawdi why he failed and he will not be caught again in this way, nor will

10. Mr. MOUNTFORD, Collector of Sátára.

other villagers, when they hear of the importance attached to their account books. He cannot learn all at once and the accounts cannot be a pronounced success all at once, but the system will eventually do more to keep him from poverty than any special law.

Account-keeping should be obligatory on all money-lenders. The accounts should not be conclusive proof. The accounts should be paged and sealed in the Mámlatdár's office. Examination by District Officers would be simple and effective.

The pass-books will considerably reduce litigation and discontent. A rayat is capable of honestly believing that he has paid more than he has. The pass-book, if properly kept, will prevent mistake and ill-feeling.

If the double accounts do not tally, the Court can reject them as not properly kept. If they tally, they will appear to be regularly kept and will be of the utmost value to the Judge.

I favour the proposal to make it compulsory for money-lenders to keep accounts in duplicate, one copy to remain with the debtor. The unsatisfactory nature of the present practice is generally recognized. I anticipate no difficulty with illiterate creditors as some one necessarily writes the bond under present conditions and the same person can write the accounts. Illiterate debtors will get some one to read the entries in their books for them. When the value of the system is recognised, debtors will take care to see that their payments are entered properly. There must be a penalty for wilful omission to enter payments. Entries must not at first be treated as conclusive proof. This might come later. I do not favour registration of money-lenders.

11. Mr. BAKER, Judge of Sátára. Except in Sind and possibly other areas I am disposed to think the proposed system desirable and feasible. I agree that the proposed legislation should not be introduced tentatively but should, subject to the exclusion of special areas to which it is considered unsuitable, at once become universally applicable.

11. Mr. BIEU, Secretary to Government, General Department. It is unsuitable in Sind because of the general illiteracy of agriculturist debtors and the existence, side by side, of two entirely different forms of script, the one peculiar to the money-lending classes, the other officially recognised and taught to agriculturists.

I consider the proposal that the duplicate accounts should be paged and sealed and issued gratis from a Government office impracticable. The cost to Government would be prohibitive and the compulsion to use such books would be a serious interference with the liberty of individuals. Harassing legislation of this sort is dangerous. Money-lenders might have the option of purchasing officially paged and sealed books from Government at cost price. The Civil Courts would soon give indications of the superior probative value they attached to accounts kept in such books.

The accounts should have the ordinary evidentiary value of accounts regularly kept. I do not approve of the licensing of money-lenders or the inspection of accounts by District Officers.

Petty advances in grain from money-lender to agriculturist should be entered in the accounts when they reach a fixed minimum, say Rs. 10. Repayments are generally on a much larger scale and should be entered as cash transactions.

13. Mr. SMART, Director of Agriculture. I entirely agree with all the remarks made by Mr. C. C. Boyd in his two letters (approving the scheme, etc.).

The use of books paged and numbered should be compulsory. I see no necessity to have them sealed. The number of pages should be printed on the outside and directions should be printed on the inside of the cover.

The importance the Courts must attach to accounts kept in a regular manner is quite sufficient without special enactment as to their evidentiary value.

In villages where rayats are educated to some extent the system proposed will provide a valuable safeguard. Copies of entries in a Society's book have been made admissible in a Court of Law. In spite of this, many societies have voluntarily and on their own initiative adopted the practice of giving pass-books to their members similar to those now proposed.

14. Mr. EWANK, Registrar, Co-operative Credit Societies. A duplicate system of accounts should be made compulsory. The necessary pass-books and account-books should be issued, paged and sealed, from a Government office. Every plaint should be accompanied by a copy made by the plaintiff of the relevant entries from the account-book and the pass-book, and every written answer to a plaint should be accompanied by a copy of the relevant entries from the counter pass-book.

I doubt whether a system of licensing sáokárs would be effective

The proposed system will greatly strengthen the position of the *sáokár* in the Courts, whether he is an honest man or the reverse. If combined with a system of licensing and registration, I should welcome its introduction experimentally. The accounts should be presumptive and not conclusive proof of the entries.

16. Mr. HATCH, Collector of Sholápur. I approve of the proposed system.

The system proposed is well calculated to prove successful. The keeping of accounts in this manner should be compulsory. Such accounts, duly attested, should be presumptive evidence for some years: they might later be made conclusive evidence. In course of time when creditors and debtors alike see that it is good for both of them to take clean accounts to Court the number of untrustworthy accounts will go down.

I approve the issue of account books from a Government office. I do not approve a system of licensing money-lenders or inspection by revenue officers.

17. Mr. HERVEY, Judge of Sholápur. The proposed scheme expects too much. Whenever there are serious accounts they carry great weight already.

18. Mr. KARRAJI, Collector of Bijápur. The proposed system obtains already in Guzerát between cash-lending *sáokárs* and literate or intelligent illiterate agriculturists. Entries of transactions are made in the accounts of both parties.

I approve the proposed system of accounts. They should not be conclusive proof. The system should apply to illiterate as well as literate *sáokárs*. The former must keep a clerk.

19. Mr. F. K. BOYD, District Judge, Bijápur. I agree with Mr. Sanjana, Judge, Small Cause Court.

(The latter favours the introduction of the system in the case of professional money-lenders only.)

The proposed system of accounts is in force in Broach in all dealings between *sáokárs* and in all good firms even when they deal with outsiders. In my opinion there is no difficulty in extending it by law to all transactions in Guzerát on the lines proposed. In Guzerát certainly the cultivator will very quickly learn the simple rules proposed and will appreciate their advantages and insist on their fulfilment. A few cultivators may suffer by being willing to acquiesce in the conditions not being carried out, but they will be those who at any rate under the present law ruin themselves.

In short the proposed system will not add any new disadvantages while it will introduce many advantages for the first time. The present practice of the Courts puts a premium on dishonesty.

Opinions in the District are unanimous in favour of the introduction of the proposed system of duplicate accounts. One account should be kept by the creditor and one by the debtor, and all entries should be attested by the signature or thumb-impression of both parties. The double attestation seems sufficient safeguard against fraud on the money-lender's part and the introduction of official account books seems likely to put a stop to all but professional lending.

We do not favour the licensing and registration of money-lenders or the inspection of accounts by District Officers.

A simple pass-book to be written up by the money-lender but kept by the borrower, entries in which would be presumptive evidence of transactions, might be tried, though I doubt how the system would work in practice. I do not believe in official supervision over accounts or in the licensing of money-lenders.

I do not approve of the proposed provision. The fact that in the four districts there has been legislation on the lines indicated and that it has proved a dead letter is fairly good presumptive evidence that any such legislation is futile.

If there is any idea of actually legislating on the proposed lines it should be introduced tentatively. The scheme of formal accounts is excellent, if workable: if not workable it will be disastrous. I quite recognize the rather unsatisfactory state of affairs at present, and if I thought that legislation on the lines proposed would be successful I should be glad of it.

The system of dual accounts is not wholly unknown to this district. Some clients of *sáokárs* do maintain dual accounts and the accounts are squared at any time within three years. The system is useful both to *sáokárs* and agriculturists. Some books might be offered for sale as an experiment.

20. Mr. SEDGWICK, for Collector, Surat.

21. Mr. ADVANI, District Judge, Surat.

22. Mr. ROTHELD, Collector of Broach.

23. Mr. WATERFIELD, District Judge, Broach.

24. Mr. PAINTER, Collector of Ahmedabad.

25. Mr. KENNEDY, District Judge, Ahmedabad.

26. Mr. CHUCKERBUTTY, Collector of Kaira.

The proposed system seems to me quite feasible. The duplicate accounts, attested in the manner prescribed, should be conclusive proof of the entries and the system should be obligatory on all money-lenders. I see no reason why Government should issue the books. I do not favour the checking of accounts by District Officers or the registration of money-lenders.

27. Mr. WALES, Collector of Thána.

In my opinion, no good purpose would be served by legislation of so drastic a nature and encroaching on the ordinary liberties of the parties. The proposed legislation is likely to hamper the course of justice. I cannot agree with the Commission's view as regards the methods of the Courts in determining the amounts due. The position of an honest money-lender is always secure under the existing law. The parties are to adduce evidence, and if they do not, the Court has to satisfy itself from the materials on record.

28. Mr. DIKSHIT, District Judge, Thána.

It is a question whether the substitution of compulsory safeguards against a creditor's dishonesty will be more satisfactory than optional ones. There can be no harm, however, in trying the proposed system, the present system having failed. I fully agree with Mr. Arthur as to the obvious and immediate advantages resulting from the scheme enumerated in paragraph 6 of his letter, as also to the benefits that will accrue to the honest creditor. The crux appears to lie in the effects on the dishonest creditor.

29. Mr. THOMAS, Collector of Kolába.

I do not favour the entries being made conclusive proof. The first objection raised in Mr. Arthur's letter seems to me more potent than the second. The borrower may consent to a false entry of principal but he will see that his repayments are entered. I would exclude the illiterate money-lender from the system.

Books should be paged, sealed and issued from a Government office. There is a strong consensus of opinion against the suggestion of registering and licensing money-lenders. I am also opposed to any check by Revenue Officers.

The account should be kept in duplicate and a penalty provided for non-compliance by the creditor. In Guzerát, the petty sáokár keeps a book of account, "Tham Khata," in which separate pages are assigned to each constituent. Mere attestation below each transaction will not be any extra trouble. There should be no time limit to the entries. There should be no distinction between literate and illiterate sáokárs. A sáokár who does any money-lending has to keep accounts. It is immaterial whether he writes them himself or gets them written by a clerk. I favour the keeping of books machine-bound and paged. I do not favour the licensing and registering of money-lenders or inspection of accounts by Revenue Officers.

30. Mr. GHOSL, Collector, Fanch Maháls.

I approve of the proposed system of keeping accounts in duplicate and think that it should be made obligatory on all money-lenders, whether literate or illiterate. The accounts need not be kept in books specially issued from a Government office. They should be kept in ordinary books and simple attestation of the entries would be sufficient.

31. Mr. A. F. MACONCHIE, Collector of Ahmednagar.

I do not think the proposed system will prevent creditors from making false entries in the accounts. If it is introduced the accounts should not be conclusive evidence. The system, if introduced, should be obligatory on all money-lenders alike, whether literate or illiterate. The account-books should be paged, sealed and issued from Government offices and should be inspected by District Officers, but money-lenders should not be licensed. While I myself am unable to assent to the proposals, I append the opinions of Mr. Kathvate and Mr. Pathak, late and present First Class Sub-Judges, who approve of them.

32. Mr. MADGAONKAR, District Judge, Ahmednagar.

The questions raised were discussed at a meeting attended by the Sessions Judge, some of the Sub-Judges, Mamlatdars, local pleaders and sáokárs and others of this district.

33. Mr. BOMANSI, Collector of West Khándesh.

We all agree to the proposed system of account. They should be introduced first in selected districts; the accounts should be regarded as presumptive evidence only. The system should apply to literate money-lenders. Books, paged and sealed, should, be issued from Government offices to any one applying for them. We do not approve of registering and licensing money-lenders or of inspection by District Officers.

I am not personally in favour of "going behind the bond" or "taking accounts" but if Government insists on retaining these provisions (mischievous in my opinion) then I can say that the scheme proposed is the only reasonable solution of the admittedly difficult situation which has arisen owing to the working of the Act.

34. Mr. F. J. VARLEY, District Judge, Khándesh.

Most of the Sub-Judges favour the proposed system, though a few condemn it on precisely the points anticipated in Mr. Arthur's letter.

In the proposed scheme the rayat will have a personal interest in seeing his book written up and, if it be answered that still he will not bother himself, he is a perfectly hopeless individual who must go to the wall in any civilised society.

There are several criticisms as to detail but not one of them is insuperable.

The checks proposed in paragraph 15 of Mr. Arthur's letter are mischievous and will frighten away many who might otherwise approve of the scheme.

If accounts must be taken, the proposed scheme affords the most reasonable method of taking them. The crying evil up to the present has been that the debtor never knows how he stands. Now he will have a ready means of doing so.

I append an outline of a "Money-Lenders' Act."

The proposed system will gain the object aimed at of putting a premium on honesty. The account keeping must be compulsory without a demand; village officers must attest the transactions when entered in the pass book; and the Civil Courts must be debarred from entertaining suits without the production of an entry from the pass-book with the plaint and of the original books at the time of hearing.

35. Mr. SIMCOX, Collector, East Khandesh.

The entries should be conclusive proof of the facts stated.

No distinction can be made between literate and illiterate sáokárs.

The books should be issued from the Government Press at a fixed price.

The inspection will add to the work of already overburdened Revenue Officers. Still I am for it in the interests of the agriculturist.

I am entirely in favour of the proposed scheme. The accounts should be conclusive evidence. The chief danger to the debtor is not that accounts should be written wrong at first but that they should be manipulated afterwards. He will be saved from that danger and given a better opportunity than he has now of seeing that the original entries are correctly made. If he is such a fool as to sign entries without getting them read, the proposed rule will not save him; neither would any rule. In my opinion there are not really so many fools of this kind as there appear to be under the present haphazard system, which makes it pay to pretend to be a fool when one is really only a knave.

36. Mr. C. M. BAKER, Collector of Násik.

I advocate the issue of paged accounts books by Government and their inspection by Government Officers.

The law should apply to literate as well as illiterate money-lenders.

The proposal that every money-lender should keep a separate account in duplicate of his dealings with each agriculturist client is reasonable and might well be recommended for adoption to sáokárs generally as likely to prevent friction between them and their clients but I am not prepared to recommend that it should be enforced by law. The agriculturist will no more look after his interests under the proposed system than he does at present.

37. Mr. PALMER, District Judge, Násik.

No mere system of book keeping will suffice to protect the illiterate debtor against the fraudulent money-lender. The duplicate account-book plan has however one decided advantage. It tells the debtor exactly how he stands at any particular moment. The entries in the duplicate accounts should be presumptive evidence only. As to whether the system should be made binding on illiterate sáokárs, it seems to me that if the system should procure security for the debtor he ought not to object to a slight increase in the cost of accommodation, and that if it safeguards the sáokár, an honest lender would think a clerk's salary a cheap insurance.

38. Mr. BONUS, Collector of Ratnágiri.

As to whether account-books should be paged and sealed and issued from Government offices, I think the precaution unnecessary, seeing that accounts are to be kept in duplicate. I do not favour the registering and licensing of money-lenders or inspection of accounts by district officers.

The proposed system has, without suggestion from the State, been introduced in various parts of Gujarát and it seems to me, if there is any real value in it as tending to protect the illiterate and to prevent litigation between lender and borrower, it is bound to obtain favour gradually and in time to be adopted generally. Before a genuine demand arises I do not think it is at all necessary to force it on people.

39. Mr. BARROW, Commissioner, N. D.

If the double account system be rendered obligatory, it will in my opinion be most dangerous to give to all attested entries the status of conclusive proof.

40. Mr. TALHYARKHAN, District Judge, Ratnágiri.

The proposed system is not likely to further the ends of justice.

I have no first-hand knowledge of the working of the Act. I am of opinion that not much good will ensue from altering the law as suggested. I would trust to the spread of education among the rayats and the expanding influence of the Co-operative Credit Societies

41. The Hon'ble Sir VITHALDAS TRACKESBY.

movement which is bound to make the sáokár in his own interests more equitable in his dealings with the rayat.

I approve the proposed system of duplicate accounts but the agriculturist's signature is not necessary and it may be very inconvenient to him to go personally to the sáokár for every transaction. The possession by him of a duplicate of his account is sufficient. Simple directions should be printed on the first page of his account-book that the book must be presented to the sáokár at the time of each transaction, that after every entry he should get it read to him by a literate person and that if he fails to do so he will be running the risk of loss. The account books so kept should be strong presumptive evidence.

42. The Hon'ble Khán Bahádúr
NOWROZI PRISONJI VAKIL.

I do not approve of licensing money-lenders which will curtail their number and limit the peasant's scope of borrowing.

The system of duplicate accounts will, I think, do much good to all concerned. It should be made obligatory on all money-lenders, literate and illiterate. There are hardly any of the latter class.

The increase of primary education will help the smooth working of the proposed system and mitigate the evils which the system is intended to remedy.

I recommend the keeping of pucca bound account-books by money-lenders, with printed columns and printed numbers on the pages. Government should keep in stock and sell at cost price. To this should be added the obligation to give a pass-book to the client and failure to do this should be penalised. The only possible chance of teaching honesty is mass education.

43. The Hon'ble Sardár Ráo
Bahádúr MOTILAL CHUNILAL.

I regret I cannot accept the scheme proposed or offer any constructive suggestion. The system will be unworkable and of no practical use. The client will leave his book with the sáokár who will see that they tally. Duplication in such circumstances will not increase the credibility of the account.

44. The Hon'ble Mr. PRATT,
Settlement Commissioner.

I cordially approve the proposed system of duplicate accounts. I was surprised yesterday to find it practically in the form suggested by Mr. Arthur already in existence at Aundh among a few of the sáokárs, who say that it has worked between them and their debtors most satisfactorily and has obviated the necessity of going to the Civil Court. It will not be hard to follow the system. That it is practicable is evidenced by the fact that some people do actually follow it. Only the dishonest will object.

45. Khán Bahádúr JACOB
ISRAEL, Kárbhári, Aundh State.

I do not assert that the system will prevent all chances of fraud; no system can do that; what is to be aimed at is to establish a system minimising the chances of fraud and no system other than the one proposed is calculated in my opinion so efficiently to prevent fraudulent transactions.

I would leave the people to get their own books. We should not stifle progress towards self-reliance.

The accounts should be made conclusive proof.

I consider the difficulty in the case of the illiterate sáokár imaginary. There is no lack of men in these days to write or read accounts either free or on payment of a trifling sum. It would be difficult to distinguish between literate and illiterate sáokárs and there would be much pretence of illiteracy if there were any differentiation made.

I am opposed to the licensing of sáokárs and to the inspection of accounts by officers.

My views have the support of the Aundh State officers, rayats, sáokárs and others fit to form an opinion. (The letter is countersigned by the Chief who fully endorses the Kárbhári's views.)

The suggested reforms seem to strike at the root of the difficulties. The proposed duplicate accounts give the debtor, if he is willing to avail himself of it, the chance of checking his creditor's accounts.

46. Mr. LAIRD-MACGREGOR,
Provincial Superintendent of
Census.

I would add the "bat pawti" system which has been successful in the case of land revenue.

I do not think it is necessary to discriminate between the small and large money-lender. If the small man wishes to take advantage of the Act, he should keep account. If he is in too small a way he would in any case not come to Court and the proposals would not affect him. The accounts should be strong presumptive evidence. I do not approve the registration of money-lenders or inspection of accounts.

The introduction of a good system of accounts should be rigorously insisted on. It will be liked by honest creditors and debtors. Dishonest persons may not like it. The accounts need not be elaborate. A ledger account and counterfoil receipt form will serve the purpose. The entries in the ledger should bear the signature and thumb-impression of the debtor. The receipt books should be printed and issued by Government. The accounts should be held conclusive.

47. RAO Bahádur K. J. AGASER, Deputy Collector (retired).

I approve of the proposed system of duplicate accounts with attestation of entries by both parties. The accounts should not be conclusive proof but strong presumptive evidence.

48. Mr. N. G. KHANDALAWALA, Special Judge under Deccan Agriculturists' Relief Act (retired).

In the present illiterate condition of the masses I regret this very desirable reform must be deferred. I do not think the country ripe for it.

49. The Honourable Mr. R. P. KARANDIKAR.

I strongly support the proposal to insist on duplicate accounts. There are objections but the value of them is doubtful. It may very well happen that the cultivator is in the majority of cases sufficiently shrewd to insist upon his duplicate account. In any case he will have the right to insist upon it and it will be his own fault if he does not. Under the proposed scheme the duty of furnishing an account to the debtor is definitely imposed on the sáokár and this is a long step in the right direction.

I would not make any distinction between literate and illiterate sáokárs. I fear that the result of making such a distinction would be an alarming lowering of the standard of literacy among the wealthier villagers. I would not insist on attestation by thumb-impressions. They are of little value unless taken by a trained man.

If the creditor's and debtor's books are both kept and regularly attested there would seem to be little need for paged or sealed books. I would deprecate any more State interference than is absolutely necessary with the private business affairs of the people.

I do not advocate registration of money-lenders.

50. Mr. W. C. SHEPHERD, Collector of Salt Revenue.

Keeping accounts should be made compulsory on all sáokárs, literate and illiterate; account books should be supplied by Government and they should be treated as presumptive evidence of the transactions.

Some selected sáokárs should be given licenses to do money-lending business with agriculturists. They should be provided with duplicate account books, paged and sealed and issued from a Government office. Their rate of interest should be limited from 9 per cent. to 12 per cent. Frugality should be encouraged on the part of rayats.

KANARA.

Under the proposed system, it is probable that the really needy agriculturist would continue to allow the sáokár to claim more than his due since he is in want of ready money and the sáokár is in a position to make his own terms. I doubt the proposed system improving matters. My opinion is bound to be *a priori* as I have no experience of districts in which the Act is an important factor. In Kanara, where there are no professional money-lenders and few of those who lend money are in anything but a small way of business, what is required is to let the ordinary cultivator get money without difficulty on reasonable terms and to let the lender get a reasonable return on his outlay. The Act has worked directly contrary to these objects and no modification of the present provisions as regards accounts is likely to improve matters. If the system is introduced, the accounts should be presumptive evidence only; I should prefer to introduce it cautiously in one district only. I do not see how one can, in practice, distinguish between literate and illiterate money-lenders. I do not approve the taking of the debtor's thumb-impression by the sáokár. It wants some skill to take it so that it shall be reliable as evidence. I do not approve of registering and licensing money-lenders.

Chapter IX should be applied to the whole Presidency. The whole Act necessarily places a premium on dishonesty. A measure which would secure the dishonest equally with the honest money-lender is opposed to the policy of the Act. If the debtor be really "just as ready to overreach the money-lender as the latter to overreach him," the time has come to repeal the Act.

51. The Honourable Meherbán NARAYANRAO GOVIND GHORPADE, Chief of Ichalkaranji.

52. Mr. G. MONTGATH, Collector of Kanara.

53. Mr. VERNON, District Judge, Kanara.

Thumb-prints will not be satisfactorily taken by money-lenders. Even in Government offices they are often taken in a very careless manner.

The case of RAO Bahádur Warud is not a good precedent. He followed strict business methods and any Court would have accepted his accounts.

SIND.

The Commissioner agrees with the unanimous opinion of the district officers that the proposals contained in Mr. Arthur's letter are unsuited to the conditions of Sind and if introduced would render the condition of the agriculturist even worse than at present. In Sind, almost every bania shop-keeper has some kind of money-lending business and in many cases is himself illiterate. The accounts, if kept at all, are kept in the Hindu-Sindhi Character—a character of which there are numerous varieties in different parts of the province and which is often intelligible only in the locality in which it is used. Consequently the illiterate Mahomedan agriculturist hardly ever knows to what he is affixing his signature or thumb-impression, though he is generally willing to sign anything in order to raise money. The agriculturists in Sind as a class could not be expected to preserve their copy of the duplicate accounts, as has been abundantly proved by their inveterate slackness in preserving their revenue receipt-books. Thus the introduction of duplicate accounts would be quite ineffectual, while the extra complications introduced by the system would operate entirely to the advantage of the bania.

The proposal to license money-lenders is entirely opposed to the habits and conditions of people in Sind.

The system of duplicate accounts may prove satisfactory where both sides are literate and have confidence in each other. The system is too elaborate to work in practice, particularly in Sind where most of the banias are themselves illiterate and get their accounts made up from time to time by paid scribes. The result would be that no accounts would ever be kept at all and the rayat would have to sign a bond for everything he borrows.

The exclusion of oral evidence would be a great hardship on the agriculturist. The observation that Government should not legislate to protect the fool from his folly is a condemnation of the whole Act, for that is in truth the whole purpose of the Act and the very reason why it is unworkable.

The licensing of money-lenders might be introduced.

It should be made compulsory for professional money-lenders (or those lending more than a specified sum a year), whether literate or illiterate, to keep accounts. I agree with Mr. Arthur that the system of duplicate accounts is desirable and should be encouraged as far as possible, but the difficulties and objections in the way of its general adoption render the proposals in paragraphs 5 and 10 of Mr. Arthur's letter impracticable.

[In the appended extract from the report of the Sub-Judge, Shikárpur, it is stated—“In view of the difficulty of proving their claim, the illiterate Hari and the village money-lender have in most cases already adopted the system of duplicate account-books. The money-lender enters in his own hand all the advances made to and all payments made by the Hari. But when the question comes to the Court, the Hari rarely produces his own book and relies upon the denial of the account or denial of the possession of his book. Where he does produce his own book, it is found most often to contain entries of more payments by him, which on evidence he is found to have got made by enemies or rivals of the money-lender.”]

The Mahomedan in Sind who wants money will sign anything. The money-lender's accounts are written in a script of Bania Sindhi which hardly any one but a Bania can read. The latter therefore could and would make false entries in his client's duplicate account with the same ease and freedom with which he does so in his ordinary account books. If the accounts were accepted as conclusive proof, the way would be open to the grossest frauds which it would be almost impossible to prove.

The whole system of money-lending as it prevails in Sind is rotten. The money-lender will lend to any one on practically no security; the people will borrow with no means of repaying. Money-lending becomes the purest gamble and it is hardly to be wondered at that the parties are inclined to load the dice.

If the bania does not keep satisfactory accounts and therefore cannot prove his debts, his losses are his own fault.

I would lay stress on the greater illiteracy among the agriculturists in Sind than in the Presidency and in particular on the fact that many of the village banias in Sind are also illiterate. It is well-known that in Sind the agriculturist does not keep his revenue receipt-book as is done in the Presidency. It is left with the bania or the tapádár. Consequently it is very doubtful whether the Sind agriculturist would keep his duplicate of the bania's account with himself. The proposed system might be introduced experimentally in one taluka.

The Sub-Judges generally favour the proposal to introduce the duplicate system of accounts, the entries to be presumptive evidence.

The system, if introduced, should be obligatory on all money-lenders. The books should be paged, sealed and issued from a Government office. Money-lenders should be registered. There should be no time limit to prove repayments. Inspection by District officers would be difficult.

60. Mr. MARTIN, Collector of Larkana. States the same difficulties in regard to the proposed system as are mentioned by the Commissioner in Sind and quoted above.

61. Mr. CHATFIELD, Collector of Sukkur. Raises difficulties in regard to Sind already stated and lays most stress on the difficulty of the written character.

62. Mr. LAWRENCE, Collector of Karachi. Lays stress on the script difficulty and states that no debtor would keep his copy of the duplicate account. Deprecates interference by Government agency in the private relations of the people.

The proposal that every money-lender should be made to keep an account of all his transactions with agriculturists clients in duplicate, every entry to be attested or impressed by both parties, appears to me a good one. It is practically the system a savings-bank adopts in dealing with its clients and on the analogy of such institutions I would prefer a paged and stamped pass-book.

The making of entries conclusive proof is too abrupt a change: they should be presumptive evidence. The system should be obligatory. It is impossible to discriminate between the literate and illiterate money-lender.

A necessary corollary of the scheme is the keeping of a day-book showing daily transactions and balances. In its absence the correctness of the pass-book entries can neither be tested nor accepted.

The question of accounts is beset with difficulties; though the system proposed is open to all the objections inherent in any plan of helping those unwilling to help themselves, yet on the whole it is probably the most feasible of any yet put forward.

64. Mr. SMYTH, Deputy Commissioner, Upper Sind Frontier. Both debtor and creditor are extremely primitive in Sind. The bania is banker, agent and general *factotum*.

The village bania is literate only in name and can hardly scribble out the notes of his dealings with his debtors. It is by no means uncommon for banias of one taluka to be unable to read the account books of those of another taluka.

With such a state of things prevalent, a system of duplicate account keeping is out of the question.

S. R. ARTHUR,

President,

Deccan Agriculturists' Relief Act Commission.

APPENDIX H.

**Pre'cis of opinions given by Heads of Districts and other leading witnesses
on the various points arising for consideration by the
Deccan Agriculturists' Relief Act Commission.**

The points are dealt with in the following order :—

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GENERAL WORKING OF THE ACT—QUESTION 10.

Mr. LEGGATT, Judge of Dhárwár.	The agriculturist has certainly been freed from past indebtedness, but it is very doubtful whether this has been fairly done. The disadvantages resulting to him from the manner of freeing him are considerable. His credit is reduced, which is in some ways a good thing. Rate of interest reduced, but this probably made up for by fictitious increase of principal of loan. Agriculturist often forced to sell his land to get money. This result contrary to main object of the Act.
Mr. CRUMP, District Judge, Belgaum.	Act, while it helps some honest agriculturists, encourages fraudulent defences on the part of dishonest agriculturists especially owing to section 10A. Honest agriculturist suffers for the sins of the dishonest. Relations between agriculturist and money-lender strained. Loss of confidence on both sides. Money-lenders resort to new tricks to avoid provisions of the Act. Money-lenders' trade reduced. He has suffered loss owing to Court having to guess about past dealings and profits of land and owing to not getting future interest.
Mr. C. C. BOYD, District Judge, Poona.	The two principal results of the working of the Act are (1) diminution of agriculturists' credit; (2) deterioration in probity and honesty on both sides. Result of (1) increase in distrust of mortgage as a security. Mortgagee liable to find himself redeemed at short notice and his claim cut down in a variety of ways. Money-lenders naturally prefer sale-deed with oral understanding. Justice by Courts based on conjecture. Claims cut down and instalments allowed on very unsatisfactory basis. Result exaggerated claims by money-lenders. It is open to very serious doubt whether the Act has not worked more harm than good. It is further open to doubt whether present condition of agriculturists makes any special legislation necessary.
Mr. F. J. VABLEY, District Judge, Khándesh.	I have no doubt the Act has done good. It has of course decreased the agriculturists' credit. This is a good thing. The Act has decreased litigation. The creditor used previously to get unconsoionable decrees. The effect of the Act on both agriculturist and money-lender has been disastrous. The best land is passing out of the hands of the agriculturist. The money-lender is driven to charging a much higher rate of interest than if the Act were not in force. The Act has thoroughly demoralized both parties. It has driven the money-lender to invent the ostensible sale-deed and the agriculturist to set up all manner of false defences. This is the moral aspect. The economic aspect is that the agriculturist's credit is very poor and he gets money at a very much higher rate of interest. The relations between the two parties are on the worst possible footing.
Mr. FAWCETT, Additional Judicial Commissioner, Sind.	The taking of history is pure guess work. The money-lender dreads and detests it. The better class money-lender is either withdrawing from business or lending money through some man of-straw. It is at the hands of this intermediate class that the agriculturist will most grievously suffer.
Mr. BAKER, District Judge, Sátára.	I think the Act has served a useful purpose. The necessity for its operation may in the future be reduced by the effective working of Co-operative Credit Societies. The Act has done good in the past. Now it gives the rayat the opportunity of getting out of his contracts and it can no longer be said that "A cultivator's word is as good as his bond." The question now is whether the benefits of the Act are outweighed by its disadvantages.

GENERAL WORKING OF THE ACT—QUESTION 10—*continued.*

Mr. PALMER, District Judge, Násik.	Effect of the Act has been good. Such provisions as the power to reduce exorbitant interest and the taking of accounts have been unquestionably beneficial.
Mr. MOUNTFORD, Collector of Sátára.	Act has decreased advantageously agriculturists' credit. Easy credit is the curse of the agriculturist.
Mr. KENNEDY, District Judge, Ahmedabad.	Act of no very general utility in Gujarát. Money-lender does not seem unfair. Cultivator apparently able to take care of himself. As regards Dekkhan, doubtful whether much result. However it would be immoral to again reduce the Courts to engines for extorting from Dekkhan peasants the monstrous claims of Dekkhan money-lenders.
Mr. G. D. MADGAVKAR, District Judge of Ahmednagar.	<i>Economic.</i> —Gain to those before the operation of the Act; loss to those after by practically compulsory sale or at least a mortgage. <i>Moral.</i> —The Act has increased perjury. Agriculturist is now well aware of his rights under the Act. The Act has restricted credit of the debtor, and has demoralized both classes.
Mr. E. MACONOHIE, Collector of Dhárwár.	I regard measures which interfere with the ordinary operation of credit and which are intended to bolster up particular classes as very dangerous weapons. Though they may for a time check the transfer of property and the ruin of particular classes they demoralize the whole country-side, teach creditors to find dishonest ways of evading the law and rob debtors of all sense of honesty. The general result of these bolstering Acts is to destroy the credit of the people, and if such legislation is maintained until the place of the money-lender is taken by co-operative banks, Government must be prepared to finance the agriculture of the country for which Government machinery is unfitted.
Mr. A. F. MACONOHIE, Collector of Nagar.	The Act has rendered relations more difficult between sáokár and rayat. Each tries his best to deceive and defraud the other; there is no confidence and no elasticity of dealing.
Mr. LAWRENCE, Collector of Karáchi.	Money-lending continues on a restricted scale. Curtailment of extravagant and thriftless borrowing on the part of zamindárs has been beneficial.
The Honourable Mr. Justice HEATON.	Section 13 is theoretically excellent and practically chaotic. The Court is directed to do that which is frequently impossible. It should be directed <i>as far as possible</i> to open an account, etc. The creditor should be compelled to file with the plaint full information in writing.
Mr. CROUCH, Additional Judicial Commissioner, Sind.	The results of the Dekkhan Act are :— (1) The rate of interest on loans to agriculturists is enhanced by the amount which represents the difference between the market rate of a safe investment and that of a hazardous speculation. (2) The business of lending money to agriculturists is restricted to a most undesirable class of Banyas. Moral effect on agriculturists: encouragement to break faith and to regard contracts as of no binding effect. The lending to agriculturists is falling into the hands of an undesirable class because the risk is great and the trouble of recovery considerable. The business only pays if dishonest practices are resorted to.

GENERAL WORKING OF THE ACT—QUESTION 10—*continued.*

Mr. F. K. BOYD, District Judge, Bijápur.	The net result of the Act is seriously to limit the credit of agriculturists and to make it difficult and dangerous to deal with them. The object of the Act is really to protect the fly against the spider; but the spider and fly case is very much less common than 40 years ago. In Kánara the debtor is as capable as the creditor and the Act is misapplied there.
Mr. HATCH, Collector of Sholápur.	The working of the Act has been demoralizing. I imagine it has been a success to the extent that it has enabled rayats to keep land they would have lost under the ordinary law. The tendency will increase for good sáokárs to leave the business of lending to agriculturists. Under the Act as it stands it obviously does not pay a sáokár to be honest. The sáokár has had to protect himself and when the Courts have cut down his accounts and refused interest on future instalments, he stood to lose heavily. The practice of entering a different amount in the bond from that actually lent was an obvious means of reimbursing himself.
Mr. HERVEY, District Judge of Sholápur.	I am strongly in favour of the Act. It is true it has decreased the agriculturists' credit. This I regard as a very good thing. (In advocating that future interest at 6 per cent. should always be allowed on instalments Mr. Hervey says) I have seen cases in which the final result to the sáokár on an undoubted cash advance has been that he gets less return than if he had put his money in a bank or any safe investment.
Mr. EMANUEL, Collector of Lárkána.	It is true that the Act tends to make a bond waste paper, but this is the lesser evil. The Bania is so much more capable of looking after himself than the cultivator that you must protect the latter.
Mr. SMYTH, Deputy Commissioner, Upper Sind Frontier.	I think on the whole the Act is doing good. There is a tendency perhaps under the Act not to give the money-lender his due and to paint him a little blacker than he is.
Mr. WEBB, Manager, Sind Encumbered Estates.	It may be true to some extent that the Act has restricted money-lending, but it seems to me that Mahommedan land-holders are always able to get money on decent security. I can't speak as to whether the money-lender gets hard measure under the Act. Under the Encumbered Estates Act if his accounts are in good order he is fairly treated if the estate is regarded as solvent.
Mr. CHUCKERBUTTY, Collector of Kaira.	Sáokárs are now in a far weaker position than they were. The new land tenure has hit them hard. The cultivator's credit with the sáokár is contracted. Cultivators now try to put by enough to finance their own cultivation. I find evidence almost every day of the decrease of the dependence of cultivators on sáokárs. The people certainly spend less on marriages and funerals than formerly.
Mr. SIMCOX, Collector, East Khándesh.	With the extraordinary prosperity of the last few years occasioned by the high price of cotton it is difficult to gauge the economic effects of the working of the Dekkhan Act.
Mr. ANDERSON, Collector of Surat.	Money-lenders are investing their money in other directions as the results of the Act. Cultivators have real difficulty now in getting money. Income-tax returns show reduced profits from money-lending. I object to the Act as class legislation of a demoralizing kind. I think people should be kept to their contracts.
Mr. RÖTHFELD, Collector, Broach.	The Act has restricted agriculturist's borrowing power, but not so that a good agriculturist cannot get what he wants for cultivation. The people have now shaken off their subservience to the Bania owing to abolition of imprisonment for debt.

GENERAL WORKING OF THE ACT—QUESTION 10—*continued.*

Mr. GHOSAL, Collector, Panch Mahals.	The economic result of the Act is that whereas formerly the <i>sáokár</i> had the cultivator at his mercy, now the cultivator generally manages to keep something for his own maintenance. The <i>sáokár</i> still makes a living though not as much as he used to do. The big <i>sáokárs</i> are now investing in mills and shares. The difficulty of getting money has made the agriculturist perforce more thrifty.
Mr. SWIFTE, Collector of Poona.	Undoubtedly the credit of the agriculturist has narrowed. When he wants to borrow money he has not uncommonly to pass a sale-deed instead of a mortgage. The agriculturist is now very ready to overreach the <i>sáokár</i> if he can.
Mr. C. M. BAKER, Collector of Násik.	I was in Upper Sind when Chapter III was applied. It caused great restriction of credit at first but not more than was salutary. One result was that the Bania, instead of dealing direct with the tenant, dealt with the zamindar who made his own arrangements with the tenant. I think the Act should remain in force in Sind.
Mr. CLAYTON, Collector of Ratnágiri.	The population exists on the proceeds of labour. Half the able-bodied population go to Bombay six months every year. An average of 3 lakhs of rupees a month is paid into the district by money order.
Mr. McNEILL (from private letter to Mr. Arthur).	My general opinion has for a long time been that the Act is a very demoralizing piece of legislation. It simply inculcates dishonesty, it restricts credit, greatly raises the rate of interest and breeds distrust. <i>Sáokárs</i> have to provide against wholly uncertain action by the Court. Unless the account is kept in some way that guarantees accuracy the Court will decide arbitrarily and the fear of arbitrary decisions is most mischievous.
Mr. TYABJI, District Judge, Borach.	Agriculturist finds difficulty in borrowing. There is temptation to dishonesty, and the setting up of false pleas. Money-lending business has been given up by many of those who carried it on. Agriculturist has been compelled to exercise thrift.
Mr. TALYARKHAN, District Judge of Ratnágiri.	Chapter III has materially benefited a very large number of agriculturists. They find it more difficult however to raise money without selling or ostensibly selling their lands. The Act tends to demoralize both classes. The <i>sáokár</i> is beginning to find money-lending business unprofitable and risky. The good result from the Act is that it protects the weak against the strong, and enables the Court to do substantial justice.
Mr. J. D. DIXSHIT, District Judge of Thána.	Agriculturists' condition has been improved. The restriction of their credit is highly beneficial, because it teaches lessons of thrift.
Mr. ADVANI, District Judge, Surat.	Agriculturists' credit has been shattered. There are more sales now than mortgages. The <i>sáokár</i> is seeking other investments. The Act should be recast altogether.

PROPOSALS FOR IMPROVING THE WORKING OF THE ACT—QUESTION 12.

Mr. LEGGATT, Judge of Dhárwár.	The first essential is to limit the agriculturist's power to alienate his land. In pecuniary cases the burden of proof should be thrown on the creditor.
Mr. CRUMP, District Judge, Belgaum.	I recommend the repeal of the Act. I see no middle course which will be effective between this and restricting the right of alienation which I do not favour. If Act retained, I see no harm in restricting instalments to, say, 7 years except for reasons to be recorded. Would fix 6 per cent. as minimum rate of interest on future instalments.
Mr. C. C. BOYD, District Judge, Poona.	Recommendations closely on the lines of those made in the body of our report. Proposes exclusion of Chapter II, provisions of Chapter III, relating to suits for accounts (15D and 16), Chapter IV, Chapters VI, VII (except sections 50 and 53), Chapters VIII and VIII-A.
Mr. HAYWARD, Additional Judicial Commissioner, Sind.	Act should be extended to "regulate suits and proceedings between creditors and illiterate and other debtors needing special protection." Burden should be on creditors to prove their debtors not in a position to require special protection, and in default Courts to follow special procedure. Chapter III, with perhaps sections 69 and 71A, contains all that is really worth preserving in the Act. Main provisions those for investigation of history of transactions. Essential provisions of this chapter should be carefully re-drafted and inserted as a chapter of the Bombay Civil Courts Act.
Mr. F. J. VABLEY, District Judge, Khándesh.	To require Courts to "go behind the bond" and administer what is described as "substantial justice" is to invite failure. The provisions of the Act admitted on all sides to be beneficial are the powers of the Court (1) to scale down exorbitant interest and (2) to grant instalments with or without interest. I append a draft "Special Classes Relief Act," embodying what I consider desirable to retain.
The Honourable Mr. CURTIS, Commissioner, C. D.	We are beginning at the wrong end now; we let the agriculturist get into debt and then put all possible difficulties in the way of the <i>śāokár</i> recovering his money. In order to rescue the improvident half we lower the credit of the whole agricultural community. We must recognize that the agriculturist must borrow and it is better in the long run to clear his title and enable him to borrow as easily and cheaply as possible and let him suffer the penalty if he does not repay. I would like to see a formal judicial enquiry into titles in land followed by a certificate. This would greatly help Co-operative Credit Societies.
The Honourable Mr. PRATT, Inspector-General of Registration.	Chapter VIII-A should go. The procedure greatly increases the work of sub-registrars in the four districts with no corresponding gain.
Mr. FAWCETT, Additional Judicial Commissioner, Sind.	Chapter IX. The keeping of accounts by money-lenders should now be made compulsory by law.
Mr. PALMER, District Judge, Násik.	Cast out Chapters II, IV, V, VI, VII, VIII-A, IX and X. Replace by definition of suits to which Act to apply, <i>i. e.</i> , those mentioned in 8 (a), (w), (x), (y) and (z).
Mr. KENNEDY, District Judge, Ahmedabad.	The Act is too elaborate. I should like a few simple sections giving the Court power to set aside contracts and modify decrees and award a sum fairly due, payable under fair conditions, where one party belongs to one of certain castes.
Mr. F. K. BOYD, District Judge, Bijápur.	I would retain the Act but very largely limit it by narrowing the definition of agriculturist. I would retain (1) the power of cutting interest; (2) of giving instalments in mortgage cases; (3) of taking history.

PROPOSALS FOR IMPROVING THE WORKING OF THE ACT—
QUESTION 12—*continued.*

Mr. HATCH, Collector of Sholapur.	The Courts should grant future interest always. I would not fix any limit to the number of instalments. I would like to see an Act restricting alienation of land from agriculturist to non-agriculturist. Nothing but that gets to the root of the problem.
Mr. HERVEY, District Judge, Sholapur.	Instalments should usually carry future interest at 6 per cent. At present the custom is not to give future interest.
Mr. McNEILL, Collector on furlough (from private letter to Mr. Arthur).	I would restrict the rayat's right of alienation of his land. Call his land a <i>watan</i> and thus attach no stigma to restriction. I greatly favour the extension of Co-operative Credit Societies, whose influence is wholly beneficial.
Mr. G. D. MADGAOKAR, District Judge, Ahmednagar.	If the interests of the State demand that the ownership of the land should remain with the agriculturists, the obvious remedy is the policy of the restricted tenure, depriving the agriculturists of the power of alienation and making them tenants of the State. Along with the purely negative remedy of the Act, Government must be prepared to create, by means of education, a class of literate and thrifty agriculturists, able to hold their own in their dealings with other classes and to help themselves individually and co-operatively. The Act encourages agriculturists to run into debt. Instead of conciliators a <i>panchayat</i> , or board of three or five conciliators, might be tried as an experiment.
Mr. TYABJI, District Judge, Broach.	The law should be altered so as to empower the Court to alter instalments, and to extend the time for payment in proper cases when a bad season occurs. I would strongly advise efforts being made to increase the number of village munsiffs.
Mr. TALYARKHAN, District Judge, Ratnagiri.	No suggestions except those made in answering other questions.
Mr. J. D. DIKSHIT, District Judge, Thana.	Apply Chapter II, including section 5, to all the districts, and leave intact the revisional jurisdiction of the District Judge. Measures should be adopted as a whole to make the Act as a whole a success, and not piecemeal.
Mr. ADVANI, District Judge, Surat.	Definition of "agriculturist" should be narrowed and certain sections of Chapters II and III should be repealed. Chapters V and VI to be done away with. Also Chapters VIII and VIII-A may be repealed. Chapter IX to be retained, but it is a dead letter. In case conciliation system is abolished, if the parties come to settlement before final hearing $\frac{2}{3}$ of the fees should be remitted.

DEFINITION OF AGRICULTURIST—QUESTION 3.

Mr. LEGGATT, Judge of Dhárwár. The Act should apply only to persons whose income from agriculture for say 5 years exceeds their income from other sources and who do not pay income-tax ;
or a list of genuine agriculturists might be made by the Revenue

ERRATUM.

At page 79 of the Report of the Deccan Agriculturists' Relief Act Commission, 1912, for "Mr. Crump, Judge of Dhárwár" read "Mr. Crump, Judge of Belgaum."

At page 94 in the 33rd line of column 2 for "murders" read "murderers."

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<p>Mr. C. C. BOYD, District Judge, Poona.</p>	<p>Mr. HAYWARD, Additional Judicial Commissioner of Sind.</p>	<p>Mr. F. J. VARLEY, District Judge, Khándesh.</p>	<p>The Honourable Mr. CURTIS, Commissioner, C. D.</p>	<p>Mr. FAWCETT, Additional Judicial Commissioner of Sind.</p>	<p>personally in agricultural labour, or persons who engage in such labour, were they not incapacitated, (3) persons who are members of a joint Hindu family along with persons covered by (1) or (2). The definition should further incorporate explanation (a) of the present section 2 and should contain a proviso excluding its application to any person whose total annual earnings from all sources amount to or exceed Rs. 500.</p> <p>Definition should be restricted to those who actually cultivate themselves or would do so but for sex, age or bodily infirmity. Agricultural labourers should still be protected.</p> <p>Not unreasonable now to assume definition impossible and to endeavour to do away with the term "agriculturist."</p> <p>Present definition includes a large number who don't require protection and excludes a large number of people, e. g., artisans, labourers and other illiterate workers, who are badly in need of it. Would make protection general and include provisions in ordinary law.</p> <p>It is essential to restrict the definition to the man who handles the plough. I would exclude in the Dekkhan Brahmins, Banias, Marwaris, Sonars, Guravs, Parbhns, income-tax payers, arms-license holders, title-holders, Parsees, artisans. Possibly it would be better to adopt provisions of Punjab Land Alienation Act and notify certain classes as agriculturists. It is not sufficient to confine the definition to cultivators of the soil because some non-cultivators would at once make a pretence of engaging in cultivation.</p> <p>The Punjab Act is a good precedent for definition by caste.</p> <p>I would confine the definition of agriculturist to personal cultivators and agricultural labourers. I would enter an explanation to cover the case of widows and other females whose male relatives were agriculturists. I would exclude all landlords who do not themselves cultivate. These are of a superior class who do not need the special protection of the Act. If a debtor was clearly a non-agriculturist when a debt was contracted he should not be allowed to plead that he is an agriculturist at the date of the suit.</p>
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DEFINITION OF AGRICULTURIST—QUESTION 3—*continued.*

Mr. BAKER, District Judge, Sátára.	I would exclude those who cultivate by tenants, but not those who cultivate through servants. Caste classification difficult. It would exclude genuine Brahmin cultivators like the Anawlas in Surat and the Haviks in Kanara.
Mr. PALMER, District Judge, Násik.	Would add explanation to meet such a case as that referred to in the question. Would exclude non-agriculturist assignee from agriculturist mortgagor and agriculturist assignee from non-agriculturist assignor.
Mr. MOUNTFORD, Collector of Sátára.	Agriculturist should be one whose income is under Rs. 500 a year, mainly derived from agriculture during last 3 years.
Mr. KENNEDY, District Judge, Ahmedabad.	Confine "agriculturists" to members of castes such as are generally landholders.
Mr. E. MACONCHIE, Collector of Dhárwár.	Would restrict definition to cultivators who cultivate themselves or through their servants, and whose income is within a certain limit which I would put at Rs. 600 a year. If his income exceeds that limit he is capable of looking after himself.
The Honourable Mr. Justice HEATON.	Definition should include (a) cultivators of the soil. (b) agricultural labourers. It is a matter for careful consideration whether to include also (c) landholders paying assessment not exceeding a certain sum. Query under (a) whether cultivators owning large properties should be excluded.
Mr. A. F. MACONCHIE, Collector of Ahmednagar.	Exclude (1) income-tax payers ; (2) those who cultivate through tenants ; (3) Brahmins and Banias. These persons do not need special protection and should be excluded from an Act meant only for the very poor and very ignorant.
Mr. LAWRENCE, Collector, Karáchi.	Exclude income-tax payers ; include cattle graziers, etc. Exclude labourers, if devoid of land.
Mr. F. K. BOYD, District Judge, Bijápur.	Exclude persons cultivating or leasing land assessed at Rs. 50 or over. The Act has gone far beyond its original intention.
Mr. HATCH, Collector of Sholápur.	Exclude income-tax payers.
Mr. HERVEY, District Judge, Sholápur.	Exclude income-tax payers. Include many such as village mbars who are not now included. Exclude agriculturist assignee from non-agriculturist mortgagor.
Mr. EMANUEL, Collector of Lárkhána.	I do not think the definition can be improved on. I don't think it would be safe to define by caste.
Mr. WEBB, Manager, Sind Encumbered Estates.	I don't think the present definition satisfactory but have no amendment to suggest.
Mr. ANDERSON, Collector, Surat.	Exclude those who cultivate through servants and tenants. Restrict the definition to those who cultivate the soil.
Mr. C. M. BAKER, Collector of Násik.	I favour either definition by caste as under the Punjab Land Alienation Act, or a list for each village to be framed by the Collector. I prefer the latter method.

DEFINITION OF AGRICULTURIST—QUESTION 3—concluded.

The Honourable Mr. ORR ...	Omit the words "or by tenants" from the definition.
Mr. G. D. MADGAVKAR, District Judge of Ahmednagar.	"Agriculturist" shall be taken to mean a person whose sole or principal occupation by himself or his servants or by his tenants at the time of the contract was agriculture. It may also be added "and whose agricultural income did not exceed Rs. 300 or 200".
Mr. TYABJI, District Judge of Broach.	Omit "principally", and add "at the time when the liability was incurred". Omit clause 2.
Mr. TALYARKHAN, District Judge of Ratnágiri.	Substitute "almost wholly" for "principally", and exclude an agriculturist assignee of an equity of redemption.
Mr. ADVANI, District Judge of Surat.	Omit "by his tenants", and provide that a person should have earned his livelihood by agriculture for 5 years preceding the institution of the suit.
Mr. J. D. DIKSHIT, District Judge, Thána.	Omit "wholly or principally" and exclude one who, though earning a larger income from agriculture than from other sources, has sufficient income from other sources to maintain himself and his family.

CHAPTER II AND CHAPTER VII.

Mr. LEGGATT, Judge of Dhárwár.	I see no objection to repealing Chapter II and Chapter VII and making the law uniform throughout the Presidency.
Mr. CRUMP, Judge of Belgaum.	The provisions of Chapter II are difficult to understand and the whole needs recasting I am against restricting the right of appeal, and therefore the special procedure in Chapter II and Chapter VII may be discarded.
Mr. C. C. BOYD, District Judge, Poona.	Chapter II should go. The law should be the same in the four districts as in the rest of the Presidency. Chapter VII should go except sections 50 and 53. The last section is important. The District Judge should have power of revision in all cases in which agriculturists are parties. In view of the proposed omission of sections 4, 5 and 6 it may be necessary to alter the Provincial Small Cause Courts Act.
Mr. HAYWARD, Additional Judicial Commissioner, Sind.	Chapter II is not in force in Sind. It is ill-drafted and has no further force now than the limitation of appeal in certain cases. It might be repealed unless found to be of special value in the Presidency Proper. Chapter VII.—Not in force in Sind and not needed.
Mr. F. J. VARLEY, District Judge, Khándesh.	The whole of Chapter II might go and the law in the four districts be made the same as in the rest of the Presidency, but if the principle of the Act is to be retained Sub-Judges should not try cases under the Act as Small Causes.
The Honourable Mr. CURTIS, Commissioner, C. D.	Chapter II should go. It is a complicated chapter. It makes wholly unnecessary distinctions between neighbouring districts in which the conditions are exactly the same.
Mr. PALMER, District Judge, Násik.	Chapter II is enough to give one a headache to look at. It with Chapter VII should go. Replace by classification of suits falling under the Act, <i>i.e.</i> , those referred to in 3 (a), (w), (x), (y) and (z).
The Honourable Mr. Justice HEATON.	I am against any division of the sections relating to Courts such as are found in Chapters II and III. The Court sections ought to be as simple and direct as possible. The object is the relief of the agricultural classes. Then let its provisions be confined to them. If that be done there is no need to have the jurisdictional complications and atrocities of section 3 (b) and section 4. I see no reason why money suits between creditors and agriculturist debtors should not be tried as Small Cause suits. We should have a uniform law of procedure throughout the Presidency.
Mr. TALYARKHAN, District Judge of Ratnágiri.	The diversity of procedure and jurisdiction introduced by Chapter II should be done away with.
Mr. ADVANI, District Judge of Surat.	Chapter II should be done away with.

AMENDMENT OF SECTION 7 AND SECTION 12
(QUESTIONS 4 (a) AND (b) AND 5.)

Mr. LEGGATT, District Judge, Dhárwár.	<p>The examination of the agriculturist as a witness should be left to the discretion of the Court, the other party being given the right to insist on his appearance for cross-examination.</p> <p>Transfers of sections and slight amendments would make confusion worse confounded. The Act requires redrafting. The application of part of an Act is much to be deprecated unless the Act is specially drafted that this may be done.</p> <p>To obtain the attendance of the defendant, the plaintiff should be required to pay the necessary fees for issue of summons or warrant.</p>
Mr. CRUMP, District Judge, Belgaum.	<p>No suit should be decided <i>ex parte</i> against an agriculturist-defendant unless, after taking such steps as the law permits, his attendance cannot be secured.</p> <p>Plaintiff should deposit expenses of defendant's attendance.</p>
Mr. C. C. BOYD, District Judge, Poona.	<p>The second clause of section 7 should be cut out and merged in section 12, the latter section to refer to all suits under the Act. The plaintiff creditor should deposit process fees and subsistence allowance. An enactment is required.</p>
Mr. F. J. VARLEY, District Judge, Khándesh.	<p>Second clause of section 7 might be omitted, the section being incorporated in section 12.</p> <p>Would allow suit to be decided <i>ex parte</i> if it is certain that he is acquainted with nature of claim.</p> <p>It should be optional with Court to dispense with second examination of defendant.</p>
The Honourable Mr. CURTIS, Commissioner, C. D.	<p>Section 7 might be cut out by an amendment of section 12.</p>
Mr. PALMER, District Judge, Násik.	<p>Not a difficulty that troubles Sub-Judges.</p> <p>They never recall an agriculturist-defendant unless necessary.</p> <p>I would cut out second clause of section 7 and amalgamate with section 12.</p> <p>No difficulty in practice in obtaining presence of agriculturist-defendant. It is usual to issue a summons first and if necessary a warrant, plaintiff paying expenses. Latter should be legalized.</p>
Mr. KENNEDY, District Judge, Ahmedabad.	<p>Plaintiff should be required to pay bhatta for agriculturist-defendant's appearance.</p> <p>Court should have discretion to dispense with latter's second appearance as a witness.</p>
Mr. F. K. BOYD, District Judge, Bijápúr.	<p>Retain practice of taking costs from plaintiff to compel attendance of agriculturist-defendant.</p>
Mr. HERVEY, District Judge, Sholápur.	<p>Attendance of defendant should be secured by issue of (1) summons, (2) warrant. Law should be amended so that plaintiff may be required to pay costs.</p>
Mr. ANDERSON, Collector of Surat.	<p>The Court should enforce attendance once. The agriculturist-defendant is often misled and induced or threatened not to appear.</p>
Mr. G. D. MADGAVKAR, District Judge of Ahmednagar.	<p>Section 7 need not be transferred to Chapter III. The words "all the parties have been examined and cross-examined under section 7" should be added after "For reasons, etc.," in section 12.</p>

**AMENDMENT OF SECTION 7 AND SECTION 12
(QUESTIONS 4 (a) AND (b) AND 5)—continued.**

Mr. TYABJI, District Judge of Broach.	The double examination of the defendant-agriculturist is unnecessary. The section should be amended accordingly. Section 7 may be transferred to Chapter III.
Mr. TALYARKHAN, District Judge of Ratnágiri.	No amendment necessary. Either transfer section 7 to Chapter III, or add an exception at the end of section 3 to make it clear that section 7 applies to all suits.
Mr. J. D. DIKSHIT, District Judge of Thána.	Section 7 is in its proper place, and must be left there. Both the sections are necessary in their proper places.
Mr. ADVANI, District Judge of Surat.	Make the examination of the agriculturist as a party before the framing of issues compulsory, and leave it to the Court to examine him or not after, according to the exigencies of the case.

SECTION 10A.

Mr. LEGGATT, Judge of Dhár-wár.	I consider this section a direct incentive to fraud. It should be expunged.
Mr. CRUMP, District Judge, Belgaum.	Effect to make all titles insecure.
Mr. C. C. BOYD, District Judge, Poona.	Should stand, because it is known that there are many mortgages dressed as sale-deeds; indeed, very often the apparent vendee admits them to be such. Under the ordinary law it is very difficult to do justice in such cases. The section has in my experience redressed very long-standing grievances.
Mr. F. J. VARLEY, District Judge, Khandesh.	I strongly object to this section as an invitation to perjury. No title for 60 years past is secure. If the section is retained there must be some limitation of it. The limitation might follow that under section 72.*
The Honourable Mr. CURTIS, Commissioner, C. D.	As a result of the section there is not a title purporting to be founded on a sale, however old, which can be said to be safe except sale under orders of a Court. I would lay down that no transaction effected more than 20 years ago should be gone into and that the section should be in force only for a definite time, say 5 years. I recognize that the rayat will suffer in the case of ostensible sales, but there are only two alternatives—either the effect of the section will be whittled down by judicial interpretation so as to render the relief given microscopic, or there will be a shock to titles in land which is incompatible with the existence of a civilized community.
Mr. PALMER, District Judge, Násik.	I do not concur in denunciation of section 10A. It should stand. It is not easy for the vendor to prove mortgage.
Mr. MOUNTFORD, Collector of Sátára.	The section is a legal sanction to dishonesty on the part of the rayat. While it remains law the agriculturist is bound to repudiate a genuine sale. A baneful provision, teaching the rayat to bring forward false evidence.
Mr. HERVEY, District Judge, Sholápur.	Suits under 10A are coming in literally by thousands in this district. Practically every sale made by an agriculturist now is challenged. The ostensible sale has become a convention now which deceives no one. When the debt is paid with interest, the money-lender commonly allows the land to be re-conveyed. I would restrict the operation of 10A to 12 years and the restriction should be absolute. It is absurd that titles of 30 and 40 years can be called in question. I would not exclude oral evidence though I believe it generally false. At the same time the Court's time is greatly wasted by such evidence and I think there is much to be said for the proposal to exclude it.

* I. e., 12 years.

AMENDMENT OF SECTION 13—QUESTION 6 (b).

Mr. LEGGATT, Judge of Dhár-wár.	The amendment would be useful, inasmuch as it would do away with some guess-work, but on the other hand it would have to be made clear that the discretion is to be used only when the probable profits appear equal to fair interest. If the burden of proof is thrown on the money-lenders, in practice the amendment would be found unnecessary.
Mr. CRUMP, District Judge, Belgaum.	If it is intended that the Court should make no enquiry as to whether profits and interest are equal, then I am decidedly opposed to the suggestion. I do not see how principal only could be awarded except (1) in cases where the terms of the contract are that the profits are to be in lieu of interest and the Court sees no reason to doubt that this is a fair bargain, (2) when the Court finds on enquiry that the profits and interest do in fact balance each other. In either case some enquiry is necessary and the taking of accounts is purely formal. Section 13 requires no amendment.
Mr. C. C. BOYD, District Judge, Poona.	No modification necessary. It is better that account of the profits should be taken.
Mr. F. J. VARLEY, District Judge, Khándesh.	No amendment necessary.
The Honourable Mr. CURTIS, Commissioner, C. D.	Yes, I would discourage Sub-Judges making enquiries into profits as far as possible. They are unfitted by their training for the task. I do not think the ordinary man of business would take a usufructuary mortgage unless he were fairly sure that the profits of the land left a margin of at least 35 per cent. over the interest.
Mr. FAWCETT, Additional Judicial Commissioner, Sind.	The Court should have the discretion suggested in cases where the account taken results in a balance due to the creditor in excess of the amount actually due to him under the terms of the contract.
Mr. BAKER, District Judge, Sátára.	Approves amendment.
Mr. PALMER, District Judge, Násik.	A difficult question. Giving discretion may enable a lazy Sub-Judge to neglect his duty of taking accounts. Occasionally profits are less than a fair rate of interest. In practice it is not usual to give creditor more than the profits he has actually received.
Mr. KENNEDY, District Judge, Ahmedabad.	The provision would be useful, as the amount of profits is often a matter of conjecture. Presumption that profits equal interest should only be drawn where there is no sound material for forming judgment. Otherwise Courts would drift into habit of always passing decrees for principal only in usufructuary cases with serious results.
The Honourable Mr. Justice HEATON.	Yes, thereby substituting a simple for an elaborate enquiry where the Judge can see offhand that profits and interest fairly balance.
Mr. F. K. BOYD, District Judge, Bijápur.	I don't see that any amendment would put the Court in a better position than at present. You must take at least a rough account of profits.
Mr. HERVEY, District Judge, Sholápur.	A proviso to section 13 should be added to the effect that "the provisions of section 13 shall not operate to increase the amount which could be recorded by the mortgagee under the ordinary law."
Mr. EMANUEL, Collector of Lárkána.	The proposed amendment does not seem equitable.

AMENDMENT OF SECTION 13—QUESTION 6 (b)—*continued.*

Mr. WEBB, Manager, Sind Encumbered Estates.	My practice is, when I can't ascertain profit, to take it as equal to one assessment, as that is the average produce of estates in Sind. I don't agree with the suggestion in question 6 (b). Where I can't get at actual profit, I would take an average according to local circumstances.
Mr. ANDERSON, Collector of Surat.	I advocate the proposed amendment.
Mr. G. D. MADGOKAR, District Judge, Ahmednagar.	Section 13 should be amended as proposed.
Mr. TRYABI, District Judge, Broach.	I am not in favour of this modification.
Mr. TALYARKHAN, District Judge, Ratnágiri.	Discretion should be allowed, but should not be unfettered as proposed.
Mr. J. D. DIKSHIT, District Judge, Thána.	Add the following proviso to section 13:— “ Provided that in no case the amount awarded shall exceed the amount which would have been payable, had the contract between the parties not been set aside.”
Mr. ADVANI, District Judge, Surat.	Yes.

AMENDMENT OF SECTION 15-A—QUESTION 7.

Mr. LEGGATT, Judge of Dhárwár.	The Court should be given discretion either to allow immediate redemption <i>provided it considers it fair to both sides</i> or to fix a term of years for the continuance of the usufructuary mortgage sufficient for the repayment of the principal with a fair rate of interest.
Mr. CRUMP, District Judge, Belgaum.	The Court should be given discretion.
Mr. C. C. BOYD, District Judge, Poona.	No experience of suits brought before expiry of mortgage.
Mr. F. J. VARLEY, District Judge, Khándesh.	No. If the principle of the Act is to be retained there should be no discretion to refuse redemption at any time.
The Honourable Mr. CURTIS, Commissioner, Central Division.	Yes, the sáokár does not get fair measure at present.
Mr. FAWCETT, Additional Judicial Commissioner Sind.	Yes, but the discretion to refuse should be limited to cases where the decree for redemption would inflict undue hardship on the mortgagee. In such cases I would allow the Court to pass a decree for redemption, to come into effect at such subsequent date as it thinks fair,—so as to avoid a second suit.
Mr. BAKER, District Judge, Sátára.	The Court should be given discretion.
Mr. PALMER, District Judge, Násik.	The amendment proposed would nullify an important portion of the Act. Not necessary.
Mr. KENNEDY, District Judge, Ahmedabad.	The amendment might be made, provided future payments under the mortgage are made through, or certified to, Court.
Mr. F. K. BOYD, District Judge, Bijápúr.	The result of a man being able to mortgage his land and come to Court next day to redeem it is that such subterfuges are resorted to as (1) the ostensible sale, (2) the sham arbitration (formerly common in Sind), (3) the sham consent decree (common in Kánara and quite common formerly in Sind). I would fix a minimum limit for redemption—It is difficult to say what limit.
Mr. HERVEY, District Judge, Sholápur.	Section 15A is badly drafted and contradicts section 15B (3).
Mr. EMANUEL, Collector of Lárkána.	I don't think the amendment desirable. The debtor should be enabled to pay any time he can.
Mr. ANDERSON, Collector of Surat.	The amendment might be made.
Mr. SWIFTE, Collector of Poona.	The redemption clauses work very hardly on the money-lender and tend to destroy the agriculturist's credit.
Mr. G. D. MADGAVKAR, District Judge of Ahmednagar.	The amendment might be made.
Mr. TYABJI, District Judge of Broach.	Yes. This amendment will check serious abuse of the section.
Mr. TALYARKHAN, District Judge of Ratnágiri.	It may be provided that, in cases where the mortgage term has not expired, a redemption suit will not be entertained before the expiry of five years from date of the mortgage.
Mr. J. D. DIKSHIT, District Judge of Thána.	Discretion may be allowed to refuse redemption before expiration of the period.
Mr. ADVANI, District Judge of Surat.	Yes. This protection of the sáokár is necessary.

AMENDMENT OF SECTION 15B—QUESTION 8.

Mr. LEGGATT, Judge of Dhárwár.	Frequently the section works hardly. I would have a decree with a default clause but allow the Court in case of hardship to condone default.
Mr. CRUMP, District Judge, Belgaum.	No opinion from personal knowledge. There is clearly a danger of the hardship suggested.
Mr. C. C. BOYD, District Judge, Poona.	The Court should sell part of the property, if capable of subdivision and if sale of part will fetch price sufficient to pay instalments due. If fair price can only be obtained by sale of whole property, it should be sold and decree-holder should be paid in full, less discount. The Courts can, in my opinion, do this now, but they do not and it should be made clear in the law.
Mr. F. J. VARLEY, District Judge, Khándesh.	Section 15B, as now interpreted by the High Court, works hardly on both parties. It drives the creditor to numerous executions and the debtor is sold up piecemeal; the result is annoyance to the creditor which is reflected in his transactions with the debtor, and the debtor gets no price for his land. I would go back to a decree with a default clause.
The Honourable Mr. CURTIS, Commissioner, Central Division.	I am strongly opposed to the present policy of only selling enough land to meet the instalment. When a debtor has been through the Court and has received the privilege of "hapta bandi" and then fails to pay the instalment, he deserves no further pity, and the Court should have discretion to sell the whole land.
Mr. PALMER, District Judge, Násik.	Favours reversion to default clause in decree. On failure to pay two consecutive instalments the whole debt should become payable.
Mr. KENNEDY, District Judge, Ahmedabad.	I do not know of actual cases of hardship, but would make it lawful to bring whole property to sale on failure of a certain number of instalments.
Mr. F. K. BOYD, District Judge, Bijápur.	The remedy is for the Court to sell more. If the section works hardly, it is the fault of the Court. As regards the default clause in the decree, it is very hard on the creditor to force him to go to Court to get payment of every single instalment. There should be a default clause and the whole debt should become payable if a debtor defaults in payment of three instalments. If he does so, it is pretty clear that he has no intention of paying.
Mr. HERVEY, District Judge, Sholápur.	The default decree might be reverted to; default clause to take effect when there has been default in payment of three instalments. I would cut out 15B (2) and put in a proviso to the above effect.
Mr. EMANUEL, Collector of Lárkána.	I have heard no such complaint. If the land goes for too little it is the fault of the mukhtyarkar.
Mr. ANDERSON, Collector of Surat.	Subdivision has gone too far in this district. I am against further subdivision.
Mr. G. D. MADGAVKAR, District Judge of Ahmednagar.	If section 15B works hardly, the agriculturist could sell off (through the Court, if necessary) a larger portion and pay an instalment.
Mr. TYABJI, District Judge of Broach.	Court should have power to decide whether a part of the property, or the whole of it, should be sold.
Mr. TALYARKHAN, District Judge of Ratnágiri.	Yes—sometimes. The Court should have power to make the whole debt payable at once in case of default in payment of one or more instalments.
Mr. J. D. DIKSHIT, District Judge of Tháua.	The question must be answered in the affirmative.
Mr. ADVANI, District Judge of Surat.	Yes.

SECTION 22.—QUESTION 14.

Mr. LEGGATT, Judge of Dhárwár.	The sole result of this section is the direct contrary of that intended. It precludes the money-lender from lending without security.
Mr. C. C. BOYD, District Judge, Poona.	I am decidedly of opinion that section 22 should be retained. If it prevents loans without security, that is a good thing. It is desirable to cut down agriculturists' credit.
Mr. F. J. VALLEY, District Judge, Khándesh.	I do not favour the application of section 22 to this district.
Mr. PALMER, District Judge, Násik.	Section 22 should be applied in Násik.
Mr. KENNEDY, District Judge, Ahmedabad.	Section 22 should be introduced generally.
Mr. HERVEY, District Judge, Sholápur.	Section 22 should be retained. Every possible obstacle should be placed in the way of agriculturists' getting rid of their land.
Mr. GHOSAL, Collector of Panch Maháls.	Not extended to this district but was found working excellently in Khándesh.
Mr. TYABJI, District Judge, Broach.	Not in force in this district and not needed.
Mr. DIKSHIT, District Judge, Thána.	Section 22 has not been extended to any district except the Deccan Districts. Its extension to other districts seems to be necessary.
Mr. TALEYABKHAN, District Judge, Ratnágiri.	I would not recommend the extension of section 22, as in that case scarcely anyone would advance even a small loan to an agriculturist except on a mortgage. I would like to see the section withdrawn altogether.
Mr. MADGAOKAR, District Judge, Nagar.	Section 22 necessary; should be extended except perhaps in Gujarát where the agriculturists are as a rule well able to look after themselves.

[Note.—The general opinion of witnesses outside the four districts is that section 22 should not be introduced.]

CHAPTER IV.—INSOLVENCY PROCEDURE.

Mr. HAYWARD, Additional Judicial Commissioner, Sind.	Chapter IV is not in force in Sind. It would appear no longer required in view of Provincial Insolvency Act.
Mr. G. C. BOYD, District Judge, Poona.	The Chapter should go.
Mr. CRUMP, District Judge, Belgaum.	I have never heard of a case under this chapter. It is wholly unnecessary.
Mr. LEGGATT, District Judge, Dhárwár.	Not applied in this district. No experience. Probably some provision is necessary regarding insolvency proceedings to prevent creditor getting over the Act altogether.
Mr. F. J. VARLEY, District Judge, Khándesh.	Chapter IV is a dead letter and might go.
Mr. PALMER, District Judge, Násik.	Should be repealed.

Note.—Further opinions not quoted, but there is a unanimity of opinion among witnesses before the Commission that the chapter should be excluded from the Act as unnecessary.]

CHAPTER V.—VILLAGE MUNSIFFS.

Mr. LEGGATT, Judge of Dhárwár.	I think Chapter V should be out altogether. If necessary, it might be put in the Civil Courts Act. Its object is to appoint certain persons as Sub-Judges with limited powers, not to relieve indebtedness.
Mr. CRUMP, District Judge, Belgaum.	So long as their pecuniary jurisdiction is limited as it is, their work can be of no importance. I doubt if they are worth maintaining, but they probably do no harm, I would certainly not appoint any more.
Mr. C. C. BOYD, District Judge, Poona.	Village Munsiffs work fairly satisfactorily and should be retained. They do more good than harm. I would not raise their powers.
Mr. HAYWARD, Additional Judicial Commissioner, Sind.	Chapter V not in force in Sind. Would not appear to be necessary.
Mr. F. J. VARLEY, District Judge, Khándesh.	I think Village Munsiffs harmless and fairly useless. I don't attach much importance either way. A good Village Munsiff may save the Court much work.
The Honourable Mr. CURTIS, Commissioner, Central Division.	Village Munsiffs should go.
Mr. FAWCETT, Additional Judicial Commissioner, Sind.	The system should be retained where you can get suitable men of good position and influence and trustworthy.
Mr. BAKER, District Judge, Sátára.	Village Munsiffs do very little work. They might be abolished.
Mr. PALMER, District Judge, Násik.	No Village Munsiffs in this district. Not desirable to introduce them.
Mr. KENNEDY, District Judge, Ahmedabad.	I know little of Village Munsiffs. General opinion adverse.
The Honourable Mr. Justice HEATON.	No merit in my eyes.
Mr. F. K. BOYD, District Judge, Bijápur.	Retain if you can get the right men. Village Munsiffs do practically nothing here.
Mr. SMYTH, Divisional Commissioner, Upper Sind Frontier.	Village Munsiffs cannot be introduced into Sind with advantage.
Mr. WEBB, Manager, Sind Encumbered Estates.	Feeling is so strong between Musulmans and Hindus that it is undesirable to give either powers to enforce decisions against the other.
Mr. G. D. MADGAOKAR, District Judge of Ahmednagar.	Extension of the system advisable only when proper men are to be found.
Mr. TYABJI, District Judge of Broach.	The system should not be abolished, but an endeavour to make these unofficial judges more useful should be made.
Mr. TALYARKHAN, District Judge of Ratnágiri.	I would much rather that the system were abolished altogether than that any zeal should be shown for its extension.
Mr. J. D. DIKSHIT, District Judge of Thána.	The provisions regarding Village Munsiffs should be altogether abolished.
Mr. ADVANI, District Judge of Surat.	Not desirable to extend the system to Surat District.

CHAPTER VI.—CONCILIATION.

The Honourable Mr. Justice HEATON.	Should be done away with, root and branch.
Mr. CRUMP, District Judge, Belgaum.	I do not regard the point as even open to controversy. If the decision lay with me, Chapter VI of the Act would be repealed today. It is impossible to get men of the right stamp in sufficient numbers. The enormous number of cases in which the parties do not appear indicates the estimation in which the system is held by the public.
Mr. MOUNTFORD, Collector of Sátára.	Splendid in theory, in practice unworkable. Puts the rayats to great trouble incommensurate with the very small measure of success attained.
Mr. F. K. ROYD, District Judge, Bijápur.	The system is excellent if you could get the right men, but you cannot. It should be abolished.
Mr. C. C. BOYD ...	... The advantages are all theoretical. You cannot find men of the right calibre. I am not in favour of refunding part of the Court-fee if the parties come to terms prior to hearing. If the parties wish to come to terms, let them file an award. If the Court is to examine parties and frame issues, court-fees should be paid. Court-fees are not large in India.
Mr. LEGGATT, Judge of Dhárwár.	The system should be abolished.
The Honourable Mr. CURTIS, Commissioner, C. D.	The system has failed throughout the Division and should be abolished. It is impossible to find men of probity and capacity to fill the post.
Mr. HAYWARD, Additional Judicial Commissioner, Sind.	The system is not in force in Sind and I do not favour its introduction.
Mr. ADVANI, District Judge, Surat.	Suitable men are not available. The percentage of agreements effected is small. The system should be abolished. If retained it should be made voluntary.
Mr. KENNEDY, District Judge, Ahmedabad.	The system should be abolished. If made voluntary it will at once collapse.
Mr. FAWCETT, District Judge, Poona.	I am against conciliation in its present form. There is no real conciliation except in a few cases. Parties go before a Conciliator to get a certificate, and they have useless trouble. I approve of refund of part of the Court-fee if parties come to terms prior to first hearing.
Mr. W. T. W. BAKER, District Judge, Sátára.	I am strongly opposed to the system. It is a clog on the administration of justice and seriously delays the disposal of cases. It should be abolished.
Mr. TYABJEE, District Judge, Broach.	The system encourages speculative claims. The creditor obtains what the Court would not award or more than the Court would decree.
Mr. A. F. MACNOCHIE, Collector, Ahmednagar.	Conciliation should be entirely abolished.
Mr. MADGAVKAR, District Judge, Ahmednagar.	Taking conciliators as a whole, I do not know any district where there exists a class or individuals numerous enough and with moral influence sufficient to achieve appreciable results. Unless and until there is more disinterested public spirit, no machinery will make conciliation a success. I recommend temporary limitation of the system with Boards of Conciliators. It might be extended gradually as found feasible.
Mr. VERNON, District Judge, Kánara.	The right kind of man is hard to find. The wrong kind easily available.

CONCILIATION—*continued.*

Mr. F. J. VARLEY, District Judge, Khândesh.	My information and experience go to shew that, with perhaps a few brilliant exceptions where we have really disinterested and public spirited men willing to sacrifice time and money over what is often a thankless task, it operates either as a clog on litigation, and that a useless clog which merely wastes time and raises questions of limitation, or, as often happens when unsuitable men are appointed, it encourages every form of dishonesty. I have reported many instances of dishonesty. I dislike prosecution where the agency is unpaid, and where I have found dishonesty have called on the conciliator to resign. The system should be abolished.
Mr. PALMER, District Judge, Násik.	The Act presupposed the Conciliator to be an independent native gentleman in the agriculturist's village or neighbourhood, known to and respected by the agriculturist, whose influence would be exerted in getting him the best terms possible. In practice the conciliator is either a <i>sáokár</i> or a person living at <i>táluka</i> head-quarters, known only to the <i>sáokár</i> and not to the agriculturist. He exercises his influence to induce the agriculturist to pass fresh bonds instead of time-expired bonds or to pay higher interest than the Court would allow. Many Conciliators object to the supervision exercised by the Sub-Judge. To avoid this they pass no agreements or very few. They say to the debtor "you must pay so much cash down to satisfy the debt." The debtor pays and the Conciliator tells the creditor to withdraw the application. One Conciliator I knew brought this practice to a fine art. The Court cannot check it. The system should be abolished.
Mr. HERVEY, District Judge, Sholápur.	Conciliation is a pure waste of time at present. There might be conciliation boards at Sub-Judges' head-quarters, sitting as a Bench with the Sub-Judge.
Mr. CHUCKERSUTTY, Collector of Kaira.	In my experience some Conciliators have intrigued to screen murders. I am for abolition of the system.
Mr. DIKSHIT, District Judge, Thána.	It is notorious that <i>khatpati</i> people, <i>i. e.</i> , persons who want to get some benefit or to raise their own importance, seek the post of Conciliator. Persons of known integrity and respectability decline to accept office. Money-lenders are undesirable. Business men hardly find time. Pleaders have an adverse interest to the reduction of litigation. The merit of the system in the Conciliator being near the home of the agriculturist is wanting. Agriculturists think instalments a blessing and are therefore pleased to get an instalment agreement arranged by the Conciliator in a case in which a Court would have given the <i>sáokár</i> nothing. The system is, however, educative and should not be abolished. No Conciliators should be appointed in new districts or where fit men are not available.
Mr. ANDERSON, Collector of Surat.	I would abolish conciliation and remit a portion of the Court-fees where the parties effect an agreement out of Court.
Mr. GHOSAL, Collector of Panch Máhals.	Conciliators are generally men of inferior intellect, not versed in legal knowledge and not experienced in checking accounts. Conciliators should not be abolished but should be given more power.
Mr. SWIFTE, Collector of Poona.	The system is good where you can get a good Conciliator. I would have fewer and better men.
Mr. GRAHAM, Assistant Legal Remembrancer.	The conciliation system is a failure. The people don't trust the Conciliator. It is impossible to get the right men for the work and the Conciliators complain that they have no power to enforce the attendance of parties.
The Honourable Mr. ORR ...	My experience in Nagar goes to shew the system a failure. The Conciliators did very little work. What they did tended to delay justice. Conciliators were not a good stamp. They favoured the <i>sáokár</i> against the agriculturist.

FIXING OF INSTALMENTS AND MODIFICATION OF INTEREST.

Mr. LEGGATT, Judge of Dhár-wár.	Sub-Judges should be given definite guiding regarding the fixing of instalments and modification of interest. In some cases, where Sub-Judges have discretion, they do not seem to recognize that the law intends them to exercise it.
Mr. CRUMP, District Judge, Belgaum.	Instalments might be limited to 7 years except for reasons to be recorded in writing. There should be minimum interest at 6 per cent. on future instalments.

LAW OF LIMITATION—SECTION 72.

Mr. LEGGATT, Judge of Dhárwár.	I see no reason to make the law of limitation different for agriculturists and I would repeal section 72.
Mr. F. J. VARLEY, District Judge, Khándesh.	Section 72 should be extended to the rest of the Presidency. A longer period of limitation saves renewals.
Mr. PALMER, District Judge, Násik.	Section 72 should be expunged.

ARBITRATION AWARDS—QUESTION 16.

Mr. LEGGATT, Judge of Dhárwár.	It is absolutely necessary to prohibit the filing of arbitration awards unless the Act is to become nugatory. If they are to be scrutinized, they might as well be agreements before a Conciliator.
Mr. CRUMP, District Judge, Belgaum.	The filing of arbitration awards should not be prohibited, but Court should have power to scrutinize and discretion to refuse to file them. I see no advantage in putting a stop to arbitration if these safeguards are adopted.
Mr. C. C. BOYD, District Judge, Poona.	It is not desirable to prohibit the filing of awards or to empower Courts to scrutinize them. They should have the power they now have under the Civil Procedure Code. In some cases debtors may lose something which they might have gained in Court but they save costs and time. The safety of the retention of the system depends on the care of the Court in seeing that the debtor really understands the award.
Mr. HAYWARD, Additional Judicial Commissioner, Sind.	Provisions should be added giving the Courts power of control over arbitration proceedings.
Mr. VARLEY, District Judge, Khándesh.	No. I think much might be done under the second schedule, Civil Procedure Code, or some modification of it.
The Honourable Mr. CURTIS, Commissioner, C. D.	The filing of awards should be prohibited.
Mr. FAWCETT, Additional Judicial Commissioner, Sind.	The filing of awards when one party is an agriculturist should not be prohibited. As in the case of conciliation agreements, the Court should have powers, similar to those in section 44 (2), to ascertain whether the award is legal and equitable, etc.
Mr. PALMER, District Judge, Násik.	Desirable to prohibit filing of awards. There is danger that an agriculturist may be induced to agree to what is directly opposed to his interest.
Mr. KENNEDY, District Judge, Ahmedabad.	Court should have power to refuse to file an award when it appears inequitable.
Mr. LAWRENCE, Collector of Karáchi.	Money-lenders in Sind used to defeat the Act by filing fictitious awards.
Mr. F. K. BOYD, District Judge, Bijápur.	Awards are generally a means of evading the Act. I would exclude them.
Mr. WEBB, Manager, Sind Encumbered Estates.	Most decidedly it is desirable to prohibit the filing of awards where one party is agriculturist.
Mr. GHOSAL, Collector, Panch Maháls.	It is desirable to prohibit the filing of awards where one party is agriculturist.
Mr. J. D. MADGAVKAR, District Judge of Ahmednagar.	A clause may be enacted, not absolutely prohibiting, but enabling the Courts to deal with such awards as they do with Conciliators' agreements sent up to the Court.
Mr. TALYARKHAN, District Judge, Ratnágiri.	No; but Courts should have power to scrutinize the awards and refuse to file them when they appear to be inequitable.
Mr. D. J. DIKSHIT, District Judge of Thána.	Yes, otherwise the provisions of the Act are defeated.
Mr. ADVANI, District Judge of Surat.	I would prohibit the filing of awards altogether in relation to agriculturists.

REMISSION OF COURT FEES—QUESTIONS 9 AND 17.

Mr. LEGGATT, Judge of Dhár-wár.	The remission of Court-fees might well be cancelled, but I would give the Court power to remit in cases in which there is no plaintiff who is well enough off to pay the Court-fees without difficulty. Question 9.—The suit would be dismissed and the agriculturist would have to bring another suit for redemption.
Mr. CRUMP, District Judge, Belgaum.	Remission of Court-fees should be cancelled. There is no need for remission in this district.
Mr. C. C. BOYD, District Judge, Poona.	All remissions of Court-fee should cease. Government are losing far more than they can afford. A great deal of present remission on redemption suits goes to money-lenders. If full Court-fees be levied those who have brought suits without proper cause will chiefly suffer. To prevent hardship I would give Court power at the end of a suit to refund Court-fees to agriculturist plaintiffs who are in great poverty and have not behaved dishonestly. This order should be appealable to District Court.
Mr. F. J. VARLEY, District Judge, Khándesh.	The time has now come when there is no need for remission of Court-fees. Most agriculturists who bring suits under the Act are represented by pleader and it is illogical that Government should forego its dues when agriculturists are quite able to afford them.
Honourable Mr. CURTIS, Commissioner, C. D.	I object to any remission of Court-fees. It leads to speculative and champertous litigation. (Detailed reasons may be referred to.)
Mr. FAWCETT, Additional Judicial Commissioner, Sind.	There should no longer be any remission of Court-fees in suits by agriculturists. The agriculturist can find money to pay Court-fees as well as to pay his pleader. If he is really poor, he can sue as a pauper.
Mr. PALMER, District Judge, Násik.	There should be no remission of Court-fees now. The agriculturist requires no inducement to come to Court.
Mr. KENNEDY, District Judge, Ahmedabad.	Exemption should be abolished. Many very speculative suits and appeals are brought. Pauper suits might be permitted on good cause shown. Arithmetical calculation of loss useless, as many suits would not have been brought if fees had not been abolished.
Mr. F. K. BOYD, District Judge, Bijápúr.	The fees might be remitted where the suit succeeds; not otherwise.
Mr. HERVEY, District Judge, Sholápúr.	I think the time has come when it is no longer necessary to remit Court-fees at all.
Mr. ANDERSON, Collector, Surat.	There should be no remissions of Court-fee now.
Mr. G. D. MADGAVKAR, District Judge of Ahmednagar.	Court-fees should not be remitted, and the notifications should be withdrawn.
Mr. TYABJI, District Judge of Broach.	Court-fees should not be remitted. The remission granted by the notification of 1889 may be cancelled.
Mr. TALYARKHAN, District Judge of Ratnágiri.	Court-fees should be remitted and remission of fees in redemption cases should not be cancelled.
Mr. J. D. DIKSHIT, District Judge of Thána.	Court-fee should not be remitted in the case contemplated by section 9, but no modification of the notification is necessary.
Mr. ADVANI, District Judge of Surat.	Question 9.—Yes to both queries. Question 17.—Remission should now be cancelled.

S. B. ARTHUR,
President,
D. A. R. Act Commission.