

THE
Dekkhan Agriculturists' Relief Act.

XVII of 1879—1 of 1902.

WITH COMPLETE CASE LAW, EXPLANATORY NOTES AND
COMMENTS, RULES, NOTIFICATIONS H. C. ORDERS,
AND ABSTRACTS FROM THE PROCEEDINGS
OF THE LEGISLATIVE COUNCIL.

BY


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1906.


Price Rs. 4-8-0.

Printed:

PRINTED AT THE VIJAYA PRINTING PRESS—1906.

PREFACE.

When the Dekkhan Agriculturists' Relief Act was passed, it was meant to be in force in certain parts of the Dekkhan, and was enacted with the object of giving relief to the indebted agriculturists in those places where the Act was to be in force. As days went on, and the working of the Act was observed by Government of Bombay to be satisfactory, they used the power given to them by s. 1 of the Act, and from time to time extended some of the important provisions of the Act to various other districts of the Bombay Presidency, and by the notification issued in August last some of the provisions of the Act have been extended almost to the whole Presidency. (Vide p. 8, pt. I, of this book.)

This step of the Local Government has contributed to attract the attention of the public generally and the bench and the bar specially to the provisions of the Act, as it has materially affected the procedure in civil suits as also the rights of contracting parties. Under these circumstances, the want of an exhaustive book on the Act was very badly felt—especially in the mofussil, both by the bench and the bar. We have, therefore, made this humble attempt with a view to remove this want.

We have tried our best to make this little book useful to the reader, and we beg to be excused for not being able to do more. The Act evidently aims at checking and discouraging litigation and barring appeals; the operation of the Act, moreover, even now is of a very much restricted kind; hence many a point of

importance and usefulness in connection with the Act has yet remained undecided by our local High Court. Our task has been thus great and difficult and so far as our humble means and opportunities allowed, we have tried to be faithful to the arduous task undertaken by us.

The book is divided into three parts; the first part is so arranged as to give (1) the section, (2) the law on the point under the old section (if any), and (3) the Commentary. In explaining the scope or object of a section, we have freely drawn upon the proceedings of the Legislative Council, where they do, as a matter of fact, throw some light on the subject. The matter in the commentary has been arranged under appropriate headings—generally selected from the wording of the section to which it relates or from the cases under the same. In giving case-law we have not confined ourselves simply to head-notes of cases but we have faithfully gone through all the cases cited by us and have also given extracts from the judgments whenever needed. So far as the cases decided under this Act are concerned, we have followed the example of some learned authors in giving the names of the Judges who decided the cases, and have also given the years in which the cases cited from the Indian Law Report series were decided. And in order to make the first part a complete book of reference, we have, under appropriate sections, given references to the notifications and the proceedings of the Legislative Council in connection with the Act.

Part II begins with an exhaustive index of notifications under this Act or having some kind of bearing

Preface.

upon it. The important notifications are given at length and grouped under appropriate headings. The notifications are divided into six headings—(1) Rules for the management of the Collector, (2) Procedure before Village-Munsifs, (3) Rules for the guidance of Conciliators, (4) Village-Registration Rules, (5) Miscellaneous notifications including High Court Circular orders, and lastly (6) Exemptions under the Stamp-Laws. These notifications have been corrected up to date and we have carefully denoted the places where amendments have been made and the notifications by which they were made.

Part III contains everything relating to the History of the Act which the reader, who wishes to be thoroughly acquainted with the provisions of the Act, is expected to read. This part contains (1) Statement of Objects and Reasons, (2) Abstract of Speeches of the members who moved the various Bills in respect of the Act in the Legislative Council, (3) Reports of the Select Committees and (4) Abstract of important speeches delivered in the Governor-General's Legislative Council by the learned members who took part in the passing of the enactments. In reporting the speeches, care has been taken to see that nothing important has been omitted and it is hoped that the reader will find this part specially instructive and interesting.

In placing this book before the public we have, we believe, spared no pains in availing ourselves of all the material at hand and we leave it to our kind reader to see how far we have succeeded in performing our humble task.

Before concluding we are bound to acknowledge

our obligations to *Mr. D. G. Gharpure, Special Sub-Judge, F. C. under this Act*, who very kindly enlightened us on various points of importance arising under the Act.

12th July 1906.

P. B. S.

S. K. P.

* * The rulings appearing in the Bombay Law Reporter are cited as 'Bom. L. R.,' while the letters P. J. refer to the Printed Judgment series. The words, Bom., All., Mad., and Cal., refer to the I. L. R. series.

PART I.
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THE
Dekkhan Agriculturists' Relief Act,
1879 to 1902.

With the Case-Law, Explanatory Notes & Comments.

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Addenda et Corrigenda.

Add the following as the last note under s. 15B :—

Directions consequent upon default:—In a redemption-decree passed under the provisions of the Dekkhan Agriculturists' Relief Act, 1879, the Subordinate Judge made the decretal amount payable by instalments; and further ordered "on failure to pay any two successive instalments, defendant No. 1 do recover the whole amount due by sale of the mortgaged property and the deficiency, if any, from the plaintiffs personally." On appeal the High Court annulled the above order and substituted in its place the following direction: "If the sum payable under the direction aforesaid is not paid when due, then defendant No. 1 will be at liberty to apply to the Court for such order as he may be entitled to under s. 15(h), sub-s. 2 of the Dekkhan Agriculturists' Relief Act."*

*Pandharinath v. Shankar, (1903) 8 Bom. L. R., 488 (Jenkins, C. J. and Jacob, JJ.)

Part I, p. 28, line 31—for '1893 P. J.,' read '1883 P. J.'

Part I, p. 44, line 30—for '1893 P. J.,' read '1883 P. J.'

Part I, p. 69, line 29—for 'net profits,' read 'net profits.'⁴

Part I, p. 71, line 33—for 'P. J., 216' read '1887 P. J. 216.'

Part I, p. 76, line 13—for 'Janoji,' read 'Janoji.'

Part I, p. 83, line 34—for '1889 P. J.,' read '1889 P. J. 77.'

Part I, p. 95, line 33—for 'without the consent of,' read
'with the consent of.'

Part I, p. 97, line 33—for 'Vol. XVII, p. 47,' read 'Vol.
XVII, p. 147.'

Part I, p. 101, line 18—for 'proviso (e),' read 'proviso (c).'

Part I, p. 104, line 13—for 'transferred' read 'dealt with.'

Part I, p. 126, line 20—for 'in another case,' read 'in another case.'

Part I, p. 127, line 10—for 'Gangadhar v. Mahadu,' read
'Gangadhar v. Mahadu'

Pt. I, 132, foot-note, last line, for 'ordinary reader,' read 'general
reader.'

Part I, p. 163 line 30—for 'defendant, by any one,' read
'defendant, from proving payments made by him by any one.'

Part II, p. 23, lines 23-24, omit the words 'the contract...
notification.'

Part III, p. 67, line 24—for 'or debt,' read 'for debt.'

Dekkhan Agriculturists' Relief Act.

THE DEKKHAN AGRICULTURISTS RELIEF ACT.

—
Act No. XVII of 1879.
—

—
MODIFIED UPTO DATE.
—

—
An Act for the Relief of Indebted Agriculturists
in certain parts of the Dekkhan.
—

— PASSED BY THE —
GOVERNOR-GENERAL OF INDIA
IN COUNCIL.

—
*(Received the assent of the Governor-General on the 29th
October, 1879.*
—

The title of an Act may be resorted to, to explain an enacting part when doubtful.¹

Preamble.—WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Dekkhan from indebtedness ; it is hereby enacted as follows :—

Commentary.

The Preamble of an Act is usually of great importance in construing the extent of the operation of the law and should be read with its sections.²

(1) Hurro Chuuder Roy v. Shooro Dhonee, 9 W. R., 402 (F. B.)

(2) Fulchand v. Ser Kishmesh Koer, 4 C. W. N., ccxvi.

A Preamble of an Act cannot be taken to have cut down the express provision thereof.¹ Whilst it may be consulted whenever the enacting part is open to doubt, it cannot either restrict or extend the enacting part when the latter is free from doubt.² The enacting word of a Statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose.³

Act—how to Construe.

A Statute ought to be construed so that, if it can be prevented, no clause, section, or word shall be superfluous, void or insignificant.⁴ Generally, an Act must be so construed as to advance the objects contemplated by the Legislature.⁵

In the construction of Statutes, in the first instance, the grammatical sense of the words is to be adhered to; if that is contrary to, or inconsistent with, any expressed intention, or any declared purpose, of the Statute, or if it would involve any absurdity, repugnance, or inconsistency in its different provisions, the grammatical sense must then be modified, extended or abridged so far as to avoid an inconvenience, but no further.⁶

It is a well established rule of construction that when the terms of an Act are clear and plain, it is the duty of the Court to give effect to them as they stand according to their plain meaning, neither adding to, nor subtracting from, them. The Legislature must be taken to have intended to mean what it has so plainly expressed; and when the terms of an Act admit but one meaning, a Court is not at liberty to speculate on the intent of the Legislature, or to construe them according to its own notions of the reasons supposed to have been the cause of its

(1) *Collector of Gorakhpur v. Palakdhari Sing*, 12 All., 35; see also 3 Bom. L. R., 548.

(2) *Ganesh Krishnaji v. Krishnaji*, (1889) 14 Bom., 387, (Scott and Candy JJ.) A case under this Act.

(3) *Chinna-Aiyar v. Mahomed Fakrudin*, 2 Mad. H. C. R., 322.

(4) *Swaminath Ayyar v. Vaidyanath Shastri*, 28 Mad., 466; following *The Queen v. Bishop of Oxford*, L. R., 4 Q. B. D. 245.

(5) *Rousseac v. Thacker*, 1 Hyde, 9, 11, 12, C. F.

(6) *Promotho Nath v. Kali Prasanna*, 28 Cal., 744 (748).

enactment. The primary question, in short, is not what may be supposed to have been intended, but what has been said.¹ Where, however, an Act has been considered not to clearly express the intention of the Legislature, it was once the practice of the majority of the Indian High Courts to refer to the previous history of the law and legislation; but the Privy Council have expressed their disapproval regarding the practice of referring to the proceedings of the Legislature which result in the passing of an Act.²

Cases under this Act.

(a) It may be that certain inconvenience will arise from the construction of the enactment in its literal sense; but that is no reason for a court to amend the work of Legislature according to its own notions of fitness.³ "The intention of the Legislature is to be ascertained from the grammatical sense as applied to the object in view" and "considerations of policy are to be excluded where the words are clear."⁴

(b) The Code of Civil Procedure and this Act being within the territorial range of the statutes *in pari materia* must be construed together so as to give effect so far as possible to the provisions of each. Another general principle is that exceptional provisions are not to receive a development to all their logical consequences contrary to the general principles of the law.⁵

(c) So far as the provisions of Act IV of 1882 relate to procedure, and are not inconsistent with the D. A. R. Act, they control proceedings under the same. But where, as in ss, 15A, 15B, 15C

(1) See the Introduction to The Law of Evidence by Ameer Ali and Woodroffe, (3rd ED., pp. 16, 17.) where the learned authors discuss this point at length.

(2) The Administrator-General of Bengal v. Prem Lall Mullick, 22 Cal., 788; S. C. L. R. 22. I. A. 107. This decision of the Privy Council has been followed by a Full Bench of the Calcutta High Court : 22 Cal., 1017 (1022), and by Strachey, J. of the Bombay High C. in Q. Empress v. Bai Gangadhar Tilak, 23 Bom., 112. Compare Chunilal v. Manisbankar, 18 Bom., 616.

(3) Annaji Waghaji v. Eapuchand Jethirau, (1833) 7 Bom., 520 (West and Nanabhai, JJ.)

(4) See cases cited in the judgment of West, J. in 7 Bom., 520.

(5) Gangadhar Sakharam v. Mahadu Santaji, (1883) 8 Bom., 20 (West and Nanabhai, JJ.)

15D, 16, 20, 22 and 70, the D. A. R. Act contains provisions directly inconsistent with those of the T. P. Act, they are saved by s. 2 (a) of the latter Act.¹

Special features of this Act.

The D. A. R. Act makes a few modifications here and there in some of the branches of the civil law. The special features of the Act, as given below, would sufficiently bear out the truth of this statement:—

- (a) The Act makes certain changes in the jurisdiction of Courts and creates Special Jurisdiction in revision and supervision.²
- (b) The general tendency of the Act is to bar appeals.³
- (c) The Act enables the agriculturist-debtors to get full accounts on liberal terms from the creditors in spite of any contracts between the parties to the contrary.⁴
- (d) It saves the persons of an agriculturist-debtor from arrest and saves his immovable property from attachment and sale, unless specifically pledged.⁵
- (e) It provides an insolvency procedure more liberal to the debtor than that in the Code of Civil Procedure.⁶
- (f) It gives a great deal of facility to the debtor in the payment of his debt by way of instalments or otherwise.⁷
- (g) It establishes new Courts of Village-Munsifs and thus enables the parties to get justice at a little cost and much nearer their homes.⁸

(1) *Bhagvan v. Gann*, (1899) 23 Bom., 644, (1 B m. L. R., 136.)
(Parsons, Acting C. J. and Ranade, J.).

(2) Chapters II, VII and s. 36; see also ss. 2A, 11 & C. V.

(3) Ss. 10, 33, 36, 44, 54, and 73 (now repealed).

(4) Ss. 3 (Cl. a), 12, 13, 13A, 15D, 16 and chapter 1X.

(5) Ss. 21 22, 29, 73 A.

(6) Chapter IV.

(7) S. 15A, 15B, 15C, 17, 18, 20, 71A, 72.

(8) Chapter V.

- (h) It encourages the settling of disputes out of Court by conciliation.¹
- (i) To avoid dishonesty or fraud in accounts, documents or pleadings, it introduces a system of Registration much wider in its scope than the one in the Indian Registration Act and requires the recording of certain transactions in writing and makes certain important provisions for the examination of parties to a suit and for keeping and rendering accounts to agriculturist-debtors.²
- (j) It abolishes the agency of pleaders in certain cases; while it empowers a Subordinate Judge to give professional assistance to agriculturists in proper cases.³
- (k) It empowers the Court to reduce and regulate the rate and amount of interest, allowing simple interest in all cases.⁴
- (l) It extends the period of limitation in certain suits for the recovery of money.⁵
- (m) Certain notifications under the Act go to reduce and exempt the stamp duties in certain cases.⁶

All these concessions and modifications are chiefly intended for the benefit of agriculturist-debtors residing in those parts of the Bombay Presidency where the Act extends.

(1) Chapter VI.

(2) Chapters VIII, VIIIA, IX, and ss. 7, 12, and 70.

(3) Ch. X.

(4) Ss. 13 and 71A.

(5) S. 72.

(6) Notification No. 4650 B. G. G., Pt. 1 pp. 506—509
1889

” ” 6822 ” ” 868
1884

” ” 785 ” ” 250—252
1899

1472 ” ” 255
1904

} (Compare Indian Stamp Act
and Court Fees Act.)

See also H. C. Circular Orders, No. 117. Pt. II of this book, pp. 58, 59.

Application of this Act.

This Act was originally intended for the relief of agriculturists in the Districts of Poona, Satara, Sholapur and Ahmednagar. By the Amending Acts of 1886 and 1895, the Legislature enabled the Local Government to extend the Act in whole or in part to other districts or places in the Presidency of Bombay. The Local Government have from time to time exercised this power; this will be clear from the table given under s. 1—Vide p. 8 post.

Although the Act in its preamble professes to be for the relief of indebted agriculturists, the enactment goes beyond the preamble; and some of its provisions are applicable (a) to agriculturists who are not indebted, and also (b) to those who are not agriculturists at all.¹ Thus the provisions of Conciliation apply to agriculturists whether indebted or not; and provisions in clauses (w) and (x) of s. 3 and those in Chapter V (which relates to Village-Munsifs) apply to those who are not agriculturists, provided certain conditions are fulfilled. Those conditions² are that the suits in question must be in amount or claim under Rs. 500, 100 (or 10) according to the class of Court in which they are instituted and must have arisen in the districts to which the Act applies.³ Even other provisions of the Act such as s. 3 clauses (y) and (z), ss. 11, 12 and the like evidently go to relieve non-agriculturist-debtors when they are joined with one who is an agriculturist.

Chapter V and VI though recently extended to this Presidency can, of course, have no application where Village-Munsifs and Conciliators are not appointed. And in those places where Ch. II is not applied and Village-Munsifs and Conciliators are not appointed, Ch. VII also will have no application.

The retroactivity of the Act in general and *pendente lite* is discussed at length hereafter (see Notes to s. 2, pp. 9-12).

(1) See *Tulsidas v. Virbasapa*, (1880) 4 Bom., 624. (West, J.)

(2) The conditions given are by no means exhaustive.

(3) Vide 4 B. m., 624, at p. 628; and *Ganesh Krishnaji v. Krishnaji*, (1889) 14 Bom., 387 (Scott and Candy, JJ.) and *Kashiram Mulchand v. Hiranand Surtaram*, (1890) 15 Bom., 80 (Birdwood and Candy, JJ.)

CHAPTER I.

PRELIMINARY.

1. Short title.—This Act may be cited as the Dekkhan Agriculturists' Relief Act, 1879:

Commencement.—and it shall come into force on the first day of November, 1879.

[^a] This section and [^a] sections 11, 56, 60, and 62 extend to the whole of British India. The rest of this Act extends only to the districts of Poona, Satara, Sholapur and Ahmednagar, [^b] but may, from time to time, be extended wholly or in part by the Local Government, with the previous sanction of the Governor General in Council, to any other district or districts in the Presidency of Bombay [^b] [^c] or to any part or parts of any other such district or districts [^c].

Commentary.

“Local Extent”:—Section 11 determines the place of suing an agriculturist in cases falling under s. 3. cl. (w), and Sections. 56, 60 and 62 refer to registration under this Act.

“British India”:—British India shall mean all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India.¹

Subsequent extension of the Act.

In exercise of the power conferred by this section, this Act has been in part extended from time to time to other districts in the Presidency of Bombay as shown in the table below.

(a-a) The words were inserted by Act XXIII of 1881, s. 3, and are to be deemed to have always been inserted.

(b-b) These words were added by Act XIII of 1886, s. 3.

(c-c) These words were added by Act VI of 1895, s. 4.

(1) See General Clauses Act (Act X of 1897), s. 3, cl. (7).

A table showing the extent of the Act.

The provisions of the Act.	Places to which they extend.	By virtue of what authority.
The whole Act. ...	Districts of Poona, Satara, Sholapur and Ahmednagar.	S. 1. of the Act.
Ss. 1, 11, 56, 60 & 62.	The whole of British India.	S. 1. of the Act.
Ss. 2 and 20. ...	District of Khandesh.	Notification No. 3154, dated the 14th May 1902; B. G. G. for 1902, pt. I, p. 776.
Ditto. ...	All parts of the Presidency of Bombay (except Aden) in which those sections are not already in force.	Notification No. 278, dated the 21st Jan., 1903; B. G. G. for 1903, pt. I, p. 89.
Chapters V, VI and VII, so far as they relate to the proceedings of Village Munsifs and Conciliators.	District of Khandesh.	Notification No. 620, dated the 3rd Feb., 1903; B. G. G. for 1903, pt. I, p. 144.
Chapter III, ss. 2, 7 and 71A.	Province of Sind.*	Notification No. 1663, dated the 13th Mar. 1903; B. G. G. for 1903, pt. I, p. 490.
Ss. 7, 11 to 21, 23, Chapters V, VI, VII and s. 71A.	All Districts of the Bombay Presidency excluding those to which they are already extended and excluding Aden and the city of Bombay†	Notification No. 4144, dated the 15th Aug., 1905; B. G. G. for 1905, pt. I, p. 1038.

* See of notification No. 1664, B. G. G. for 1901, pt. I, p. 490. Vide Part II of this book.

† City of Bombay (Presidencytown); shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay. (See s. 2, sub-section, 41 General, Clauses Act, X. of 1867.)

Repealing and Amending Acts.

The D. A. R. Act (XVII of 1879) has undergone many changes and has been much added to by subsequent enactments. A list of the enactments and the time when they came into force are given below.

Number of the Act.	Time when it came into force.
Act XXIII of 1881.	26th October 1881.
„ XXII of 1882.	1st February 1883.
„ XXIII of 1886.	1st January 1887.
„ XII of 1891. †	21st March 1891.
„ VI of 1895.	1st May 1905.
„ XVI of 1895. †	10th October 1895.
„ I of 1902 ‡	1st March 1902.

This Act may be cited as D. A. R. Acts 1879 to 1902.*

The Act how far retrospective.

In the absence of any guide to the ascertainment of the intention of Legislature, the presumption is that a Statute depriving the subject of vested rights is not retrospective. It may well be that such a presumption does not exist where a statute is remedial and merely alters procedure, and that the Courts are bound to advance the remedy and apply the improvement in procedure retrospectively, as was done to a limited extent in *Wright v. Hale*;

† These Acts are general repealing and amending Acts and are not confined to the D. A. R. Act only.

‡ This is a Bombay Act. All the other Acts, enumerated in the above list, are of The Supreme Legislative Council.

* See Bombay Act I of 1902, s. 1 (1).

but if the change in procedure when sought to be applied retrospectively be *complicated by the divestment of a preexisting right* then the presumption against such an intention revives in its full strength.¹

In short, the general rule is that Acts are prospective, not retrospective, in their operation. To this rule there are two exceptions (a) when Acts are expressly declared to be retrospective, (b) when they only affect the procedure of the Court.²

Where an Act is expressly made retrospective, no difficulty of construction or application would arise; but where the Act does not so express the intention of the Legislature clearly, then we submit, *the only test is to see whether the Act deals with substantive or adjective law*. The determination of this question is not however free from difficulty. And the difficulty is the more felt in interpretation of Acts, like the D. A. R. Act, which contain provisions, both substantive and adjective. In giving illustrations of provisions which merely affect the procedure in Courts of justice, Pollock C. B. in *Wright v. Hale*³ referred to those relating to the service of proceeding and what evidence must be produced to prove particular facts.

Adjective law would thus include those provisions which are merely remedial, which lay down the mere procedure of the Court but which do not affect any vested rights of the parties. Now, in connection with the provisions of this Act which have been applied long since, the question loses its practical importance and need not be discussed here. The provisions which have been recently extended to the Bombay Presidency (excluding of course the above mentioned four districts) are ss. 7, 11-to 21, 23, Chapters V, VI, VII and s. 71A. No question can arise as to s. 23 and

(1) *In Re Ratansi Kalyanji*, 2 Bom., 216 (F. B.). *Wright v. Hale*, 6 H. N. 227. See also 5 M. L. A. 109; 8 C. W. N. 201 (P. C.).

(2) *Javanmal Jitmal v. Muktabai*, (1890) 14 Bom., 517; (Telang and Scott j.). see *Shivram v. Kondiba*, (1884) 8 Bom., 345; (*West and Nana-bhai j.*); *Dipchand v. Gokuldas*, (1880) 4 Bom., 363; (*Westropp C. J. and Melvills j.*); *Agarchand v. Gundaya*, 1884, P.J., 50. These are cases under this Act.

(3) 6 H. N. 227, referred to in the judgment of Westropp C. J. in *Re. Ratansi Kalyanji*, 2. Bom., 216, (F. B.).

Chapters V and VII which can have no retrospective effect. The provisions of chapter VI cannot affect suits instituted before the Conciliators are appointed. The Chapter, is however, expressly made retrospective as to decrees which are passed before the Act came into force. But even in execution of such decrees, the darkhasts filed before the appointment of Conciliators cannot, it is evident, be affected by the Chapter. Now, out of the remaining provisions, ss.15B, 20 and 21 (as they now stand) are made expressly retroactive, so far as they relate to decrees passed before the Act came into force and they would equally affect proceedings which might be pending at the date of the extension of the provisions given therein. Of the remaining sections, ss. 15 D, 16, 17 and 18 introduce new remedies and would, it is submitted, validate like suits, and proceedings, if any, pending when the sections were extended. But the sections cannot have any retroactive operation to a greater extent. Sections 15A, 15AA and 15C also may, to a certain extent come under the same category.

The rest of the sections have reference to s. 3 of this Act. From section 3 cl. (a) the words "*on or after the 1st day of November 1879,*" and from cl (b), the words, "*on or after the same date,*" were repealed by Act XVI of 1895. Lawyers and practitioners in the moffussil are trying to put different interpretations upon the repeal of these words. On one side, it is argued that if the section, as it originally stood was expressly prospective, the mere repeal of the above words, which had become *nugatory by lapse of time*, cannot, without more, give the section a retroactive operation. On the other side, it is argued that as these words in particular have been omitted by the repealing Act of 1895 the section has got a retroactive operation by implication. Indeed, in the midst of this difference of opinion, it is important to note that the Act XVI of 1895 which repeals the words from s. 3, as mentioned above, is a general repealing Act and is not solely confined to the D.A.R. Act. 1

(1) The preamble of Act XVI of 1895 runs thus: "Whereas it is expedient that certain enactments specified in the 1st Schedule to this Act, which are spent or have ceased to be in force otherwise than by express specific repeal or have by lapse of time or otherwise become unnecessary, should be expressly and specifically repealed, &c.

Section 3 of the same Act XVI of 1895 provides, (amongst other things,) that the repeal by that Act of any enactment would not provide or

The only thing that now remains, is to ascertain whether the provisions of sections 7, 11 to 13 and of 71A are adjective or substantive. Ss. 7 and 11 contain provisions which are adjective; but from the wording of those sections they seem to apply to suits which are instituted after the sections came into force. The rest of the sections go to affect more or less the rights of the parties concerned, and, therefore, they cannot be considered as retrospective.

Effect of change of law pendente lite.

Though the utility of the rulings noted under this heading no longer exists for the purposes of this Act, unless it is revived by subsequent changes in the law as laid down by this Act, the principles laid down in the cases are of general importance, and we propose to state the same here at length. The cases have much to do with s. 6 of Act 1 of 1868 which is as follows:—

The repeal of any Statute, Act, or Regulation shall not affect any thing done, or any offence committed or any fine or penalty incurred, or any proceedings commenced, before the repealing Act shall have come into operation.

This section has been substituted by section 6 of the Consolidating (Act X of 1897) which runs as follows:—

Where this Act, or any Act of the Governor-General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not,

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

restore any jurisdiction not then existing or in force, and would not affect the validity or invalidity of any proceeding &c. &c.

Turning to the point indicated by the head note, it is to be noted that the *repeal* of an Act is not to affect any proceeding begun under the Act. If the repeal of an Act is not to affect pending proceedings, much less, it may be said, should the *amendment* of the Act have this consequence. This proposition is generally true, but it is to be taken with another one, viz, when on a general law especially of procedure, one more specific is superimposed, effect is to be given to the latter so far as possible along with the earlier one, but, if necessary, in partial supersession of it. The general rule is that a repealed Statute cannot be acted on after it is repealed, but as provided in s. 6 of the General Clauses Act, I of 1868, all matters that have taken place under it before its repeal remain valid. But a new order of a Court, not ancillary or provisional, but directing a further substantive step in the execution of a decree, is a new proceeding which should be governed by the law in force when the order is made, and not by the law which it repeals. An Act passed to promote some public important object, such as the protection of the property of the Dekkhan Agriculturists, may be given on that account a retroactive operation, if necessary, as the rule against such operation, rests itself on such a general public interest which may, under the circumstances, be deemed of less importance than the one embodied in the Act.¹

Change of status by change in law.

As already remarked above, change in the law does not generally affect any proceeding begun when it comes into force. But a change of *status* or legal capacity generally operates at once to extinguish, diminish or vary the extent to which a party may claim the aid or protection of a Court. A man who was earning his livelihood *partially* by agriculture within a district to which the D. A. R. Act applied, brought a suit for redemption. At the time of the institution of the suit, he was an agriculturist as defined by s. 4 of Act XXIII of 1881. During the pendency of the suit the definition of agriculturist was changed by s. 3 of Act XXII of 1882. *Held* that, if the plaintiff was not an agriculturist within the mean-

(1) Shivram Udaram v. Kondiba Muktaji, (1884) 8 Bom., 340; (West and Nanabhai, j.); For facts, see the case noted under s. 22; see also cases noted under the same section.

ing of Act XXII of 1882 at the time of adjudication, he had no right to redeem on the special terms of s. 12 of Act XVII of 1879, as he had lost, *pendente lite*, the specific personal character on which the right depended.¹

The general rule is that when the law is altered, pending an action, the rights of the parties are decided according to the law as it existed when the action was commenced, unless the new statute shows a clear intention to vary such rights. In the case cited above the change in the definition of an agriculturist not merely affected the jurisdiction of the Courts, which would be a matter of procedure but also the rights of the parties.² So in a case where sometime previously to the institution of the suit, the defendants lived and carried on business as money-lenders at Yeola, a taluka not subject to this Act, and while there, they became indebted to the plaintiff. Subsequently they removed to Kopargaon, in which district this Act was in force. Both at Yeola and at Kopargaon, they, in the course of their business, acquired land which they cultivated. In 1882, the plaintiff brought this suit against them in the Subordinate Judge's Court at Yeola to recover the debt due to him. The defendants contended that they were agriculturists, and could not be sued in the Court at yeola. The suit came on for trial in July 1883, at which date Act XXII of 1882 had come into force which altered the definition of agriculturist. The defendants contended that the definition of agriculturist to be applied in the the case was that contained in Act XXIII of 1881, which was in force when the suit was instituted, and not that in Act XXII of 1882, which was in force at the date of the trial. *Held* that, having regard to the very special nature of the legislation embodied in s. 12 of this Act for the benefit of a particular and a very limited class, it was intended by the legislature that a person claiming the benefit of that section *at the trial* should fill the character of an agriculturist as then defined by law.³

(1) *Padgaya Somshetti v. Baji Babaji*, (1887) 11 Bom., 469 (West and Birdwood, jj.); following *Shamlal v. Hirachand*, (1886) 10 Bom., 367.

(2) *Shamlal v. Hirachand*, (1886) 10 Bom., 367. (Sargent C. J. & Birdwood, jj.).

(3) *Ibid*; *Padgaya Somshetti v. Baji Babaji*, (1887) 11 Bom., 469 (West and Birdwood, jj.).

Change of status by change in facts.—In execution of a simple money decree obtained against the defendant as an agriculturist, his immoveable property was attached. He applied to have the attachment raised on the ground that he was an agriculturist. The Subjudge found on evidence that he had ceased to be an agriculturist and rejected the application. The District Judge on appeal confirmed this order on 2nd November 1895, holding that no appeal lay against the finding of the lower Court as to the status of the defendant. *Held*, that the Sub-Judge had no jurisdiction in execution proceedings to reopen the question of the defendant's status as an agriculturist which had been decided in the course of the suit. *Held* also that the District Judge was bound on appeal to set aside the Sub-Judge's decision, quite irrespective of the terms of s. 73 of the Act which was in force when the order appealed against was passed. *Held* further that as s. 73 had been repealed before the appeal was heard its provisions as to finality could not be binding on the Appellate Court.¹

In a suit the Subordinate Judge held that the defendant was an agriculturist and that therefore, the suit could not be maintained without a certificate under section 47 of this Act. Under Section 73 of this Act the finding of the Subordinate Judge upon the point was final. The plaintiff appealed, the appeal including other points of objection to the decree as well as that with regard to the *status* of the defendant. Pending the appeal, Act VI of 1895 was passed; which repealed section 73. At the hearing of the appeal the judge considered the question of the *status* of the defendant, and held that he was not an agriculturist, overruling the decision of the Subordinate Judge upon this point. *Held*, that the Judge in appeal was right in entertaining the question. The provisions of Act VI of 1895 altered the procedure and were, therefore, applicable to proceedings already commenced at the time of their enactment. *Held*, also, that even if the General Clauses Act (I of 1868), section 6, applied to Acts not conferring rights, but simply concerning judicial procedure, it could not affect the present

(1) *Gyanmal v. Ramchandra*, 1896, P. J. 342. (Fulton and Hosking JJ.). See also *Malhar v. Chinto*, 1887, P. J., 38. *Malalingappa v. Nenchand*, 1887, P. J., 77. See also *Katansi Kalyanji*, 2 Bom., 148 and also 16 Cal., 429.

case, as the repeal was not one of the Act itself, but only of a section in the same relating to procedure.¹

2. [a] **Construction**:—In constructing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed namely:—

Legislative definitions,—or interpretation clauses being necessarily of a very general nature not only do not control but are controlled by, subsequent and express provisions on the subject-matter of the same definition. The principle on which they are themselves to be interpreted may become a matter of controversy, and the application of them to particular cases may give rise to endless doubts.²

1st. “**Agriculturist**,”—Shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

Commentary.

“**Agriculturist**.”—It is indeed very difficult to ascertain the precise meaning of this term, as defined by this section. The Select Committee in 1882 remarked, “It would probably be impossible to frame a definition which would not go too far one way or the other.” Difficulties having arisen as to the construction of the definition of agriculturist an attempt was made in the Bill of 1881 to recast S. 75 of this Act, (which gives the Local Government a power

(1) *Gangaram v. Punamchand*, (1896) 21 Bom., 823 (Farran C. J. and Fulton J.).

(2) Per Lord Denman C. J. quoted in *Uda Begam v. Imam Uddin*, 2 all at p. 86. *cf.* the following quotation of Sir F. Dwaris cited in the case: “Interpretation clauses are by no means to be strictly construed and convenience seems likely to lead their being practically disregarded.”

(a) This section was substituted for the original s. 2. by Act VI of 1895.

to make rules) so as to admit of rules being made, among other matters, to define more precisely what classes of persons should be deemed to be agriculturists for the purposes of the Act. The attempt, however, failed, probably because it was not thought proper that such a vital point in an Act passed by the Supreme Legislature should be left entirely in the hands of the Local Government. The question as to what classes of persons should or should not be classed as agriculturists was also discussed at length in a correspondence¹ between Dr. Pollen and Mr. Hope, the framer of this Act; and had the correspondence been published, it is certain that it would have thrown much light on the construction of the term.

Analysis :—The definition notes down two different classes of persons as coming within its sphere.

(A) In the first class will come a person,

- (1) who by himself or by his servants or tenants
- (2) earns his livelihood
- (3) wholly or principally
- (4) by agriculture,
- (5) which agriculture is carried on within the limits of a district to which this Act may apply.

(B) In the second class will come a person who (1) ordinarily and (2) personally (3) engages in agricultural labour (4) within the limits to which this Act may apply.

“ Shall be taken to mean a person : ”—The word “ person ” ordinarily includes any company or association or body of individuals, whether incorporated or not.² The definition may likewise include an institution, such as a *Devasthan*, School or Dispensary which is being maintained with the income derived from agricultural sources attached to it.

(1) So far as we are able to ascertain it, this correspondence has not been published and we simply find a reference to it in the Proceedings of the Governor-General's Council for 1895, Vol. XXXIV, p. 170.

(2) See S. 3, Sub-S. 39 of Act X of 1897, (General Clauses Act.)

“Who by himself or by his servants or by his tenants:”—The words *servants* or *tenants* may in particular cases include relatives, friends, or even strangers. In practice we often find that a Joint Hindu family owns large fields and is almost entirely maintained by agriculture carried on by its manager. We also meet here and there with a case where a man is himself unable to carry on his agricultural business for some reason or other, and the business is, therefore, carried on for him by his friends. Neither the manager in the first case, nor the friend in the second case, can strictly be called a tenant or servant. And a question may, therefore, be asked: can the person for whom the management is undertaken, be said to be an agriculturist? A reply in the affirmative will not be incorrect.

“Earns his livelihood”:—It is difficult to ascertain the particular significance of this phrase in the definition. This Act is evidently intended for the relief of agriculturist-debtors; there would thus seem to be no meaning in including in this definition persons who amass great wealth as well from agriculture as from trade or other profession. Viewed in this light, an agriculturist would, it seems, be a person whose income from non-agricultural sources is so small that it is not sufficient for his maintenance. But in a case where the plaintiff, an owner of inam villages, the revenue from which, together with his income from other sources not agricultural, was greatly in excess of the income he derived from agriculture, mortgaged the inam villages, and thereby reduced the income actually received by him from non-agricultural sources to less than the income he derived from agriculture, *held* that although his income from the inam villages and from other sources not agricultural might together be sufficient for his maintenance, nevertheless the construction of the definition of agriculturist given in the Act which is quite independent of any such question, could not be affected thereby, and that he must be deemed to “*earn the means of his livelihood*” principally from agriculture, and to be an agriculturist within the meaning of the Act.¹

(1) *Dwarkojirao Baburao v. Balcrishna Bhalchandra*, (1894) 19 Bom., 255, (Sargent, C. J. and Candy, J.). The Italics are ours.

For a better understanding of the case we give the facts and cite the full judgment of Sargent, C. J., as under :—

The first plaintiff received from the Kolhapur State a monthly pension of Rs. 33 and his mother Rs. 19, the yearly income from that source being Rs. 624. The plaintiff's mother also received from another source a sum of Rs. 6 per mensem being a yearly income of Rs. 72. The plaintiffs were also owners of certain villages the revenue of which was considerable; but owing to mortgages on them they only yielded to the plaintiff, a sum of Rs. 333 per mensem. The lower court held that they did not earn their livelihood principally from agriculture, their income from sources other than agriculture being in excess of the income derived from that source. The High Court held "The expression *earns his livelihood* can only mean *obtains the means of maintaining himself*. At the present moment the inam villages, owing to the mortgage on them, only contribute Rs. 333 per annum towards the plaintiff's maintenance, that being the only sum which comes into their hands from that source. Therefore, even if the whole pension from the Kolhapur State were added to it, still the means of providing for the plaintiff's livelihood would be less than that derived from agriculture; and, therefore, under those circumstances we think they must be deemed at the time of bringing the suit to obtain or, in other words, "*earn the means of livelihood*" principally from agriculture. The fact that the 333, 624 and 72 Rs. might together be sufficient for the plaintiff's maintenance, cannot, in our opinion, affect the construction of the definition of "agriculturist" which is quite independent of any such question."^{*}

It will be noted that the definition, as it goes, leaves the point, whether earning one's livelihood will include what is needed for the maintenance of his family, open and undefined. This difficulty would not, however, arise if the status of an agriculturist is determined by comparing his income from agriculture with that from other sources (if any), and by finding if his income from agriculture is greater.

"Wholly or principally":—The word *principally* has been substituted for the word *partially* which stood in the clause before the passing of Act XXII of 1882. The change in the word

* The Italics are ours.

led to important results and contributed to the passing of a few important rulings which have been already given in a preceding note¹.

What are a man's principle earnings for the purposes of this definition will have to be decided according to the facts of each case. So in the case where a member of a Joint Hindu family earns by service or trade (which is his individual concern) more than what may fall to his share if the family income from agriculture be divided, the question of deciding whether he is an agriculturist or not will be very much nice for determination.

“By agriculture”:—The term agriculture is not defined, However, as explained in the English Dictionaries, it ordinarily means, the art or science of cultivation of the ground, especially, with the plough, in fields or in large quantities, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops. It may also include the rearing, feeding and management of livestock.²

In The Board of Agriculture Act³ “agriculture” is said to include “horticulture” (s. 12). In The Small Holdings Act,⁴ “agriculture” and “cultivation” are said to include horticulture and the use of land for purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables and the like (s. 20).⁵ It is doubtful, however, if this definition can be followed here in all its details. A person who owns salt-works and manufactures salt will not be an agriculturist. Agricultural produce will generally include vegetables, cotton, grain, grass, fruits and flowers. But it is difficult to say whether it would include these productions after they change their natural form by any process or improvement

(1) Vide the heading :—Change of law *pendente lite*, on p. 12.

(2) See the term defined in Webster and Annandale.

(3) (1889), 53 & 53 V. C. 30.

(4) (1892), 55 & 56 V. C. 31.

(5) Stroud's Judicial Dictionary.

made upon them; e. g. ginned cotton, or spindles of thread, flour of grain, grass mattresses, sugar, or preserve of fruit, and flower garlands or flower scents will not be called agricultural produce. This question would arise in determining the income of the person who prepares or manufactures any of these things by working upon any kind of agricultural produce got by him by agriculture carried on by himself.

“Carried on within the limits”:—So if a person, residing at Poona, carries on agriculture wholly or principally at places where the Act does not extend, he will not come under this definition.

“To which this Act may for the time being extend”:—The whole of this Act is extended to the four specified districts only. But some provisions of the Act apply to other districts; while some apply to the whole of British India. If the words “*this Act*” were to be construed as including any portion of the Act, then an agriculturist residing at Calcutta to which a portion of the Act is extended, will come under the definition, which is evidently absurd. If, on the other hand, the words “*this Act*” were to mean the whole of it, then a person carrying on agriculture at any place in the Bombay Presidency (excluding of course the four districts, in which the Act has a full operation) would not fall under this section even if a portion of the Act were extended to it; so construe the words *this Act* in either way, the absurdity is inevitable.

Here it may be noted, that when the first extension under this Act (s. 20) was made by the Local Government in 1902, the Government were careful to extend s. 2 also. It cannot be supposed that s. 2 was extended simply to explain the meaning of the word agriculturist appearing in s. 20; because we see that the Legislature in passing Act XVII of 1879 did not extend this defining section along with ss. 11 and 56 to the whole of British India to explain the word agriculturist appearing in those sections. In determining, therefore, whether *this Act* is to be deemed to have been extended to any particular place for the purposes of this defining section, it seems, it will have to be considered, whether *this defining section itself* is extended to that place.

It was, however, held in a case¹ that the operation of s. 2 is within the Act itself and there alone, being such that wherever the word agriculturist occurs the definition given may be substituted for it. The sections in which this word is used have a wider or narrower local operation; the defining section determines only in what sense they are to be understood apart from the notion of locality. It follows that the word agriculturist in s. 11 means one according to the definition in s. 2 although the latter section is not declared to extend to the whole of British India.

This was a case decided under the section as it stood before the Amending Act of 1895 was passed. The wording of the old section on this point was clear enough; the case can thus throw no light upon the present question. Under these circumstances, it seems, we must conclude that an agriculturist, in order to fall under this definition, must be carrying on his business at a place where this section applies.²

“Or who ordinarily engages personally in agricultural labour”:—This provision is independent of the provision that precedes it. So a man who ordinarily engages personally in agricultural labour will be considered an agriculturist irrespective of the consideration whether he earns his livelihood principally from agriculture or not. Here too, it is not clear how to determine the status of those who are by reason of close relationship or other wise solely dependent upon such a person for their support and maintenance.

There is nothing in the definition which requires that a man in order to come under this definition must cultivate his own land or must own any land at all. The class of people, contemplated by the last words of the clause, seems to include persons who are labourers, servants or tenants. In the case of a servant, his master may, at his option, engage him in agricultural labour at one time, and in

(1) *Tulsidas v. Virbasapa*, (1880) 4 Bom., 634, (West J.). See also *Purusottam v. Bhavanji*, (1880) 4 Bom., 360, post.

(2) or where any provision of this Act, other than sections 1, 11, 56, 60, and 62, is made applicable.

non-agricultural labour at another. In such a case the Court concerned will have to see whether the person is *ordinarily* engaged in agricultural labour within the specified limits. The word *ordinarily* as used here is most significant. In the absence of the word, one could have conveniently kept aside his usual avocations for a time and temporarily assumed the character of an agriculturist for the purposes of the Act. So in a case where the defendants were, within a few months of the institution of the suit, acting as traders, it was *held* that a man must have gained his livelihood by farming for at least one full agricultural season to have acquired the condition of an agriculturist under the Act. The status of agriculturist and of trader is not to be taken up and laid momentarily aside in order to embarrass a Creditor.¹

Explanation (a) :—An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid, or who is prevented from so earning his livelihood or engaging in agriculture by age or bodily infirmity or by necessary absence in the Military service of Her Majesty, does not thereby cease to be an agriculturist within this definition.

Commentary.

A man, who is not an agriculturist at a time when his status as an agriculturist comes into question, will nevertheless be deemed to be an agriculturist under this explanation in two cases: (a) where he, being an agriculturist, ceases to be so only for a short time; (b) where he, being ordinarily an agriculturist, is prevented from continuing to be so by reason of age, bodily infirmity &c.

(b) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

(1) *Tulsidas Dhunji v. Virbasapa*, (1880) 4 Bom., 624 (West J.).

Commentary.

"A mortgagee is not as such an agriculturist":—The word "mortgagee" seems to include a mortgagee with possession. If, however, any person irrespective of his position as a mortgagee falls within the definition, or if even as a possessory-mortgagee he ordinarily engages personally in agricultural labour as aforesaid, he would, it is clear, come under the definition.

2nd.—In Chapters II, III, IV and VI, and in Section 69, the term "Agriculturist," when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.

3rd.—An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or personally engages in agricultural labour as aforesaid.

The term agriculturist :—Before the amendment of 1895, the term had reference to an agriculturist residing within any of the four districts only and not to one residing in any other district.¹ The word would now seem to refer to an agriculturist residing in any part of the Bombay Presidency except Aden and the city of Bombay.

"Proceeding."—This word² ordinarily includes all proceedings in any suit from the date of its institution upto the date of its disposal, including proceedings in appeal or in execution.

"Shall include a person":—The D. A. R. Act, as amended by Act XXII of 1882, applies as well to persons who were

(1) Purushottam Lalbhai v. Bhavanji Partab, (1880) 4 Bom., 360, (Westropp C. J., and Melvill j.); see the case referred to under s. 11.

(2) for the meaning of this word, see 15 Cal., 107; 3 Cal., 622 (F. B.); 6 B. H. C., 166; 15 Cal., 357; also 16 Cal., 267 (F. B.).

agriculturists when the liability in the suit was incurred, as to those who were so when the suit was instituted.¹

As then defined by law :—If a man when he incurred his liability was not an agriculturist within the meaning of that word as then defined by law, because the Act did not then extend to the place where he carried on his agriculture, he will not probably come under this rule if it is strictly construed. The definition of the term agriculturist has undergone some important changes, as will be clear from the following :—

Old Law.

Act XVII of 1879 enacted :—

“Agriculturist” means a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts;* and every agriculturist shall be deemed to reside where he so earns his livelihood.

Act XXIII of 1881 enacted :—

“Agriculturist” means a person who, when or after incurring any liability, the subject of any proceeding under the Act, by himself, his servants or tenants, earned or earns his livelihood, wholly or partially by agriculture carried on within the limits of the said districts. A cultivator who has temporarily ceased to earn his livelihood in manner aforesaid, without any intention of changing his status as such, does not thereby cease to be an agriculturist within this definition. An assignee of Government assessment, or a mortgagee is not as such an agriculturist within this definition.

Act XXII of 1882 enacted :—

1st —“Agriculturist” shall be taken to mean a person who by himself, his servants or tenants, earns his livelihood wholly or principally by agriculture carried on within the limits of the said* districts, or who ordinarily engages personally in agricultural labour within those limits.

Explanation.—(a) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood or to engage personally in agricultural labour as aforesaid, does not thereby cease to be an agriculturist within this definition.

(1) *Banu v. Krishnambhat*, 1886 P. J.159. (Sargent, C. J. and Birdwood, J.).

* Poona, Satara, Ahmednagar and Sholapur.

(b) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

2nd. In Chapters II, III, IV, and VI, and in s. 69, the term agriculturist when used with reference to any suit or proceeding shall be deemed to include also a person who, when any liability incurred by him and forming the subject or part of the subject of that suit or proceeding was so incurred, was an agriculturist as defined in the first rule.

Change of status at different stages.

A party may be an agriculturist only

- (a) when the liability was incurred but not afterwards,
- (b) when the cause of action arose " "
- (c) when the suit was instituted " "

A party may become an agriculturist,

- (d) at any of the above stages but not before,
- (e) at the hearing of the suit "
- (f) when the darkhast was filed "
- (g) in course of the execution-proceedings but not before.

In all these cases different considerations would arise as shown below :—

(a) He will be deemed to be an agriculturist only in reference to suits or proceedings under chapters II, III, IV and VI or under s. 69, (vide s. 2, rule 2nd).

(b) He will be considered an agriculturist only for the purposes of limitation under s. 72.¹

(c) If a party loses his personal character pending the suit, he must lose the benefit thereof. This rule may, however, sometimes be found hard in practice. When the preliminary point of status is once determined, the Court will be disinclined to allow it to be reopened now and then. There is no direct authority under the Act on the point. The only cases which approach this question deal specifically with the change of status as constituted by a change of law *pendente lite* and not with change of *status de facto* irrespective of any change of law. Although the Court is bound to take notice of a change in law pending suit, still it may be argued the court is not equally bound to take notice of any change of *status*

(1) A person falling under this class may in certain cases fall under class (a) also.

(brought about by change in his personal circumstances) of a party in course of the suit after it has once come to any determination on the point. Otherwise this plea of change of *status* might be raised at every hearing, and adjournments asked for to produce fresh evidence to prove the change till the day on which the judgment is to be given. However this may be, the principle enunciated by the reported cases is general and according to it a change of status would deprive the party, who was, an agriculturist when the suit was instituted, of the benefits attached to such status, and he will not be considered an agriculturist when the decree is to be passed.¹

(d) If a party becomes in fact a *bona fide* agriculturist at any of the stages *a*, *b* or *c*, he will reap the advantages to which he may be entitled under the Act although he was never an agriculturist before. The *dictum*,² that a man must have gained his livelihood by farming for at least one full agricultural season to have acquired the condition of an agriculturist, is not, it is submitted, to be taken as laying down any hard and fast rule of universal application.

(e) It is difficult to see how an acquisition by a party of the status of an agriculturist at the hearing is to affect proceedings already begun; and if such an acquisition creates any rights in favour of the party it is equally difficult to say how those rights are to be enforced. To take a concrete instance, if a party to a suit acquires the status of an agriculturist on the last day of hearing, various doubts would arise as to how the law is to be applied to such a case. But it may be argued that if a party has to lose his *vested* rights if he loses his status pending a suit, why should he not acquire new rights which did not originally belong to him by the acquisition of the status of an agriculturist in course of the suit. That he should so acquire the rights seems to be in consonance with the rulings of our High Court. So in a case where the plaintiff was an agriculturist at the time the suit came on for hearing, *held* that there was no objection to the suit being heard and determined under the Act.³ Moreover, in the case noted below,⁴

(1) See the remarks of West J. in *Padgaya Somshetti v. Baji*, (1887) 11 Bom., 469. Compare also Rule 2nd, s. 2.

(2) *Fulsidas Dhuuji v. Virbasapa*, (1880) 4 Bom., 624, (West J.).

(3) *Kondi v. Gunda*, 1882 P. J. 156. (Merrill and Nanabhai, JJ.).

(4) *Padgaya v. Baji*, (1887) 11 Bom., 499; cf. also *Rambhat v. Laxman*, 5 Bom., 630.

West J. remarked that:—"It would be hard to say that a man suing as son of A. B. could continue the suit in that character after his adoption by C. D; and as a right may be lost so it may be gained *pendente lite* by the acquisition of a particular status with reference to the object of the suit."

(*f* & *g*) If a party becomes an agriculturist at the time the application for execution is presented or if he becomes an agriculturist during the course of execution-proceedings the case becomes analogous to (*d*) & (*e*) and the remarks therein would equally apply.

Before s. 73 was repealed, the law did not allow the reopening of the question of the status of an agriculturist in execution-proceedings. But as the section is no longer law, the rulings,¹ under that section would not of course affect the consideration of the question. It is again to be noted that a party may not be earning his livelihood by agriculture or engaging in agricultural labour at any of the stages (*a*) to (*g*) and yet he will be considered an agriculturist for the purposes of the Act, if he falls under explanation (*a*).

The privileges of an agriculturist are personal²:— An assignment by an agriculturist mortgagor of his equity of redemption to a non-agriculturist will not confer on the latter the personal privileges of the former under this Act. But the assignee of an agriculturist mortgagor being himself an agriculturist is entitled to the benefit of ss. 12 to 14.³ Moreover, it seems, an agriculturist assignee would reap the benefit of the Act, even though his assignor was a non-agriculturist; (Quare).

(1) Compare cases in 1896, P. J. 342, 1887 P. J. 38, 1887 P. J. 77.

(2) *Rajaram v. Lakshman* 1882 P. J. 424 (Sargent, C. J. and Nanabhaj, J.). Cf. *Amichand v. Kanu*, 1884, P. J. 203, and *Dnyanu v. Appa*, 1893, P. J. 271, cited under s. 12 *infra*.

Compare also *Mahalan. v. Kusaji*, (1893) 18 Bom., 739, where the plaintiff was considered an agriculturist because her husband and son were so.

(3) *Dnyanu v. Appa*, 1893 P. J. 271. (West and Nanabhaj, JJ.). Vide also *Shripat v. Sitaram*, 1887, P. J. 296, and *Anaji Waghujji v. Bapuchand Jethiran*, (1883) 7 Bom., 520 cited under S. 3 sub-clause (*z*).

However an assignment of the above nature will evidently be watched with great scrutiny;¹ and where the Court is not satisfied as to the *bona fides* of the assignment, it will, it seems, go behind it, and proceed with the suit as if the assignee was a non-agriculturist.

Where a purchase is made *benami* and a suit is brought by the benamidar in order that the real purchaser may escape the consequence to which he would be liable if he purchased and sold in his own name, the Court will look behind the record to see who the real purchaser is. A benamidar may maintain a suit in his own name, but the Court will put the defendant in the same position as if the real were the actual plaintiff.

One Dagdu, an agriculturist, purchased certain land *benami* for Kelkar a non-agriculturist, and brought a suit for redemption under the provisions of the D. A. R. Act. Under the notification of the Government of India, No. 2092, dated the 29th July, 1881, the fees in case of suits by agriculturist for redemption were remitted, and the plaintiff, therefore, paid no stamp duty on the plaint. *Held* that Dagdu might maintain the suit in his own name, but must pay the usual stamp fees, and that the suit should proceed as an ordinary suit as though Kelkar was the nominal as well as the real plaintiff.²

In a suit for redemption by the assignee of an agriculturist mortgagor the District Judge dismissed the plaintiff's suit on the ground that the assignment was not made *bona fide*, as he considered the admitted consideration to be inadequate, *held* that the issue did not properly arise in the suit against the mortgagor.³

Sometimes others can share the benefit of the privilege :—The owner of part of the equity of redemption has a right to redeem the whole of the mortgaged property on paying the whole of the mortgage-debt, and where he does so on the terms of this Act, the other sharers in the equity of redemption, though not agriculturists, are entitled to get the benefit thereof.⁴

(1) But see *Tukaram v. Bahirao*, 1888 P. J., 7, cited post.

(2) *Dagdu v. Balvant R. Natu*, (1897) 23 Bom., 820 (*Farran, C. J.*, and *Candy, J.*).

(3) *Tukaram v. Bahirao*, 1888, P. J., 7. (*Birdwood and Parsons JJ.*).

(4) *Gulabpuri v. Pandurang*, 1886 P. J. 142, (*West and Nanabhai, JJ.*); referred to in 22 Bom., 820.

So also in the case noted below the Court remarked that a non-agriculturist plaintiff might under certain circumstances reap a considerable portion of the advantage derived from the suit, a result which the D. A. R. Act contemplates in some instances.¹

Whether an agriculturist is bound to follow the procedure laid down by this Act :—When a provision is intended for the benefit of a particular class of persons one would naturally think, it is at the option of a person of such class to claim the benefit of the provision. This Act is, however, so framed that in some cases the agriculturist, if he once becomes a party to any suit or proceeding falling under this Act, is not allowed an option to see whether the provisions of the Act should or should not be applied to the suit or proceeding. The duty imposed upon the Court by the Act is imperative; and it is not at the invitation of any party to a cause that the Court has to perform that duty. The duty of the Court is imperative, so much so that according to the 4th para. of s. 12 even when the amount of the claim is admitted, the Court has to satisfy itself that the admission is genuine.² So also in cases where the agriculturist party is the sowkar, or creditor of a non-agriculturist debtor, he may not be interested in submitting to the procedure of Conciliation and the like; and yet, as Chapter VI stands, the provisions would apply, and would thus go to serve the cause of a non-agriculturist even to the detriment of the agriculturist party. Sometimes an indebted agriculturist may be interested in posing himself as non-agriculturist, for instance in order to plead the bar of limitation. But the Act would apply to him if the other party alleges and proves that he (the debtor) is really an agriculturist. So when a matter in dispute becomes the subject of any suit or proceeding under the Act, it being not the agriculturist but the Court that has to apply the law to the facts of the case, the option of the former will not affect the jurisdiction of the latter. But out of Court, of course, the parties will, it seems, be at liberty to finally settle their claims in any way they like, and in thus settling they are

(1) S. 3 Clauses (y) and (z) ss. 12 and 13, and Chapter VI may be cited as such instances. *Dagiu v. Balvant*, (1897) 22 Bom., 820. (Farran, C. J., and Candy, J.).

(2) See the remarks of Chandavarkar J. in *Patlu v. Naru*, (1905) 7 Bom. L. R., 688.

not bound by any of the provisions of the Act.¹ Thus in a case a childless Hindu widow, having succeeded to the estate of her father-in-law, sold a portion of it in order to pay off his debts. The estate was situate in a district in the Presidency of Bombay subject to the D. A. R. Act. The plaintiff, as reversioner, sued for a declaration that the sale was void beyond the life-time of the widow. Both the lower Courts made the declaration prayed for by the plaintiff, on the ground that there was no necessity for the sale, as the widow might have availed herself of the provisions of the D. A. R. Act. On appeal by the defendant to the High Court, *held*, reversing the Lower Court's decree, that the sale by the widow should be upheld, that she was not bound to avail herself of the relief afforded by the D. A. R. Act any more than the provisions of the limitation, and that the moral obligation, which rested upon her, to pay the debt of her father-in-law justified the sale.²

The plea of Status :—The Court must enquire fully into an allegation by the defendant in a suit brought by an alleged agriculturist, that the plaintiff is not an agriculturist, and if it refuses to do so, the High Court will interfere under its extraordinary jurisdiction.³ This plea can be raised by any of the parties to the suit. *Quare*—can it be raised for the first time in appeal?⁴

Where in a previous suit, defendant had raised the question of status as agriculturist and the case was decided and in a later suit he pleaded the same status, *held* that the matter in issue in the two suits was not the same within the meaning of s. 13 of the Civil P. Code. In the first suit the question was whether the defendant was an agriculturist at the date of the suit, the question now is whether he is so at the date of this suit; during the interval the status may have changed.⁵

(1) *Cf.* Mohan v. Tukaram, (1895) 21 Bom., 63. (Farran, C. J. and Parsons, J.).

(2) Bhaoo Babaji v. Gopala Mahipati, (1886) 11 Bom., 325 (Sargent, C. J. and Nanabhai, J.) In this case, it seems, the sale was made in satisfaction of a previous mortgage; and if accounts would have been taken under this Act the sale would have been unnecessary. The facts are not very clear.

(3) Hari v. Sitaram, 1882, P. J., 15 (Mc. Gill and Kembal, JJ.) *cf.* Jivaji v. Kaka, 1883 P. J. 9.

(4) See *Janardan v. Ananta*, 1896 P. J. 396. under s. 10.

(5) *Vishwanath Garud v. Dala bin Tukaram*, 1889 P. J. 343.

Not Barred by Admission :—The mere fact that the defendant described himself in the instrument on which the suit was brought as a trader would not, of itself, estop him from pleading at the trial that he was an agriculturist and entitled to the protection of this Act. There must be evidence to show that, by describing himself as a trader, he represented himself as a trader, and intended that that representation should be acted on by the plaintiff.¹

4th. "Money" shall be deemed to include agricultural produce, implements and stock.

5th. "Lease" shall be deemed to include a counterpart, Kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease.

6th. "Standing crops" shall include crops of all sorts attached to the soil, and leaves, flowers, and fruits upon, and juice in, trees and shrubs.

[^a] 2 A. Jagirdars, &c., to be deemed Subordinate Judges :—Every jagirdar and other authority invested with powers under Bombay Regulation XIII of 1830 and Act XV of 1840 shall, for the purposes of this Act, be deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct.

(1) *Kadappaa, v. Martanda*, (1892) 17 Bom., 227. (Sargent, C. J. and Birdwood J.). See s. 115, Indian Evidence Act.

(a) Section 2 A was inserted by Act XXII of 1882, s. 4.

CHAPTER II.

— — — — —
*On the Hearing of certain Suits by
 Subordinate Judges.*
 — — — — —

3. Application of this Chapter:—The provisions of this chapter shall apply to:—

(a) Suits for an account, [a] whatever be the amount or value of the subject matter thereof, [a] instituted [b] by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and

(b) Suits of the descriptions next hereinafter mentioned, [c]

- (1) when such suits are heard by Subordinate Judges of the first class and the subject-matter thereof does not exceed in amount or value five hundred rupees, or
- (2) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or
- (3) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto.

(a—a) These words were inserted by Act XXII of 1882, s. 5.

(b) & (c) Words repealed by Act XVI of 1895 are omitted.

The descriptions of suits referred to in clause (b) are the following, namely:—

(w) suits for the recovery of money alleged to be due to the plaintiff—

on account of money lent or advanced to, or paid for, the defendant, or

as the price of goods sold, or

on an account stated between the plaintiff and defendant, or

on a written or unwritten engagement for the payment of money not hereinbefore provided for;

(x) suits for recovery of money due on contracts other than the above and suits for rent or for moveable property, or for the value of such property, or for damages; and

(y) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or for foreclosure and [a] sale, when the defendant, or any one of the defendants, [b] is an agriculturist; and

(z) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

Old Law.

The words from clause (a) repealed by Act XVI of 1895 are:—

(a) "And" was substituted for "or" by Act XXIII of 1886, s. 5.

(b) The words repealed by Act XXIII of 1881 are omitted.

Chapter II, S. 3. Application.

"on or after the first day of November, 1879 ;"

The words from clause (b) repealed by Act XVI of 1896 are :—

"and instituted on or after the same date."

The words from clause (y) repealed by Act XXIII of 1881 are :—

"not being merely a surety for the principal debtor,"

N.B.—Foot-notes to the section itself will indicate the insertions and substitutions.

Commentary.

Application of this Chapter :—This Chapter, in respect of some of its provisions, is not limited in its application to suits brought by or against agriculturists only. Clauses (w) and (x) of s. 3 apply to suits between parties whether agriculturists or not,¹ and even clauses (y) and (z) will apply to non-agriculturist parties when they are joined in suits with agriculturists.

Except suits for account, this Chapter is limited in its application to suits for sums not exceeding Rs. 500 or 100 according to the class of the Court in which the suit is instituted. This Chapter applies to suits before *Subordinate Judges only*; and so it has been held that s. 3 has no application to cases heard by *Assistant Judges*.² The application of this Chapter is restricted to suits falling under s. 3 only.³

For remissions of Court-fees and process-fees in suits under this Chapter, see notifications⁴ on the subject in Part II of this book.

Clause (a)—“ Under the provisions hereinafter contained”:—These words seem to refer to ss. 15D. and 16, because there are no other sections in this Act which relate to suits for account. If suits

(1) *Ganesh Krishnaji v. Krishnaji*, (1889) 14 Bom., 387, (*Scott and Candy, JJ.*); see also 4 Bom., at p. 628.

(2) *Mahadji v. Ramchandra*, 1885 P. J. 159, (*Sargent, C. J. and Birdwood, J.*).

(3) Vide the first para of s. 3.

(4) For reference to these notifications see p. 5, *ante*.

under ss. 15D. and 16 will thus be governed by this Chapter, it will follow that by virtue of s. 10 no appeal will lie from decrees or orders passed in such suits so far as they declare the account between the parties concerned. But it is clear that when in the same suits decrees for redemption or for payment by instalments are passed under sections 15D and 17, such decrees will not be affected by s. 10.

Cl. (b). The pecuniary jurisdiction:—Cl. (a) gives Sub-Judges power to try suits for accounts, irrespective of their amount or value, under this Act; while cl. (b) restricts the application of this Chapter¹ to suits not exceeding Rs. 500 at the most, tried by Subordinate Judges competent under sub-clauses 1 to 3 of the same. So when the valuation of a suit exceeds the jurisdiction of the Court as given by this clause the effect will be that the provisions of this Chapter will not apply to it. Particularly with respect to suits falling under sub-clause (w), a Court may be ousted of its jurisdiction under this Chapter in two ways; 1st, when the valuation of the suit as instituted in a Sub-Judge's Court exceeds the pecuniary limits given in clause (b). In this case the suit will have to be tried as falling under the ordinary jurisdiction of the Court; 2ndly, when the amount or value of the subject-matter does not exceed Rs. 10 the suit will generally be tried by the Village-Munsif [if any such has been appointed under the provisions of this Act.]

Under sub-clause 3, the Court derives jurisdiction by reason of consent of parties. The section does not say in what form the consent is to be taken. In practice it is generally taken in the form of a *purshis*² and not orally. If a party or his pleader once gives such consent, it can not be withdrawn after the hearing has begun, and the suit has proceeded on the footing of such consent.³ The sub-clause is so worded that there is room to believe that the consent will not be assumed from mere

(1) See *Tulsidas v. Virbasapa*, (1880) 4 Bom., 624. (West J.).

(2) Cf. s. 20, Presidency Small Cause Courts Act.

(3) *Rupchand v. Balvant Narayan*, (1887) 11 Bom., 591 (West and Birdwood, JJ.).

acquiescence. When the parties do not agree that the provisions of Chapter II should apply to the case, an appeal would lie from the decision of the Sub-Judge.¹

Jurisdiction assumed through honest misinformation as to value :—An application of Chapter II of the D. A. R. Act by a Subordinate Judge, which would have been illegal and wrong if the Subordinate Judge had known that the subject-matter of the suit was of greater value than Rs. 100, may be sustained if he was led into applying it by honest misinformation. The original proceeding being thus justified, a Special Judge has jurisdiction to revise it, and, if necessary, to order a new trial. Where jurisdiction depends upon particular facts stated, the proceeding will not be null through a mere error in stating facts so as to found the jurisdiction, though they will be voided probably by fraud or at any rate will be voidable against him who has practised it.²

The valuation of a suit for redemption :—It may be a question whether the valuation of a suit for jurisdictional purposes ought to be governed by any rules of an arbitrary kind for regulating Court-fees and the like. The Court Fees Act no doubt says that in a suit for redemption the amount originally advanced shall for the purposes of the Act determine the valuation of the suit. But the proper valuation of a suit for redemption is the amount remaining due on the mortgage or claimed on it by the mortgagee.³ It is that amount and the right connected with it which is the usual subject of contention in a mortgage suit. "The rules laid down in the Court Fees Act are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction." (*Per Birdwood J.*)³

(1) *Madhavrao Ekuath v. Raoji*, 1885 P. J. 150, (Sargent, C. J. and Birdwood, J.).

(2) *Kondajee Babaji v. Anan*, (1883) 7 Bom., 448, (West and Nana-bhai, JJ.); *Ramechandra v. Janardan*, (1889) 14 Bom., 19, (Sargent, C. J. and Nanabhai, J.).

(3) *Rupchand Khemchand v. Balvant Narayan*, (1887) 11 Bom., 591 (West and Birdwood, JJ.).

Valuation of a redemption-suit where nothing is due on the mortgage :—But where in a suit for redemption the mortgage debt was satisfied out of the rents and profits and no sum remained due on the mortgage, the amount of the original advance for the purposes of jurisdiction would determine the valuation; and where in such a case the defendants denied the mortgage and claimed the property as their own, such denial would not alter the character or nature of the subject-matter of the suit. It continued after the denial in its original shape so far as the plaintiffs were concerned. Nor is the complexion of it entirely changed because the defendants put forward certain grounds of defence which, if well founded, must defeat the plaintiff's right to redeem.¹ In the case from which this remark is taken, *Parsons J.* observed, "If the case had been one of first impression I should have been inclined to hold that the words "mortgaged property" in paras (y) and (z) of s. 3 must be construed to mean "admittedly mortgage property;" and that the provision of s. 10 could not apply to cases where the mortgage was denied and the title had to be proved. The point is, however, concluded by authority.² At the same time I must express my opinion that an amendment of the Act is necessary, for it is not right that under an Act passed only to relieve the agricultural classes from indebtedness, Sub-Judge of second class should be authorized to deal with questions which affected title to immoveable property and to dispose of them with final effect, on the mere allegation of the plaintiff that such property was mortgaged and that the amount due on the mortgage at the date of suit was less than Rs. 100."³

Suits referred to in cl. (b) :—include suits for (a) redemption, (b) foreclosure or sale and (c) possession of mortgaged property by the mortgagee as such, (d) as also suits for money on contracts, express or implied.

(1) *Amrita v. Naru* (1888), 13 Bom., 489. (*Birdwood and Parsons, JJ.*). One of the grounds of defence urged in this case was that the defendants had made improvements to a great extent on the mortgaged property.

(2) *Govindaingh v. Kallu*, 2 All., at p. 780; see also *Rupchand Khemchand v. Balvant Narayan*, 11 Bom., 591.

(3) *Amrita Bin Bapuji v. Naru Bin Gopalji Shamji* (1888) 13 Bom., 489, (*Birdwood and Parsons, JJ.*).

Where by a written contract the defendant was employed to sell the plaintiff's goods upon certain terms and to account for the goods or their proceeds when called upon, *held*, that a suit calling upon the defendant for an account in pursuance of his undertaking, was a suit on the contract and came within the provisions of s. 3.¹

Suits falling under clauses (w) and (x):—The Legislature seems to have intended to include in these clauses all claims of a pecuniary nature arising out of contracts whether written or unwritten.¹ It is difficult to ascertain the precise intention of the Legislature in sub-dividing such suits under clauses (w) and (x). Suits for the recovery of money would fall both under clauses (w) or (x). So far as Chapter II is concerned, it is immaterial whether such a suit falls under cl. (w) or cl. (x). But the distinction between the clauses becomes of immense importance when the application of other provisions of the Act comes in question. For instance, in a suit for the recovery of money when falling under clause (w) [and when the defendant is an agriculturist] the amount of the claim will be determined according to the rules in ss. 12, & 13, and the suit will be governed by the special Limitation-law in s. 72. Moreover such suits will have to be instituted at the place where the agriculturist-defendant resides, either in the Court of a Subordinate Judge or of a Village-Munsif according to the value of the subject-matter of the suit. None of these special provisions would apply to a suit for the recovery of money, when it falls under clause (x). It is to be noted that except under this Chapter, clause (x) is nowhere specially referred to in this Act. From what appears from a perusal of some of the provisions of the Act, clause (w) [barring of course suits for the price of goods sold] seems to refer to suits arising out of money lending transactions between a creditor and a debtor, wherein money is to be recovered for money² spent, lent, or advanced to or for the defendant. It would thus include "all suits on bonds, khata, written acknowledgments and the like, and would exclude suits for rent, for damages, &c."³

(1) *Lakshman bin Ramji v. Rampiarbai*, 1897 P. J. 290 (Farran, C. J. and Candy, J.).

(2) It is doubtful whether the word money as used in the section is to be understood according to the definition given in s. 2, Rule 4th.

(3) For the contents in the inverted commas, read the Statement of Objects and Reasons for amending s. 72. by Act XXIII of 1896.

Clause (w) :— It has been held that a suit to recover money spent by the plaintiff on account of the defendant,¹ or one on a bond to secure the payment of the price of grain and the interest due on a mortgage bond given to secure an old debt,² would fall under cl. (w).

Clause (x) :—A suit for the redemption of a chattle³ and a suit to recover fees from a client⁴ would fall under clause (x).

A suit for emoluments :—A suit by plaintiff to recover his share of the emoluments arising out of reading *Purans* from the defendants, held to be a suit for money had and received by the defendants for plaintiff's use [the defendant having rightly received it from the Temple Committee but being under an implied contract to pay the plaintiff his share] and falling under cl. (x) of s. 3, and not a suit for damages.⁵

A question of title in a suit for rent :—In a suit to recover a sum of Rs. 30 as rent under s. 3, cl. (x) a second class Subordinate Judge incidentally determined the question of the plaintiff's title to the land for which the rent was claimed. The point then arose, as to whether the decision of the suit by the Subordinate Judge could be appealed against, or whether it was open to revision by the Special Judge under s. 50 of the Act, held that although a question of title was incidentally raised and decided in the case, still by analogy with the decisions under the several Small Cause Courts Acts, the suit as brought was one properly falling under cl. (x) of s. 3. and that no appeal lay.⁶

(1) Ganesh Krishnaji v. Krishnaji, (1889) 14 Bom., 387, (Scott and Candy, JJ.).

(2) Dipchand v. Kashi, 1881 P. J. 116, (Westropp, C. J. and Pinhey, J.).

(3) Kashiram Mulchand v. Hiranand Surtaram, (1890) 15 Bom., 30, (Birdwood and Candy JJ.).

(4) Rangu v. Kalu, 1885 P. J. 221 (Birdwood and Jardine, JJ.).

(5) Shankarbhat v. Raghunathbhat, 1892 P. J. 288, (Bayley, Ag. C. J. and Candy, J.); Rangu v. Kalu, 1885 P. J. 221; referred to.

(6) Shidhu v. Ganesh, (1891) 16 Bom., 128, (Sargent, C. J. and Birdwood, J.).

A suit to recover revenue or Mamul Judi is not one on a written or unwritten engagement :—The word ‘engagement’ refers to a contractual engagement. So a suit for land revenue would not fall under this clause ; as it is clear that the liability for land revenue does not spring from a contractual engagement nor is the claim in respect of it one for damages within the meaning of sub-section (x).¹ a suit by an Inamdar of a village to recover *Mamul Judi*, i.e., money due on account of the Desbmukhi allowance assessed on land in the village is not a suit for money due on an unwritten engagement, or for rent within the meaning of clauses (w) or (x), the allowance being in the nature of a tax or cess imposed on the property.²

Clauses (y) and (z)—Mortgaged property:—The words “mortgaged property” refer to immovable property only.³ The expression is not to be limited by a technical consideration of what in a lawyer’s point of view constitutes a mortgage. It should be read in its ordinary popular sense. Therefore, property given for enjoyment till a debt was liquidated from its profits is mortgaged property.⁴

Sale or Mortgage :—There are some transactions which, though appearing to be sales, are, in reality, mortgages. To this class belong cases where there is ostensibly a conveyance with a collateral agreement for repurchase by the vendor on payment of the purchase-money within a stipulated time ; and such a collateral agreement may be either introduced into the conveyance itself or may be made at a subsequent period.

(1) *Sheik Gulam v. Kashinath Bapuji*, (1901) 25 Bom., 244, s. c. 2 Bom. L. R., 795, (Jenkins, C. J. and Batty, J.).

(2) *Narayan v. Gangadhar*, 1888, P. J. 283, (Birdwood and Parsons, JJ.).
 In this case the Court remarked that the word ‘rent’ as used in s. 3 must mean something agreed to be paid in consideration of the transfer of a right to enjoy immovable property.

(3) *Kashiram Mulchand v. Hiranand Surtaram*, (1890) 15 Bom., 30, (Birdwood and Candy, JJ.).

(4) *Rama v. Yesu*, 1896 P. J. 284, (Farran, C. J. and Fulton, J.).
Mahipatrao v. Gambhirmal, 1886 P. J. 141, referred to.

Under these circumstances, the question whether the transaction is a mortgage properly so called or is a sale with a right to repurchase, depends upon the special circumstances of each case :—(1) where the money paid by the grantee is not a fair price for the absolute purchase of the property conveyed to him ; (2) where the purchaser was not let into immediate possession of the property ; (3) where instead of receiving the rents for his own benefit, he accounted for them to the grantor and only retained the amount of interest ; (4) where the expence of drafting and preparing the deed is borne by the transferor ; (5) where there exists a power to the transferee to recover the sum named as the price of the repurchase ; (6) where there is a covenant for the payment of interest ; (7) where the stipulated period of repurchase is a very long one. In all these cases the deeds are to be taken as constituting mortgages,¹ these are indeed very important criterions for us, and some Judges have gone the length of holding that *oral evidence of the acts and conducts of parties*, whether contemporaneous or subsequent, is always admissible in order to show that the deed, though ostensibly a conveyance, was in reality intended to operate only as a mortgage.² It is clear that the question how far the *intention* of the mortgagor may be gathered from sources other than the document itself, has now, so far as India is concerned been settled by the Privy Council, who observed :—“ Their Lordships do not think that oral evidence of intention was admissible for the purpose of construing the deeds or ascertaining the intention of the parties. . . . The case must, therefore, be decided on a consideration of the contents of the documents themselves with such extrinsic evidence of surrounding circumstances as may be required to show in what manner the language of the document is related to existing facts.”³ For this purpose reference may be made to cognate

(1) Gour's Transfer of Property Act, Vol. II p. 556. See also Patel Ranchhod v. Bhikhabbai, 21 Bom., 704.

(2) Preonath v. Madhu Sudan, 25 Cal., 603 (F.B.). Khankar v. Ali Hafez, 28 Cal., 256. Mahomed v. Nazeer Ali, 28 Cal., 289. The Calcutta High Court is confirmed in this view of the matter and holds that the P. C. decision in the case of Balkishen Das, v. Legge cited in the next foot-note, does not come in the way of the view. Vide the two cases in 28 Cal., specially the judgment of Banerji, J. in 28 Cal., 256 ; and see *contra* 25 Mad., 7.

(3) Balkishen Das v. Legge, 22 All., 149.

Pt. I, p. 43—Add to the 8th footnote:—

The case of *Dattoo v. Ramchandra*, has been followed in *Keshavarao v. Raya*, 8 Bom. L. R., 289 (Russel and Batty, JJ.); to the same effect are the rulings in *Hanmant v. Govind*, 8 Bom. L. R., 283 (Jenkins, C. J. and Aston, J.) and *Abaji v. Luxman*, 8 Bom. L. R., 553 (Jenkins, C. J. and Beaman, J.). These decisions have done away with the protective jurisdiction which used to be exercised by our High Court in such cases as those of *Baksu v. Govinda*, 4 Bom., 594; and the Courts are now powerless to look into the true nature of a transaction and go behind the terms of the deed drawn in respect of the transactions by taking direct oral evidence or indirect evidence of conduct in such cases as those of *Baksu v. Govinda*.

This view of law is calculated to be detrimental to the interest of uneducated and uncalculating masses to be found in large numbers in this Presidency. So in the latest case (*Abaji v. Luxman*) on the point our learned Chief Justice expressed the hope that " there may be early legislation which will enable the Courts, at least where an agriculturist is concerned to investigate and determine the real nature of the transaction, unfettered by s. 92 of the Evidence Act, and to award such relief as the justice of the case may require ".

Vide also the article on the **Agriculturists and the Law Courts** published in No 13 of 8 Bombay Law Reporter.

documents executed at or about the same time as indicative of the intention of parties.¹ Distinction must, however, be made between the admissibility of evidence, to show that a recital of a fact in a contract is erroneous, and evidence to vary its terms.² If it was not so, facilities would be afforded for the grossest frauds.³ Both the Privy Council cases reported in 22 Allahabad and noted below were considered by a Division Bench of the same High Court and it was held that extrinsic evidence was not admissible for the purpose of showing that a document which purported to be, and on the face of it was, a deed of sale was in reality a deed of gift.⁴ And a Division Bench of the Bombay High Court recently held that where a written document is alleged to be governed by a contemporaneous oral agreement or statement of intention which must be inferred from the surrounding circumstances, the Court must be guided by s. 92 of the Evidence Act⁵ and the Court cannot have recourse to those equitable principles which enable the Court of Chancery to give relief in those cases of which *Alderson v. White*⁶ and *Lincoln v. Wright*⁷ are examples.⁸

If the words of a deed are plain and unambiguous, the fact that the parties understood it otherwise and acted on such understanding for a period of more than forty years cannot affect the construction of the instrument and the effect to be given to it.⁹

In construing a mortgage-deed, the terms of which are of a doubtful character, the intention of the parties, as deducible from their conduct at the time of execution and other contemporaneous documents executed between them, are to be looked to.¹⁰

(1) See 25 Mad., 7 ; in this case the 22 All., P. C. case is followed and the Calcutta cases above referred to are dissented from.

(2) *Esh Lal Chand v. Indarjit*, 22 All., 370, (P. C.).

(3) *Ibid.*, at p. 375.

(4) *Faiz-un-nissa v. Hanif-un-nissa and others*, 27 All., 612.

(5) *Baikishen Das v. Legge* referred to,

(6) (1858) 2 DeG. and J. 98.

(7) (1859) 4 DeG. and J. 16.

(8) *Dattoo v. Ramchandra*, (1905) 7 Bom. L. R., 669, (Jenkins, C. J. and Batty, J.).

(9) *North Eastern Railway v. Lord Hastings*, (1900), A. C. 269; followed in 25 Mad., 7.

(10) *Jafar Hussen v. Ranjit Singh*, 31 All., 4.

Clauses (y) and (z) apply to an agriculturist assignee:— The provisions of these clauses are not limited to an agriculturist who is himself the original mortgagor or mortgagee; they would equally apply to their assignee if he is himself an agriculturist.¹ And the fact that the assignor was a non-agriculturist would not, it seems, make any difference, provided the assignment was a *bona fide* and a real transaction.

Clause (y)—A suit for the possession of mortgaged property:— must, in order to fall under this clause, have been brought by the mortgagee against the mortgagor as such. A suit by a mortgagee to recover possession of the mortgaged property from the mortgagor under the terms of a lease accepted by the latter from the former does not come under this clause.² So also a suit based on a dispossession of existing possession does not fall under this clause. An incidental reference to a mortgage in the plaint does not affect the question, when the suit is one to recover possession from a person who is not the mortgagor.³

Clause (z)—A suit in ejectment:—In a redemption-suit governed by the provisions of Chapter II of the Act, one of the defendants was sued merely as a person in possession, *held* that the suit against that defendant was one in ejectment. A suit in ejectment is not governed by s. 3, clause (z) and an appeal against the decree in such a suit lies to the District Court.⁴

4. Certain suits to be instituted in Courts of First Class Subordinate Judges:—Where a Subordinate Judge of the first class and Subordinate Judge of the second class have ordinary jurisdiction in

(1) *Shripati v. Sitaram*, 1887 P. J. 296, (Sargent, C. J. and Nanabhai, J.); see *Annaji Waghujji v. Bapuchand Jethiram*, (1883) 7 Bom., 521; *Dnyanu v. Appa*, 1893 P. J. 271; cited *ante*.

(2) *Mulchand v. Raoji*, 1883 P. J. 84 (West and Nanabhai, JJ.).

(3) *Krishnaji v. Hari Janu*, (1904) 28 Bom., 635; s. c. 6 Bom. L. R., 588; (Jenkins, C. J. and Aston, J.); following *Mulchand v. Raoji*, *supra*.

(4) *Sakharam v. Shripati*, (1891) 16 Bom., 183; *Amrita v. Naru*, (1888) 13 Bom., 489, distinguished.

the same local area, every suit referred to in section 3, clause (b), and instituted in such local area shall, if the amount or value of the subject-matter of such suit exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class.

Commentary.

The word 'instituted' explained:—The plaintiff sued to establish his title to, and recover a moiety of a cash allowance payable to him from the Mamlatdar's treasury at Satara. The claim was valued at Rs. 455-4. The plaint was filed in the Court of the First Class Subordinate Judge at Satara, who transferred it for trial to the Joint Sub-Judge of the Second Class. The suit was dismissed on appeal on the ground of want of jurisdiction under s. 4. Held that the requirements of s. 4 were sufficiently complied with by the suit having been filed in the Court of the Subordinate Judge of the First Class. The word "*instituted*" in s. 4 does not mean *heard and determined*. The Subordinate Judge of the First Class was competent under s. 23 of Act XIV of 1869 to transfer the suit to the Joint Subordinate Judge of the the Second Class who was deputed to assist him.¹

5. Subordinate Judges not to act as Judges of Small Cause Courts:—Notwithstanding anything contained in the Bombay Civil Courts Act (XIV of 1869), section 28, no Subordinate Judge shall be invested with the jurisdiction of a Judge of a Court of Small Causes. [a]

Old Law.

The words repealed by Act XVI of 1895 are:—

"And any such jurisdiction heretofore conferred on the Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of November, 1879, to have been withdrawn."

(1) *Manaji v. Narayanrao*, (1894) 19 Bom., 46 (Jardine and Kanade, JJ.).

(a) Words repealed by Act XVI of 1895 are omitted.

Commentary.

S. 28 of the Bombay Civil Courts Act runs thus :—

The Governor of Bombay in Council may invest, within such local limits as he shall from time to time appoint, any Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of 500 rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of 50 rupees.

The Governor of Bombay may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

Although as provided for in s. 5 of this Act, the above section from the Bombay Civil Courts Act cannot be brought into service; yet by Chapter II of this Act all Subordinate Judges in the district to which this Chapter may apply are invested with powers which are more or less summary; the powers, [so far as the scope of this Chapter goes] being enlarged so as to include mortgage-cases of the class in which agriculturists are so commonly involved.

6. Jurisdiction of Subordinate Judge and Small Cause Court :—The Local Government may, from time to time, by notification in the local Gazette, direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 16 of the Provincial Small Cause Courts Act (IX of 1887), shall be heard and determined by him and not otherwise and may, by a like notification, cancel any such direction.

S. 16 of Act IX of 1887 referred to above runs thus :—

Save as expressly provided by this Act, or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

Notifications under this section :—For notifications¹ under this section, see Part II of this book.

(1) No. 7057, B. G. G. for 1879, Pt. I, p. 934; No. 1664, B. G. G. for 1901, Pt. I, p. 490.

7. Summons to be for final disposal of suit:—In every case in which it seems to the court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

Court to examine defendant as a witness:—In every suit the court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it clearly [a] unnecessary so to do.

[b] **Explanation:—**The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement.

Old Law.

For old law see foot-notes below.

Object of the section:—“The presence of the defendant being essential for the thorough investigation proposed, and the raiyats being, through various difficulties, apt to leave their suits undefended it has been provided [in this section] that, except for special reasons, no suit shall be decided *ex parte*, but that the Court shall compel the defendant to appear.”¹

In every suit:—In districts to which the whole of Chapter II is applicable, the provisions of s. 7 will evidently apply to suits of the nature described in s. 3. But where Chapter II is not so extended, but s. 7 alone is extended, it becomes difficult to ascertain the precise meaning of the expression *in every suit* appearing in s. 7. The expression itself is too comprehensive and is not followed by any qualifying words, as are to be found in s. 10, to show that it has reference to suits to which Chapter II applies. Yet the words cannot be very literally construed and the recent extension of s. 7 cannot

(a) “Clearly” was added by Act VI of 1895, s. 6.

(b) This explanation was inserted by Act VI of 1895, s. 6.

(1) See Statement of Objects and Reasons for Act XVII of 1879. Words in brackets are our own. For the form of the summons, see H. C. circular orders, B. G. G. for 1903, Pt. 1, pp. 388, 389, cited in Part II of this book.

be taken as applicable to suits not of the nature described in s. 3. To construe them otherwise would be equivalent to giving the words a meaning which the Legislature never intended to give them, and the authority given to the Local Government to extend to any district or districts any provisions of the Act cannot be so exercised as to give to any of them a meaning and operation which the Legislature never intended.

The difficulty, however, does not cease here; because granting that section 7 is to apply to suits described in s. 3, it is next to be seen whether the description of suits given in section 3 is to be taken literally or only by way of illustration; or in other words whether a defendant is compulsorily to be examined under s. 7 in suits falling under clauses (w) or (x), the amount or value of which exceeds rupees 500. The difficulty is of every day occurrence and different practices have been found to be prevailing in different Courts in the mofussil. Under the circumstances by the analogy of the construction¹ placed upon the reference to s. 3 in ss. 11 and 12, it is submitted that the provisions of s. 7 would apply to suits of unlimited value though otherwise of the kind or kinds specified in s. 3 of the Act.²

“The Court shall examine the defendant”:—The wording of the section is no doubt peremptory; but where a defendant does not turn up even though a witness summons is duly served upon him, it seems it would be a sufficient reason for the Court to dispense with his examination, and proceed with the suit. The word defendant is wide enough and evidently refers both to agriculturist as well as non-agriculturist defendants. It would be a wrong practice not to examine a defendant because he is described in the plaint as non-agriculturist. The plaintiff creditor is presumably interested in representing an agriculturist defendant to be non-agriculturist; and it would thus be necessary to examine every defendant to ascertain whether he is an agriculturist or not.

(1) See *Tulsidas v. Virbasapa*, (1880) 4 Bom., 624, (West, J.).

(2) One of the Honourable Members in the Legislative Council (in 1895) had proposed to make this section one of universal application; but the S. Committee decided that the section should remain in chapter II.

S. 7 and s. 12 :—The examination of the defendant is also rendered necessary by s. 12 of this Act. This provision as to examination was purposely introduced in s. 12 in order to dispense with the necessity of extending s. 7 along with Chapter III, to those places where Chapter II is not to be extended. But the recent notification¹ extends s. 7 of Chapter II along with s. 12 to the whole of this Presidency. With what view this is done by the Local Government cannot be ascertained. But its effect is to make the examination of the defendant more compulsory than it would have been under the provisions of s. 12.²

Explanation to s. 7 :—“It is a favourite dodge with the Sawkar to get the defendant to file a written statement containing an admission of his liability and then keep him out of Court. It is for the purpose of not allowing such a dodge to be successful, and to enable the Court to see that the defendant has exercised an intelligent option in defending the suit, that this explanation has been inserted.”³

8. (Written Statement.)—*Repealed by Act VI of 1895, s. 3.*

Old Law.

section 8 was :—

In suits of the descriptions mentioned in s. 3, clauses (w) and (x), no party shall be entitled, without the permission of the Court to file a written statement.

9. (Record of evidence)—*Repealed by Act VI of 1895, s. 3.*

(1) No. 4144, B. G. G. (1905), pt. 1, p. 1038.

(2) See also the note to s. 12 heading “Shall examine both the plaintiff, and the defendant as witnesses.”

(3) Read Honourable Mr. P. M. Metha's Speech—Proceedings of the Supreme Legislative Council for 1895.

Old Law.

Section 9 was :—

Record of evidence :—When the subject-matter of any suit does not exceed ten rupees in amount or value, it shall not be necessary to take down the evidence, or to make a memorandum thereof in manner provided by the Code of Civil Procedure; but in cases where the evidence is not so taken down, and no memorandum is so made, the substance of the evidence shall be stated in the judgment.

10. No appeal to lie :—No appeal shall lie from any decree or order passed in any suit to which this chapter applies.

Similar Provisions—are to be found in Chapter IV (s. 33), Chapter V (s. 36), Chapter VII (s. 54, para 4); and before Act VI of 1895 was enacted, the finding as to whether a person was or was not an agriculturist was final (*old s. 73*). An attempt was made in the Amending Bill of 1882 to apply a similar bar to appeals in matters falling under chapter III, but the proposal was disapproved.

Superintendance and Revision :—The suits and proceedings under this Chapter will be subject to the powers of superintendance and revision given by Chapter VII.

This Chapter does not apply :—Where the subject-matter of a suit heard by a Subordinate Judge of the second class exceeded Rs. 100 but did not exceed Rs. 500 and the parties had not agreed that the provisions of Chapter II should apply to the case, *held* that an appeal would lie from the decision of the Sub-Judge.¹ So also if a case falling under this Chapter is heard and decided by an Assistant Judge, an appeal will lie against the decision.²

A decree in a suit for redemption of a chattel is not appealable :—A suit was brought to redeem an ornament pledged for a sum below Rs. 500. The suit was filed in the Court of the first class Subordinate Judge at Satara, where this Act applied. The

(1) *Madharao Eknath v. Raoji Walad Blowanji*, 1885 P. J. 150, (Sargent, C. J. and Birdwood, J.).

(2) *Mahadji v. Ramchandra*, 1885 P. J. 159, (Sargent, C. J. and Birdwood, J.).

Subordinate Judge passed a decree for redemption of the pledge. *Held* that, although neither of the parties was an agriculturist, the case fell under Chapter II of the Act, and that no appeal lay against the decree of the Subordinate Judge. *Held*, further, that the Special Judge had revisional jurisdiction in the matter.¹

The provisions of this Chapter apply to suits described in s. 3. For suits to which section 3 applies and from which no appeal lies, see cases noted below and already cited.²

If a District Judge on appeal raises a new issue and finds defendants agriculturists, he should refer parties to proper tribunals :—A suit was filed as an ordinary suit and as such tried by second class Subordinate Judge. On appeal, the District-Judge raised a new issue and found the defendants agriculturists, and dealt with the appeal as though he had jurisdiction. *Held*, that he had no jurisdiction to hear an appeal in the suit as a suit under this Act, and that he ought to have referred the parties to the proper tribunal, and not himself to have dealt with it in appeal.³

The plea of bar allowed at the hearing :—where the Sub-Judge decided that the case did not fall under Chapter II of the Act but had decreed plaintiff's claim and he as respondent did not file cross-objections under s. 561 of the Civil procedure Code but raised the question at the hearing of the appeal, but the appellate Court refused to consider this preliminary point because the lower Court had decided that the case was not one under Chapter II and because no objections under s. 561 had been filed, *Held* that the decision of the first Court that the case did not fall under Chapter II formed no element of the decree passed in plaintiff's favour and it was not necessary for him to appeal against it or to formally object to it under s. 561. It was open to him to take the objection to the Court's jurisdiction at the hearing and it should have been considered.⁴

(1) Kashiram Mulchand v. Hiranand Surtaram, (1890) 15 Bom., 30, (Birdwood and Candy, JJ.).

(2) Mahadji v. Ranchandra, 1885 P. J. 159. Amrita v. Naru, (1888) 13 Bom., 489. Shidhu v. Ganesb, (1891) 16 Bom., 128. Sakharam v. Shripati, (1891) 16 Bom., 183; and other cases cited under s. 3; see also note to s. 3 cl. (a), headed :—“Under the provisions hereinafter contained.”

(3) Janardan v. Ananta 1896 P. J. 396. (Farran, C. J. and Hosking, J.).

(4) Rajai v. Appaji, P. J., 1888, 229, (Birdwood and Parsons, JJ.), following Kupchand v. Balwant, 11 Bom., 591.

CHAPTER III.

*Of Suits and other Proceedings to which
Agriculturists are Parties.*

Scope of this Chapter:—This Chapter introduces many important provisions for the relief of agriculturist-debtors. It mainly aims at taking full accounts from creditors. The first four sections of this Chapter apply to the determination of the debts of agriculturists in a mode specified by this Act. The history and merits of the disputed and doubtful cases will be inquired into, and an account will be taken in a certain way if the Court considers the course to be necessary.¹ Ss. 15 A, 15 B, and 15 C make some modifications² in the provisions of the Transfer of Property Act, by allowing the mortgagor time to pay his debt either at once [even if the time for payment has not come] or by instalments or by keeping the mortgagee in possession. Ss. 15 D, and 16 introduce novel relief to debtors who are thereby enabled to bring suits for accounts against their creditors and s. 17, which specially relates to suits under s. 16, makes a provision that a decree passed under s. 16 may direct that the amount declared under the said section may be paid by instalments. Section 18 gives to the debtor, who has filed a suit for account under s. 16, a right of depositing the amount of the debt in Court. S. 20 is an improvement upon s. 210 of the Civil P. Code. And then come the most important sections 21 and 22; the former saves the person and the latter protects, the immoveable property [not specifically pledged], of the agriculturist-debtor from arrest and attachment respectively.

(1) Hon'ble Mr. Hope's Speech in moving the Bill; Proceedings of the Supreme Legislative Council (1879); Vol XVIII p. 144.

(2) Read the judgment of Ranaje J. in *Bhagva v. Ganu*, 23 Bom., 644, (1899); s. c. 1 Bom. L. R., 136; see s. 2 (a) of the T. P. Act.

This Chapter governs suits and proceedings before Courts of all grades, except the Courts of Village-Munsifs (vide s. 23), and is not limited in its application to suits for sums not exceeding Rs. 500. The reference in this Chapter to clauses (w) (y) and (z) of s. 3 is only by way of illustration.¹ The provisions of this Chapter, though mainly intended for the relief of agriculturist-debtors only, would, as pointed out before, indirectly go to relieve non-agriculturist debtors also.²

The provisions of ss. 12 and 13 are applicable only to suits instituted *on or after the 1st day of November 1879*, [the day on which this Act comes into force].³

II. Agriculturists to be sued where they reside:—Every suit of the description mentioned in section 3, clause (w), may, if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides, and not elsewhere.

Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere.

Nothing herein contained shall affect sections 22 to 25 [both inclusive] of the Code of Civil Procedure.

Commentary.

Scope of this section :—“In order to prevent the provisions of Chapter III of the Bill [now this Act]⁴ being evaded by entering into contracts with agriculturists of the four districts

(1) *Tulsidas v. Virbasapa*, [1880] 4 Bom., 624, (West, J.).

(2) See Note: “*Others can share the benefit of the privilege*,” under s. 2.

(3) *Suryaji v. Tukaram*, [1880] 4 Bom., 358. (Westropp, C. J. and Melvill, J.). The words *italicised* were repealed from s. 3 *cl. (a)* by Act XVI of 1895. As to the effect of the repeal of these words, see note to s. 1, heading “This Act how far retrospective.”

(4) The words in brackets are our own.

to which the Bill [this Act]¹ extends, at places beyond the limits of those districts, we have introduced a section in the beginning of Chapter III [this s. 11]² requiring suits against such agriculturists to be brought where the defendants reside."³ This section governs suits coming under s. 3 cl. (w) when the defendant, or one of the defendants thereto is an agriculturist. Hence with respect to all other suits the place of suing will be the same as determined by Civil P. Code, or by Chapter V of this Act.

It may be noted that so far as it goes, this section modifies s. 17 of the Civil P. Code with respect to certain suits for the recovery of money which according to the provisions of this section are to be instituted and tried only in the Court within the local limits of whose jurisdiction the agriculturist-defendant resides.³

Section 11, and the place of suing :—S. 11 extends to the whole of British India as to suits brought against agriculturists of the description given in s. 2. In a suit against defendants, who were residents at Sholapur, for Rs. 1947, the price of goods sold and delivered, the defendants moved for a postponement for the issue of a commission to take evidence that they were agriculturists. The Court granted the commission holding that if the defendants established that they were *bona fide* agriculturists, they would be exempt from the jurisdiction of the High Court.⁴

The effect of the extension of s. 11 of this Act by the 1st section to all British India, is simply to impose upon any person in any part of British India, who brings a suit of the nature mentioned in s. 3, cl. (w) against an agriculturist or agriculturists residing within the districts of Poona, Satara, Sholapur and Ahmednagar, the necessity

(1) The matter given in Brackets is our own.

(2) Vide the Report of the Select Committee; Gazette of India (1879) pt, V. p. 948.

(3) Vide *Bhagyan v. Gauu*, [1899]. 23 Bom., 644; s. c. 1 Bom. L.R., 136. (*Parsons, Ag, C. J., and Ranade, J.*).

(4) *Tulaidas Dhunji v. Virbasapa*, 4 Bom., 624, (West, J.).

of instituting the suit and having it tried in a Court within the local limits of whose jurisdiction he or they reside. The Court must necessarily be in some one of the said four districts.¹

A suit was brought in the Subordinate Court of Haveli, under this Act, for the recovery of a sum of money, against agriculturists some of whom resided within the jurisdiction of that Court and others within the jurisdiction of Saswad Court. Defendants residing within the jurisdiction of the Haveli Court were proved to be non-agriculturists under the Act, upon which the Haveli Court rejected the suit and refused to return the plaint for presentation to the Saswad Court on the ground that the case did not fall within the provisions of section 57 of Civil Procedure Code. *Held*, [ordering the return of the plaint] that s. 57 of Civil Procedure Code applied, because (a) no option as to the selection of the Court was allowed by law² and (b) none of the defendants were dwelling within the local limits of the Haveli Court; and that where the Court in which a plaint has been presented has no jurisdiction to try the suit, the proper procedure to be followed would be to return the plaint for presentation to the proper court.³

Transfer of Suits :—It may be noted here that there is no provision in this Chapter similar to the one we meet with in s. 51 or in s. 35 of this Act empowering the District Judge to transfer a suit from one Court to another. Any of the defendants may, however, apply to the Appellate Court to which the Court in which the suit is brought may be Subordinate for a transfer of such suit to any other Court Subordinate to such Appellate Court, and the provisions of ss. 22 to 25 of the Civil P. Code will apply to the case.⁴

(1) *Purshotam Lalbhai v. Bhavanji Partab*, [1880] 4 Bom., 360. (Westropp, C. J. and Melvill, J.). The enumeration of the four districts in the case is in accordance with the definition of the term Agriculturist as it then stood.

(2) 10 Mad. 211 followed; 5 B. H. C. 211 referred to.

(3) *Ladhajee v. Hari*, [1899]. 23 Bom., 679 s. c. 1 Bom. L. R., 176, (Parsons, Ag., C. J. and Ranade, J.).

(4) See the last clause of s. 11.

12. History of transactions with agriculturist-debtors to be investigated:—In any suit of the description mentioned in section 3, clause (*w*), in which the defendant or any one of the defendants [^a] is an agriculturist,

and in any suit of the descriptions mentioned in section 3, clause (*y*) or clause (*z*),

[^b] the Court, if the amount of the creditor's claim is disputed, shall examine both the plaintiff and the defendant as witnesses, unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do, and shall enquire [^b] into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the suit has arisen, first with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and, secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court for reasons to be recorded by it in writing believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to enquire, but may do so if it thinks fit.

In other cases in which the amount of the claim is admitted the Court shall be bound to enquire as aforesaid.

(a) Words repealed by Act XXIII of 1881 are omitted.

(b-b) These words were substituted for the original words by Act XXIII of 1886, s. 6.

Section 9, clause first, of Bombay Regulation V of 1827 is repealed so far as regards any suit to which this section applies.

Nothing herein contained shall affect the rights of the parties to require that any matter in difference between them be referred to arbitration.

Old Law.

The words repealed by Act XXIII of 1881 are :—

“ Not being merely a surety of the principal debtor.”

The original words for which a substitution denoted in the footnote above was made by Act XXIII of 1886 were :—

“ The court shall, if the amount of the creditor's claim is disputed, enquire.”

S. 13. Mode of taking account :—When the Court enquires into the history and merits of a case under section 12, it shall—

Notwithstanding any agreement between the parties or the person (if any) through whom they claim, as to allowing compound interest or setting off the profits of the mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

- (a) separate accounts of principal and interest shall be taken :

- (b) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor as part of the transactions :
- (c) in the account of principal there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure :
- (d) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable :
- (e) in the account of interest there shall be debited to the debtor, monthly, simple interest, on the balance of principal for the time being outstanding, at the rate allowed by the Court as hereinafter provided :
- (f) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions [estimated, if necessary, at such money-value as the Court in its discretion, or with the aid of

7. Summons to be for final disposal of suit:—In every case in which it seems to the court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

Court to examine defendant as a witness:—In every suit the court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it clearly [a] unnecessary so to do.

[b] **Explanation:—**The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement.

Old Law.

For old law see foot-notes below.

Object of the section:—“The presence of the defendant being essential for the thorough investigation proposed, and the raiyats being, through various difficulties, apt to leave their suits undefended it has been provided [in this section] that, except for special reasons, no suit shall be decided *ex parte*, but that the Court shall compel the defendant to appear.”¹

In every suit:—In districts to which the whole of Chapter II is applicable, the provisions of s. 7 will evidently apply to suits of the nature described in s. 3. But where Chapter II is not so extended, but s. 7 alone is extended, it becomes difficult to ascertain the precise meaning of the expression *in every suit* appearing in s. 7. The expression itself is too comprehensive and is not followed by any qualifying words, as are to be found in s. 10, to show that it has reference to suits to which Chapter II applies. Yet the words cannot be very literally construed and the recent extension of s. 7 cannot

(a) “Clearly” was added by Act VI of 1895, s. 6.

(b) This explanation was inserted by Act VI of 1895, s. 6.

(1) See Statement of Objects and Reasons for Act XVII of 1879. Words in brackets are our own. For the form of the summons, see H. C. circular orders, B. G. O. for 1903, Pt. 1, pp. 388, 389, cited in Part II of this book.

when the matter comes to the stage of a regular suit, by examining the parties and by making further inquiry with a view to ascertain the defence and the amount of the debt [if any] due from the defendant. The reference in this section to clauses (w), (y) and (z) of s. 3 is only by way of illustration and there is nothing in the section to show that the relief was designed only for persons owing debts of small amount. Hence the section will apply whether the suit falls under Chapter II or not.¹ Although clause (a) of s. 3 is not referred to in this section, still the provisions of this and succeeding sections 13 and 13A will apply to account-suits by force of sections 15D and 16 of this Act.

The defendant ceasing to be an agriculturist-pendente lite—*Held*, that having regard to the very special nature of the legislation embodied in s. 12 of this Act for the benefit of a particular and a very limited class, it was intended by the Legislature that a person claiming the benefit of that section at the trial should fill the character of an agriculturist as then defined by law.²

“If the amount of the creditor’s claim is disputed”:—
In a case where the Subordinate Judge had omitted to enquire under this section, Chandavarkar, J. remarked: “Whether the Subordinate Judge was right or not in not holding the inquiry depends upon the question whether the amount of the creditors claim was disputed, for the existence of such a dispute is a preliminary condition of the necessity for the enquiry directed by s. 12. The appellants, who sued to redeem the property in dispute, burdened with three usufructuary and three simple mortgages, claimed by their plaint to redeem on payment of about Rs. 100 to the assignee of the mortgagee. The defendant, on the other hand, by his written statement, claimed that Rs. 17,502 were due to him under the mortgages. There was, then, a dispute as to the mortgagee’s claim, which brought it within the operation of s. 12, para 3, and cast upon the Court the duty of holding an enquiry as directed by its provisions. We cannot accept the argument, that the expression, “if the amount of the creditors claim is disputed,” means the amount mentioned in the bond or deed sued upon. Such a

(1) *Tulsidas v. Virbasapa*, (1880) 4 Bom., 624 [628, 629]. (West, J.).

(2) *Ehambal v. Hirachand*, (1880) 10 Bom., 367, cited in notes to s. 1.

meaning narrows down the plain sense of the term 'claim' and there is nothing in any of the provisions of the Act to warrant our attaching to the word any other than its usual meaning. Further, even assuming that the word 'claim' means 'the amount mentioned in the bond sued upon,' such amount must be taken to be not merely the amount of the principal lent but the aggregate of the sums payable in consequence of the liability created by the terms of the contract of lending embodied in the bond."¹

"Shall examine both the plaintiff and the defendant as witnesses":—In order to ascertain as to what are the matters in dispute, the Civil Procedure Code provides in Chapter IX for the examination of the parties by the Court.² But such an examination is not compulsory under the Code, while it is compulsory under this Act. The provision for the compulsory examination of parties is introduced in this section for the following reasons:—

Section 7 of the Act merely makes the examination of the defendant compulsory in all suits under Chapter II, which includes even non-agriculturist suits; but sections 12 to 14 apply to many suits which affect agriculturists only and do not fall under Chapter II, and it is even more important that the defendant should be examined as a witness in such suits than in many of the suits to which Chapter II applies. The defendant is generally the debtor, but in redemption suits it is the plaintiff who is the debtor, and it is his examination that is most necessary. It is, moreover, almost impossible for the Courts to investigate the past history of an old debt in a satisfactory manner without examining both creditor and debtor as witnesses. Again, unless a provision against *ex parte* decrees be inserted in Chapter III, it will not be possible to guard against *ex parte* decrees in other districts to which the Act may hereafter be extended without also extending the other provisions of Chapter II at the same time."³

"Unless for reasons it deems it unnecessary so to do":—The provisions of this section as to examination are not as obligatory as those of s. 7 of this Act. The reasons which may lead a Court

(1) *Patil v. Naru*, (1905), 7 Bom. L. R., 688, (Chandavarkar & Aston, JJ.).

(2) See *Subbaji v. Shiddappa*, 4 Bom. L. R., 86, and H. C. Circular orders (1903) Chapter I, s. 17.

(3) Statement of Objects and Reasons; (Act XXIII of 1856).

in ruling that the examination of the parties is unnecessary would vary according to the circumstances of each case. And although it is very much difficult to imagine them, it may be taken that, when the transaction between the parties giving rise to the suit is of a recent date and is not complicated, and when the parties are represented by pleaders and have stated their case fully in the plaint and in the written statement, or where the parties to the suit are merely the representatives or assignees of the parties to the original transaction, and who consequently have no personal knowledge of the same, the Court may dispense with their examination, when such examination would require unnecessary adjournments.

“And shall enquire into the history, &c.”—Where the defendant’s [mortgagee’s] claim is disputed by the plaintiff [mortgagor], the mere fact, that the plaintiff did not bring to the notice of the Subordinate Judge the provisions of s. 12 and insist upon an inquiry thereby directed, did not exonerate the Subordinate Judge from the responsibility cast upon him by the said provisions in plain and unmistakable terms, independently of the wishes or acts of the parties. The words of the section are that the Court “*shall enquire*”; there is no discretion left to inquire or not where the creditor’s claim is disputed. The duty imposed upon the Court in imperative terms was obviously intended by the Legislature for the protection of the agriculturists, as a matter of public policy, and no Court can neglect it or omit its performance on the ground that the party, for whose benefit it was created, waived it. It is not at the invitation of any party to a cause that the Court has to perform that duty. The Court must act *suo moto*, and hold an inquiry as directed by the section, if the amount of the creditor’s claim is disputed. ... Where the inquiry is not so made from the commencement of the transactions between the parties, the decree of the lower Court will be reversed and the case sent back for an inquiry and for taking a fresh account under ss. 12 and 13.¹

(1) Patlu v. Naru, (1905) 7 Bom. L. R., 688 (Chandavarkar and Aston, JJ.); Putaji v. Sadashiv, 1887 P. J. 211. (Sargent, C. J. and Nanabhai, J.); Appa v. Bapu, 1885 P. J. 255 (Birdwood and Jardine, JJ.); Ganesh v. Kashi, 1888 P. J. 132 (Birdwood and Parsons, JJ.).

In a case where the plaintiff sued, under s. 3 cl. w., for money due on a bond, dated the 8th September 1877, the defendant though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court, therefore, proceeded with it *ex parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part-payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that the defendant was not entitled to offer the evidence. On his referring the case to the High Court, *held*, that it was his duty to summon the witnesses named by the defendant, as the Court is bound by s. 12 to inquire into the merits of a case whenever the amount of the claim is disputed. Sections 100, 101 and the like of the Civil Procedure Code cannot affect the question, in as much as by s. 74 of this Act, the Civil Procedure Code is only to be applied so far as it is consistent with this Act.¹ Moreover, the point that the Lower Court had not made the inquiry in the way given by this section can be taken for the first time in appeal. The point arises upon the Act, and the Judge is bound to take judicial notice of it.² The D. A. R. Act makes it the duty of the Court to inquire into the history of the past transactions except under certain circumstances where the claim is admitted. Although, therefore, the plaintiff may not have asked the Sub-Judge to go behind the bond, it was still his strict right to have such an inquiry made and we think he was not too late in insisting on it before the Court of appeal with the view to supporting the decree which was in his favour.³

The nature of the inquiry:—The Commission, appointed by the Bombay Government in 1875 to inquire into the condition of agriculturists, thus enumerates the chief frauds which are practised:—

By creditors:—(1) Forging bonds, (2) withholding the consideration mentioned in the bond, (3) obtaining new bonds in

(1) Dulichand v. Dhondi, (1881) 5 Bom., 184 (Westropp, C. J. and Melvill, J.).

(2). Vide remarks of Chandavarkar, J. in Patlu v. Naru; *supra*

(3) See also 13 All., 304; Putaji v. Sadashiv, 1887 P. J. 211; (Sargent, C. J. and Nanabhai, J.).

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 payment, (7) pleading that bonds are false when they are really genuine.¹ These points will be useful in the conduct of the inquiry under this section.

The inquiry is to be made, *first*, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise on the ground of coercion, misrepresentation, failure or want of consideration, satisfaction and the like, and *secondly*, with a view to taking an account between such parties. Under the section it is not necessary for the defendant to raise any such defence; but whether such a defence is raised by the defendant or by the Court for him, the Court must before allowing it be satisfied that it is a valid defence according to the law of Contract and Evidence as applied to the particular circumstances of the case.

A Court inquiring into the history of a case under s. 12 is not intended to cke out by mere guesses a history which is defective; the proper course is to start from the point where reasonable certainty begins.²

From the commencement of the transaction :—The word transaction here evidently refers to loan-transactions in general between a creditor and an agriculturist-debtor. Many of—such transactions may be of a very old standing; for instance the relation of a creditor and a debtor may be subsisting between two families for generations together, and the loans advanced during the interval may not form part of one entire transaction, but may be so many distinct and separate transactions. So in case a litigation were to arise and reach the Court, what the Court will have to determine in such cases seems to be, as to when the account of the transaction out of which the suit arose was first opened between the parties, or in other words when the consideration for the liability, on which the

(1). Cited from Proceedings of the Supreme Legislative Council, Vol. XVIII, p. 134.

(2). *Mabadi v. Rajaram*, 1887, P. J. 216 (West and Birdwood, JJ.).

claim is based, was wholly or in part first actually paid to the debtor, and this will be done, notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation between the parties. *Saukars* would generally be anxious to give to their transactions with debtors an appearance which will suit their own interest. We can imagine a case of a shrewd creditor putting forth a man who may advance in his own name a loan to the debtor whereby the latter would discharge his old debt, and upon closing the account with the debtor, the same creditor may open a fresh account [of course after a lapse of some time] with a fresh advance to the same debtor to satisfy the intermediate liability to the new creditor. In such cases the Court will, it is submitted, go behind the deed and ascertain the *bonafide* and real cash transaction to begin with.

If a distinct conclusion be come to that the consideration money for a particular bond sued upon was actually paid in cash and no part of it was applied in satisfaction of any previous obligation between the parties, the transactions would be so disconnected from the previous transaction between the parties, as not to call for any inquiry into the history of the bond.¹ This would be in accordance with the spirit of the remarks made by the Court on the application of s. 13 in another case.²

In a redemption suit if the plaintiff is an agriculturist the Court is bound to go behind the mortgage bond and investigate the prior transactions between the mortgagor and the mortgagee.³

But in a case where the plaintiff, an agriculturist, who had executed in 1876 a mortgage for Rs. 350 under which Rs. 200 only had been received, induced the defendant to pay Rs. 350 to the mortgagee in satisfaction of his claim, and the latter executed an assignment of the mortgage to the defendant which the plaintiff signed *held*, that this transaction constituted the commencement of the transaction between the plaintiff and defendant, and that in taking the accounts under the D. A. R. Act the Court could not go behind it.⁴

(1) *Gopal v. Yeswantrao*, 1887 P. J. 273 (Sargent, C. J. & Nanabhai, J.).

(2) *Mahadu v. Rajaram*, 1887 P. J. 216.

(3) *Amarchand v. Lakshman*, 1890 P. J. 220 (Bayley and Telang, JJ.).

(4) *Lakshman v. Mana*, 1883 P. J. 320 (West and Nanabhai, JJ.) Here if the plaintiff had not been a consenting party, the position of the defendant would, it seems, have been different.

So also where the contract has been made the subject of adjudication by the Civil Court, and a decree has been passed, the contract is thereupon merged in the decree, and s. 13 of this Act furnishes no warrant for the revision of the decree and opening of the account between the agriculturist-debtor and his creditors from the commencement of the transaction, since a decree, though based upon a contract and giving effect to it in a particular way, is yet a very different thing from the contract.¹ When a matter is referred to arbitration, and an award is made, the Court will file it without going into the history and merits of the case,²—of course subject to the objections (if any) under Civil P. Code, that may be made to the award. Moreover, having regard to the provisions of s. 13 it is not competent to a Court to go behind a decree passed in a suit instituted *before* the Act came into force and inquire into the history of transactions settled by that decree³.

Vide also note to s. 13 under the heading: "In the course of the transactions."

"Transactions between parties:"—Where in a redemption suit the plaintiff was an agriculturist, but the defendants were not agriculturists, *held* that the account between the parties referred to in s. 12 must be taken to be the account between the plaintiff and the defendants and not between defendants *inter se* neither of whom was an agriculturist.⁴

"And the persons through whom they claim":—Section 12 contemplates suits and accounts between persons who were representatives only of those who were parties to the original transaction.⁵

"In other cases:"—In suits under this section the debtor may (i) dispute the creditor's claim or (ii) admit the same. In case (i)

(1) *Tatya Vithoji v. Bapu Balaji*, (1883) 7 Bom., 330 (West and Nanabhai, JJ.).

(2) *Mohan v. Tukaram*, (1895) 21 Bom., 63; (Farran, C. J. and Parsons, J.).

(3) *Goverdhan v. Yesu*, 1882 P. J. 24 (Kemball and Finley, JJ.).
Appaji v. Atmaram, 1882 P. J. 125.

(4) *Narayan v. Vithal*, 1893 P. J. 191 (Candy and Fulton, JJ.).

(5) *Annaji Waghuji v. Bapnchand Jethi Ram*, (1883) 7 Bom., 250 (West and Nanabhai, JJ.); see the case noted under s. 2.

the Court shall *examine* the parties unless it deems it unnecessary to do so and shall *inquire* into the history and merits of the case. In case (ii) the Court is nevertheless bound to *inquire*, unless it believes the admission to be true and made by the debtor with a full knowledge of his legal rights as against the creditor. In cases where the debtor is an illiterate person and is not represented by a pleader the Court would generally examine him to ascertain whether the admission made by him is as required by this section. Many nice questions would arise where (a) there are several defendants, some of whom are agriculturists, while others are not, or (b) where some of the defendants [all of them being agriculturists] admit the plaintiff's claim but the others dispute it. In the former case, it is clear that if an agriculturist-defendant does not admit plaintiff's claim, an inquiry will be made under this section. But if the agriculturist defendant were to admit the claim, while the other defendants who are not agriculturist were to dispute the same, it is submitted that there is room in the wording of the section to support the conclusion that the Court will be bound nevertheless to inquire. In the latter case, an inquiry is indeed essential.

Burden of proof as to payment of consideration :— Although proviso 1 of s. 92 and s. 102 of the Evidence Act which correspond with cl. 1 of s. 9 of Reg. V. of 1827,¹ have not been similarly repealed, the intention of the Legislature in enacting this Act, clearly was to *relieve the debtor* of the necessity of proving failure of consideration, although admitted in the bond on which he is sued, and the execution of which he admits.² Therefore in a suit on a bond against an agriculturist, if the defendant admits execution, the *onus* is not on him of proving that he had not received full consideration. But the claim being disputed, it is incumbent on the judge to inquire into the history and merits of the case in the manner prescribed by sections 12 and 13.³

(1) Clause 1 of s. 9 of Regulation V of 1827 runs thus:—"Written acknowledgments of debt in any shape shall not be held conclusive in a Court of law as to the amount, if the defendant shows that a full consideration has not been received." This clause has been repealed by s. 13 of this Act.

(2) *Maloji v. Vithu*, (1885) 9 Bom., 520. (Sargent, C. J. & Birdwood, J.).

(3) *Panda v. Ganesh*, 1885 P. J. 228, (Birdwood and Jardine, JJ.).

Admission by agriculturist :—Sections 12 and 13 imperatively require the Courts to investigate the history of all transactions with agriculturist-debtors *without regard to any admissions made by such debtors*, save in very exceptional cases and for reasons to be recorded by the Court in writing. Therefore, where an agriculturist mortgagor sued for an account and for redemption, admitting in the plaint that the land had been mortgaged to secure the payment of three sums advanced at different times, it was *held* that the Court was bound to inquire not only into the amount, but also as to the nature of the obligation, that it was not right for the Court to accept as a charge on the land an item not proved to have been advanced on the security thereof.¹

In a case the Subordinate Judge in taking evidence did not deal with the admission of the defendant in his written statement as to the receipt of a certain amount. In the District Court, the point was taken that the accounts were not properly taken; but the District Judge wrote, "plaintiff now wants to rely on defendants' admission. This is abandoning his own case, and he cannot do this and rest his own case on defendants' admission without amending the plaint. And the defendants have not admitted receipt of cash," &c. *Held*, that this was not an examination of accounts taken under the D. A. R. Act, and not an adjudication on the evidence and the pleadings of the parties, no reasons being given for the opinion that defendants had not admitted receipt of cash.²

Arbitration :—The section does not affect the rights of the parties to refer any matter to arbitration. And when a matter is referred to arbitration and an award is made the Court will file it without going into the history and merits of the case.³

Mode of taking account.

Scope of section 13 :—Section 13 principally aims at (1) disallowing compound interest, (2) setting off profits, service, and other advantages, (3) opening up of settled account, (4) and introducing the rule of *Dandupat*.

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- (1). *Bhan v. Antaji*, 1884 P. J. 77. (*Kemball and Birdwood, JJ.*)
 (2) *Krishnaji v. Sambhu*, 1892 P. J. 280 (*Bayley and Candy, JJ.*)
 (3) *Mohan v. Tukaram*, (1895) 21 Bom., 63. cited under s. 47 and s. 12.

(I) **Disallowing compound interest**:—The Court is not bound in all cases to award even simple interest. Generally the Court would allow simple interest under this section, (i) when it is provided for under the contract, (ii) when the parties are in law or equity entitled to claim it. It is in the discretion of the Court to regulate the rate of interest under s. 71 A.¹

Although the Court can go behind a given settlement of account, it will not do so when the settlement is in the form of an award passed by an arbitrator or of a decree passed by a Court determining the rights and liabilities of the parties; and interest may begin to run on the amount so determined in the award or decrees comprising of principal and interest to which the creditor will be considered as entitled; thus practically compound interest on the original principal may be obtained by the creditor.

(II) **Setting off profits &c.**:—Under this Section a usufructuary mortgagee otherwise entitled to retain the profits of the mortgaged property without account in lieu of interest, will have to account for the profits obtained by him. The rights and liabilities of the mortgagee in possession are determined by ss. 72 and 76 of the T. P. Act; but where the provisions of that Act are inconsistent with those of this Act, the provisions of the latter are saved by s. 2, cl. (a) of the former Act.² It has been held in some cases [which have, of course, nothing to do with D. A. R. Act] that a mortgagee, who, instead of letting the land to ryots and realizing the rent in the ordinary way, cultivates it himself, is not responsible for the whole of the profits arising to him by farming the land but only such profits as he would have realized had he let it to a tenant.³

The word *profits* in cl. (f) of s. 13, must mean net profits.⁴ It would be very much easy to determine the profits arising from land, but it would be very difficult to put any money-value upon services and other advantages received by the creditor in the course of a transaction under consideration. Generally, a creditor holds a sort of superiority over his debtor who is always at the beck and

(1) Read the note on interest under that Section.

(2) *Bhagavan v. Ganu*, 23 Bom., 644, (1 Bom. L.R., 136), per Banatje, J.

(3) *Raghoonath v. Gireadhari*, 7 W. R. 244.

(4) *Bacurao v. Vishnu*, 1885 P. J. 81.

call of his *Saukar*—anxious to please him by offering his services to him. And it is evident that these services and like advantages are to be given credit to in money-value when adjusting the accounts under this section, although this might not be in contemplation of the parties when the services were rendered or the advantages received. The ascertaining of the money-value of such a vague thing as *advantages of every description* must necessarily be arbitrary only. And it is good that the Legislature, while repealing s. 15, sanctions the Court to take the aid of arbitrators in the determination of such matters under this section.

Clauses (e) and (f)—of the section provide how the account of interest is to be made up and clause (g) tells us how the amount due at the date of instituting the suit is to be ascertained.¹ Each payment by way of profits or otherwise must be set off in the first place against interest due on the debt at the date of payment and the balance only, if any, against the principal then due.²

Accounts after suit :—Accounts should not be taken upto a date subsequent to the institution of the suit.³

Account not to be taken on assumption :—The judge is not justified in assuming without evidence that one half of the sum stipulated in the final bond as representing old books constituted the original advance and one half interest thereon.⁴ In a redemption suit under this Act, the Court should, in taking an account, form its own opinion on the subject. As the law stands, a mere guess as to the sum of money actually advanced cannot be made in favour either of one side or the other.⁵

Where plaintiff sued an agriculturist on a bond, *held*, that there was no principal which enabled a Court to determine how much was

(1) *Ramchandra v. Tukaram*, 1885 P. J. 142 (Sargent, C. J., and Nanabhai, J.).

(2) *Ramchandra v. Hari*, 1884 P. J. 89 (Sargent, C. J. and Nanabhai, J.).

(3) *Apa v. Gopal*, 1889 P. J. 157 (Sargent, C. J. and Candy, J.).

(4) *Vithal v. Mahadajee*, 1888, P. J. 71. (Birdwood and Parsons, JJ.).

(5) *Dhondi v. Lakshman*, (1894) 19 Bom., 553 (Bayley, Ag. C. J. and Fulton, J.); *Mahadu v. Rajaram*, 1887 P. J. 216 considered; *Maloji v. Vithu*, (1885) 9 Bom., 520. referred to.

principal and how much interest; that there was no presumption that half was principal and half interest, though from the existence of the rule of *Dandapat* it may be inferred that the creditor would not have allowed interest to accumulate in excess of the principal sum before requiring a fresh bond from the debtor; that in such cases the Judge must draw his own inference after exhausting all particular means of inquiry. If possible, it (Court) will ascertain the date approximately when the transactions giving rise to the bond sued upon began, and from the course of the later dealings between the parties may infer the character of the earlier. It will draw all proper presumptions from the non-production of the books of accounts by the defendant, whom the Act seems to contemplate as the primary source from whom inquiry is to be made (Chap. IX). But when by reason of the antiquity of the transaction or other causes no presumption can legitimately be drawn against the defendant we are inclined to think that the Subordinate Judge cannot act upon the ruling in *Krishnaji v. Yeshwantrao*;² but we cannot lay it down as a rule binding upon him.³ He will of course bear in mind the provisions of s. 13 cl. (d) in applying that ruling."⁴

Annual rests :—It is obligatory upon the Court to take accounts directed by the D. A. R. Act, which requires *annual rests*;⁵ and this not being done, the decree was reversed and the case sent back to the Lower Court to take accounts according to the Act.⁶

"In the course of the transaction" :—When a mortgagee opens up his account in the name of his mortgagor, he generally takes care simultaneously to open several *khatas* in the name of his debtor; and eventually so many relations are created. For instance, the relation of mortgagor and mortgagee originates with the deed itself to which may also be added another relationship

(1) *Mahadu v. Rajaram*, 1887, P. J. 216, referred to.

(2) 1887 P. J. 214. It is submitted this reference should rather be to P. J. 216, cited *ante*.

(3) See *Dhondee v. Lakshman*, 19 Bom., 553.

(4) *Ganesh v. Hari*, 1895 P. J. 373, (Farran, C. J. and Parsons, J.).

(5) The section itself says nothing of annual rests; see cl. (e) of the section.

(6) *Hanmant Ramchandra v. Babsji*, (1891) 16 Bom., 172, (Sargent, C. J. and Candy, J.).

by the mortgagee subsequently taking a bond for the balance of interest on the mortgage. So also a relation of landlord and tenant may arise [in some cases] if the mortgagee leases the mortgaged property to the mortgagor. With so many transactions in hand, the mortgagee may without contest get decrees in respect of the amounts due under the lease and interest-bond, the debtor all along believing that his payments must have been credited to the mortgage-account. And thus when after a long interval a suit is brought upon the mortgage, the plea of satisfaction is raised for the first time. In making an inquiry and taking accounts in such a suit it becomes very difficult to ascertain the actual payments to the mortgagee. Indeed in taking accounts in respect of the mortgage all the above transactions will have to be taken into consideration, so that a proper conclusion may be reached.

Where, however, parties have entered into *several distinct transactions*, payments or even overpayments made by the debtor in one transaction will not be given credit to in the other transaction. What the Court has generally to see is whether the transactions are really distinct or whether they are so made to defraud the debtor. So in taking accounts under the Act, of mortgages, between the same parties, which are essentially distinct contracts, as when the interest in one is to be paid out of the profits, while in the other it is to be paid in cash, and the amount is payable in 5 years in one case and in 4 years in the other, as soon as the prior bond is found to be paid off out of the profits, it would not be necessary to take further accounts, under the Act, of that bond; but the account of the subsequent bond must start fresh from its date, so that the latter cannot be held to be liquidated either wholly or in part by profits lawfully received prior to its date. To hold so would be to oblige the mortgagee to refund money which had rightly come into his hands under the former contract.¹

A lent B Rs. 150 for which B gave him a bond, dated 6th July, 1872. Of this loan Rs. 100 were advanced on the mortgage of certain land, and the bond contained the terms of the mortgage, one of which was that the profits of the land were to be taken by

(1) *Vishnu Keshav v. Satwaji Tulaji*, 1897, P. J. 87, following *Janoji v. Janoji*, (1882), 7 Bom., 185.

the mortgagee in lieu of interest on the Rs. 100. The remaining Rs. 50 of the loan unsecured by the bond were made repayable with compound interest at Re. 1-8-0 per cent. per mensem. The bond further provided that the mortgage should not be redeemed until the latter sum of Rs. 50 with interest should be paid off. B sued for redemption of the mortgage. The first Court found that the mortgage had been paid off, and ordered redemption on the plaintiff paying Rs. 50 with interest, which under the rule of *dámdupat* increased the amount to Rs. 100. The plaintiff applied to the Special Judge for review on the ground that he had already paid the Rs. 50. The Special Judge did not review the case on that ground, but acting under the power given him by sections 53 and 54 of this Act varied the decree by ordering redemption on payment of Rs. 50 only, holding that as the mortgage had been long since paid out of profits, the balance of such profits should be applied to payment of the interest due on the Rs. 50. On appeal to the High Court, *held*, that the Courts while inquiring into the merits of a case under section 12 of this Act had authority under section 13 to treat the original advance of Rs. 100 and Rs. 50 as a single transaction and to set aside the agreement of the parties to treat part of the loan as a mortgage-loan and part as an unsecured loan, and to deal with the whole case [as in substance it was] as an advance on a mortgage.¹

L mortgaged certain lands to D in the year 1847 for Rs. 150 carrying interest at 27 per cent. and M became surety for him. It was agreed that if L did not pay the money when demanded by D M should pay it, and having thus redeemed the land, take possession of it. In 1876, the mortgagee having demanded the money, M paid him Rs. 400, that were found due and took possession of the land. In a suit brought by L against M for redemption, it was argued on behalf of L that, as M was an agriculturist, accounts should be taken from the date of the mortgage, under s. 13 of the Act and that if only 12 p. c. interest was allowed less than Rs. 400 would be found due on the mortgage in 1876, that of the Rs. 400, only Rs. 150 represented the principal money and the rest, accumulation of interest; that no interest should be allowed on the latter. That

1. *Balkrishna v. Mahadev*, (1896) 23 Bom., 520. (FARRAR, C. J., and HOSKING, J.).

as M subrogated into the rights of the creditor and there was no provision in the deed for making rests, and as nothing was agreed about interest between plaintiff and defendant, under Regulation V of 1827, s. 15, profits should be set off against the interest and that there should be no foreclosure clause in the decree. Held, that M was not a transferee of the mortgage, that the transaction between L and M, within the contemplation of s. 12 and under which M claims to hold the land, arises out of the implied agreement at the time of the mortgage, that L would indemnify M for whatever sum he might have to pay as surity; that the property, therefore, remained with M as a security for the entire sum of Rs. 400 and interest; that Regulation V of 1827 was not applicable to a case of principal and surity.¹

Calculation of interest² :—Where a mortgage-deed provided for the re-payment of the principal amount, Rs. 100 and interest thereon at 2 per cent. per mensem, within 4 months, and contained the following provision: "You (the mortgagee) are to pay the Government assessment and local-fund-cess for the said piece of land and to receive the income thereof. And should any rent be received in respect of the *wada* the same is to be received by you as profit and you are to receive the income of the said piece of land in lieu of the government assessment;" Held, that there was nothing in the mortgage-deed which led clearly to the conclusion that the mortgagee, was to receive for his own benefit more or less than the principal sum and interest at 2 per cent. per mensem, four months from the date of the bond; nor was there any stipulation expressed or implied that the account between the mortgagor and mortgagee should not be taken in the ordinary manner and, therefore, s. 13, cl. 2 of the D. A. R. Act applied. Independently of this Act, it would not be imperative on the Court, taking the account, to give interest on such bond at the rate of 2 per cent. per mensem, for more than 4 months from the date of the bond. Should the Court think that rate too high, it might, if the principal money remained unpaid after four months, direct the payment of such lower rate of interest for the period subsequent to the 4 months as might be just, and which would usually be the Court rate.³

(1) *Lakshman v. Malbar*, 1886, P. J. 191 (Sargeant, C. J. & Birdwood, J.).

(2) Read note on interest under s. 71 A. *post*.

(3) *Kashinath v. Ambaji*, 1881 P. J. 74, (Westropp, C. J. and Nana-bhai, J.). Read the note on interest under s. 71 A.

Agriculturist mortgagor not entitled to a refund :—
 The plaintiff, an agriculturist, sued (as mortgagor) for account and redemption of the mortgaged property under the D. A. R. Act; the defendant pleaded that, by the terms of the mortgage bond he was not bound to account, and that s. 12 of the Act did not apply. The Subordinate Judge overruled the objection, and on taking account, found a balance due from the defendant to the plaintiff. He accordingly, made a decree in favour of the plaintiff for the land and the amount. The District Judge confirmed the decree of the first Court. *Held* that the decree of the lower Court must be varied by omitting the direction ordering the defendant to pay the balance to the plaintiff. In a suit for account and redemption, if the mortgagee, on taking the accounts, is found to have been overpaid, the general practice is to order the payment by him of the balance due to the mortgagor with interest from the date of the institution of the suit. The application of the above rule, however, in redemption-suits instituted under this Act, in cases where the terms of the mortgage contract between the parties are set aside for the purpose of taking the account under the provisions of s. 13 of the Act, would not only lead to the redemption of the mortgaged property contrary to the terms and conditions of the contract, but would, in many cases oblige the mortgagee to refund the money which rightly came into his hands under the contract. There is no express provision in the Statute either directing or enabling this to be done; and remembering that the Act encroaches on existing legal rights it should on legal principal, not be construed to extend beyond the particular object which the Legislature had in view in passing the Act. That object as expressed in the preamble is effected when the agriculturist is enabled to discharge his debt and recover his land on far easier terms than those which he has contracted for, and it would be going beyond that object, if the Act were construed to entitle him also to a refund of money which had already properly come into the mortgagee's hands under the contract.¹

(1). *Janoji v. Janoji*, (1883) 7 Bom., 185. (Sargent, C. J. and Nanabhai, J.), followed in *Kamchandrabai Daba Sathe v. Janardan Apaji*, (1889) 14 Bom., 19 (Sargent, C. J. and Nanabhai, J.), *Vishnu Keshav v. Satwaji Tulaji*, 1897 P. J. 87, (Patel and Tyabji, JJ.).

In another case where, by two separate mortgages certain lands were mortgaged in 1830 by the plaintiff's father to the defendant. In 1882 the plaintiff as an agriculturist brought the present suit for redemption of the lands comprised in both mortgages. *Held*, that separate account of the two mortgages should be taken. The mortgages were distinct transactions relating to different lands, and section 13 contains no words enabling the Court to treat them as one. The fact of their being included in the same suit could not affect the question. In taking the accounts of the above mortgages there was a sum of Rs. 5075-13-2 due to the plaintiff-mortgagor by the defendant-mortgagee, and, on the other mortgage, a sum of Rs. 3774-2-7 due to the defendant mortgagee by the plaintiff mortgagor. The plaintiff-mortgagor contended that, although by the ruling in *Janoji v. Janoji*¹ he could not compel payment of the Rs. 5075-13-2 due to him on the one mortgage, he was entitled to have so much of it as might be necessary to set off against the Rs. 3774-2-7 still due by him on the other mortgage. *Held*, that on the authority of *Janoji v. Janoji*, the plaintiff had no legal claim to the Rs. 5075-13-2, and, that being so, the existence of the balance in his favour on account of one mortgage could not be treated as extinguishing the claim of the defendant to the Rs. 3774-2-7 due on the other mortgage. The plaintiff as an agriculturist-mortgagor was enabled to free his land from both the mortgages on the favourable terms provided by the D. A. R. Act, but was precluded from compelling the mortgagee-defendant to refund what the latter had personally acquired under the terms of his contract of mortgage.¹

When suit for account is the proper remedy :—The plaintiff sued an agriculturist on a bond to secure the payment of the price of grain and the interest due on a mortgage bond given to secure an old debt. *Held*, that having regard to ss. 12 to 14, the suit was not sustainable as brought, but that the plaintiff should be allowed to amend his plaint by seeking an account of what was due on his mortgage, and for such relief by way of foreclosure or sale as he might be entitled to.²

(1) *Ramchandra Baba Sathe v. Janardhan Apa ji*, (1889) 14 Bom. 19. (Sargent, C. J. and Nanabhai, J.).

(2) *Dipchand v. Kashi*, 1881, P. J., 116, (Westropp, C. J. and Finhey, J.).

14. (Interest to be allowed.)—*Repealed by Act VI of 1895, s. 3.*

Old Law.

The repealed section 14 was:—

Interest to be allowed—The interest to be awarded in taking an account according to the rules set forth in s. 13 shall be—

- (a) The rate, if any, agreed upon between the parties, or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable; or
- (b) If such rate is deemed by the Court unreasonable or if no rate was agreed upon, or, when any agreement between the parties, or the persons (if any) through whom they claim, to set off profit without an account in lieu of interest has been set aside by the Court, such rate as the Court deems reasonable.

N. B.—These provisions have been practically reproduced by the same Amending Act (VI of 1895) in s. 71A of this Act.

15. (Reference to arbitration in certain cases.)—*Repealed by Act VI of 1895, s. 3.*

Old Law.

The repealed section 15 was:—

Reference to arbitration in certain cases:—Instead of inquiring into the history and the merits of a case under s. 12, or if, upon so enquiring, the Court is unable to satisfy itself as to the amount which should be allowed on account of principal or interest, or both, the Court may of its own motion, direct that such amount be ascertained by arbitration.

If the parties are willing to nominate arbitrators, the arbitrators shall be nominated by them in such manner as may be agreed upon between them.

If the parties are unwilling to nominate arbitrators, or can not agree in respect of such nomination, the Court shall appoint any, three persons it thinks fit.

Provided that, if all the parties reside in the same village, town, or city, and, in the opinion of the Court, three fit persons can be found among the residents of such village, town, or city, it shall appoint residents of such village, town, or city.

The provisions of sections 508 to 522 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

Commentary.

Case under the repealed section :—Where a suit is brought upon a bond the execution of which is admitted by the defendant, no strict rule can be laid down, as to the party upon whom the burden of proof rests. If the parties adduce no evidence, the Court must be content with the evidence of the parties themselves, and endeavour, in the language of s. 15 of the Act, to “satisfy itself.” If it cannot satisfy itself as to the amount which should be allowed on account of principal or interest, or both, it may, under that section, direct, of its own motion, that such amount be ascertained by arbitration.¹

The right of parties to refer to arbitration is saved by s. 12, last para. See, also s. 13 cl. (f).

[a] 15A. Mortgagor entitled to decree for redemption though time fixed by mortgage has not arrived or debt has not been paid :—In a suit of the description mentioned in section 3, clause (z), the Court shall not refuse to pass a decree for redemption merely on the ground that the time fixed for the payment of the principal of the mortgage-money has not arrived, or on the ground that the mortgage debt has not been completely discharged, or on both.

Commentary.

The object of the Section :—The provision that redemption suits are not to be dismissed as premature merely because the time for redemption as fixed by the mortgage has not arrived, appears essential, in order to give full effect to the provisions of ss. 12 to 14 of this Act, which empower the Courts to set aside the terms of the agreement between a mortgagor and mortgagee and declare the mortgage debt paid off whenever the mortgagee has received the amount of his advance with reasonable interest thereon.²

[a] S. 15 A. was inserted by Act XXII of 1882, s. 6.

(1) *Maloji Santaji v. Vithu Hari*, (1885) 9 Bom., 520 (Sargent, C. J. and Birdwood, J.) see also *Dhondi v. Lakshman*, (1894) 19 Bom., 553 (Bayley, Ag. C. J. and Fulton, J.).

(2) Statement of Objects and Reasons; (Amending Act XXII of 1882.)

The usual contentions—in a redemption-suit particularly on a mortgage by conditional sale, are (1) that the deed sued upon is really a deed of sale with a condition of repurchase attached to it and (2) that the suit is premature it being agreed between the parties that the mortgage is not to be redeemed within a certain term. How far these contentions will be upheld will be clear from the following cases.

Construction of the document :—In a case in consideration of a debt due by the plaintiff to the defendant, the latter was to take possession of certain land for ten years and appropriate the income thereof in liquidation of the debt, and that after the expiry of the said period the right, to the land was to cease; the deed was headed “mortgage-deed with possession regarding land.” Before the expiration of the ten years the plaintiff brought this suit for redemption and possession, alleging the transaction to be a mortgage. *Held*, that it was a mortgage and that the plaintiff was entitled to redeem even before the expiration of the mortgage term of ten years. On the point of construction the High Court remarked :— “The case must therefore be decided on a consideration of the documents themselves with such extrinsic evidence of surrounding circumstances as may be required to show in what manner the language of the document is related to existing facts. . . It is difficult to believe, when the parties deliberately designated the transaction as a mortgage, they did not believe themselves to be clothed with all the rights and remedies incidental thereto. When the terms are as clear as they are in this case, it seems a wanton exercise of ingenuity to wrest the terms of a contract from its true construction to one to which the parties never intended to apply.”¹

Time fixed immaterial :—Under this section a decree for redemption can be passed even though the time fixed for the repayment of the principal of the mortgage money has not arrived.²

Under this Act an agriculturist mortgagor may sue *for account and possession* of mortgaged property before the time fixed in the mortgage-deed for the payment of the mortgage-debt, on the ground

(1) *Tukaram v. Ramchandra*, (1901) 26 *Bom.*, 252 *F. B.* (Jenkins, C. J. and Fulton, Crowe and Chandavarker, JJ.). This point is considered at length at pp. 41-43 *ante*.

(2) *M. Lapa v. Shamji Naik*, 1897 *P. J.* 49 (Parsons and Ranade, JJ.).

that the debt has been satisfied. Any agreement between the parties by which the mortgagor is compelled to remain in the mortgagee's debt for a definite period *pro tanto* frustrates the object which the Legislature had in view. It would be straining the language of the Act to hold that the time fixed for payment is an agreement determining the manner of taking the account under s. 13. The rule of law that the right to redeem is co-extensive with the right to foreclosure and consequently postponed until the time fixed for the payment of mortgage debt, does not apply to cases falling under this Act.¹

Decree for possession before debt is paid off:—The Court has a power to place the mortgagor suing for redemption in possession of the mortgaged property before the debt is paid off. The words *decree for redemption* must be construed as meaning a decree awarding possession to the mortgagor, for otherwise, the provision would be unnecessary and meaningless.²

Effect of an agreement in variance with this section :—
An agreement between mortgagor and mortgagee to the effect that the latter should hold the land for 20 years in satisfaction of the mortgage-debt, offends against the spirit of this section by virtually providing for principal and interest not being paid off for 20 years, and therefore it should be disregarded and the amount due on the mortgage determined under s. 13.³

Thus in a case where in December 1870, A, an agriculturist, mortgaged his land to B for Rs. 600. Twenty years, usufruct of the land was to extinguish the mortgage. In 1883 there was a further charge in favour of B of Rs. 90. While in possession B had to spend Rs. 225 for repairs, &c. It was verbally agreed in August 1890 that 8 more years usufruct was to be enjoyed in consideration of the said Rs. 225. In 1892 A sued to redeem the mortgage of 1883 and to recover possession, as the debt was already paid off. *Held*, that the debt of Rs. 225 was a mortgage-debt by virtue of the mortgage of 1870, that the term of 8 years should be disregarded and that an

(1) Babaji v. Vithu, (1882) 6 Bcm. 724 (Sargent, C.J. and Kemball, J.).

(2) Kandas v. Muktabai, 1888 P. J. 287 (Birdwood and Parsons, J.J.).

(3) Mahipatrao v. Gambhmal, 1886 P. J., 141 (Sargent, C. J. and Birdwood, J.).

account of the mortgage for Rs. 225 should be taken, if A is willing to amend his plaint, and should be asked to redeem that as well as the mortgage of 1883; and that the profits after satisfying the debt of Rs. 225 should be applied in reduction of the debt of Rs. 90.¹

But where a mortgagee has been placed in possession in pursuance of an agreement between the parties which is filed, under s. 44 or in terms of which an award has been filed, or where he is so placed in possession by the Court under the provision of this Act, evidently the mortgagor will not be entitled to redeem within the time during which the mortgagee is to remain in possession under the new arrangement.²

But in a case where in 1888 one Dhondi and his eldest son Bala mortgaged certain ancestral property for Rs. 1,500. In 1890 Dhondi alone came to an arrangement with the mortgagee by which it was agreed that the mortgagee should enjoy the income of the mortgaged property till 1900 A. D. in full satisfaction of the mortgage-debt. This agreement was filed in Court under section 44 of this Act on 4th April, 1891, when it took effect as a decree. In execution of this decree the mortgagee sought to attach the property mortgaged. Dhondi having died in the meantime, his sons objected to the attachment on the ground that the decree was fraudulent and collusive. But this objection was disallowed by the Court, and the property was attached. Thereupon Dhondi's sons filed a suit for redemption of the mortgage of 1888. Defendant pleaded that the mortgage was merged in the agreement of 1890, and that the plaintiffs had no right to redeem. *Held*, that the agreement was not binding upon the plaintiffs. By the agreement the right to redeem the mortgage before its fixed period under the provisions of section 15A of this Act ceased and the right to the surplus profits in the hands of the mortgagee over and above the mortgage-debt was also lost, without any countervailing advantage or benefit. Such an agreement by a Hindu father is not binding on his sons in

(1) *Babaji v. Maniram*, 1894 P. J. 37 (Sargent, C. J. and Candy, J.), *Mahipatrao v. Gambirmal*, 1886 P. J. 141, followed.

(2) *Ranchandra v. Kondaji*, (1896) 22 Bom., 221; (Farran, C. J. and Fulton, J.)

respect of ancestral property. It amounts, *pro tanto* to an alienation, by him, of the ancestral estate without consideration. *Held*, also, that as the agreement was not binding upon the plaintiffs, the decree against their father based upon the agreement was also not binding upon them.¹

Also in a case where S. mortgaged a field and a house to A, the mortgage-deed stipulated that on S's failure to pay principal and interest due at a specified time, A was to take possession. Upon default, A obtained a decree directing recovery of a certain sum as principal and interest found due upto that date and in default of S to pay the same, to recover possession. A entered into possession under the decree, S having brought subsequently a redemption suit, *held*, that the decree did not change the relationship of mortgagor and mortgagee between the parties as there was no *gahan lahan* clause in the mortgage and A had sued for possession and not for foreclosure. *Held*, also, that the account taken in the suit could not be disturbed but that in other respects the rights of the parties were not affected by the decree. The account should be taken from the date of the first decree according to sections 13 and 14, of the D. A. R. Act.²

[a] 15AA. Power of Court to name some future date for payment by the mortgagor:—
So far as it may be consistent with the provisions of this Act, every decree for redemption or foreclosure of any mortgage, and every decree or order for the sale of any mortgaged property made at the instance of a mortgagee thereof, shall name such future day, not being less than six months after the date of such decree, as the Court may think reasonable for the payment by the mortgagor of the money payable under the decree, and no such foreclosure shall be made absolute nor shall any such sale take place before the day so named.

(1) *Bala v. Balaji*, (1897) 22 Bom., 825 (Farran, C. J., and Candy, J.).

(2) *Dattatraya v. Anaji*, 1886, P. J. 237 (Sargent, C. J. & Birdwood, J.).

(a) S. 15AA was added by Act VI of 1905, s. 8.

Commentary.

In a case¹ decided before this section was introduced it was held, that when a decree ordered payment of the entire debt found due to be made within a fixed period, there was nothing in the D. A. R. Act which could justify the omission of the ordinary direction for foreclosure in default of payment. It was observed :—“The Act only provides for the account between the mortgagor and mortgagee in redemption suits being taken in a particular manner, but is silent as to the force of the decree beyond allowing the judge to direct payment by instalments.” The decree for foreclosure or sale will have to be drawn in accordance with ss. 86 and 88 of the T. P. Act, except when the advantages under s. 15B and the like are to be given therein. And in another case it was held that in a redemption-suit by an agriculturist mortgagor, the only decree which could be made, in the absence of any special provision in the Act, was the ordinary decree for payment of the whole amount,² within 6 months or, in default, for foreclosure.³

Where B obtained a decree on 21st July 1882 in redemption-suit directing him to pay a certain sum to the mortgagee within one year or the mortgage to be foreclosed. Before the year expired, B applied for an order to be allowed to pay the redemption-money by instalments under the D. A. R. Act, which was granted. On appeal that order was reversed and the judgment concluded as follows :—“The original decree must stand, and the defendants are to be allowed to apply at once for payment of the sum originally decreed; if not paid at once, the mortgage is to be foreclosed.” B having not paid till the 15th January 1884, the mortgagee presented a *darkhast* for foreclosure on that date, when B paid the redemption-money. Held, that the effect of the order above quoted was to postpone foreclosure until there had been default of payment on demand, and as there had been no demand and default, before the mortgagee presented his *darkhast* on 15th January 1884, the payment by B then was not too late.⁴

(1) *Abaji v. Gann*, 1889 P. J. (Sargent, C. J. and Cundy, J.) *Lakshman v. Malhar*, 1886 P. J. 192.

(2) S. 15B was not enacted when this case was decided.

(3) *Shankarappa v. Danapa*, (1881) 5 Bom., 604 (Westropp, C. J. and Melvill, J.).

(4) *Babajee v. Lakshman*, 1887, P. J. 83 (Sargent, C. J. & Nanabhai, J.).

[a] 15B. Power to order payment by instalments in case of decree for redemption, foreclosure or sale :—(1) The Court may in its discretion in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section 3, clause (y) or clause (z), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor, as it thinks fit.

(2) If a sum payable under any such direction is not paid when due, the Court shall, except for reasons to be recorded by it in writing, instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realisation of that sum.

[b] (3) Power to continue the mortgagee in possession :—In passing a decree for redemption or foreclosure in any such suit as aforesaid, the Court may direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession for such further period as will enable him to recover his principal with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

[a] This section was inserted by Act XXII of 1882, s. 6.

[b] Sub-section (3) was added by Act VI of 1895, s. 9.

[a] (4) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid, the Court may in its discretion, instead of making an order for payment thereof, direct that the mortgagee be continued in possession for such period [to be specified by the Court] as will in the opinion of the Court be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

Commentary.

The scope of the section :—The amendment made by the introduction of the new section 15B merely extends to decrees in mortgage-suits the rule of sections 17 and 20 of the Act empowering the Court to direct that the amount of the decree shall be paid by instalments. If it is allowable to empower a Court to give such a direction in regard to an unsecured claim, it seems to be *a fortiori* allowable in the case of a secured claim.¹

By force of this section the Court may, instead of directing that the amount found due on the account be paid in one sum, direct it to be paid in instalments and the section moreover, says that in such a case, when an instalment is not paid, only so much of the property as may be necessary to pay the instalment in arrear should be sold, and not what would be necessary to pay the whole debt.

By sub section (3) of this section, if the mortgagee be in possession and the possession be a beneficial one the redemption may be effected, without any sale and without any necessity for the debtor paying any sum in cash whatever, by merely continuing the mortgagee in possession for sometime. The mortgagee would thus work the whole debt off and then restore the possession to the mortgagor.

[a] Sub-section (4) was added by Act VI of 1895, s. 9.

(1) Statement of Objects and Reasons. Amending Act XXII of 1892.

86 Ch. III, s. 15B. In course of proceedings under decree.

But in order to work out this process, it would be necessary when the time for restoring the land comes, that a further account should be taken to show that the debt was completely recovered. And so sub-section (4), instead of directing that the mortgagee should remain in possession until the result of the account shows the debt to be paid, authorizes the Court to fix a time for which the mortgagee is to remain in, at the end of which period he is to go out and the mortgagor is to resume possession of his property.

In the course of any proceedings under a decree :—In a redemption suit under the Act the Court having passed a decree for the payment of the mortgage amount within a certain period, and the decree being confirmed in second appeal, the mortgagor after the expiration of the time for redemption specified in the decree applied to the High Court for an order for the payment of the amount by instalments under s. 15 B. of the Act. *Held*, that such an order could only be made in the course of the proceedings under the decree, that is, by the Court which carries out the decree.¹ An application by the mortgagor *after a consent decree* has been passed in a redemption-suit, to make the amount of the mortgagor-debt payable by instalments, is not a “proceeding under the decree” within the meaning of cl. 1 s. 15B; it is rather a proceeding *against the decree* and therefore the Subordinate Judge has no jurisdiction to modify the decree in that way.²

No instalments after foreclosure :—The applicant, an agriculturist-mortgagor, sued the defendant, the mortgagee, for redemption on the terms provided by this Act. The account was made up and the mortgagor was directed to pay the sum found to be due within six months, or to be for ever foreclosed. He failed to pay within the time fixed, and afterwards applied, under s. 15 B of the Act as amended by Act XXII of 1882, to be allowed to pay the amount of the decree by instalments. *Held*, that the order asked for could not be made. An order for foreclosure, when the

(1) *Bhagirthibai v. Hari Ravji*, (1894), 19 Bom., 318 (Sargent, C. J. and Fulton, J.); *Gulabpuri v. Pandurang*, 1886 P. J. 142 referred to.

(2) *Datto v. Balvant*, 1885, P. J. 248 (Birdwood and Jardine, JJ.). *Cf. Balcrishna v. Dnyanoba*, 1889 P. J. 25.

time appointed by the order has expired, itself operates to transfer the ownership, and the ownership, having once passed to the mortgagee, cannot be taken away from him by a subsequent order not founded on any way new transaction of the parties, except on some special ground, such as fraud or inevitable accident, which should be the subject of a special proceeding.¹

Where an agriculturist was allowed by the decree two years within which to redeem and was to be foreclosed at the end of that period and the decree further gave him the option of paying the mortgage debt in a lump sum or applying under s. 15B for instalments and he made no application within the 2 years, but after the foreclosure order had operated, made an application for instalments on the ground that at about the time of the expiration of the period allowed for redemption, he was very ill; *held*, that as soon as the order for foreclosure had operated, there was a transfer of ownership and that he cannot get rid of the effect of that order under the circumstances alleged by him.²

Effect of an order absolute :—The above decision seems to have turned upon the point of the transfer of ownership to the mortgagee by force of the operation of the order for foreclosure. But where in a decree the order is for sale and not for foreclosure, the question, *whether the mortgagor will be allowed to pray for instalments even after the order absolute for sale is made*, is very difficult to be solved, so far as the application of this Act is concerned. *On the hand*, it may be said that in as much as by s. 89 of the T. P. Act the right of redemption is lost the moment the order absolute for sale is passed, the relation of mortgagor and mortgagee shall come to an end and *the right to ask for instalments cannot exist* in favour of the mortgagor when an order absolute for sale has been once passed. *On the other hand*, it may be said that the above provision of the T. P. Act cannot apply to the present question and the words, *in the course of any proceedings under a decree*

(1) *Ladu Chinnaji v. Babaji Khanduji*, (1883) 7 Bom., 533 (West and Nanabhai, JJ.).

(2) *Ranchandra v. Bahiru*, 1891 P. J. 72 (Birdwood and Parsons, JJ.).

are so wide that Courts will be justified in granting instalments (if other circumstances are favourable) even after the passing of the order absolute for sale.¹ In the case of an order absolute for foreclosure, the proceedings under the decree in respect of which the order may have been made, come to an end when the order is passed, but in the case of decree for sale in respect of a mortgage, the proceedings do not terminate, because after the passing of the final order for sale many more things are to be done to give effect to the terms and meaning of the decree.² The question cannot stand undecided for a long time and an authoritative decision from the Bombay High Court may soon be expected.

Instalment-order not to be varied. No estoppel by acceptance :—Section 15B allows the Court to order payment of a decree by instalments either in its decree or in the course of the execution. But it does not authorize a variation of any order once so made. Nor does section 20 of this Act authorize a series of instalment-orders each one varying from the preceding. A decree was made payable by instalments with a proviso that in default of payment of any one instalment, the whole amount remaining due should be recoverable at once. The judgment debtor made default. Thereupon the decree holder sought to recover the whole amount of the decree. The judgment debtor then applied for a fresh order for payment by instalments. The Court of first instance refused, but the Subordinate Judge in appeal granted the application. The judgment-debtor paid in Court the amount of instalments which had become due under the second order. The decree-holder took out the money so paid in. *Held*, that the Subordinate Judge in appeal had no power to make a fresh order for payment by instalments varying the original order. *Held*, also, that the judgment-creditor by taking out the money paid into Court by the judgment-debtor as instalments due under the second order for instalments did not bind himself to abide by that order.³

(1) See *Bharvau v. Ganu*, *Supra*, and the remarks of Ranade, J. therein. See also s. 2 (a) of T. P. Act and ss. 290, 291 & 310A of Civil Procedure Code.

(2) Indeed it is very much difficult to understand the proper significance of the expression—*payable under the decree*—in the 1st paragraph of the section.

(3) *Balkrishna Inḍrabhan v. Abaji bin Bahirji More*, (1887) 12 Bom. 326; (West and Birdwood, J.J.).

A Court executing a decree can execute it in accordance with its terms :—When a mortgagee is *under a decree* continued in possession of the mortgaged property for a definite time, he is entitled to retain that possession until the expiration of the specified period and is not liable to be redeemed before then. The general rule is that when the mutual rights and obligations of the plaintiff and defendant have been determined by a decree, the decree affords the measure of those rights and obligations and a Court executing the decree can only execute it in accordance with its terms,¹— of course subject to certain provisions, such as those given in ss. 15B, 20 and the like.

Effect of default in paying instalments :—Where the question to be decided was whether under s. 15B cl. 1, the Court could attach, to an order for payment by instalments of the money found due on the mortgage, a proviso that if there should be default in payment of any instalment, the whole remaining mortgage-debt should become due, *held*, that having regard to the special object of the Act, it could not have been intended by s. 15B, that the Court should be able solely in the exercise of its discretion to effect by its decree what it is expressly forbidden to do by cl. 2 of that section without recording the reasons in writing.²

[a] 15C. (1) Power to order payment by instalments in suits for possession of mortgaged property :—The Court may, if it thinks fit, in any suit for the possession of mortgaged property under section 3, clause (y), instead of passing a decree for possession of that property, pass a decree directing that the amount payable by the mortgagor shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and as to the appropriation of the profits and accounting therefor, as it thinks fit.

(1) *Ramachandra v. Kondaji*, (1896) 23 Bom., 221 (Farran, C. J. and Fulton, J.); see *Lakshman v. Sheik Abdulla*, 1890 P. J. 154; *Mahant Ishwargar v. Chudarama Manabhat*, (1888) 13 Bom., 106; *Balcrishna v. Abaji*, (1887) 12 Bom., 326.

(2) *Rama v. Ramchandra*, 1894, P. J., 456 (Sargent, C. J. and Fulton, J.).

(a) This section was inserted by Act XXII of 1882, s. 6.

(2) If a sum payable under any such direction is not paid when due, the Court may, if it thinks fit, instead of making any other order which it is empowered to make for the realisation of that sum, make an order directing that the mortgagee be put in possession of the whole or any portion of the property mortgaged.

[a] 15D. Mortgagor may sue for account:—

(1) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount.

(2) When any such suit is brought, the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

(3) At any time before the decree in the suit is signed, the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage, or the mortgagee, if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be), instead of a decree merely declaring the amount remaining unpaid, and the Court may, if it thinks fit, grant the application.

(4) The provisions of section 15B shall apply to any decree passed under sub-section (3).

16. Agriculturist-debtors may sue for accounts :—Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor, or due by him to the creditor as the price of goods sold, or on

(a) This section was inserted by Act XXII of 1882, s. 6.

a written or unwritten engagement for the payment of money, and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

Amount of debts in such cases to be determined according to foregoing provisions:— When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had sued him for recovery of the debt.

Commentary.

Account-suits:—Sections 15D and 16 introduce novel provisions enabling the debtor to sue his creditor for accounts. Account-suits would come under s. 3 cl. (a) of Chapter II. The provisions of Chapter II materially differ from those of Chapter III, in as much as there is no appeal from any decree or order in any suit under Chapter II; while no such bar is to be found in Chapter III. An attempt was made in the Amending Bill of 1882 to bar appeals and introduce under Chapter III the system of revision given in Chapter VII. But the proposal fell through. By the same Bill of 1882 the provisions of Chapter II were clearly made applicable to suits for accounts *without any limit or value*. And an amendment was accordingly introduced in cl. (a) of s. 3 of the Act. The clause, as is clear, applies to account-suits brought in the Court of a Subordinate Judge under the provisions of ss. 15D and 16. The anomaly which unavoidably arises is that although appeals are not prohibited in all suits under Chapter III, they cannot be made in respect of suits for accounts under these sections. It is, however, submitted that section 3, cl. (a) should be construed very strictly, and when a simple suit for account has *changed* its form *e. g.* at the time of passing a decree, under cl. 3 of s. 15D or under s. 17, and a decree for redemption or payment by instalments is passed, s. 3 cl. (a) and s. 10 will no longer be given any operative force in respect of such a decree and hence an appeal will not be barred. (For remissions of Court-fees see Part II of this book).

“The amount shall be determined under the same rules:”—The rules herein referred to are evidently those embodied in ss. 12, 13, 13A and 71A. of this Act.

Account-suits. Law before s. 15D was introduced:—A suit for an account upon a mortgage could not be maintained by a mortgagor unless he asked for redemption also.¹ And where there had been a suit between an agriculturist-mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of money declared to be due was barred under either s. 13 or s. 43 of the Code of Civil Procedure.² But where an agriculturist mortgagor sued for account and did not also claim redemption in the same suit, he was allowed by High Court to amend his plaint in second appeal and convert the suit into one for redemption.³

Law after the amendment:—Under s. 15D of the Act as amended by Act XXII of 1882, an agriculturist-mortgagor can sue for an account upon a mortgage, without at the same time asking for redemption. Such a suit will not bar a subsequent suit for redemption. The section was expressly intended to remove the bar created by s. 43 of the Civil Procedure Code.⁴

Where, however, under the provisions of cl. 3 of section, 15D in addition to the declaratory decree there has been a decree ordering payment and in default sale, a second redemption suit can not be brought. The test is whether the party could or could not obtain in execution of the decree the relief which he seeks in the suit.⁵

(1) *Hari v. Lakshman*, [1831], 5 Bom., 614 (Westropp, C. J. and Melvill, J.); followed in *Hari v. Sitaram*, 1882, P. J. 15, and referred to in *Bhau Balaji v. Nilkanthrao*, 7 Bom., 377.

(2) *Bhau Balaji v. Hari Nilkanthrao*, [1883] 7 Bom., 377 (Kemball, Finhey, J.J.).

(3) *Hari v. Sitaram*, 1882, P. J., 15, (Melvill and Kembal, J.J.); *Hari v. Lakshman*, (1881) 5 Bom., 614, followed. Cf. *Jivaji v. Kaka*, 1883 P. J. 9, (Sargent, C. J., and Kembal, J.).

(4) *Laluchand v. Girjapa*, (1895) 20 Bom., 469 (Jardine and Ranade, J.J.);

(In this case Ranade J. remarked at pp. 472 and 473:—"The power conferred on the Court to turn an account-suit into a suit for redemption is . . . balanced by an alternative power to turn the account-suit into a suit for foreclosure or sale, if the mortgagee applies for such conversion, and the Court sees fit to grant his application. The appellant's pleader admitted that this permission to turn an account suit into a foreclosure suit cannot be construed into a prohibition to the mortgagee to bring a separate suit for foreclosure or sale, if he does not avail himself of clause 3, or if the Court sees no reason to grant his application.")

(5) *Govind Valadrama v. Mavji*, 1897 P.J. 364 (Parsons & Ranade, J.J.).

What may an account-suit determine :—In a suit by a mortgagor for an account, the title of a person in possession can be tried in order to ascertain whether or no profits of the land, since he got into possession, were held by him as mortgagee, and therefore to be placed to the credit of the plaintiff's account.¹

A mortgagor instituted a suit on several mortgages, in the Court of a Sub-Judge of Second Class, for account. The amount of all the mortgages put together increased the valuation of the suit over Rs. 5000. The plaintiff-mortgagor in order to bring the suit within the Court's Jurisdiction applied for permission to amend the plaint and to withdraw his prayer with respect to one of the mortgages. On a reference by the Sub-Judge to the High Court, *held*, "Section 15D which provides for a suit of an exceptional character was intended to give the mortgagor the power of obtaining an account of what was due on mortgage of his property. And therefore, in cases of there being several mortgage-bonds *the account must be taken of all of them* in the same suit. And if the total amount exceeds Rs. 500 the case does not fall under Chapter II of the Act. If it exceeds Rs. 5000, the First Class Subordinate Judge alone has jurisdiction."²

17. Decree under section 16 may provide for payment by instalments. Execution of decrees under this section.—A decree passed under section 16 may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into Court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained a decree in a suit to recover the debt.

(1) *Rama v. Karinkhan*, 1885 P. J., 112 (Sargent, C. J., and Birdwood, J.).

(2) *Babji v. Hari*, (1892) 16 Bom., 351; (Sargent, C. J. and Birdwood J.). Cf. s. 3 cl. (a) of this Act; (see s. 14 of Act. XIV of 1869),

18. Payment into Court in cases under section 16.—The plaintiff in any suit instituted under section 16 may at any stage of such suit deposit in Court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Commentary.

Section 18 does not refer to s. 15D probably because the latter section was not there when the former was originally drafted. There seems to be no particular intention of the Legislature in excluding s. 15D from the operation of this section. However, whether the exclusion is intentional or unintentional, the section, as it stands, can not apply to suits under s. 15D.¹

19. (Power to discharge judgment-debtor. Power to direct institution of insolvency proceedings.)—*Repealed by Act VI of 1895, s. 3.**

Old Law.

The repealed section is :—

Power to discharge Judgment-debtor:—When a decree has been passed, whether before or after this Act comes into force, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court,

(1) This section may be compared with ss. 83 and 84 of Transfer of Property Act and with ss. 376 to 379 of Civil P. Code. It may be noted also that this section applies only when the person depositing the money has instituted a suit under s. 16 of this Act.

* Although this section is repealed a reference to it is to be found in ss. 20 and 24.

“on application or of its own motion” may, either in the course of execution of such decree or otherwise, if it is satisfied that “the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees” and that he is unable to pay the whole of such sum, direct the payment of such portion of the same as it considers him able to pay, and grant him a discharge from the balance “of such sum.”

Power to direct institution of insolvency proceedings:—When the sum payable under the decree amounts to fifty rupees or upwards, or when there are other debts due by the debtor which, together with such sum, amount to fifty rupees or upwards, the Court, “on application or of its own motion,” may direct proceedings to be taken with respect to him as nearly as may be as if he had applied to be declared an insolvent under the provisions hereinafter contained.

20. Power to fix instalments in execution:—The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist, or the portion of the same which it directs under section 19 to be paid, shall be paid by instalments with or without interest.

Decree means a personal decree:—The words “decree passed against an agriculturist” in this section, mean a decree passed against an agriculturist personally, and *do not include a decree for the recovery of money by the sale of mortgaged property.* The effect of this section must be taken to be an enlargement of the indulgence granted by s. 210 of the Civil Procedure Code, but only in those cases to which the latter section applies. By section 210 of the Code, the Court may, after the passing of the decree in money-suits, order the amount to be paid by instalments, *provided the decree-holder consents.* By this section the Court may make the same order in similar suits, without the consent of the decree-holder.¹ The second clause of s. 210 runs thus:—

“And after the passing of any such decree the Court may, *on the application of the judgment-debtor and without the consent of the decree-holder,* order that the amount decreed be paid by instalments *on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise as it thinks fit.*”

(1) Shankarapa Dargo Patel v. Danapa Virantapa, (1881) 5 Bom., 604, (Westropp, C. J. and Melvill, J.); in this case the darkhast-proceeding dated before the Act came into force. See the order of reference. See Balkrishna v. Dnyanoba, 1889, P. J. 25. The Italics are ours.

From the words underlined in the above section it clearly appears that the wording of s. 20 is more liberal to the debtor than that of s. 210.

Provisions for instalments:—Section 15B empowers a Court to grant instalments in a decree for redemption, foreclosure or sale passed under the provisions of this Act. By s. 15C in suits brought by a mortgagee for possession of the mortgaged-property, the Court trying the suit is empowered to order instalments for the payment of the mortgage-money due on the mortgage. Section 17, which refers to account-suits under s. 16, and which enacts that a decree under s. 16 may provide for payment by instalments of the amount found due, relates only to account-suits *brought by debtors* and s. 20, which of course does not apply to decrees in mortgage-suits,¹ simply authorizes the granting of instalments *after* a decree is passed. It thus follows, that in the case of ordinary suits (suits not relating to foreclosure or sale of a mortgaged-property) for the recovery of money brought by a creditor, there is *no provision in the Act* which allows the granting of instalments at the time of passing a decree. In this respect, therefore, the Court will have to act upon the general provisions given in s. 210 of the Civil P. Code, the first paragraph of which section runs as follows :—

“ In all decrees for the payment of money the Court may, for any sufficient reason, order that the amount shall be paid by instalments with or without interest ;”

The reader will at once see that the words “ for any sufficient reason ” printed in Italics above, do not appear in s. 20 of this Act; nor in the second paragraph of s. 210 of Civil P. Code. Perhaps in cases under the second paragraph of s. 210, the consent of the decree-holder is as good a safe-guard as the considerate discretion that will be exercised by the Court. It is an open question whether in granting instalments under s. 20 the Court can be more lenient towards the judgment-debtor than they would have been if the words under consideration were to exist in the section.

Another important point to be noted here, is that although a debtor can get instalments under this act, if he approaches the Court as a plaintiff under ss. 16 and 17, he cannot ask for instal.

(1) See *Balkrishna v. Dnyanoba*, 1889 P. J. 25.

ments in a decree under this Act simply because instead of suing his creditor he is himself sued. Of course in case he is sued by a mortgagee for foreclosure or sale, s. 15B allows him to move the Court for granting instalments. When instalments have been once granted under a decree or order, no fresh order for instalments can be passed under this section. Section 20 does not authorize a series of instalment-orders each one varying from the other.¹

It seems s. 20 is not to be restricted to decrees for money only, but may include decrees for the delivery of any moveable, which decrees shall also, as required by s. 208 of Civil P. Code, state the amount of money to be paid as an alternative if delivery cannot be had.

The reference to s. 19 is made nugatory by the repeal of that section by Act VI of 1895.

21. Arrest and imprisonment in execution of decree for money abolished :—No agriculturist shall be arrested or imprisoned in execution of a decree for money [a] passed whether before or after this Act comes into force.[a]

Commentary.

Object of the Section :—Imprisonment was, at best, a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. It will be quite unnecessary for these purposes, and will be reserved for cases of flagrant fraud or dishonesty in insolvents.²

“A decree for money” :—A decree directing costs to be paid in a particular manner is a decree for money as far as the award of costs is concerned.³

“Passed whether before or after this Act comes into force” :—Before these words were incorporated into this section and in s. 22, both the sections were not held to be applicable to a decree made previously to the date on which this Act came into force.⁴

(1) *Balerishna v. Abaji*, (1887) 12 Bom., 326 (West and Birdwood, JJ.).

(2) Hon'ble Mr. Hope's Speech, Proceedings of Governor-General's Council for 1879, Vol. XVII, p. 47.

(3) *Yesu v. Waman*, 1881 P. J. 316 (Westropp, C. J. and Kemball, J.).

(4) *Dipchaud v. Gokaldas*, (1880) 4 Bom., 363 (Westropp, C. J., M. Melvill and F. D. Melvill, JJ.).

(a-a) These words were added by Act XXII of 1882, s. 8.

22. Immoveable property exempted from attachment and sale unless specifically pledged.

[^a] Immoveable property belonging to an agriculturist [^b] shall not be attached or sold [^a] in execution of any decree or order [^c] passed whether before or after this Act comes into force, [^c] unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists. [^d] For the purposes of any such attachment or sale as aforesaid standing crops shall be deemed to be moveable property. [^d]

But the Court, [^e] on application or of its own motion, [^e] may, when passing a decree against an agriculturist or [^f] in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force, [^f] direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by s. 29.

The provisions of s. 31 shall, *mutatis mutandis*, apply to any property so dealt with.

[a-a] These words were substituted for the original words by Act XXIII of 1886, s. 7.

[b] Words repealed by Act VI of 1895, s. 10, are omitted.

[c-c] These words were inserted by Act XXII of 1882, s. 9 (1).

[d-d] These words were inserted by Act VI of 1895, s. 10.

[e-e] These words were inserted by Act XXII of 1882, s. 9. (2).

[f-f] These words were substituted for the original words by Act XXII. of 1882, s. 9 (3).

Chapter III, s. 22.

Old Law.

The original words for which a substitution marked [a-a] was made by Act XXIII of 1886, s. 7 were :—

“ No agriculturist's immoveable property shall be attached or sold.”

In the place of these words, Act XXIII of 1886, s. 7 substituted :—

“ Immoveable property belonging to an agriculturist, other than his standing crops, shall not be attached or sold.”

[b] And the words *other than his standing crops* in the above were repealed by Act VI of 1895, s., 10.

The original words for which the substitution marked [f-f] was made by Act XXII of 1882, s. 9 (3) were :—

“ At any subsequent time.”

Commentary.

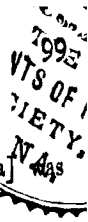
Scope of section 22 :—Section 22 is framed so as to secure to the agriculturist against his creditors the possession of as much of his land as is required for his support and the support of the members of his family who are dependent on him. For the purposes of this section *standing crops* were at first regarded as immoveable property.¹ But it was found desirable that standing crops should not for purposes of attachment and sale be so treated, and consequently should not be exempted from being taken in execution of a decree. Being usually a kind of legitimate security for an advance for the purposes of cultivation, it seems, the Legislature kept them accessible to persons making advances so that they may look to them for their recoupment if necessary.

Law prior to the amendment of 1882 :—Neither s. 21 nor s. 22 applies to a decree made *previously* to 1st November 1879; and the holder of such a decree may arrest or imprison his agriculturist-judgment-debtor, as well as attach and sell his immoveable property not specifically mortgaged.² But it applies to decrees for money passed *subsequently* to the coming into force of this Act in suits filed before it was passed.³

(1) See *Sidu v. Sambhu* (1882), 6 Bom., 592. see also *Ananda v. Manaji*, 1880 P. J. 274 and *Kirpanankar v. Govinda*, 1880 P. J. 329.

(2) *Dipchand v. Goku das*, (1880), 4 Bom., 363; (Westropp, C. J. and M. Melvill and F. D. Melvill, J.J.).

(3) *Yasu v. Waman*, 1881 P. J. 316 (Westropp, C. J. and Kemball, J.).



Effect of amendment pendente lite:—On the 7th of September 1870, the applicant obtained a money-decree against certain agriculturist-defendants, and, having made five applications for execution upto 1879, realised a part of the judgment-debt. On the 2nd of September 1882,—that is, after coming into force of this Act,—the creditor made his last application for recovering the balance by attachment and sale of the lands of the debtors. On the 1st of February 1883 while the above application was pending, this Act was amended by Act XXII of 1882, so as to prohibit the sale of the immoveable property of agriculturists in execution of a decree, even though such decree was passed before the date of the Act. *Held*, notwithstanding the provision of s. 6 of the General Clauses Act and the attachment of the lands before the coming into operation of Act XXII of 1882, that the order for sale, having been made subsequently, was illegal, and should be set aside. The general rule is that a repealed statute cannot be acted on after it is repealed; but, as provided in s. 6 of the General Clauses Act, 1868, all matters that have taken place under it before its repeal remain valid. But a new order of a Court, not ancillary or provisional, but directing a further substantive step in execution of a decree, is a new proceeding which should be governed by the law in force when the order is made, and not by the law which it repeals. An application for an order for sale must on account of the elaborate provisions in ss. 320 and the following, and the prolonged process under this Act, be regarded as a new proceeding: not a mere continuation of one already begun. In this case it was also observed, that the mere fact, that a decree was made before the new law was passed, would not indeed affect the matter, but an attachment would affect it, seeing that the new law is not made expressly retroactive as to existing attachments.¹

The issues under this section:—Under this section the Court has simply to inquire:—(1) Was the land specifically mortgaged for the repayment of the debt? (2) Does the decree or order relate to that debt? (3) Does the security still subsist? The word “specifically” in the section has no greater force than the word “specific” in s. 58 of the T. P. Act.

(1) *Shivram Udaram v. Kondiba Muktaji*, (1884) 8 Bom., 340 (West and Nanabhai, J.J.); see *Mangal Prasad*, L. R. 8 Ind. Ap. 123, and other cases cited therein.

Bhicu an agriculturist borrowed in 1866 a sum of money from the plaintiff's mother, Yesubai, under a bond, whereby he mortgaged his house as security and also covenanted to pay each year to Yesubai half the produce of certain land as interest and the other half in reduction of the principal and in case of default she was to be at liberty to let the lands to others and to take the profits. Yesubai subsequently sued to recover the debt and obtained a decree directing the sale of the land. In execution of this decree, the land was sold on the 5th June 1896, and was bought by the plaintiff, who now sued for possession. It was contended on behalf of the defendants that the covenant to pay the produce did not amount to a "specific mortgage" of the land and that consequently the sale to the plaintiff was invalid under this section. *Held*, that the land was specifically mortgaged for the repayment of the debt and that the sale was valid, and plaintiff entitled to recover.¹

Unless it has been specifically mortgaged:—With that part of the section where these words appear may be compared the ruling that s. 266 of the Civil P. Code, proviso (e) does not prohibit the sale of property specifically mortgaged, albeit, that the property be materials of a house belonging to or occupied by an agriculturist.²

Equity of redemption is immoveable property:—One Raghoji, an agriculturist, mortgaged the land in dispute to the defendant in 1872. In 1875 one Dagdu obtained a decree against Raghoji (the mortgagor), who was then represented by his widow, the plaintiff. In execution of this decree Raghoji's equity of redemption was sold on the 10th February 1883 and was bought by the son of the defendant (the mortgagee). On the 12th April, 1883, the sale was confirmed and on the 10th November, 1883, the purchaser took formal possession of the land. In 1891 the plaintiff (widow and heir of the mortgagor Raghoji), brought this suit to redeem the mortgage and to recover the possession of the land, contending that under s. 22 of this Act, the sale of the equity of redemption was a nullity. The lower Court dismissed

(1) *Bhagvandas v. Hathibhai*, 4 Bom., 25, followed in *Bapuji v. Mahadu*, 1892. P. J. 111.

(2) *Balshet v. Dhondo*, (1901) 3 Bom. L. R., 545; s. c., 26 Bom., 33, (*Candy and Fulton, JJ.*). see *Venkatrao v. Bijesing*, (1885) 10 Bom., 108.

the suit, holding that although the sale might be illegal, so long as the certificate of sale remained in force it was a bar to the plaintiff's right to redeem. *Held*, that the plaintiff being found to be an agriculturist, this Act applied, the provisions of which applied although the decree and order for sale were made before the Act was passed. The Act expressly forbids the immoveable property of an agriculturist to be sold in execution, and an equity of redemption is immoveable property, within the contemplation of the Act. The sale, therefore, on the 10th February 1883, of the equity of redemption in the mortgaged lands was illegal and a nullity, and was no defence to the plaintiff's suit to redeem the mortgage.¹

An application in contravention of this section would not save limitation :—An application by a decree-holder to attach an agriculturist judgment-debtor's immoveable property is not an application in accordance with law and it cannot be of avail to render a subsequent application for execution within period of limitation.²

The provisions of this section will have to be supplemented by s. 73 A.

For Notifications under this section and s. 29, see Part II of this book.³

23. Chapter not to apply to Village-Munsifs' Courts:—No provision of this chapter shall apply to the proceedings in the Courts of Village-munsifs unless such provision has been specially extended thereto under the power hereinafter conferred.

(1) *Mahalavu v. Kusaji*, (1893), 18 Bom., 739 (Sargent, C. J. and Bayley, J.). In this case the plaintiff was considered an agriculturist because her husband and son were so.

(2) *Chatur Kushalchand v. Mabadu Bhagaji*, (1885) 10 Bom., 91. (Sargent, C. J. and Birdwood, J.).

(3) See also B. G. G. for 1895, pt. 1, p. 176 ; and B. G. G. for 1903 pt. 1, p. 306.

CHAPTER IV.

Of Insolvency.

24. Subordinate Judges to have jurisdiction in agriculturists' cases:—Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent and proceedings taken under orders passed under the second clause of section 19 ; and, except as provided in Chapter VII of this Act, no such application or proceeding shall be dealt with by any other Court.

Commentary.

How far this Act differs from the Code:—The chief points in which the provisions of the Insolvency-Chapter differ from those of the Civil P. Code are that they allow an agriculturist to apply to be adjudicated an insolvent, though no process in execution has been issued against him ; that they entitle him to an adjudication in all cases in which, as a matter of fact, he may be insolvent, leaving any misconduct on his part to be punished under the Code of Civil Procedure ; and that they similarly entitle him in all cases to a complete discharge from debts, which after all reasonable enforcement, he is unable to pay.¹

As modified by the provisions hereinafter contained:—The provisions of ss. 344 to 359 relate to insolvent *judgment-debtors*. In Districts to which the present Chapter has been extended, the application of the provisions aforesaid is made subject to the

(1). Statement of Objects and Reasons. (Act XVII of 1879).

modifications contained in this Chapter with respect to proceedings to have an *agriculturist* declared insolvent. The modifications made are noted below under the appropriate sections.

Second clause of s. 19:—The reference in the section to proceedings taken under orders passed under s. 19 is now made negative by the repeal of s. 19 by Act VI 1895.

No such application shall be dealt with by any other Court:—Under the Civil Procedure Code, District Judges (s. 344) and Judges specially authorized for the purpose (s. 360) can only deal with applications in insolvency. But under this Act (by virtue of this section) a Subordinate Judge alone can entertain such applications in the first instance, though subsequently they can be transferred by the District Judge under his revisionary and supervisory powers given by Chapter VII of this Act.

25. Agriculturist may apply for adjudication in cases not provided for by Code.—Any agriculturist whose debts (if any) amount to fifty rupees or upwards may apply to any Subordinate Judge within the local limits of whose ordinary jurisdiction he resides to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property, in execution of a decree.

Commentary.

“Any agriculturist”:—whether he be a judgment-debtor or not, can apply under the section when he becomes indebted to the extent of 50 rupees or upwards.

“Amount to fifty rupees.....” An agriculturist whose debts amount to less than fifty rupees can apply under the Civil Procedure Code if he satisfies the conditions laid down by the Code. Such a relief under the Act was once possible, but it has been taken away by the repeal of s. 19, by Act VI of 1895.

Arrest and attachment—which are the conditions precedent to the entertainment of an application under s. 344 of the Civil Procedure Code have little occasion under this Act in as much as s. 21 prohibits arrest of a judgment-debtor, and s. 22 dis-

allows attachment of his immovable property (unless specially pledged). A mere attachment would not, moreover, enable an agriculturist to apply if he is not indebted to the extent given in the section.

As to the contents of the application and the procedure thereupon see ss. 345 to 350 of Civil Procedure Code.

26. Modification of section 351 of the Code:— Notwithstanding anything contained in section 351 of the Code of Civil Procedure the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under section 344 of the said Code or section 25 of this Act.

Commentary.

“Notwithstanding . . . s. 351”—the Court is bound to declare an agriculturist insolvent if he is really in insolvent circumstances *without having regard to any act of bad faith or recklessness* of the debtor. It is to be noted, however, that the Court, having granted the application, is none the less empowered to punish the dishonest debtor under s. 359 of the Code for any such act of bad faith committed by him.

“Has been properly made under s. 344 of the Code or s. 25 of this Act”—Neither of these sections gives the contents of the application. In this respect, therefore, both of them will have to be supplemented by ss. 345 and 346 of Civil Procedure Code.

27. Receiver. No person other than the Nazir of the Court shall be appointed as Receiver, and no Receiver shall be entitled to commission.

No such provision is to be found under the Civil P. Code.

As to the effect of appointing a receiver, see note ss. 29 and 30.

28. Proof of debts.—In determining under section 352 of the said Code the amount of any claim of the nature referred to in section 12 of this Act due by an insolvent agriculturist, the Court shall proceed in the manner prescribed by sections 12 to 15 of this Act, both inclusive.

Commentary.

Proof of debts :—In determining the amount of the debt, the Court shall go into the history of the debt under s. 12 and shall take account under s. 13, when the original claim is of the nature mentioned in s. 3, clause (w) (the defendant being an agriculturist), and s. 3, clauses y and z.

“In manner prescribed by ss. 12 to 15” :—S. 14 providing for the interest to be allowed, and s. 15 providing for references to arbitration in certain cases were repealed by Act VI of 1895. It is, however, reasonable to suppose that the reference in this section to s. 14 is now to be read as applying to s. 71A which comes in its place.

29. Immoveable property not to vest in Receiver, but may be managed for benefit of creditors :—No immoveable property of the insolvent shall vest in the Receiver; but the Court, [a] on application or of its own motion, [a] may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the Receiver has been appointed, any immoveable property to the possession of which the insolvent is entitled and which, in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the Local Government may from time to time make in this behalf, to manage the same for the benefit of the creditors by letting it on lease or otherwise.

Provided that, if the insolvent or his representative in interest at any time pays into Court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

A Collector managing property under this section shall during the management have all the powers which the owner might as such have legally exercised,

and shall receive and recover all rents and profits of such property, and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land revenue due to Government, except the powers mentioned in the Bombay Land Revenue Code, 1879, section 150, clauses (b), (d), and (e).

Nothing in this section shall authorise the Court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist.

30. Secured debts:—When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court, [a] on application or of its own motion, [a] may direct the Collector if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under section 325 of the Code of Civil Procedure.

Where property is let under this section the premium shall be applied to the payment of the debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the Receiver and thereafter to the insolvent or his representative in interest.

When property is sold under this section, the sale proceeds shall be applied, first, to the payment of the debt, and the balance, if any, shall be paid to the Receiver.

[a-a] These words were inserted by Act XXII of 1882, s. 10.

Commentary.

"On application or of its own motion" :—The provisions of sections 22, 29 and 30, which empower the Court to order the Collector to deal with the immoveable property of an insolvent in certain ways for the benefit of his creditors, are intended to enable the Court to act of its own motion ; otherwise the provisions in question are likely to prove almost a dead letter.¹

The power of the Collector :—The Collector is empowered under this section to take into his possession all the immoveable property, to the possession of which the insolvent is entitled, excepting (i) houses and buildings belonging to and occupied by the insolvent agriculturist, and (ii) property required for the support of the insolvent and the family dependent on him. The Collector is also given all the powers of an owner to manage it, subject to the qualification embodied in the section and the rules made by the Local Government thereunder. In thus managing the estate he can also exercise all the powers of a Collector for securing and recovering the land-revenue by any available means, excepting (i) forfeiture under s. 153, (ii) sale of defaulter's immoveable property under s. 184, (iii) arrest and imprisonment of the defaulter under ss. 157 and 158, of the Land Revenue Code.

Effect of appointing a receiver :—(1) By virtue of s. 29, immoveable property belonging to the insolvent shall not vest in the Receiver ; but it will have to be managed by the Collector as provided by the same section. (2) The section, however, makes an exception in favour of that immoveable property belonging to the insolvent to the possession of which, he is entitled and which is required for the support of the insolvent and the members of his family dependent on him ; and such property shall not vest in the Receiver, nor will it be subjected to the management of the Collector. (3) As regards the houses or other buildings belonging to and occupied by an agriculturist, evidently these too shall not vest in the Receiver, and, moreover, they will not be subjected to the management of the Collector. It is to be noted that this kind of property is also saved by s. 266 of the Civil P. Code. (4) So far as moveables of the insolvent are concerned, they will vest in the Receiver, unless they fall within the exempting clause or clauses of s. 266 of Civil P. Code. This is clear from the fact that s. 354 of

(1) Statement of Objects and Reasons for the Amending Act XXII of 1882.

the Code will apply to insolvency-proceedings under the Act, unless there is some provision to the contrary in this Chapter.

Subject to the rules :—These rules¹ are given in part II of this book.

31. Insolvent incompetent to sell, etc., property dealt with under sections 29 and 30 :—So long as any management under section 29 or letting under section 30 continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let, or any part thereof.

32. Scheduled debts discharged :—When the balance available for distribution among the scheduled creditors under section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the right to share in the profits of any property managed by the Collector under section 29, or let by him under section 30.

Commentary.

Object of the Section:—If a man's debts are so heavy that he cannot clear them off in the time indicated in the last sections, it is better that he should get a discharge for the balance than that he should drag on as a slave without hope of freedom or stimulus to exertion.²

33. Appeals barred :—No appeal shall lie from any order passed under this chapter except orders passed in exercise of the power conferred by section 359 of the Code of Civil Procedure.

Commentary.

Appeals under Civil Procedure Code :—It will be noted that orders under ss. 351, 352, 353, 357 are appealable under clauses (17) and (29) of s. 568 of the Civil Procedure Code.

(1) Notification No. 892, dated 4th February 1895.

(2) Vide Hon'ble Mr. Hope's speech.—Proceedings in Governor General's, Council for 1879, Vol. XVIII, p. 152.

CHAPTER V.

Of Village-munsifs.

34. **Appointment of Village-munsifs:**—The Local Government may, from time to time, appoint any pátel of a village or any other person possessing local influence in a village to be a Village-munsif for such village or for such village and for any other villages the sites of which are situate in the same district not more than two miles from the site of such village, and may cancel any such appointment.

Commentary.

Object of this Chapter:—"If notwithstanding all the precautions (taken with a view to prevent litigation),¹ the dispute unfortunately develops into litigation, the Bill next endeavours to place the Courts of law within easier distance from the homes of the people, and to make them more absolute, less technical, less dilatory and less expensive. In pursuance of the objects just mentioned, Chapter V empowers the Local Government to appoint any Patel of a Village, whom it deems competent, to be a Village-munsif. . . The Munsif's jurisdiction will be limited to suits for money not exceeding ten rupees, and will generally follow the model of the Madras-Village-Munsif's system, constituted under Madras Regulation IV of 1816, except that the Munsif will not have, as there, a further jurisdiction, by consent of parties, extending upto Rs. 100."²

35. **Suits triable by them:**—Every Village-munsif so appointed shall take cognisance of suits of the description mentioned in section 3, clause (w), when the subject-matter thereof does not exceed ten rupees in amount or value, and all the defendants at the time of the commencement of the suit actually and

(1) The matter in brackets is our own insertion.

(2) Hon'ble Mr. Hope's speech: Proceedings in Supreme Legislative Council, for the year 1879, Vol. XVIII. p. 136;

voluntarily reside or carry on business or personally work for gain within the local area for which such Village-munsif is appointed.

Jurisdiction of other Courts excluded:—

Notwithstanding anything hereinbefore contained, a suit cognizable by a Village-munsif shall not be heard by any other Court :

Proviso:—Provided that the District Judge may, from time to time, transfer any suit instituted before a Village-munsif to his own Court or any other Civil Court in the district for trial :

Provided also that no Village-munsif shall try any suit to or in which he is a party or is personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

Commentary.

Village-munsif's power in the trial of a suit:—The jurisdiction of a Village-Munsif is exclusive. In order that a suit may be triable by a Village-Munsif the following conditions must be satisfied: (1) The suit must fall under s. 3 (w). (2) The claim must not exceed ten rupees in amount or value. (3) All the defendants who need not necessarily be agriculturists must *at the time of the commencement of the suit* be residing within the local area over which the jurisdiction of the Village-munsif extends. (4) The Village-Munsif must not be a party to the suit or must not be personally interested in it.

As the provisions of the Civil Procedure Code are not to be applied to the proceedings before a Village-Munsif, he will have no power of reference or review under ss. 617 and 623 of the Civil P. Code. But when a suit is transferred from the Court of a Village-Munsif to that of a Subordinate Judge, it seems, he will have such power.

A Village Munsif has no jurisdiction to try a *suit for rent* under this Act.¹

(1) *Vithal Ranchandra v. Gangaram Vithoji*, (1880) 5 Bom., 180 (Westropp, C. J. and Melvill, J.).

36. District Judge's power of revision :—The District Judge may, on a petition being presented within thirty days from the date of any decree or order of a Village-munsif by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village-munsif [a] or on the ground that the Village-Munsif has exercised a jurisdiction not vested in him by law [a] and pass such other decree or order as he thinks fit.

Except as provided in this Act and in section 622 of the Code of Civil Procedure, [b] every decree and order of a Village-munsif shall be final.

Commentary.

District Judge's power :—There is no appeal to the District Judge against any decree or order of a Village-munsif under this Chapter. The District Judge can inspect, supervise and control the proceedings of a Village-munsif under the proviso to s. 35 and under Chapter VII of this Act. But under the same Chapter he has no power of revision in respect of proceedings before a Village-munsif. He can exercise such a power *only under s. 36 and upon an application of a party* on the grounds laid down in s. 36. Section 54 gives all the powers of the District Judge under this Act to the Special Judge and also gives to him the power of reference under s. 617 of the Civil Procedure Code. But the District Judge or Special Judge can exercise the power of reference only in cases pending before him *under Chapter VII*. It follows therefore that he has *no power of reference* in cases pending before him in the exercise of his revisional power *under s. 36*.

High Court's power :—This section leaves the Revisionary power of High Court unaffected.

Concurrent Jurisdiction of the High Court and the District Judge :—When the Village-munsif has exercised jurisdiction not vested in him by law, the District Judge and the High Court have concurrent jurisdiction in revision under s. 36 of this Act and s. 622 of the Civil Procedure Code respectively.

(a-a) These words were added by Act VI of 1895, s. 11.

37. Power of Local Government to make rules:—The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act for regulating the procedure of Village-munsifs and for conferring on them or any of them all or any of the powers for the trial of suits or the execution of decrees exercised by a Civil Court under the Code of Civil Procedure or any other enactment for the time being in force.

N. B.—As to the rules made by the Local Government under this section, see part II of this book.¹

(1) See also part I of B. G. G. for 1879, pp. 1001 and 1002; and pp. 708, 709 of B. G. G. for 1880; p. 894 of B. G. G. for 1898; and pp. 859 and 1009 of B. G. G. for 1903.

CHAPTER VI.

Of Conciliation.

38. **Appointment of Conciliators :—**The Local Government may, from time to time, appoint any person other than an officer of Police to be a Conciliator, and may cancel any such appointment.

Every Conciliator appointed under this section shall be appointed only for a term not exceeding three years, but may on the expiration of the period for which he has been appointed be again appointed for a further term not exceeding three years.

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the Local Government may, from time to time, prescribe.

[^a] The expression “ officer of police ” in this section shall not be deemed to include a police patel appointed under Bombay Act No. VIII of 1867 (*for the Regulation of the Village-Police in the Presidency of Bombay.*)

Commentary.

Object of the Chapter :—“ Whenever serious misunderstanding unfortunately arises between money-lender and raiyat, either party should be able to resort to a friendly non-judicial authority bound to use his best efforts to reconcile the two, and no litigation should be commenced without a certificate from the Conciliator that his endeavours in this behalf have failed.”¹

[^a] This para was added by Act XXIII of 1881 s. 7. As to the reason that led to the insertion of this explanation, see ‘ *Statement of Objects and Reasons* ’ (Bill No. 9 of 1881 ; Act XXIII of 1881).

(1) Hon’ble Mr. Hope’s Speech,—Proceedings in Governor-General’s Legislative Council for 1879, Vol. XVIII, p. 135.

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“ May be again appointed ”:—A conciliator may be reappointed more than once.¹

39. Matters which may be brought before Conciliator :—When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognisance of a Civil Court between two or more parties one of whom is an agriculturist residing within any local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them.

Commentary.

“ Any matter within the cognisance of Civil Court : ”—This chapter is not confined to suits specified in s. 3.² The expression—*Civil Court*—is not here defined and the explanation to s. 47 can have no operation here, as it purports to apply to that section alone. Section 11 of the Civil P. Code enacts that Civil Courts are empowered to try all suits of a Civil nature unless their cognisance is specially barred.

“ One of whom is an agriculturist : ”—In accordance with the wording, as it stands, it is sufficient for purposes of the application of this section that any of the parties should be an agriculturist; it is not necessary that the debtor should be an agriculturist.

“ To which any such agriculturist is a party ”:—Although the word *which* (in the eighth line of the section) has reference to the word *decree*, the section would, it is submitted, apply to execution-proceedings *only when an agriculturist is a party to those proceedings*. Cases can be imagined where only one of the parties to the decree was an agriculturist but has since then ceased to be so or has assigned his interest under the decree to a non-agriculturist, or being dead, his interest has descended to his heirs who are not agriculturists. In

(1) *Dattaram v. Bhiva*, 1887 P. J. 246 (Sargent, C. J. and Nanabhai, J.).

(2) *Durgaram v. Shripati*, (1884) 8 Bom., 411. (Nanabhai and Birdwood, JJ.).

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all these cases, the wording of the section, if strictly construed, would apply and a Conciliator's certificate would be needed. That this is not, however, the intention of the Legislature appears clearly from the wording of the cognate section 47.

Taken literally, this section would also apply when execution is sought not by or against an agriculturist-party but by or against other non-agriculturist party, the former being, however, a nominal party to the proceeding.

“Which was passed before the date”—See note to s. 47 under the heading “*decree passed after the Act &c.*”

“Any of the parties may apply”:—The word ‘may’ has been given the force of ‘must’ by the bar of section 47 (of course this applies where the parties mean to go to litigation). Under this section, so far as its provisions go, even a non-agriculturist party or a formal party can try and drag the other parties before a Conciliator even against their will. Moreover, in the case of an agriculturist, when he is a creditor, or holds the position of a plaintiff, he may not be so much interested in seeking conciliation. But the effect of this section and s. 47 is to compel him to follow the procedure provided by this Chapter, even when the other parties against whom the relief is sought are not agriculturists.

“To such Conciliator”:—This refers to the Conciliator (if any such has been appointed) for the territorial jurisdiction in which any agriculturist party resides. But where both the plaintiff and the defendant are agriculturists, it would be more in consonance with the general principles of law that the place of so applying should be the place where the agriculturist party against whom the relief is sought is residing. So also where the dispute between the parties has reference to land [and particularly where the nature of the dispute is such as may necessitate the inspection of the subject-matter thereof] it will be more beneficial and convenient to refer to the Conciliator for that place. But as the section goes, it has been held that the Conciliator to whom application under this section is to be made for an amicable settlement of a dispute must be the one appointed for the *local area in which the agriculturist is residing*, and not for the district in which the land in dispute is situated.¹

(1) Sayad Nyamtula v. Nana Valad Faridsha, (1888) 13 Bom., 424 (Birdwood and Parsons, JJ.).

40. Procedure thereupon:—If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place.

Day for attendance may from time to time be postponed:—If such person fails to appear at the time first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance.

[^a] A Conciliator empowered by the Local Government in this behalf may, instead of inviting, direct the person against whom the application is made to attend at the time and place either first or subsequently fixed.

[^a] If an applicant, or a person against whom an application is made, fails to be present or attend at the time and place specified in a direction proceeding from a Conciliator under this section, he shall be deemed to have committed an offence under s. 174 of the Indian Penal Code.

Commentary.

“If such person fails to appear:”—The words “if such person” evidently mean the person against whom the application is made. The absence of the applicant is not contemplated in this respect; whether in such a case the application would be struck off or time extended for appearance is not clear under the section. But the practice¹ is that the application is generally struck off. A second application to the Conciliator is not, however, barred.

[^a] These paras were added by Act XXIII of 1886, s. 8.

(1) See notes to s. 49.

Invite and direct:—The distinction between these two terms deserves to be noted. A party disobeying a direction would thereby commit an offence but a party disregarding an invitation would not.

This section before the new provisions were added to it in 1886 gave to a Conciliator no power to compel the attendance of any party. But the want of such a power was found in a large number of cases to render the Conciliation-Chapter of the Act practically a dead letter, and on a reconsideration of the point, the conclusion arrived at was that the risk of abuse was not so serious as to warrant the withholding from the Conciliators a power which was clearly essential to the effective working of the system. After a great discussion, therefore, two paragraphs were added to the section by the Amending Act of 1886, and as given in the last paragraph, a penal liability was affixed to the disobeying of a *direction*.¹

The expressions *invite and direct* were not for the first time introduced in the section by the Amending Act of 1886. We find them in the first paragraph which is a part of the enactment of 1879. The former expression is used with reference to the person against whom the application is made and the latter with reference to the applicant. Whether the distinction in this phraseology was deliberate and whether the word '*direct*' all along carried with it the specific meaning and consequence as expressed by the amendment, is a question of some difficulty. The question has, however, no practical importance and it seems desirable that whenever any direction of the nature given in this section is to be given to any party he should rather be warned as to the consequences which may follow, in case the direction were to be disobeyed.²

41. When all parties appear, Conciliator to endeavour to reconcile them:—Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question, and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration.

(1) See statement of Objects and Reasons, Amending Acts of XXII of 1882 and XXIII of 1886.

(2) It seems some rules have been framed to regulate the issuing of such *special summonses*.

42. Conciliator to hear statements of witnesses, etc.:—The Conciliator shall hear but shall not record the statement of any witness, and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and, if any party or witness consents in writing to affirm any statement upon oath in any form not repugnant to justice or decency and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties.

Commentary.

The power of a Conciliator under this section:—A Conciliator is not to be deemed a person having by law or consent of parties authority to receive evidence. He has to hear the witnesses with a view to see how far they would enlighten him on the matter in dispute before him. He has to take down in writing a concise statement of plaintiff's case, but he has not to take down in writing the defence of the other party nor the statement of the witnesses. But if any party or witness consents in writing to affirm any statement on oath, he is to see that the oath is duly taken. All this is so provided probably with a view to a rapid despatch of business and to simplify the record in this respect. The phraseology used in this section is peculiar to itself and would not authorize a Conciliator to go and inspect the subject-matter in dispute, as Courts¹ are empowered to do. However, this section along with s. 41, would not, it is submitted, be construed as strictly prohibitory, and a Conciliator may do any such thing which is reasonable with a view to do justice to the parties, and to amicably settle the dispute between them.

43. Any agreement arrived at to be reduced to writing:—If on the day on which the case is first heard by the Conciliator, or on any subsequent day to which he may adjourn the hearing, the parties come to

(1) It was held in *Manohar v. Gebiappa*, (1882) 6 Bom., 31. (cited under s. 48.) that a Conciliator exercising his function as such is not to be deemed a Court.

any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.¹

Explanation.—A Conciliator may be appointed arbitrator under this section.

[^a]44. Procedure when agreement finally disposes of case and in other circumstances:—

(1) When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides, and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

(2) The Court which receives the agreement shall in all cases scrutinise the same, and if it thinks that the agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

(3) If the said Court thinks that the agreement is not a legal or equitable one, or that it does not finally

[^a] This section was substituted for the original s. 44 by Act VI of 1895, s. 12.

(1) A sample form of a *Kabuliyat* is given in part II of this book. See also notes to s. 49.

dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall of its own motion issue process for the attendance of the parties, and if after such inquiry as may be deemed necessary the Court finds that such agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed, and from which no appeal lies.

(4) If, on the other hand, the said Court finds that the agreement does not constitute a legal or equitable agreement, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall return the said agreement to the Conciliator, and such Conciliator shall thereupon be bound to furnish on demand to the parties or any one of them a certificate under section 46.

(5) The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section.

Old Law.

The original Section 44 was:—

Procedure when agreement finally disposes of case:—When agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of law at gaols having jurisdiction in the "place" where the agriculturist who is a party thereto resides; and shall, at the same time, deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

The Court which receives the agreement shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order

such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed, and from which no appeal lies.

The Court may in any case, for reasons to be recorded by it in writing from time to time extend the period of one month allowed for showing cause under this section.

[The last clause has been added by Act XXII of 1882, s. 12.]

In this section, the word "*Taluqa*" had been substituted for the word "*place*" by Act XXIII of 1881, s. 8; but by Act XXII of 1882, s. 11, the word "*place*" was re-substituted for the word "*Taluqa*."

Commentary.

"The Court . . . of lowest grade . . . in the place where agriculturist-party resides"—This will generally be the nearest Court (except perhaps that of a Village-Munsif) both to the Conciliator and to the agriculturist-party. The jurisdiction of such a Court for the purpose of this section would not, it seems, depend upon the valuation of the subject-matter in dispute, nor upon the place where the subject-matter is situate, nor upon the place where the defendant resides, nor will it depend on the place where the cause of action arose.¹ Where, however, *both the parties are agriculturists*, the place of residence² of an agriculturist-debtor or of the agriculturist against whom any relief is sought would determine jurisdiction, as it would be more convenient to the indebted agriculturist for whose benefit this Act is intended.

"Shall deliver a written notice":—The notice is to be served through the Subordinate Judge to whom the agreement is forwarded.³

An order, directing an agreement to be filed without service of notice contemplated by s. 44, is an *ex parte* order and might, with regard to s. 74 of the Act, be set aside under ss. 108 and 647 of the Civil Procedure Code, as it is a *condition precedent* for the exercise of the Court's jurisdiction under s. 44 *that such a notice should have been given*.⁴

(1) Cf. s. 525 of the Civil Procedure Code.

(2) See s. 2, rules 2 and 3; vide also the comments to s. 39.

(3) See Notification No. 5370, dated 29th August 1882, cited in part II of this book; also see *Jotiram v. Devba*, (1885), 10 Bom., 189, cited under s. 49.

(4) *Murari v. Hari*, 1887 P. J. 39. (Sargent, C. J. and Nanabhai, J.).

“**Show Cause**” :—The expression “*show cause*” in para 2 of this section means to *allege and prove* sufficient cause and not simply to object.¹

“**Finally disposing of the matter**” :—This expression in ss. 43 and 44 means no more than the expression *amicable settlement* in ss. 41 and 46. An agreement for the settlement of the plaintiff's claim to be paid a mortgage-debt at once, or to have the property sold, by an arrangement for the payment of the debt by instalments, with power to the plaintiff, in default of payment of any instalment, to take or to retain possession until the debt has been satisfied out of the produce of the estate, is an amicable settlement, and therefore ‘one finally disposing of the matter,’ which, if duly presented, must be filed by the Court. Where the sum due upon such an agreement is partly made up of interest, a provision to pay interest on any instalment remaining due does not make the agreement illegal.²

Under this section, the plaintiff in a case presented to the Subordinate Court of Talegaon an agreement compromising the amount of a decree obtained by the plaintiff against the defendant in the Small Cause Court at Poona. The agreement stipulated that the plaintiff was to receive, in full satisfaction of the amount of the decree (which was for Rs. 59-15-11), the sum of Rs. 40 to be paid by yearly instalments of Rs. 4 each, and that, in default, the plaintiff was to recover the whole amount of the decree by executing it. The Subordinate Judge refused to file the agreement, being of opinion that it did not finally dispose of the matter. The case being referred to the High Court, *held* that the agreement was one finally disposing of the matter within the meaning of s. 44, and that, therefore, the Subordinate Judge of Talegaon was bound to receive it, and to proceed as directed in that section.³

“**Shall ... order such agreement to be filed**” :—The Court is *bound to file* an agreement duly forwarded by a Conciliator, unless cause is shown within the time mentioned in s. 44.⁴ It is *not essentially necessary* that the parties should be present on the day fixed for their attendance.

(1) *Rajmal Motiram v. Krishna Valad Mahipati*, (1895), 20 Bom., 205 (Sargent, C. J. and Fulton, J.); *Dandekar v. Dandekar*, 6 Bom., 663, followed.

(2) *Vasudeo Paudit v. Narayan Joshi*, (1884), 9 Bom., 15. (Sargent, C. J. and Kemball, J.)

(3) *Lakshminchand v. Arjuna*, (1881.) 6 Bom., 77, (Westropp, C. J. and Birdwood, J.)

(4) *Haibatrao v. Nathaji*, 1883 P. J., 115. (Pinhey and Nanabhai, JJ.),

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The inquiry under the Notification No. 2730 of 1881 must be consistent with s. 44. That Notification authorizes a Sub-Judge to refuse to file an agreement only if it is not an agreement within s. 43. An order of the Sub-Judge and Special Judge refusing to file an agreement was reversed, in the case noted below, as the agriculturists had not shown cause even within the extended time given to them.¹

N.B.—The rule in this notification has been distinctly superseded by s. 44 as amended by Act VI of 1895.²

“It shall then take effect as a decree”:—Where a Conciliation agreement was filed under s. 44 after the date of the first instalment due under it, *held*, that the decree contemplated by the section can not be read as “directing” the first instalment to be paid on a date anterior to the filing of the agreement, *i.e.* to the date of the decree and that, therefore, the only date from which time can run, under Art. 179 of Limitation Act, is the date of the decree.³

S. 44 of this Act and s. 89 of T. P. Act:—Agreements filed under s. 44 of this Act, if relating to sale of mortgaged property, are subject to the provisions of s. 89 of the Transfer of Property Act.⁴

45. Procedure where agreement is for reference to arbitration:—When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the Code of Civil Procedure.

Commentary.

“The Court having jurisdiction in the matter”—will not necessarily be the same to which an agreement finally disposing of the case would be forwarded under section 44. (Compare the wording of that section.).

(1) *Ratanji v. Nama* 1889, P. J., 21. (*Jardine and Candy, JJ.*)

(2) See Notification No. 3634, B. G. G. 1903, pt. 1 p. 859, cited in part II of this book.

(3) *Madhavrao v. Vithu*, 1886 P. J. 162, (*Sargent, C. J. and Birdwood, JJ.*). When the time for payment expires before the date of filing, it is extended by the *Kabuliyat* to three months from the date of filing. See the form of the *Kabuliyat* given in part II of this book. See also notes under s. 49.

(4) *Bhagwan v. Ganu*, (1899) 23 Bom., 644.

46. Certificate to be given to applicant if conciliation fails. If the person against whom any application is made before a Conciliator cannot after reasonable search be found, or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his hand to that effect.

See notes under s. 49.

47. Suit or application for execution not to be entertained by Civil Court unless such certificate is produced.—No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, shall be entertained by any Civil Court unless the plaintiff produces [a] a certificate in reference thereto obtained by him under section 46 within the year immediately preceding.[a]

[b] *Explanation.*—The expression “Civil Court” in this section does not include a Mámlatdár's Court under Bombay Act No. III of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts*).

Old Law.

The original words for which a substitution was made by Act XXII of 1882, s. 13 are :—

“Such certificate as aforesaid in reference thereto.”

[a—~~a~~] These words were substituted for the original words by Act XXII of 1882, s. 13.

[b] This *Explanation* was added by Act XXIII of 1881, s. 9.

Commentary.

“No suit and no application for execution” :—The necessity to procure a Conciliator's certificate before the entertainment of a suit, to which an agriculturist, residing within any local area for which a Conciliator has been appointed, is a party, is not limited to suits specified in s. 3 of this Act, but extends to all matters within the cognizance of a Civil Court. Such a certificate is necessary before bringing a suit against an agriculturist to obtain a declaration that certain property is liable to be sold in execution.¹ Nay this section is applicable to every application for execution of a decree against an agriculturist within the meaning of that Act.²

Filing a private award : No suit :—Where a matter has been referred to arbitration, without the intervention of a Court of justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, *without obtaining the conciliator's certificate*, apply for the filing of the award under s. 525 of the Code of Civil Procedure, the provisions of which are not superseded by s. 47 of this Act.³ This case was followed in another case where also it was held that the Code of Civil Procedure does not treat an application to file an award as a suit, though it directs it to be numbered as one. And there are no express words in the D. A. R. Act to show that the word ‘suit’ is used throughout it, in other than its ordinary sense.

In the case noted below⁴ it was remarked :—“When the parties go before a Conciliator, and in pursuance of his advice a reference to arbitration takes place, and an award is made, effect is given to the award without scrutiny. Where parties are before the Court and agree to refer a dispute to arbitration effect must be given to their agreement (s. 12), upon which the usual results are evidently,

(1) Durgaram Maniram v. Shripati, (1884) 8 Bom., 411 (Nanabhai and Birdwood, JJ.).

(2) Abaji v. Hari, 1881 P. J. 312. (Westropp, C. J., and Kembal, J.).

(3) Gangadhar Sakharam v. Mahadu Santaji, (1883) 8 Bom., 20, (West, and Nanabhai, JJ.); Cf. s. 15 of this Act.

(4) Mohan v. Tukaram, (1895) 21 Bom., 63 (Farran, C. J. and Parsons, J.); Gangadhar v. Mahadu, (1883) 8, Bom., 20 followed.

we think, intended to follow; if an award is made, it must be filed under section 522 of the Civil Procedure Code. This *right of the parties to refer to arbitration is still preserved, though the power of compulsory reference by the Court is now taken away.* (Act VI of 1895, sec. 3). If the Legislature has thus thought fit to preserve the full effects of an award in the case of a reference to arbitrators made after proceedings begun, there is, we think, no reason for presuming that it had a contrary intention in the case of a reference and award prior to such proceedings. We think that we ought to follow the ruling in *Gangadhar v. Mahadu*¹ and hold that the award should be filed without inquiry under section 12. It must be remembered that the judge before filing such an award can, upon objection by the debtor, inquire into the matter specified in section 521 of the Code, and if he is in doubt as to its *bona fides* or freedom from fraud, can refer the parties to a regular suit, where the whole matter can be reopened under s. 12."

"Decree passed after the Act comes into force":—Decrees passed subsequently to the Act coming into force will be decrees in suits either instituted *after* the date on which the Act came into force or *before* it; in the former case, a Conciliator's certificate will have to be filed when the suit is instituted and no further certificate will be required in execution of the decree in such suit. In the latter case, where the suit is instituted before this Chapter is made applicable or before a Conciliator is appointed and then a decree is passed, it is submitted, that a Conciliator's certificate should have been necessary for entertaining application for execution. It seems however, such a case has escaped the attention of the Legislature.

"To which any agriculturist is a party":—Where it *does not appear on the face of the plaint* that the defendant is an agriculturist, it must necessarily be entertained for the purpose of determining whether he is so or not. If it should turn out that he is, the prohibition contained in s. 47 will be satisfied by holding that the Court should not proceed further until the plaintiff has produced the necessary certificate.¹

(1) *Raghnath v. Anant*, 1882 P. J., 368. (Sargent, C. J. and Melvill, J.). See the notes under ss. 39 and 44 *ante*.

"Shall (not) be entertained":—Suits or applications filed before the Act came into force or before the Conciliators are appointed will not be affected by this section.¹

"A certificate in reference thereto." **Addition of parties**:—This section says nothing about what is to be done in case of addition of parties. It deals with the original suit only. As the Court cannot by the addition of the parties change the nature of the suit or make a new case for any of the parties, the suit continues to be the same. Therefore, a suit, to which this section applies, commenced to be entertained with a certificate, can be continued against parties who are added to it without a fresh certificate being required in reference to them. The words "in reference thereto" used in s. 47 refer to the suit and not to the parties to the suit.²

Although there is no provision in this Act empowering a Conciliator to enter the name of the heir of a deceased party, and Government have not apparently under s. 49 (a) of the Act made any rules regulating the procedure before Conciliators in this respect, yet when a Subordinate Judge is seized of a Conciliation-agreement, there is a proceeding before him under the Act. He should, therefore, under s. 74 of the Act follow the provisions of the Civil Procedure Code in regard to placing on the record the heirs of the deceased parties.³

Certificate of no effect after a year:—This is thought necessary in order to prevent these certificates being used *in terrorem*, and it will probably operate beneficially in another way, in as much as when more than a year has elapsed from the time at which the attempt at conciliation has failed, it may not unreasonably be hoped that a fresh attempt may be successful.⁴

Suit dismissed for want of a certificate : effect:—A suit being dismissed against the principal debtor, on the ground that no

(1) See *Raghunath v. Anant*, 1892 P. J. 368; *Sayad Nyamtula v. Nana Valad Faridsha*, (1888) 13 Bom., 424 cited.

(2) *Krishnarao Anandrao v. Hari*, 1898 P. J. 397 (Parsons & Ranade, JJ.).

(3) *Narandas Sakharam v. Kondi*, (1894) 19 Bom., 202. (Sargent, C. J. and Candy, J.).

(4) Statement of Objects and Reasons (Act XXII of 1882.).

conciliator's certificate had been obtained under this Act, it was held that *this did not amount to discharge of the principal*, and that the suit could proceed and a decree be given against the surety.¹

The objection as to want of proper certificate:—
The want of a proper certificate is not fatal to a suit. As soon as a defect in a certificate becomes apparent, the proper course is for a Court to stay proceedings to enable the plaintiff to make good the defect by producing a requisite certificate.² *This defect does not vitiate the suit* and a fresh certificate can be filed in appeal.³ *The objection to the suit, on the ground that a proper certificate is not obtained, can be taken for the first time in second appeal*, as it is an objection affecting the jurisdiction of the Court below.³

[a] 48. **Allowance to be made in period of limitation:—**In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded. [b]

Old Law.

Section 48 of Act XVII of 1879 was:—

“In computing the period of limitation prescribed for any such suit* the time intervening between the application made by the plaintiff under section thirty nine and the grant of the certificate under section forty-six shall be excluded.”

(1) *Narsu v. Narsu*, 1883, P. J. 282 (Bayley, Ag. C. J. and Pinhey, J.). Cf. *Putali v. Tulja*, 3 Bom., 223 on the point of *res judicata*.

(2) *Sayat Nyamtula v. Nana Valad Faridsha*, (1888). 13 Bom., 424 (Birdwood and Parsons, JJ.) It is otherwise under s. 433 of Civil Procedure Code that is so because the wording of that section is very peremptory.

(3) *Krishnarao Anandrao v. Hari*, 1898 P. J. 397 (Parsons and Ranade, JJ.).

[a] This section was substituted for the original section 48 by Act XXIII of the 1881, s. 10.

[b] The second paragraph repeated by Act XII of 1891, is omitted.

* Note the non-existence of the word *application* after the word *suit*,

In place of this section, Act XXIII of 1881, s. 10 substituted a new section, the first paragraph of which is the present section 48; the second paragraph of the same, being repealed by Act XII of 1891, was:—

“Any such application which after the first day of November, 1879, has been rejected, and which, if such time had been excluded in computing the period of limitation prescribed for such application, would have been entertained, shall be entertained if made within two months from the twenty-sixth day of October, 1881.”

Commentary.

Law before the amendment by Act XXIII of 1881:—*The time spent by a judgment-creditor in obtaining a certificate from a Conciliator under this Act, prior to its amendment by Act XXIII of 1881 in order to entitle such creditor to obtain execution of his decree, cannot be deducted in computing the time within which such decree may be executed.*¹

To give a fresh starting point the application to take some step in aid of execution must be made to the proper Court; a Conciliator appointed under this Act is not a Court. The presentation, therefore, to a Conciliator of an application to effect an amicable settlement within the period of limitation does not save the limitation, if the application to the proper Court be time barred. The presentation to any Civil Court of an application for execution of a decree passed before the Act came into force, to which an agriculturist residing within any local area for which a Conciliator has been appointed, is a party, is no legal presentation at all if the application be not accompanied by the Conciliator's certificate.²

Law under the amendment:—*The period during which the Conciliator is endeavouring to effect an amicable settlement is to be deducted in computing limitation under this section.*³ And this rule is not limited to suits falling under s. 3 only.⁴

(1) *Madhaji v. Shivaji*, (1881) P. J., 243. (Westropp, C. J. & Pinhey, J.).

(2) *Manohar v. Gebiappa* (1881) 6 Bom., 31. (Melvil and Kembal, JJ.)

(3) *Venkatrao Bapu v. Bijesing Vithalsing*, (1885) 10 Bom., 168. (Sargent, C. J. and Birdwood, J.).

(4) *Durgaram v. Shripati*, (1884) 8 Bom., 411 cited under s. 47.

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Where the Conciliation-agreement was ordered to be filed after the date of the first instalment due under it, held that the period of limitation ran from the date of filing.¹

A suit in which no certificate is needed:—The time occupied before a Conciliator by a plaintiff in a suit in which no Conciliator's certificate is necessary, cannot be deducted in computing the period of limitation for such suit.²

"Application . . . under s. 39":—In the case noted below³ the plaintiff was an agriculturist residing in the Kopergaon Taluka and purchased the house in dispute from the defendant on the 30th January 1872, but did not get possession. On the 12th December 1883, he applied to be put into possession under s. 39, to the Conciliator appointed for the Khatav Taluka, where the house in dispute was situate. The proceedings before the Conciliator lasted until the 19th February 1884, on which day a certificate under s. 46 of the Act was granted to the plaintiff. On the 20th February, 1884, the plaintiff brought this suit to recover possession of the house. The defendant pleaded limitation. The plaintiff contended that under s. 48, the time occupied in the proceedings before the Conciliator should be deducted in computing the period of limitation. *Held*, that the plaintiff was not entitled to such deduction, as the Conciliator, before whom the proceeding had been instituted, was not one appointed for the local area in which the plaintiff was residing, as required by s. 39, and had, therefore, no jurisdiction to deal with plaintiff's application. *Held* also, that the certificate obtained by the plaintiff was not such a certificate as is required by s. 47 of the Act.

49. Local Government to make rules¹:—The

(1) See *Madhavrao v. Vithu*, 1886 P. J. 162 cited under s. 44. See notes under s. 49.

(2) *Ganesh v. Balaji* 1883, P. J. 238. (*West and Nanabhai, JJ.*)

(3) *Sayad Nyamtula v. Nana Valad Faridsha*, (1888) 13 Bom. 424 (*Birdwood and Parsons, JJ.*). *Raghunath Dalajee Khade v. Anant Govind Bhopale*, 1882 P. J., 368 referred to.

(4) For rules under this section see part II of this book. See also part I of B. G. G. for 1879 pp. 999-1000, for 1880 p. 1072, for 1882 p. 682, for 1884 p. 784, 1903 pp. 389 and 859.

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Local Government may from time to time make rules—

- (a) regulating the procedure before Conciliators in matter not provided for by this Act;
- (b) fixing the charges to be made by Conciliators for anything done by them under this Chapter; and
- (c) determining what record and accounts shall be kept by Conciliators and what returns shall be framed and furnished by them.

Commentary.

The sections of this Chapter and the notifications issued by Government thereunder are not sufficient to give a complete idea of the procedure before Conciliators. We, therefore, propose to add some notes on the practice for the reader's information.

(a) The procedure before Conciliators.*

The application—to be made under s. 39 to a Conciliator should be in writing almost in the form of a plaint. It need not be verified; but it should be accompanied by documents or extracts from accounts on which it is based; and the list of the documents put in should be entered on the application. Such an application may be made either by one party or by both jointly; in the latter case, however, the Conciliator is enjoined to inquire whether the indebted party, joining in the application, has fully understood what he is doing.

Admission of the application:—When an application is presented to a Conciliator he will generally file and register it, if (i) the dispute is of a civil nature and can be taken cognizance of by a Civil Court; and if (ii) any of the parties to the application is described as an agriculturist residing within the local limits for

* The information given below is taken mostly from the rules made by the Special Judge for the guidance of Conciliators. We have not dwelt on points purely ministerial, as doing so would not interest ordinary reader.

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which he is appointed. If the Conciliator has reason to suspect that a party described as an agriculturist is really not so, he will inquire into the matter and refer the case if necessary to the Subordinate Judge for inquiry and order.

Issue of summons :—When the application is filed, the Conciliator will fix a day for hearing, which will generally be any day within one month from the date of filing—of course having regard to the distance of the place where the opponent may be residing. He will at once inform the day of hearing to the applicant and issue summons to the opponent. If the opponents are more than one and reside in different villages, each one will have a separate summons issued to him and served through the agency of the Civil Court or of a Village-officer as the Conciliator may think convenient. The Conciliator may even call the parties himself, if he thinks they would attend without a summons.

The rule that a notice to parties to a Conciliation-agreement should be served through a Subordinate Judge, framed by the Local Government under s. 49 of this Act and published at page 682, part 1 of the Bombay Government Gazette, (1882) is not *ultra vires*, and a notice so served was held to be a good notice.¹

Adjournments :—Conciliators are generally instructed to use utmost despatch in the disposal of applications. An application can in no case be kept pending for more than three months except with the permission of the Special Judge; and generally more than three adjournments should not be allowed.

Attendance :—Parties may attend even before the day fixed for hearing if they want the disposal of the application on that day. The Conciliator will note the attendance of parties and if the opponent, for sufficient reason, could not attend, the Conciliator may adjourn the hearing to any further day.

Effect of failure to attend :—(a) If the applicant does not attend without any sufficient reason, the application will generally be dismissed.² (b) If the opponent does not attend (without good

(1) *Jotirau Maniram v. Devba Iswarapa* (1885) 10 Bom. 189. (Sargent, C. J. and Nanabhai, J.).

(2) If however the opponent is present and is willing to compromise, one more adjournment will be given to enable the applicant to attend.

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reason) a certificate will be given to the applicant under s. 46. If both the parties do not attend after a *special summons*, from a Conciliator specially authorized under s. 40, has been served against them, they will be deemed to have committed an offence under s. 174 of the I. P. Code. This penal liability applies even when one of the parties happens to be absent.

The disposal of application :—The application may be disposed off in either of the following ways :—(i) It may be dismissed, (ii) if the parties agree to a settlement a *Kabuliyat* may be made or, (iii) if the parties cannot agree, a certificate may be given.

When will the application be generally dismissed ?—(a) If the applicant fails to pay the process-fees or Court-fees within the time allowed by the Conciliator (generally four days), (b) if the applicant fails to attend on the day fixed for hearing, the application will generally be dismissed.

Taking an application again on file :—If the applicant within 30 days from the day of dismissal, applies to get his application again on file and shows sufficient reason therefor, the application will be again taken on file ; in which case no *fresh* process-fees need be paid.

Kabuliyat :—After the inquiry under ss. 40, 41 and 42, if the parties come to an agreement finally disposing of the matter under s. 43, such agreement, which is styled as a *Kabuliyat*, will be written almost in the form¹ of a decree (with some additional endorsements) and signed by the parties and attested by the Conciliator. Such *Kabuliyat* will generally be filed before the day on which performance of the agreement embodied in the *Kabuliyat* is to be made. The Conciliator may, in proper cases, with the consent of the parties add or strike off the names of parties,

Issue of certificate :—A certificate is issued under s. 46

- (i) when the opponent wilfully absents himself or cannot be found,
- (ii) when the endeavour to induce the parties to agree to an amicable settlement fails, or

(1) A sample of the *Kabuliyat* is given in part II of this book.

- (iii) when the Conciliator thinks that the claim of the applicant is not within time ; or that the document which is the basis of the claim is defective for want of stamp, registration and the like.

N.B. -When the Conciliator is satisfied that the first certificate given to the applicant is really lost, a new certificate will be given to him.

The application to get a certificate should be made within ten days from the date when the order to give such certificate is passed by the Conciliator.

The duties of a Conciliator :-Amongst a number of other ministerial duties,

- (i) The Conciliator ought not to interfere in a matter in which he is personally interested without the permission of the Special Judge.
- (ii) when the parties come to an agreement and a *Kabuliyat* is drawn, the Conciliator should take care to ascertain whether the persons before him are the real parties to the dispute, and whether they have fully understood the meaning and effect of what they had agreed to do and have freely given their consent thereto.
- (iii) The Conciliator has generally to try his best to bring the parties to (a voluntary) amicable settlement.
- (iv) A Conciliator should make a report to the Special Judge, if he is to be absent for more than four days from the place for which he is appointed.

Reference to Special or Subordinate Judge :-

- (i) When the *status* of a party comes into question the matter is referred to the Subordinate or Special Judge,
- (ii) when a matter is required to be kept pending for more than three months, or
- (iii) when the Conciliator is interested in the matter before him, a reference will be made to the Special Judge.
- (iv) When any of the parties to a *Kabuliyat* revokes his consent to it and protests against its being filed, the Conciliator will refer the matter to the Court to which the *Kabuliyat* is to be sent.

Remand :—The Court may remand a case to the Conciliator for further inquiry or amendment of the *Kabuliyat*. The Conciliator after further inquiry should make the necessary changes in the *Kabuliyat* and get them attested by the parties. If after any *Kabuliyat* is remanded the parties do not appear, it may be sent back to the Court. When a *Kabuliyat* is sent back by the Court in order that the Conciliator may give the party a certificate under s. 46, the Conciliator may take the original application on file and grant the certificate if the applicant presents himself in time to receive it.

Transfer:—The Special Judge may transfer an application from the file of one Conciliator to the file of another. But a Conciliator himself cannot make such a transfer.

Documents put in:—If the documents put in with the application be extracts from account-books, the Conciliator will compare and check them with the original and return the original books to the parties. If the party putting in any document immediately wants it back, the Conciliator may make the necessary endorsements on the document and on the application in the matter of which it is produced, and return it to the party producing it, asking him at the same time to produce the same when called for. The Conciliator will, if so required, pass receipts of documents put in and kept by him in his custody. Documents which, by force of the *kabuliyat*, have become void or useless, will not be returned to the parties but will be sent to the Court with the *Kabulyat* with an endorsement to that effect. But where the document has not thus become void or useless, a true copy of the same will be sent to the Court with the *Kabuliyat* and the original returned to the party producing it after taking his acknowledgement of the receipt of the same on the application. When a matter before a Conciliator is settled independently of him or when it cannot be settled and a certificate is given to the applicant under s. 46, all documents put in will be returned to those persons who had produced them.

(b) Charges to be made by Conciliators.

The process-fees—will be received in the form of Court-fee stamps. The process-fee for summons will be paid only once. So if a fresh summons is required to be served upon the persons already summoned, or their heirs (in case of the death of the former), no

additional process need be paid. So also, where a summons is to be served upon the opponent for himself and as the guardian of a minor, one process need be paid.

Court-fees :—The Court-fees are taken generally from the applicant within a time—not more than 15 days,—fixed by the Conciliator. On failure to pay the same by any of the parties within time, the application will stand dismissed. The Court fee is taken at the rate of 8 annas per cent on the amount awarded in the *Kabuliyat*. The valuation of a suit, other than those described in s. 3 of this Act, will for this purpose be determined by the general rules of Court-fees Act. Court-fee-stamps should be affixed to the *Kabuliyat*; when the fees amount to more than 10 rupees, the *Kabuliyat* should be written on the stamped paper.

Costs :—The costs of process-fees will be entered by Conciliator on the margin of the *Kabuliyat* or the certificate as the case may be.

(c) Records,¹ Returns and Accounts.

A Conciliator has chiefly to keep a general register of applications, a process-fee and Court-fee book, and an inward and outward register. He has also to send to the Special Judge by the end of every month a monthly statement of the disposal of applications and the fee received therein, a monthly report, contingency bills, &c.

The applications disposed of in any month are to be sent to the Court before the 15th of the next month. And except the Register-book and fee-book for the current year and a year preceding it, all other such books of previous years are to be sent to the Court for safe custody.

(1) The forms of record with necessary directions are given in part II of this book.

CHAPTER VII.

Superintendence and Revision.

50. District Judge to inspect, etc.:—The District Judge shall inspect, supervise and control the proceedings under [a] Chapter II, Chapter IV and Chapter VI [a] of this Act, of all Subordinate Judges and the proceedings of all Village-munsifs and Conciliators.

[b]51. District Judge may withdraw case from Conciliator or Subordinate Judge, or sit with Subordinate Judge as a Bench for trial of any case :—The District Judge may—

- (a) transfer any application pending before a Conciliator to the file of any other Conciliator;
- (b) [c] transfer from the Court of one Subordinate Judge to another any suit or any agreement pending before a Subordinate Judge under Section 44 of this Act; or [c] transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under [a] Chapter II, Chapter IV or Chapter VI [a] of this Act, and may dispose of the same as if he were a Subordinate Judge; or

[a—a] These references were substituted for the original references by Act XXII of 1882 s. 14.

[b] This section was substituted for the original s. 51 by Act XXIII of 1881, s. 11.

[c—c] These words were added by Act VI of 1895, s. 13.

- (c) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

If the Members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail.

Old Law.

This section in Act XVII of 1879 was :—

The District Judge may—

- (a) transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under Chapter II or Chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge ; or
- (b) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail.

[a] 52. Appointment of Assistant or Subordinate Judges to aid District Judge :—(1) The Local Government may appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges under Chapter II, Chapter IV and Chapter VI of this Act, and of all Village-munsifs and Conciliators in any district or part of a district to which this Act applies:

Provided that, if the Local Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts or parts of districts or districts and parts of districts.

[a] This section was substituted for the original s. 52 by Act VI of 1895, s. 14.

(2) The District Judge may, by order, confer upon any Assistant or Subordinate Judge appointed under this section, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 51.

Old Law.

The original section 52 was :—

The Local Government shall appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges, under "Chapter II, Chapter IV, and Chapter VI" of this Act, and all Village-Munsifs and Conciliators in each of the said districts of Puna, Satara, Sholapur, and Ahmadnagar :

Provided that, if the Local-Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts.

Any Assistant or Subordinate Judge appointed under this section may, in any district for which he is so appointed, if the District Judge so direct, exercise the powers of the District Judge under section 51 of this Act, and transfer any suit under section 25 of the Code of Civil Procedure.

Commentary.

District Judge's powers of Superintendence :—The powers of Superintendence of a District Judge are defined by sections 50 and 51 and the District Judge has also the power under para (2) of s. 52 to delegate the functions vested in him by s. 51 to any Assistant or Subordinate Judge appointed under s. 52 by the Local Government. Section 51 does not refer to proceedings before Village-Munsifs, but powers somewhat similar to those in s. 51 have been vested in the District Judge by the proviso to s. 35. A Special Judge (if appointed) is to discharge in the place of the District Judge all his powers under this Act.

Powers of Assistant and Subordinate Judges :—The Local Government may vest an Assistant or Subordinate Judge with powers of *inspection* and *Supervision* mentioned in s. 50, which will be exercised subject to the control of the District Judge. It is submitted that under the section, as it stands, the Local Government cannot confer on an Assistant or Subordinate Judge the powers vested in a District Judge by s. 51. But the District Judge may

confer such powers on Assistant or Subordinate Judges appointed under s. 52. An assistant or a Subordinate Judge appointed under s. 52 has not any independent and full powers either of revision or reference.¹

53. Of revision :—The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under [a] Chapter II, Chapter IV or Chapter VI [a] of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit;

and any Assistant Judge or Subordinate Judge appointed by the Local Government under section 52 may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and, if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit:

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.

54. Special Judge :—The Local Government from time to time may, and if the Government of India so direct shall, appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village-munsifs and Conciliators, and may cancel any such appointment.

(1) V. d. s. 53 para 2, s. 54 last para; compare s. 435 (Criminal Pro. Code) last para.

[a—s] These references were substituted for the original references by Act XXII of 1882, s. 14.

Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function except those which he is empowered by this Act to discharge.

If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section 52, or by a Bench, in any suit or proceeding under this Act.

[^a] But the District Judge or Special Judge, or an Assistant or Subordinate Judge or Bench, may refer to the High Court, under section 617 of the Code of Civil Procedure, any question of law, or usage having the force of law, or the construction of a document, arising in any case pending before him or it under this chapter as if that case were a suit or an appeal pending before him or it; and, in respect of every reference so made, sections 618 to 621 of the said Code, both inclusive, shall apply:

[^a] Provided that no reference shall be made under this section by any Assistant or Subordinate Judge, or by any Bench of which the District Judge or Special Judge is not a member, without the previous sanction of the District Judge or Special Judge, as the case may be.

Commentary.

The powers of revision—

Of the District or Special Judge :—The powers of revision given by this section are restricted only to suits and proceedings

[^a] These paras were added by Act XXII of 1882, s. 15.

under Chapters II, IV and VI. An execution-order in a suit to which Chapter II applies is an order in the suit, and, therefore, subject to revision under s. 53.¹ In a suit falling under cl. (w) of s. 3 the Special Judge has jurisdiction although neither of the parties to the suit is an agriculturist.² With reference to proceedings before Village-munsifs, the District Judge has no power of revision under this Chapter. A provision in this respect is, however, made in s. 36 of this Act.

Under Section 36—the District Judge can only act on the application of a party and *cannot act of his own motion*; while under s. 53 the District Judge can exercise his revisional jurisdiction *proprio motu*.³

Under sections 53 and 54 the Special Judge can interfere with an improper as well as an illegal decree or order. His revisional jurisdiction resembles that possessed by the High Court under the Code of Criminal Procedure, and ought, if it be held to include the power of setting aside the decision of a lower Court on the facts, to be exercised only in very exceptional cases.⁴

But in a subsequent case it was held that under this section the Special Judge has a *revisionary power in all cases when a failure of justice appears to have taken place*. It is for him to decide whether the finding on a question of fact by a Subordinate Judge is of that nature, and in doing so, he is entirely within his jurisdiction.⁵ Section 622 of the Civil Procedure Code gives to the High Court jurisdiction to interfere only where the Lower Court acts without jurisdiction or has exercised its jurisdiction illegally or with material irregularity.⁶ But the practice of this Court under section 622 of the Code cannot, in the absence of words to that effect, be properly imposed on the special Judge as regards matter of law determining jurisdiction.

(1) *Manohar v. Bhavani*, 1885 P. J. 90 (*Birdwood and Wedderburn, JJ.*).

(2) *Ganesh Krishnaji v. Krishnaji*, (1889) 14 Bom., 387. (*Scott and Candy, JJ.*).

(3) *Vide Balakrishna v. Mahadeo*, (1896) 22 Bom., 520, cited later on.

(4) *Shidu v. Bali*, (1890), 15 Bom., 180 (*Birdwood and Telang, JJ.*) dissented from in 19 Bom., 286; see also 23 Bom., 321.

(5) *Guru Basappa v. Chanamalappa*, (1894) 19 Bom., 286 (*Sargent, C. J. and Fulton, J.*) *Shidu v. Bali*, (1890) 15 Bom., 180, dissented from.

(6) *Usasubhai v. Imratbhai*, 1893 P. J. 149; (*Sargent, C. J. and Telang, J.*) *Rayachand v. Sultan Rahimbhai*, (1893) 18 Bom., 347 referred to.

When the Special Judge under this Act entertains a clear opinion that the findings of the Subordinate Judge on the questions of fact are erroneous, and exercises his discretion in setting aside the decree, the High Court will not, in its extraordinary jurisdiction, interfere with that discretion, except under most exceptional circumstances.¹

The possibility that a Sub-judge may have decided the question of limitation wrongly by having present to his mind an earlier decision instead of a later decision offers no ground for the exercise of the extraordinary jurisdiction in a decision from the Special Judge under the D. A. R. Act.²

Where the Lower Court finds the parties to be non-agriculturists—Special Judge has no jurisdiction:—The plaintiff alleging that she was an agriculturist sued for redemption under Chapter II of the D. A. R. Act. The Subordinate Judge raised an issue as to her *status* and on that issue found that she was not an agriculturist. He, however, proceeded with the trial of the case and on the merits dismissed her claim. She thereupon applied to the Special Judge, who took up the case in revision, reversed the decree of the Lower Court, and passed a decree in the plaintiff's favour, holding that she was an agriculturist. *Held* that the Special Judge had no jurisdiction. The Sub-Judge had found that the plaintiff was no agriculturist. Having done so, it must be deemed that he went on with the trial only in his ordinary jurisdiction and the decree passed was one not under Chapter II of the D. A. R. Act, but under the general provisions of Civil P. Code. By s. 53 the Special Judge has jurisdiction only over the decisions and orders passed by a Sub-Judge under Chapter II.³

Where a suit to redeem a mortgage was admittedly within the jurisdiction of the Court of First Instance under this Act, it was

(1) *Rayachand Mayachand v. Sultan Rahimbhai*, (1893) 18 Bom., 347 (Sargent, C. J. and Telang, J.).

(2) *Sakharam v. Parvati*, 1888 P. J. 274 (Sargent, C. J. and Nanabhai, J.).

(3) *Lakshman v. Ramchandra* (1898) 23 Bom., 321, (Parsons and Ranade, JJ.); *Cf. Bhagavant v. Rangoo* 1884 P. J. 30 and *Koudaji v. Anau*, (1883) 7 Bom., 448. (West and Nanabhai, JJ.).

held that it was within the revisional powers of the Special Judge, and none the less so because the Special Judge, while confirming the decree of the Lower Court, incidentally found that the mortgage sued on did not really exist and that another one did exist of such an amount that a suit to redeem it would not have been within Chapter II of the Act.¹ So also an application of Chapter II of this Act which would be illegal and wrong, if the Subordinate Judge knew the subject-matter was of greater value than Rs. 100, may be sustained if he was led into applying it by honest misinformation. And the original proceedings being thus justified, a Special Judge can revise them and order a new trial.²

Withdrawal of a suit in revision :—The Special Judge is not competent in the exercise of his revisional powers to allow a plaintiff to withdraw his suit with liberty to bring a new one merely on the ground that he has made some mistake in filing the suit.³

Right to remand :—The Special Judge has a right to remand a case.⁴

The power of reference :—This section empowers a reference on a question of law or usage or on a construction of document arising in a case under this Chapter. No doubt, the essential qualifications in s. 617—that the trying Court must entertain reasonable doubt on the question⁵ and that the construction must affect the merits—do not appear in this section. But it is submitted that as this section expressly refers to and relies upon section 617 of the Code, both the sections must be read together in order to ascertain whether a reference would lie in any particular case.

The word *case* in s. 54 evidently includes suits and proceedings under Chapter II, IV or VI.

(1) *Bhagvant v. Rango*, 1884 P. J., 30. (West and Nanabhai, JJ.).

(2) *Kondajee v. Anau*, (1883) 7 Bom., 448 (West and Nanabhai, JJ.).

(3) *Muktaji Bhagoji v. Manaji*, (1888) 12 Bom., 684. (Birdwood and Parsons, JJ.).

(4) *Kondumal v. Kasiba* 1881, P. J. 1 (Westropp, C. J. and Birdwood, J.).

(5) See *Bhadaji v. De Brito*, (1905) 7 Bom. L. R., 995.

“Appointed under section 52”—The Assistant and Subordinate Judges appointed under s. 52 have no independent power of reference or revision like that possessed by a District Judge.¹ But the proviso to s. 54 has no application to references under s. 617 of the Civil Procedure Code by a Subordinate Judge not appointed under s. 52 of this Act. The previous sanction of the Special Judge is not, therefore, necessary to a reference made by a Subordinate Judge in a case not tried by him under Chapter VII of this Act and it is not competent to the Special Judge to refuse to forward such a reference.²

Powers of review :—It is to be noted that this Chapter, while conferring the powers of reference and revision on certain Judges, does not confer upon them any powers of review. Under s. 74 the Civil Procedure Code is made applicable to proceedings before Subordinate Judges only. The Subordinate Judges, therefore, can review their own findings independently of this Chapter; while a District Judge or a Special Judge cannot. But the discretion given to the District or Special Judges under their powers of revision is so wide that they can use their discretion in revising their decrees or orders in certain cases. It seems, however, that they cannot review a case simply on the ground of the discovery of fresh evidence.³ Moreover, the Special Judge has jurisdiction *proprio motu*, under the provisions of s. 53, to vary a decree of the Lower Court while not reviewing the case on the ground applied for by the plaintiff.⁴

The exercise of discretion :—An Assistant Judge having found that the defendants in a suit pending before him were not agriculturists, the defendants presented a petition of review of that finding and in review the Assistant Judge came to a contrary conclusion. *Held* that as s. 74 only makes the Civil Procedure Code applicable to suits before a Subordinate Judge, the conduct of proceedings before a District or Assistant Judge, when sitting in

(1) Vide s. 53, para 2 and s. 54, last para.

(2) *Rango v. Kalu*, 1885 P. J. 221. (Birdwood, and Jardine, J.J.).

(3) A detailed description of the cases illustrating these points is given in the next paragraph.

(4) *Balcrishna v. Mahadeo*, (1896) 22 Bom., 520. (Farran, C. J. and Hosking, J.). As to the facts of the case, see the case cited in notes to sections 12 and 13.

revision under s. 53 of this Act, is within his own discretion, and the granting of a review on the ground of mistake as to the nature of the defendant's income, is a reasonable exercise of such discretion.¹

The Special Judge appointed under this Act (the defendants not appearing) reversed, in revision under s. 53 of that Act, the decree of the Sub-Judge and passed a decree for the plaintiff. One of the defendants, who, it appeared, had not been served with notice of the previous application for review, subsequently applied to the Special Judge to review his decree, and that application was granted on the ground that the applicant had not had notice of the former review. On this subsequent review, the Special Judge discovered that he had made a mistake with reference to the date of certain documents, and that this mistake had led him to a wrong conclusion upon the merits of the case. He consequently reversed his former order and dismissed the suit, confirming the original decree of the Subordinate Judge. The plaintiff then applied to the High Court under its extraordinary jurisdiction under s. 622 of the Civil Procedure Code. *Held* that in granting a rehearing, the Special Judge had exercised a reasonable discretion with which the High Court could not interfere in its extraordinary jurisdiction. The Civil Procedure Code is not applicable to proceedings before the Special Judge, and the conduct of such proceedings rests within his discretion.² The Special Judge cannot, under this Act, review his decree and order a new trial on the ground of discovery of fresh evidence,³ but he has discretionary power to review his decree in order to correct a mistake into which he has fallen.⁴

The Special Judge, under this Act, has power to set aside an *ex parte* order made by himself—if such a course be needed for a reasonable exercise of the discretion on his part.⁵

(1) *Badricharya v. Ramchandra Gopal*, (1893) 19 Bom., 113 (Sargent, C. J. and Candy, J.); see *Visvanath v. Aba*, 1886 P. J. 11, *Of. Babaji v. Babaji*, (1891) 15 Bom., 650.

(2) *Ramsing v. Babu Kisansing*, (1893) 19 Bom., 116. F. B. (Sargent C. J. and Parsons and Fulton, JJ.).

(3) *Babaji v. Babaji* (1891) 15 Bom., 650 (Birdwood and Parsons, JJ.) cited in *Ramsing v. Babukisansing*, *Supra*.

(4) *Ramsing v. Babu Kisansing*, *Supra*.

(5) *Ramachandra Narayan v. Draupadi*, (1895) 20 Bom., 251. (Sargent, C. J. & Fulton, J.); *Visvanath v. Aba*, *Badricharya v. Ramchandra*, *Ramsing v. Babu Kisansing*, all cited above, were referred to and considered.

Notice how far necessary :—It is illegal on the part of the Special Judge appointed under this Act to reverse the decree of a Subordinate Judge on review without giving a proper and sufficient notice to the party in whose favour the decree was passed.¹ In a case decided a few months previously, it was *held* that notice to the parties was not necessary before the power of revision under s. 53 could be exercised; that section 53 does not expressly provide for such notice, and that s. 74 only made the Civil Procedure Code applicable to suits and proceedings before the Subordinate Judge and that under s. 75 no rule regarding notice had been made by the Local Government.²

Conflict between a District Judge and a Special Judge:—As the Special Judge is to be appointed to discharge *in the place* of the District Judge all the functions of the District Judge, there is thus no likelihood of the simultaneous exercise of the powers under this Chapter by both of them. A *conflict of authority* may, however, arise where the Special Judge is succeeded (in authority) by the District Judge (or *vice-versa*) and the succeeding Judge differs from the Judge to whom he succeeded.

So also, a conflict may arise where A sues B to recover possession on the strength of a sale-deed which the defendant contends to be a mortgage-transaction, and the Court dismisses the suit holding it to be a mortgage; and where another suit is brought by B against A on the same deed for redemption in which the plaintiff gets a decree. The matter in the first suit not being under this Act goes to the District Court in appeal, and the matter in the second suit (being under this Act) goes before the Special Judge in revision. In this case it is possible for the two Courts to come to different and inconsistent conclusions, in which case it will be difficult to ascertain the effect of the one decree over the other. The best course for the Special Judge to avoid such anomaly, seems to be to stop proceedings until the question of sale or mortgage is finally disposed of in appeal.

(1) *Rupchand Kheochand v. Balvant Narayan* (1887), 11 Bom., 591 (West and Birdwood, J.J.).

(2) *Vishvanath v. Aba* 1886, P. J. 11. (Sargent, C. J., and Nanabhai, J.). This case does not seem to be referred to in the case reported in 11 Bom., 591 cited above. The Judgment in this case says that the opinion of the Division Court consisting of West and Nanabhai, J.J. on petition No. 89 of 1884 was apparently the same. It seems this judgment of West and Nanabhai, J.J. is not reported even in the Printed Judgment series.

CHAPTER VIII.

Registration by Village-Registrars.

55. Appointment of Village-Registrars:—
The Local Government may, from time to time,—

- (a) appoint such persons as it thinks fit, whether public officers or not, to be Village-registrars for such local areas as it may, from time to time, prescribe;
- (b) direct the Village-registrar for any local area to discharge the functions of a Village-registrar for any other local areas concurrently with the Village-registrars of such other local areas; and
- (c) delegate to any person, by name or in virtue of his office, the powers conferred on it by this section;

and may cancel any such appointment, direction or delegation.

Commentary.

The object of this Chapter :—The first object aimed at is to establish precautions against fraud by either debtor or creditor in their original transactions with each other, and so keep them on good terms and out of Court as far as possible.

This Chapter is intended to meet some of the usual frauds, *e. g.* (1) forging bonds, (2) withholding the consideration mentioned in the bond, (3) obtaining new bonds in satisfaction of old bonds and of decrees and nevertheless enforcing the latter, (4) tendering in evidence false receipts and false evidence of alleged payments, (5) pleading that bonds are false when they are really genuine.

This Chapter 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; that the registrar shall give a copy of it to the party not entitled to the original, and shall both endorse on the original whether transfer of consideration took place before him or not and mark for future identification any instrument which such original supersedes. The reasonableness of such a measure is evidenced by the provisions for Notaries in France and most of the European Countries, and by the penalty in England on unauthorized persons practising as conveyancers. Instruments not so executed will be invalid. By these means every raiyat should at least know what he signs, and both parties should receive due protection.¹

56. Instruments executed by agriculturist not to be deemed valid unless executed before a Village-registrar :—No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an Agriculturist residing in any local area for which a Village-registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-registrar :

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding, [a] or apply to any instrument which is executed by an agriculturist merely as a surety [a] [b] or to any instrument required by section

(1) Hon'ble Mr. Hope's speech, Proceedings in Governor-General's Legislative Council, 1879, pp. 134-135.

[a—] These words were added by Act XXIII of 1881, s. 12.

[b] See the first footnote on the next page.

17 of the Indian Registration Act, (III of 1877), to be registered under that Act [b].

Commentary.

*This section extends to the whole of British India.*¹

Sections 56 and 70.—Section 56 only says that unless the instrument of the nature described therein is written and attested according to the provisions of this Chapter, it will *not be admissible in evidence*, nor will it be acted upon by any person authorized to receive evidence or by any Public Officer; but so far as the question of the *creation* of mortgage, lien or charge of or upon immoveable property belonging to an agriculturist is concerned, s. 70 says that the mortgage, lien or charge shall be invalid, unless created by a written instrument under the hand of the person creating it. No doubt, after the instrument is drawn out, it will not be admitted in evidence unless it is registered under s. 56.²

Distinction between sections 56 & 63A.—Section 63A relates only to documents required to be registered under s. 17 of Indian Registration Act; while s. 56 relates, as is apparent from the words at the end of the proviso to the same section, to documents other than those covered by s. 17 of the Indian Registration Act, but falling under the description given in s. 56.

In their effects, sections 63A and 56 are a little different. A document coming under s. 63A, but not registered, will not be received in evidence for the purposes given in s. 49 of the Indian Registration Act only; while an instrument, falling under s. 56 but not written or attested as required by the section, shall not be admitted in evidence for “*any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any public officer.*”

“**Shall [not] be admitted for any purpose**”:—The plaintiff sued two defendants, one of whom was found to be an agriculturist, on a *Khata* which contained an acknowledgment of liability to pay the amount due to the plaintiff and also an

[b—b] This portion was added by Act XXIII of 1886, s. 9.

(1) See s. 1 of this Act.

(2) Vide the remarks of Rausse, J. in 22 Bom., 788 (793).

agreement to pay interest. The defendant, who was an agriculturist, was struck off the record, and the plaintiff proceeded against the other, and obtained a decree against him for the amount claimed, the Court being of opinion that this section did not apply and that the *Khata* sued on was valid and admissible in evidence though not registered. The matter was referred under section 622 of Civil Procedure Code to the High Court; it was argued that it was simply an irregularity but in effect it was found to be an illegality, and the High Court held that the *Khata* was an instrument purporting to evidence an obligation to pay money within the meaning of this section which applied although one of the executants was not an agriculturist. The use of the words "for any purpose" in this section shows that the instrument in question, which was not written and attested in accordance with the section, could not be admitted in evidence in any case whatsoever—not even to enforce a liability against one who was not an agriculturist.¹

S. 56 of this Act & s. 35 of Stamp Act:—S. 56 as a whole may be compared with s. 35 (first paragraph) of the Indian Stamp Act and with proviso (d) of the same section. Under the Indian Stamp Act, an instrument not duly stamped will generally be admissible in evidence in criminal proceedings, excepting those under Chapters XII or XXXVI of Criminal Procedure Code; but such a saving provision does not exist in the proviso to s. 56 of this Act.

"Executed.....by an agriculturist":—The plain words of this section speak only of the execution by an agriculturist and clearly refer to the *status* of the person who actually executes the document. A document executed by an agriculturist in his own name and not as the agent of another, is inadmissible in evidence by reason of non-compliance with the provisions of this section.²

Instruments falling under s. 56:—(1) Every instrument which does not fall under s. 17 of I. R. Act and which purports

- (a) to create, modify, transfer, evidence or extinguish an obligation for the payment of money, or

(1) *Dinsha Kuvarji v. Hargovandas Govardhandas*, (1888) 13 Bom., 215 (Birdwood and Parsons, JJ.) But see the remarks of Parsons, J. in *Mahadeo v. Mahadu* (1896) 22 Bom., 788 (792).

(1) *Bapuji Govind v. Mahadeo Narayan*, 1897 P. J., 137 (Parsons and Banade, JJ.).

- (b) to create etc. a charge upon any property, or
- (c) which purports to be a conveyance or (d) a lease ;
- (2) and which is executed after this Act comes into force,
- (3) by an agriculturist (for himself and not merely as an agent or surety for another),
- (4) residing in any Local area for which a Village-registrar has been appointed.

Release :—In a case a release, though not registered under the Indira Registration Act, was held admissible, as it was registered under s. 56 of this Act as a conveyance.¹

Kabuliyat :—In 1891 the defendant passed to the plaintiff an agreement before the Conciliator admitting his liability to the plaintiff for an amount due on a previous mortgage and for a decretal debt, as also for a fresh advance then made. By the same document, property already in possession of the plaintiff, as also an additional house, were mortgaged, with possession for the whole debt thus admitted due, the defendant agreeing to pay interest at a certain rate. The mortgagor was to pay off the debt within 4 years, and in default plaintiff was to recover the same by sale of the property and to hold the defendant personally liable for any deficit. This agreement (*Kabuliyat*) was forwarded by the Conciliator to the Subordinate Judge, who, however, refused to file it and consequently no decree was drawn up in the terms thereof. The agreement was not executed in accordance with the terms of the D. A. R. Act, nor was it registered thereunder. In a suit brought by the plaintiff for recovery of the mortgage-debt by sale of the property or in the alternative for an order directing the defendant to execute a mortgage in terms of the said agreement and for a personal decree against the defendant for the amount due, held that as the agreement was not in itself a mortgage and as it was not registered or executed according to section 56, the Lower Courts were right in holding that the relation of mortgagor and mortgagee was not established between the parties and the Lower Courts had rightly refused the relief by way of sale. *Held also*,—(*Per Parsons, J.*)

(1) See *M. Madu v. Bayaji Eddu*, (1893) 19 Bom., 209 (Sargent, C. J. and Cardy, J.). The release was executed on 16th June 1885, and then the latter part of the proviso to s. 56 did not exist, it being added by the Amending Act of 1886.

that the agreement was not in itself a mortgage but simply evidenced an intention of the parties to create one and as such was not inadmissible under s. 56 of the D. A. R. Act, that even if it were intended by the agreement itself to create a mortgage, though the document was inadmissible to prove the interest intended to be created, it was admissible to show the contract entered into for the mortgage, and as such was valid and capable of being specifically enforced. Held (*Per Ranade, J.*) that under this section and s. 70 of D. A. R. Act, the agreement was not admissible in evidence and it was doubtful if the agreement could even be regarded as an instrument in writing. But the oral agreement, which was sought to be given effect to by the agreement, could be proved *aliunde*. Such oral agreement so proved would not come within the prohibition of this section and s. 70, and could be directed to be specifically enforced.¹

A balance of account—signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and can not, therefore, be admitted in evidence, unless written by or under the superintendence of, and attested by, a Village-registrar as required by this section.² It may be observed that a difficulty will arise if such entries be held registrable under this section, for the entries in account-books, when attested under sections 56 and 57 will become bonds according to section 3, cl. 4 (b) of Stamp Act (I of 1899); and will not be admissible in evidence, if not written upon a stamp-paper. It would thus virtually prohibit such entries being made at all.³

A will—needs no registration under this section. Wills can, however, be registered like other documents. Hence the necessity for specially referring to them in section 61 as substituted in 1895.⁴

(1) *Mahadeo Vinayak Vaidya v. Mahadu* (1897) 22 Bom., 788 (Parsons and Ranade, JJ.).

(2) *Kanjee Ladha v. Dhonda*, (1882) 6 Bom., 729 (Melvill and Kembell, JJ.).

(3) See the remarks of the Sub Judge referring this case to H. C. at p. 730, of 6 Bom., 729 cited above.

(4) *Sali Kom Appa v. Nana*, 1896 P. J. 707 (Farran, C.J. and Hoeking, J.).

Sale-deed registered under Registration Act :—The plaintiff purchased a house from the defendant, who was an agriculturist, under a deed of sale dated 23rd June 1886. The deed was registered under the Registration Act (III of 1877). On the 1st December 1886, the plaintiff sued to recover possession of the house. The defendant pleaded that the sale-deed was invalid for want of consideration. Both the Lower Courts rejected the claim on the ground that the sale-deed, not having been executed according to the provisions of this section, was inadmissible and inoperative. In second appeal, it was contended for the plaintiff that, as the Amending Act (XXIII of 1886) came into force after the institution of the suit, but before the suit came on for hearing, the plaintiff was entitled to the benefit of the proviso added to this section by the Amending Act, whereby it was provided that section 56 was not to apply to instruments which were duly registered under the Indian Registration Act. *Held* that the proviso to this section did not apply, as it was not retrospective in operation, as it involves not merely a change of procedure, but also a change of existing rights. *Held* also, that the mere admission in the defendant's written statement of the execution of the sale-deed did not dispense with the necessity of establishing affirmatively the validity of the deed which was expressly impugned by the defendant.¹

Proof aliunde :—Defendants will not be precluded by ss. 56 and 64 from proving the payment by any one of the ordinary legal modes of proof. These sections were not meant to protect land-lords; and so payment may be proved otherwise than by a written receipt, though such be given.²

[^a]57. Such instruments to be written by, or under the superintendence of, a Village-registrar and executed in his presence.—When any

(1) *Javanmal Jitmal v. Muktabai*, (1870) 14 Bom., 516 (Scott and Frisling, JJ.).

(2) *Bala v. Shiva*, 1897 P. J. 453 (Farrao, C. J. and Candy, J.)—*Keda i v. Gajsi Koni Narayana*, (1871) 13 B.M., 600, at p. 633. See I.L. (e) to s. 91 of the Evidence Act.

[^a] This section was substituted for the original s. 57 by Act XXIII of 1881, s. 13.

persons intend to execute any instrument to which section 56 applies, all such persons shall appear before the Village-registrar appointed for the area in which the agriculturist, or, when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the Local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and, after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

Attestation of such instruments.—Every instrument so written and executed shall at the time of execution be attested by the Village-registrar, and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

For the purposes of this section every executant of any such instrument shall appear in person before the Village-registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependant, whom he has duly furnished with a power-of-attorney, [b] executed and authenticated in such manner as the Local Government may, from time to time, by rule prescribe, [b] authorising him to appear and act on his behalf.

Old Law.

S. 57 of Act XVII of 1879 was:—

When any persons, one of whom is an agriculturist residing in any such local area, desire to execute any such instrument, they shall present themselves

(b-b) These words were inserted by Act XXII of 1882, s. 16.

before the Village-Registrar appointed by the Local Government for the area in which such agriculturist, or, when there are several such agriculturists, any one of such agriculturists, resides, and such registrar, after satisfying himself in such manner as he deems fit as to the identity of the parties and receiving from them the fee (if any) prescribed by the Local Government in this behalf and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence, and after reading the same aloud or causing it to be so read in the hearing of the parties, shall require them to execute it in his presence.

Every instrument so written and executed shall at the time of execution be attested by the Village-Registrar and also, if any of the parties thereto is unable to read such instrument, by two respectable witnesses.

Commentary.

“Any instrument to which s. 56 applies”:—The provisions of this section and s. 59 also apply to instruments falling under s. 17 of I. R. Act and s. 63 A of this Act.¹

“Every executant shall appear in person”:—The Indian Registration Act does not peremptorily require the personal attendance of the executant. It sanctions the presentation through an authorized agent.²

58. Registration of instruments by Village-registrars:—Every Village-registrar shall keep a register of instruments executed before him in such form as shall, from time to time, be prescribed by the Inspector-General of Registration.

As soon as all the [a] intending executants have executed any instrument [a] before a Village-registrar, he shall make a copy of it or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same. [b]

Previous to delivery, the original instrument [c] shall be endorsed under the Village-registrar's

(1) See s. 63 A.

(2) See ss. 32 and 36 of I. R. Act (III of 1877).

[a—b] These words were substituted for the original words by Act XXIII of 1-81, s. 14.

[b, c] Words repealed by Act XXIII of 1886, s. 10 (1) and (2), are omitted.

signature, with the date of registration, the name and residence of the Village-registrar, and the volume and page of the register in which the instrument has been registered.

[^a]A certified copy of any entry in the register shall be granted by the Village-registrar, free of charge, on the application of any party to the instrument to which the entry relates, or of his agent or representative, and the copy shall be admissible as evidence of the contents of the instrument.

Old Law.

The original words for which a substitution was made by Act XXIII of 1881 s. 14 were :—

“Parties to any instrument have executed it.”

The words repealed by Act XXIII of 1886, s. 10, (1) were :—

“And a certified copy thereof to the other party, or to each of the other parties if there be more than one.”

And the words repealed by cl. (2) of s. 10 of Act XXIII of 1886 were :—“*and each such copy.*”

59. Consideration to be fully stated in every instrument executed before a Village-registrar:—
In every instrument written by, or under the superintendence of, the Village-registrar, the amount and nature of the consideration, if any, shall be fully stated.

The Village-registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

Previous instruments to be produced:—
If the instrument modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the Village-

[^a] This para was added by Act XXIII of 1886, s. 10 (3).

registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village-registrar under his hand for identification.

[^a]Production of copy of previous instrument when to be permitted.—Provided that if it is alleged that any such previous instrument is on the record or otherwise in the custody of a Court, or is lost, or has been destroyed, the Village-registrar, after ascertaining that such previous instrument was duly registered, may permit a certified copy thereof to be produced in lieu of the original; and in every such case the following procedure shall be observed, that is to say:

- (a) the contents of the certified copy shall be fully described in the modifying or superseding instrument, and the said copy shall be marked by the Village-registrar under his hand for identification, and shall then be delivered to the person who produced it;
- (b) if the previous instrument is lost, or has been destroyed, and the registered entry thereof is in his custody, the Village-registrar shall endorse on such entry a note under his hand as to the modification or supersession of the said instrument;
- (c) if the previous instrument is in the custody of a Court, or if it is lost, or has been destroyed, and the registered entry thereof is in the custody of another officer, the Village-registrar shall forward a certified copy of the entry in his register relating to the modifying or superseding instrument to such Court or officer, with a report explaining

[^a] This proviso was added by Bom. Act I of 1902, s. 3.

the circumstances, and such Court or officer shall on receipt thereof endorse on such previous instrument or registered entry a note as to the modification or supersession of the said instrument.

60. Registration under this Act to be deemed equivalent to registration under Indian Registration Act, 1877.—Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village-registrar but has been otherwise executed shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

N. B.—This section applies to the whole of British India. (See s. 1).

[a]61. Superintendence of Village-registrars and custody and destruction of their records.—

(1) The Local Government may appoint one or more officers to exercise by themselves or their subordinates a general superintendence over all Village-registrars, and may either make rules, or empower such officer or officers to make rules, from time to time consistent with this Act for regulating the proceedings of the Village-registrars and for providing for the custody of their records.

(2) The Local Government may, by order to be published in the Government Gazettee, declare that any documents other than wills remaining unclaimed in any registration office in any district or part of a district to which this Act applies, for a period exceeding two years, may be destroyed.

[a] This section was substituted for the original s. 61 by Act VI of 1893, s. 13.

Old Law.

The original section 61 was :—

Village-registrars to be subordinate to the Inspector-General of Registration:—The Inspector-General of Registration shall exercise, by himself and his subordinates, a general superintendence over all Village-registrars, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act for regulating their proceedings, and for providing for the custody of their records.

Note :—For rules under this section, see Part II of this Book.¹

62. Exemption of instruments to which Government or any officer of Government is a party:—Nothing in this Act shall be deemed to require any instrument, to which the Government or any officer of Government in his official capacity is a party, to be executed before a Village-registrar.

Note :—This section extends to the whole of British Indian (see s. 1.)

63. Power of Local Government to make rules:—The Local Government may, from time to time, make rules regulating the appointment, suspension, dismissal and remuneration of Village-registrars, and prescribing the fees to be levied by them.

Note :—For rules under this section, see Part II of this book.²

(1) See also B. G. G., part I,—for 1896, p. 937,—for 1898, p. 1178,—for 1899, p. 979,—for 1902, p. 214,—for 1903, pp. 29, 155, 1592.

(2) See also B. G. G. part I,—for 1896, pp. 971, 1178,—for 1902, p. 251,—for 1903, pp. 1254, 1340.

CHAPTER VIIIA.*

*Registration of Instruments referred to in section 17 of
the Indian Registration Act, 1877.*

63A. Mode of execution by agriculturists of instruments required to be registered under Act III of 1877.—(1) When an agriculturist intends to execute any instrument required by section 17 of the Indian Registration Act, 1877, to be registered under that Act, he shall appear before the Sub-registrar within whose sub-district the whole or some portion of the property to which the instrument is to relate is situate, and the Sub-registrar shall write the instrument, or cause it to be written, and require it to be executed, and attest it and, if the executant is unable to read the instrument, cause it to be further attested, and otherwise act in accordance with the procedure prescribed for a Village-registrar by sections 57 and 59 of this Act, and shall then register the instrument in accordance with the provisions of the Indian Registration Act, 1877.

(2) An instrument to which sub-section (1) applies shall not be effectual for any purpose referred to in section 49 of the Act last-mentioned unless it has been written, executed and attested in the manner provided in that sub-section.

Note:—See note to s. 56, headed : “ss. 56 and 63A compared.”

* Chapter VIIIA was inserted by Act XXIII of 1886, s. 11. For Objects and Reasons, vide Bill No. 18 of 1886, para 7 ; and the discussion on the report of the Select Committee, p. 352 of the Proceedings in Governor-General's Legislative Council for 1886.

CHAPTER IX

Of Receipts and Statements of Account.

The object of Chapter IX—is to provide some safeguard against the Sawkar committing frauds, by requiring them to give receipts to agriculturists for all payments made by them, to render accounts, and to furnish a pass-book in which the agriculturist's account will be periodically written up.

64. Agriculturists entitled to written receipts:—The person to whom any agriculturist makes any payment of money in liquidation of a debt shall, at the time of such payment, tender to such agriculturist, whether he demand the same or not, a written receipt for the amount of such payment.

If such payment is made under any instrument executed before a Village-registrar, the receipt shall, if the agriculturist so require, be endorsed on the copy of the instrument furnished to him under section 58.

Commentary.

S. 64 of this Act and s. 30 of the Stamp Act:—The receipt under s. 64 of this Act is to be given for the payment of money in liquidation of a debt whether the same is *demand*ed or not by the agriculturist paying the money. While under s. 30 of the Stamp Act, the receipt is to be given when demanded. Moreover, unlike s. 30 of the Stamp Act, s. 64 of this Act contains no limitation as to the amount for which the receipt is given.

S. 64 does not make any provision for the registration of a receipt, similar to that contained in clause (c), s. 17 of the Indian Registration Act.

Sections 56 and 64 of this Act will not preclude an agriculturist defendant, by any one of the ordinary legal modes of proof.¹

(1) *Kedari v. Gajai*, 18 Bom., 690 : see *Bala v. Shiva P. J.* 1897 p. 450, and ill (e) to s. 91 of the Evidence Act.

65. Agriculturists entitled to have annual statements of account :—Any agriculturist by whom any money is due under any instrument shall, on such date in each year as the Local Government, having regard to local custom, may from time to time, by notification in the official Gazette, fix, be entitled to receive, on demand, from the person claiming under such instrument, a statement up to that date of his account under such instrument.

*Note :—*The day of the Devali festival is fixed as the date on which agriculturists shall be entitled to receive or demand, from any person claiming money from them under an instrument, a statement of the account up to the said date.¹

66. Agriculturists entitled to have account made up from time to time in a pass-book :—Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book; and to require, from time to time, that his account up to date be written therein and authenticated by the signature or mark of the said trader or money-lender.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent, for the purpose of section 64, to the grant of a receipt for the amount so entered.

No person whose account has been written in a pass-book as required by this section shall be entitled also to demand an account under section 65.

(1) Notification No. 7058, B. G. G. for 1879, pt. I, p. 934.

67. Penalty for contravention of sections 64 to 66,—Any person who, in contravention of section 64, 65 or 66, refuses or neglects to tender a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees.

Note :—Compare also s. 65 of the Indian Stamp Act.

CHAPTER X.

Legal Practitioners.

[a] 68. Pleaders, etc. excluded in certain cases:—No pleader, vakil or mukhtar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-munsif: [b]

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-munsif, to employ any relative, servant or dependant who is not, and has not previously been, a pleader, vakil or mukhtar, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

When a relative, servant or dependant appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act.

Old Law.

Section 68 of Act XVII of 1879 was:—

No pleader, vakil or mukhtar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-munsif, or to any case cognizable by a Subordinate Judge under this Act, the subject-matter whereof does not exceed in amount or value one hundred rupees:

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator, Village-munsif

[a] This section was substituted for the original s. 68 by Act XXIII of 1881, s. 15.

[b] Words repealed by Act XXII of 1882, s. 17, are omitted.

or Subordinate Judge, to employ any relative, servant or dependant who is not and has not previously been a pleader, vakil or mukhtar, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of such party.

Provided also that a Subordinate Judge may permit a pleader vakil, or mukhtar, or an advocate or attorney of a High Court, to appear before him on behalf of any party to any case of the description aforesaid in which, for reasons to be recorded by him in writing, he deems it desirable that the party should have such assistance.

When a relative, servant, or dependant, appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act.

The words omitted by Act XXII of 1882, s. 17 are :—

“The subject-matter whereof does not exceed in amount or value one hundred rupees.”

69. Power of Court to appoint pleader for agriculturist:—When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party, any pleader, vakil or mukhtar, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or any other fit person [who is willing so to do] to appear on his behalf.

CHAPTER XI.

Miscellaneous.

70. Mortgages, etc., to be valid only when written:—No mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be valid unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien or charge.

Nothing in this section shall apply to any mortgage, lien or charge created by mere operation of law, or in favour of the Government or of any officer of the Government in his official capacity.

Commentary.

In order to provide some safeguard in the interest of agriculturist-debtors, this section is intended to invalidate all mortgages created by an agriculturist otherwise than by a written instrument.¹

See note to s. 56, heading:—"S. 56 and s. 70." See also 22 Bom. 788, cited under s. 56, p. 154 of this book.

[a] **71. Bar of application of section 258, Act XIV, 1882:**—The last clause of section 258 of the Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act, in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved.

(1) See the Statement of Objects and Reasons, Bill No. 12 of 1870. See also s. 56 and note thereunder.

[a] This section was inserted by Act VI of 1895, s. 16.

Old Law.

Section 71 of Act XVII of 1879 was :—

Every instrument executed before this Act comes into force and purporting to create any mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist, shall be deemed to be an instrument required by section 17 of the Indian Registration Act, 1877, to be registered; and any such instrument which before the passing of this Act was not so required to be registered may, notwithstanding anything contained in the said Indian Registration Act, 1877, be registered under that Act within one year from the date on which this Act comes into force.

Every Village-Registrar appointed under this Act shall be deemed to be a Sub-Registrar for the purpose of so registering such instruments; and the local area for which he is appointed shall be deemed for such purpose to be his sub-district.

Nothing in this section applies to an instrument purporting to create a mortgage, lien or charge in favour of the Government or of any officer of the Government in his official capacity.

This section was repealed by Act XXIII of 1881. As indicated in the foot-note to the section the present section is an insertion made by Act VI of 1895, s. 16.

[A case under old s. 71 :—The period occupied in obtaining registration under s. 71 cannot be deducted in computing limitation. The Village-Registrar has power to enforce the attendance of an executant under part VII of Act III of 1877.]

[a] 71A. Rate of interest allowable on taking an account :—In taking an account under section 13 or in any suit under this Act where interest is chargeable such interest shall be awarded at the following rates:—

- (a) the rate, if any, agreed upon between the parties or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable; or

(1) *Wamanrao v. Sambhu*, 1882 P. J., 261 (Sergeant, C.J. & Melvill, J.).

[a] This section was inserted by Act VI of 1895, s. 17.

- (b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or, when any agreement between the parties or the persons (if any) through whom they claim, to set off profits against interest and assessment and similar charges without an account, has been set aside by the Court, such rate as the Court may deem reasonable.

Old Law.

For old law see the next note.

Commentary.

Scope of the section—It will be seen that this section was added by Act VI of 1895, which Act repealed s. 14 as it stood in Chapter III of this Act. It is apparent that this section merely re-enacts the law embodied in the repealed section 14. The object aimed at by the Legislature is to make the provisions applicable not only to s. 13 of this Act, but to the whole of this Act.

“Where interest is chargeable”:—“So long as the old s. 14 nestled under the shadow of s. 13, it could not have been understood as a direction that interest must always be allowed. There are cases where the parties enter into no agreement as to interest, and where custom and Interest Act do not contemplate the payment of interest. All we want to do is to regulate the rate of interest *when payable*.”¹

Interest can be allowed only in the following cases²:—(i) Where there is an express promise to pay interest, (ii) where from the course of dealings between the parties it may be inferred that such was the

(1) See the remarks of Hon'ble Mr. Leo Warner.—Proceedings in the supreme Legislative Council for 1895, p. 173.

(2) For this note we are indebted to the article on the law of interest appearing in 8 Bom. L. R., Nos. 5 and 7. See also *Chaku Modan v. Dullabh Dwarke*, 9 B. H. C. R., 7. *Haji Mahomad v. E. Spiner*, 24 Bom., 510. *Ennoda Soonduri Dasee v. Oodhubnath Roy*, 11 W. R. 125. *Miller v. Barlow*, 14 M. I. A., 209.

intention, (iii) where there is a contract for the payment of money on a certain day, as on bills of exchange, promissory notes, &c., (iv) where there is unnecessary and vexatious delay caused by the misconduct of the person bound to pay, (v) where the person liable to pay obtained money by fraud, (vi) when by the wrongful act of the defendant, plaintiff is deprived of money which was actually making interest, (vii) where it is proved that the money has been used and interest has been actually made by the debtor and (viii) lastly where there is a Legislative enactment allowing interest.¹

The contract to pay interest may be express or implied. It may be implied from usage or from the course of dealing between the parties or other circumstances. "There needs not either the antiquity, the uniformity or the notoriety of custom, which in respect of all these becomes a local law. The usage may still be in course of growth; it may require evidence for its support in each case; but in the result it is enough if it appears to be so well known and acquiesced in that it may reasonably be supposed to have been an ingredient tacitly imported by the parties into the contract."²

Interest is chargeable on the award of costs or mesne profits.³ But in a suit under Chapter XXXIX of the Civil Procedure Code, the plaintiff is not entitled to recover any interest

(1) The interest Act XXXII of 1839 enacts that upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment, provided that interest shall be payable in all cases in which it is now payable by law.

See also ss. 209, 210, 211 and 222 of the Civil Procedure Code, sections 85 to 88 of the T. P. Act, ss. 79 & 80 of the Negotiable Instruments Act XXVI of 1881, and s. 73 illus. (n) and s. 74 illus. (d) of the Contract Act.

(2) *Jugromobun Ghouse v. Manickchand*, 7 M. I. A., 263.

(3) See sections 211 and 222 of C. P. Code. But see 9 B. H. C. R., 7 cited *ante* and *Pillai v. Pillai*, 2 I. A. 219.

unless such interest is specified in the promissory note itself, or to give evidence regarding any agreement to pay interest.¹

Interest after due date :—There is no rule of law that, upon a contract for the payment of money on a day certain, with interest at a fixed rate down to that day, a further contract for the continuance of the same rate of interest is to be implied.² Although in cases of this class interest for the delay of payment *post diem* ought to be given, it is on the principle, not of implied contract but of damages for a breach of contract. The rate of interest which the parties have agreed to maintain during the term of their contract may well be adopted, in an ordinary case, as a proper measure of damages for subsequent delay.³ But where the rate is excessive, or the creditor has delayed in bringing the suit, the Court would reduce the stipulated rate of interest.⁴

Interest after suit :—The section gives to a Court wider scope for the exercise of discretion in the matter of the fixing of the rate of interest than that given by s. 209 of the Civil Procedure Code. Wherever s. 209 applies, the discretionary power given to Courts can only be exercised so as to adjust or fix the rate of interest from the date of the suit. The rate agreed on must be awarded upto the date of the suit, unless the rate is exorbitant, or there is fraud or extortion on the part of the creditor⁵ or weakness or utter ignorance on the part of the debtor.⁶

The discretion given to Courts by s. 209 above is taken away from them by Transfer of Property Act (ss. 86-88 and 93) and in a

(1) *Bhupatiram v. Sourendra Mohan*, 30 Cal., 446. See ss. 79 and 80 of Act XXVI of 1881 (Negotiable Instruments Act).

(2) See *Deen Daval Lall v. Het Narain Singh*, 2 Cal., 413 *Nivas Ram v. Udit Narain*, 13 All., 330.

(3) *Cook v. Fowler*, L. R. 7 H. L. 27. (1874). See also *Moti Singh v. Ramo Hari Singh*, 24 Cal., 699 (F. B.)

(4) *Nauchand Hansraj v. Bapu Saheb*, 3 Bom., 131. (Melvill and Kembal, JJ.)

(5) *Koondun Lall v. Ameer Hassunkhan*, 11 M. I. A. 120; *Kamini Soondari v. Kali Prosunno*, 12 Cal., 225; *Modhosing v. Kashiram*, 9 All., 228.

(6) *Lalli v. Ram Prasad*, 9 All., 74.

suit by a mortgagee to recover the money due on his mortgage, the plaintiff is entitled to interest at the rate specified in the mortgage-deed *upto the date of decree*, and a Civil Court has no discretion to refuse to award such interest,¹ provided, of course, the rate be such that no valid legal objection can be taken to it.

Interest—how far a matter of discretion?—Under this Act where interest is chargeable in accordance with the principles discussed above the Court is bound to award it. This section, however, gives the Court discretion *to regulate the rate of interest* from the beginning of a transaction. This discretion, unfettered, as it is, by any of the provisions of the T. P. Act or C. P. Code, is sound and reasonable and capable of correction by a Court of appeal.³

“Such rate as the Court may deem reasonable”:—What the Court may deem reasonable will depend upon the circumstances of each particular case. The mercantile rate of interest in Bombay is generally 9 per cent. per annum on all book debts.⁴ In one case⁵ the Lower Court had allowed the rate of 9½ per cent, in another case⁶ the rate allowed by the Court below was 12 per cent. In both the cases the stipulated rate was higher, but the High Court did not interfere, and allowed the interest as awarded. The rate of interest which the Court generally allows is from 6 to 12 per cent. per annum. It is, however, important to note that as high interest means bad security, so bad security, means high interest, and the money lender's security is under this Act more than ever weak, seeing that he cannot touch his debtor's person, nor his house, nor his clothing, nor his cattle, nor (unless the debt is specially secured) his land.

(1) *Surya Narain v. Jogendra Narain*, 20 Cal., 360 *Chaturbhai v. Harbbanji*, 20 Bom., 744. See *Carvalho v. Nurbibi*, 3 Bom., 202. *Dhaudbhai v. Dhaudbhai*, 14 Bom., 113. *Mangniram v. Dhowtal Roy* 12 Cal., 569.

(2) *Lalla Bunscedur v. Koonwur Bindesoree Dutt Singh*, 10 M. I. A. 154.

(3) *Juggomohun Ghose v. Manickchund*, 7 M. I. A., 263. Cf. also s. 23 of Sp. Re. Act.

(4) *Ramlal v. Dulab Dass*, Perry's O. C., 220.

(5) *Ramchandra Tukaram*, 1885 P. J. 142.

(6) *Gopal v. Appa*, 1882 P. J. 246; in this case the mortgagee had raised no objections to the rate awarded.

Stipulation for high interest is not always a penalty :— When the interest charged in a mortgage bond is very high and the debtor is of full capacity, the general rule is that the Court will not grant relief without proof of unfair dealing or undue pressure or influence on the part of the creditor, or that the creditor has taken unfair advantage of the debtor's weakness and necessities, or that the debtor was overreached, tricked or deceived, or that he was ignorant of the unfair nature of the transaction. The case of a female debtor in fiduciary relation to the creditor and of an expectant heir are exceptions to the general rule. The mere fact that the debtor was in urgent need of money is not sufficient in itself to raise the presumption that the creditor took unfair advantage of his necessity.¹

Simple interest at a high rate is not in itself a penalty within the meaning of s. 74 of the Contract Act.² But a stipulation to pay higher rate of interest from the date of bond in case of default is always considered as a penalty.³ However, a stipulation for enhanced interest from the date of default may not necessarily be a stipulation by way of penalty. Whether such a stipulation is penal or not, is question of fact and not of law.⁴

As to the cessation of further interest by deposit or tender, see s. 18 of this Act, s. 378 of the C. P. Code and ss. 83 and 84 of the T. P. Act.

72. [a] Limitation :—In any suit [b] of the description mentioned in section 3, clause (w), [b] for

(1) *Uneshchandra Khasnavis v. Golap Lal Mustafi*, 31 Cal., 233.

(2) *Prayagkapri v. Shyam Lal*, 31 Cal., 131; in this case (on a mortgage) the rate of interest allowed till the day fixed in the decree for payment was the contract rate of 75 per cent. per annum. In *Satischunder Giri v. Hemchunder Mookhopadhyaya*, 29 Cal., 823 the interest allowed on an unsecured debt of Rs. 175 was at the contract rate of one rupee *per diem*.

(3) *Trimbak Tukaram v. Bhagchand*, 27 Bom., 21; s. c. 4 Bom. L. R., 713. See also 25 All., 169.

(4) *Abdul Gani v. Nanallal*, 30 Cal., 15. See explanation and illustration (d) to s. 74 of the Indian Contract Act.

(a) This section was substituted for the original s. 72 by Act XXIII of 1881, s. 17.

(b-b) This reference was substituted for the original reference by Act XXIII of 1886, s. 12 (1).

the recovery of money from a person [a] who at the time when the cause of action arose was an agriculturist [b] in any of the districts of Poona, Satara, Sholapur and Ahmednagar, [b] the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say) :—

(a) when such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

(b) in any other case,—six years:

[c] Provided that nothing in this section shall—

(i) apply to a suit for the recovery of money from a person who is a surety merely of the principal debtor if the principal debtor was not, at the time when the cause of action arose, an agriculturist [d] in any of the districts aforesaid, [d] or

(ii) revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force.

Old Law.

S. 72 of Act XVII of 1879 was :—

“ In any suit against an agriculturist under this Act for the recovery of money, the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say):—

(a) Words repealed by Act XXIII of 1886, s. 12 (2), are omitted.

(b) These words were added by Act VI of 1895, s. 18.

(c) This proviso was substituted for the original proviso by Act XXIII of 1886, s. 12 (3).

(d-d) These words were added by Act VI of 1895, s. 18.

(a) When such suit is based on a written instrument registered under this Act, or any law in force at the date of the execution of such instrument, twelve years;

(b) in any other case,—six years :

Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force."

For this section, was substituted the following section by Act XXIII of 1881.

Act XXIII of 1881, s. 72.

In any suit *under this Act* for the recovery of money from a person *not being merely a surety for the principal debtor*, who at the time when the cause of action arose was an agriculturist, the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877, (that is to say):—

(a) When such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of this instrument,—twelve years;

(b) in any other case,—six years.

Proviso :—as in the old section of 1879.

For the words "*under this Act*" above, were substituted the following :—"of the description mentioned in s. 3, clause (w), by Act XXIII of 1886, s. 12 (clause 1).

The words from the above section :—"not being merely a surety for the principal debtor" were repealed by Act XXIII of 1886, s. 12 (clause 2).

S. 19 of Act XXII of 1882 :—

"Notwithstanding anything contained in the foregoing sections of this Act, the period of limitation for any suit instituted within 2 years from the day in which this Act comes into force, and to which, if this Act had not been passed, section 72 of the D. A. Act 1879, would have applied, shall be the period prescribed by that section."

Commentary.

Object of s. 72:—Section 72 has been introduced into the Bill, as there appears to be a pretty general consensus of opinion to the effect that the difficulties of the raiyat are much aggravated by the

present law of limitation which compels the money-lender at very short intervals to sue him or take a fresh bond, either of which steps commonly entails a considerable addition to the debt.¹

Scope of s. 72 :—The section applies under the following conditions :—

- (a) The suit must be of the description mentioned in s. 3 clause (w); and it must be against a person who at the time when the cause of action arose was an agriculturist in any of the four districts specified in the section.

If the suit is brought against a surety, the principal debtor must, when the cause of action arose, be an agriculturist in any of the four specified districts.

- (b) As stated in the proviso (i) to the section, the right to sue must not have been barred.
- (c) In order to get twelve years limitation, the suit must be founded on a registered instrument.

“Of the description mentioned in s. 3, cl. (w)” :—This reference has been substituted for the original reference—suits under this Act—in order that it may include all suits on bonds, *Dattas*, written acknowledgments, and the like, and exclude suits for rent, or damages, etc., to which there is no necessity of applying a special law of limitation.”²

“In any of the districts” :—When this section was amended by Act VI of 1895 the Select Committee observed “It is not expedient to extend the special limitation-period in force in four districts, to any other district or part of a district to which the Act may be extended and in which the ordinary limitation law will run.”

S. 72, cl. (a) :—“A written statement” The plaintiff brought this suit on a writing which ran as follows :—“Receipt taken by Vasudeo from Ramkrishna, an agriculturist: I have borrowed Rs. 1045 from you from time to time for my private expenses; I have passed you no bond for this money. Today I have taken

(1) See Statement of Objects and Reasons, Bill No. 12 of 1879.

(2) See the Statement of Objects and Reasons, Bill No. 18 of 1886, para 8.

Rs. 390 more, making Rs. 1,435 in all. For that I will give you a bond 15 days hence. I have received the money." *Held*, on a construction of the above writing, that it was not a mere acknowledgment, but was an agreement founded on an old debt and a new loan covered by it and it contained a distinct undertaking that a debtor would pass a bond after 15 days; that the suit must, therefore, be regarded as based on a written instrument and that it would fall within the provisions of s. 72 (a). *Held* also that the document was duly registered under this Act, s. 58.¹

Suits against surety :—(a) under Act XVII of 1879. In a case, a question was referred to the High Court, whether under s. 72 of this Act an agriculturist surety was liable although the suit was barred as against the principal debtor, and it was *held*, that the surety being an agriculturist, was still liable, in as much as s. 72 applies to all agriculturists, whether principals or sureties, in the districts affected by the Act.²

(b) Under the Act as modified by Act XXIII of 1881 :— Where an agriculturist who was surety for the principal debtor, was made co-defendant in a suit on a money-bond, *held* that in his case the period of limitation was the ordinary period of three years, and not the period of six years allowed by s. 72.³

On the 2nd January 1882, the plaintiff sued the defendants, who were agriculturists, on a bond dated the 21st September, 1877, payable in four months, which had been executed by the second defendant as surety *for the first*. The suit was instituted under s. 3,

(1) *Vasudeo v. Ramkrishnarao*, (1900) 24 Bom., 394; s. c. 2 Bom. L. R., 123 (*Ranade and Crowe, JJ.*); *Shankar v. Mukta*, (1898) 22 Bom., 513, distinguished.

(2) *Hajarimal v. Krishnarao*, (1881) 5 Bom., 647 (*Westropp, C. J.* and *Birdwood, J.*) In this case it was suggested in the judgment that an exception in the case of a surety may be introduced; the section was accordingly amended in 1881 (Act XXIII of 1881).

(3) *Ganesh Raoji v. Govind Gopal*, (1885) 9 Bom., 461 (*Sargent, C. J.* and *Birdwood, J.*).

ol. (w); *held* for the reason stated in *Kushalbai v. Kabhai*¹ that the suit was barred as against the second defendant.²

S. 17 of Act XXIII of 1881 was retrospective. The object, the Legislature had in enacting s. 17 of Act XXIII of 1881, was to correct the mischief which had been unintentionally occasioned by the too general language of s. 72 of the Act of 1879. The scope of Relief Acts of 1879 and 1881, as well as the circumstances which led to the passing of s. 17 of the Act of 1881, forbid that the real intention of the Legislature was opposed to a retrospective operation of the section. The object of the D. A. R. Acts is to benefit agriculturists, and has been effected in a great degree in disregard of the vested rights of their creditors. It cannot, therefore, be presumed, but rather the contrary, that the Legislature, when it passed the Act of 1881 to remove the hardship which it had inadvertently imposed on agriculturist sureties by the Act of 1879, would do so with any regard to the possible inconvenience or injustice which might be caused to creditors by a sudden return to the old period of limitation.³

Operation of s. 72 as amended in 1881 and 1882 :—A as principal, and B and C as sureties, obtained a lease from D of certain land, dated 30th July 1880. A, B, and C were agriculturists within the meaning of this Act and the lease was registered under s. 56 of the Act. On 1st March 1884 D sued A, B, and C: ^a recover the rent under the lease. *Held* that, under s. 72 as amended by Acts XXIII of 1881 and XXII of 1882, the extended limitation *did not apply to the surety, even though the principal debtor was an agriculturist*. The words “not merely a surety for the principal-debtor” (which enact the exception to the extended limitation given

(1) *Sobhachand v. Bhagubai*, 1882, P. J. 145 (Melville and Nanabhay, JJ.), dissented from in *Agarchand v. Gandaya*, 1884 P. J. 50.

(2) 6 Bom. 26. The principle laid down in this case was that an Act of limitation, although it is a law of procedure and generally has a retrospective effect, is not to be so construed any more than any other Act, when such retrospective application would destroy vested rights or inflict such hardship or injustice as could not have been within the contemplation of the Legislature.

(3) *Agarchand v. Gandaya*, 1884 P. J. 50. *Sobhachand v. Bhagubai* 1882, P. J. 145, dissented from.

by that section) are not restricted to the case in which the principle debtor is a non-agriculturist. The lease, however, having been registered under s. 54, *held*, that it was under s. 60 to be deemed to have been registered under the provisions of the Indian Registration Act, and that, therefore, by article 116 of the Limitation Act, the period of limitation applicable to the surety was six years from the date of default by the principal debtor to pay rent.¹

In a suit arising out of a cause of action of the 17th October 1880 and 8th July 1881, *held* that the decision of the question of limitation with reference to s. 72 of Act XVII 1879, s. 17 of Act XXIII of 1881 and s. 19 of Act XXII of 1882, must depend upon whether defendant was an agriculturist as defined by Act XXIII of 1881, when the cause of action arose.²

73. Decision as to whether person is an agriculturist, final.—*Repealed by Act VI of 1895, s. 3.*

Old Law.

The repealed section 73 was :—

73. Decision as to whether person is an agriculturist, final :—The decision of any Court of first instance that any person is or is not an agriculturist shall, for the purposes of this Act, be final.

Repeal of section pendente lite :—Where an appeal against the decree of the Subordinate Judge was filed, s. 73 made the decision of the Subordinate Judge that the defendant was an agriculturist final. Pending the appeal, the section was repealed, *held* that on the hearing which took place after the repeal, the District Judge had power to come to the conclusion that the defendant was not an agriculturist and thus overrule the decision of the Subordinate Judge on the point. This course was in accordance with the general rule, that Statutes which effect changes in procedure are in

(1) *Kesu Shivram v. Vithu Kanaji*, (1884) 9 Bom., 320 (Sargent, C. J. and Kembal, J.).

(2) *Gangaram v. Nemchand*, 1889 P. J., 313. (Sargent, C. J., and Hart, J.).

* For cases under this section before its repeal see *Gyanmal v. Ramchandra* 1896, P. J., 342; *Malhar v. Chinto*, 1887 P. J. 38; *Madhavrao v. Raoji* 1885, P. J. 150; *Mahalingappa v. Nemchand*, 1887, P. J. 77. See also *Gangaram v. Punamchand*, 1896, P. J., 212 and *Raji v. Janardan*; 1885 P. J., 105.

their operation, unless the contrary appears on the face of the enactment, retroactive in the sense that the provisions of such Statutes are applicable to proceedings already commenced at the time of their enactment. In *Re Ratansi Kalianji*.¹ This rule has already been recognized by this Court in the case of earlier changes in the same Act. An instance will be found in *Shivram v. Kodiraj*.² And the same principle has been observed in the case of *Anand-chunder v. Nitai Bloomij*.³ The repeal of an Act of a section relating to procedure is not the repeal of an Act within the meaning of s. 6 of Act I of 1886.⁴

[^a] 73A. Certain agricultural produce exempted from attachment, etc :—When the Collector has taken any immoveable property of a judgment debtor or insolvent into his possession under section 22 or section 29, he may, by an order in writing, direct that any other such property not so taken shall be deemed to be reserved for the support of the judgment-debtor or insolvent and the members of his family dependent on him, and may rescind that order.

While any such order continues in force in respect of any immoveable property, agricultural produce grown on that property shall not be attached or sold in execution of a decree passed whether before or after this Act comes into force, and shall not vest in the receiver appointed in any insolvency proceedings.

74. Civil Procedure Code to apply in Subordinate Judges' Courts :—Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act.

(1) 2 Bom., 148

(2) 8 Bom., 347.

(3) 16 Cal., 429.

(4) *Gangaram v. Punamchand*, 1896 P. J. 212, (Farran, C. J. and Fulton, J.). Cf. *Gyanmal v. Ramchandra*, 1896 P. J. 342

(^a) This section was inserted by Act XXII of 1883, s. 18.

N.B.—For illustrations to this section ; see Chapter IV and the cases noted below.¹

75. Additional power to make rules :—The Local Government may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained.

For notification under this and the *following section*, see part II of this book.²

76. Rules to be published :—All rules made by the Local Government under this Act shall be published in the official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

- (1) Dulichand v. Dhondi, 5 Bom., 184 cited ante, s. 13 and 13.
 Badaricharya v. Ramchandra, 19 Bom., 113. Cited under Ch. VII.
 Ramsing v. Babu Kisansing, 19 Bom., 116, do.
 Visvanath v. Aba, 1886 P. J. 11, do.
 Ramlal v. Ramchandra, 1885 P. J. 250, do.
 Ramchandra v. Draupadi, 20 Bom., 281, do.
 Mohan v. Tukaram, 21 Bom., 63, cited under chapter III.
 Narayandas v. Kondi, 19 Bom., 202. Gangadhar v. Mahadu
 8 Bom., 20, cited in chapter VI.

(2) See also notification No. 7189B, B. G. G. for 1896, pt. I, p. 974 ; and No. 2730, B. G. G. for 1881, pt. I, p. 232.

PART II.
CONTAINING
The Notifications issued under or bearing on
THE
Dekkhan Agriculturists' Relief Act
XVII of 1879.

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"	Extension of the provisions of Ss. 2 and 20 of the Act to the Khandesh District.	3154 (14-5-02)	776	"
"	Extension of the provisions of Ss. 2 and 20 of the Act to all parts of the Presidency of Bombay (except Aden) in which those sections are not already in force.	278 (21-1-03)	89	"
"	Extension of the provisions of Chapters V & VI and Chapter VII (so far as it relates to the proceedings of the Village-Munsifs and Conciliators) of the Act to the District of Khandesh.	620 (3-2-03)	144	"

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S. 1	Extension of the provisions of Ss. 7, 11, 21, 23 and Chapters V, VI, VII, and s. 71A to all districts of the Bombay Presidency excluding those to which they are already extended and excluding Aden & the City of Bombay.	4144 (15-8-05)	1038	8 of pt. I.
S. 6	Description of suits to be heard by the Subordinate Judge of Poona.	7057 (22-11-79)	934	56
"	Description of suits to be heard by the Subordinate Judges of Hyderabad, Shikarpur, Hala and Larkhana.	1664 (13-3-01)	490	"
Ss. 29 & 75.	Rules for the management by the Collector of immoveable property of which he takes possession under s. 22 or 29 of the Act &c.	892 (4-2-85)	176	1—4
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"	Amending and adding a new rule 21A to the above rules.	3634 (3-7-03)	859	9
"	Substituting a new para for the second para of rule 7 of the above rules.	4431 (14-8-03)	1009	5
S. 38	Appointments of Conciliators in the Districts of Poona, Satara, Sholapur, Ahmednagar and Khandesh in supersession of all previous notifications.	3632 (21-7-05)	939-948	...
S. 40	Vesting certain Conciliators in the 5 Districts aforesaid with powers described in s. 40	3332 (5-7-05)	864	...
S. 49	Table of charges to be made by Conciliators; and rules as to the record and accounts to be kept by them.	7536(17-12-89)	999	12
"	Rule providing for time within which certificates under s. 46 shall be demanded.	8125 (7-12-80)	1072	"

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S. 49	Rule regarding the service of the written notice under s. 44 of the Act.	5370 (29-8-82)	682	12
"	Charges to be levied by Conciliators from applicants for summonses issued under s. 40 of the Act.	7095 (8-10-84)	784	13
S. 55	List of Village-registration circles in the Districts of Ahmednagar, Poona, Satara and Sholapur.	6710 A (26-10-82)	871	...
		872 D (3-2-99)	149	...
"	Transfer of Villages from V. R. Circle of Pimpalgam Dhepa in the Sangamner Taluka to that of Sangamner*	5330 (13-7-04)	948	...
"	Division of V. R. Circle of Pangri in the Barsi Taluka of the Sholapur District and reconstitution of two circles of Pangri*	6975 (12-9-04)	1241	...
"	Including the Village of Nimboni in V. R. Circle of Ghirdi of the Sangola Taluka of the Sholapur district*	6035 (26-7-05)	928	...

* These notns. are issued in modification of Notns. Nos. 6710A, & 7398.

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S. 55	Amalgamation of certain Village-Registration Circles in the Poona & Ahmednagar Districts.	1671(13-3-86)	261	...
"	Modifying the Village-Registration Circle arrangements in the Ahmednagar & Poona Districts.	3555 (17-6-86)	534	...
"	Amalgamation of the Village—Registration Circles in Ahmednagar District.	3089 (25-5-86) 3774† (29-6-86) 4454 (3-8-87) 4060 (28-7-88)	471 573 699 651
"	Transfer of Villages from one Village-Registration Circle to another in the Ahmednagar District.	3691 (1-6-01) 4683 (11-8-86) 3072 (29-3-92) 7013 (11-9-95) 1630 (7-3-01) 4995 (17-7-01) 3691 (1-6-01)	1031 676 303 947 487 1225 1031
"	Abolishing a Village-Registration Circle in the Ahmednagar District.	7398 (11-10-93) 1630 (7-3-01) 4995 17-7-01)	951 487 1225
"	Amalgamation of Village-registration circles in the Poona District.	3016 (18-5-86) 2275 (18-4-87) 3223 (4-6-87) 8923 (25-11-89) 7668 (4-11-03) 1276 (18-2-90) 4442 (25-6-90)	439 340 479 1007 1392 141 575

† Expunged by notification No. 1630 (7-3-01)

Section of the Act.	Subject of Notification.	Number and Date of notification.	Published at the following page of pt. I, of B. G. G. for the year of the notification.	Page of part I of this Book.
S. 55	Transfer of the head quarters of the Village-Registration Circle of Ukadgaon to Belwandi Budruk in the Shrigonda Taluka of the Ahmadnagar District.	9695 (2-12-96) 903 (3-2-97)	1236 164
"	Transfer of the head quarters of the Village Registration Circle of Narayandoho in the Ahmednagar Taluka to Chichondi (Mahad patlachi) in the same Village—Registration Circle and Taluka in the Ahmednagar District.	5144 (10-8-98)	722	...
"	Transfer of the head quarter-station of the Village—Registration circle of Jalalpur-Rasin in the Karjat Taluka of the Ahmednagar District and altering its designation to Khed Rasin.	2561 (31-3-97)	603	...

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S. 55	Transfer of the head-quarters of the Village Registration Circle of Khatgaon-Takli in the Ahmednagar District to Hingangaon, and altering its designation to Hingangaon Circle.	5520 (23-7-97)	1365	...
"	Alteration in the name of Village-Registration Circle in the Poona District.	6140 (25-10-86)	949	...
"	Reconstitution of Village-Registration circle in the Taluka of Bhimthadi and in the Petha of Dhond, and abolishing the Village-Registration circles of Petas in the Bhimthadi Taluka of the Poona District.	6797 (23-8-92)	848	...
"	Transfer of Villages from one Village-Registration Circle to another in the Poona District.	1644 (6-3-85)	320	...
		1995 (17-3-85)	337	...
		5987 (22-8-90)	879	...
		7668 (4-11-03)	1392	...
		8986 (16-12-90)	1300	...
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S. 55	Modifying the local areas forming the Village-Registration circle in the Satara District.	3970 (9-6-85)	771	...		
		2178 (3-4-86)	359	...		
		4805 (18-8-86)	710	...		
		4196 (21-7-87)	651	...		
		5733 (18-10-88)	838	...		
		722 (29-1-89)	84	...		
		4881 (14-7-90)	691	...		
		1164 (11-2-91)	140	...		
		5438 (26-6-94)	660	...		
		8160 (3-10-94)	1002	...		
"	Amalgamation of Village-Registration circles in the Satara District.	2615 (1-4-95)	414	...		
		6898 (2-9-96)	896	...		
		9685 (2-12-96)	1234	...		
		1674 (2-3-97)	413	...		
		7964 (3-11-97)	1835	...		
		"	Transfer of Villages from one Village-registration Circle to another in the Satara District.	4891 (23-8-86)	722	...
				7043 (5-9-92)	908	...
				7311 (14-9-92)	923	...
				7447 (20-9-92)	958	...
				7438 (22-9-96)	975	...
"	Transfer of the head quarters of the Village-Registration Circles of Mandrulkola from Mandrulkola to Maldan in the Patan Taluka of the Satara District.	2402 (3-4-94)	276	...		

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S. 55	Amalgamation of Village-Registration Circles in the Sholapur District.	6137 (25-10-86)	931	...
		6598 (15-11-86)	989	...
		334 (18-1-87)	49	...
		630 (29-1-87)	74	...
	" Amalgamation of Village-Registration Circles in the Sholapur District—contd.	4447 (2-8-87)	699	...
		7183A (13-12-87)	979	...
		3664 (12-7-88)	601	...
		1044 (9-2-91)	134	...
	" Transfer of Villages from one Village Registration circle to another in the Sholapur district.	872 C (3-2-99)	148	...
		2684 (15-4-85)	509	...
6286 (5-9-85)		1117	...	
5826 (11-10-86)		912	...	
" Transfer of the head quarters of the Village Registration circle of Hatidi in the Sangola Taluka of the Sholapur District.	1954 (12-3-89)	204	...	
	5118 (21-7-90)	723	...	
	872 C (3-2-99)	148	...	
	7381 (1-10-89)	839	...	
S. 61	Rules for regulating the proceedings of Village-Registrars and for providing for the custody of their records	7189 (11-9-96)	957	16-48
"	Errata in the above rules.	9381 (24-11-96)	1178	18,19 24,37 47
"	A new rule for rule 40 of the above rules.	4457 A (27-6-99)	979	33
"	Amendment of Nos. 16, 19 and 40 of the above rules.	768 A (4-2-02)	214	20,21 33

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	Substituting a new form of index in appendix B to rule 5 of the above rules.	1128 (16-2-03)	155	34
	Addition to rule 17 of the above rules.	7683 (4-11-03)	1392	20
	Rules regulating the appointment &c. of the District Inspectors and Village-Registrars.	7189 A (11-9-96)	971	49-54
	Errata in the above rules.	9381 (24-11-96)	1178	49, 50 51, 53 54
	Alteration in No. 47 of the above rules.	912 (11-2-02)	251	51
	Alteration in the above.	6794 (29-9-03)	1254	51
	Errata in the above.	7317 (19-10-03)	1340	51
	Fixing a date for the agriculturists to receive or demand a statement of their account from their creditors &c.	7058 (22-11-79)	934	164 of pt. I
	Rules for carrying out the provisions of the Act.	7189 B (11-9-96)	974	55, 56
	Rule requiring Subordinate Judges to scrutinize documents received from Conciliators.	2730* (30-4-81)	232	...

* The rule in this notification is superseded by s. 44 of the Act.

Part II.—Notifications.

Rules for the Management of immoveable property by the Collector.

In exercise of the power conferred by section 29 and 75 of this Act the Governor-in-Council is pleased to make the following rules* for the management by the Collector of immoveable property of which he takes possession under sections 22 or 29 of this Act and generally for carrying out the provisions of this Act in respect of such property.

1. When a Court directs the Collector to take possession of any immoveable property of a judgment-debtor or insolvent, it shall transmit with its order copies of all documents, orders or proceedings which it may think necessary to make the Collector aware of essential facts concerning the position of the judgment-debtor or insolvent, and the nature and extent of the property to be managed by him.

It shall also at any time furnish the Collector with copies of any documents, orders or proceedings other than those transmitted which the Collector for the purpose aforesaid desires to see.

2. The aforesaid copies shall be prepared and sent to the Collector free of all costs to the parties, being made by the Court's establishment.

3. On receipt of the Court's order, the Collector may either himself proceed to execute it, or may refer it, for disposal, subject to his supervision and control, to any of his subordinates not lower in rank than a Mahalkari.

4. The Collector or other officer, to whom he so refers the Court's order, shall appoint a day for hearing any representations which the parties may desire to make, and shall cause a written notice to be served on each of them of the day so fixed.

* Notification No. 892, dated 4th February 1895, B. G. G. for 1895, part I, pp. 176, 177.

2 Rules for the Management by the Collector.

On the appointed day, or as soon thereafter as may be, the Collector or other officer aforesaid shall, after such inquiry as he deems fit, determine whether any portion of the property to which the Court's order relates, is required for the support of the judgment-debtor or of the insolvent, and the support of the members of his family dependent upon him.

The decision of any officer other than the Collector under this rule shall be subject to confirmation by the Collector.

5. Possession of the property, or of so much of it as is not, in the opinion of the Collector, required for the support of the persons aforesaid, shall then be taken by the Collector, or by the officer aforesaid on behalf of the Collector, and the fact of possession having been so taken shall be published by written notice to the parties, and by proclamation on or near the property in such manner as the Collector or other officer aforesaid deems suitable.

6. If the fact of the judgment-debtor or insolvent being entitled to possession be disputed, or if any objection be raised to the Collector's taking possession of the property or of any portion of it, the Collector shall refer the parties concerned to the Court, and pending such reference shall stay proceedings in respect of so much of the property as is in dispute.

7. If after possession of the property has been taken under rule 6, any order in writing is made by the Collector under section 73A of the Act, directing that any other immoveable property not so taken shall be deemed to be reserved for the support of the judgment-debtor or insolvent, and the members of his family dependent on him, such order shall be published in the same manner as the fact of possession having been taken.

8. The Collector or other officer aforesaid, may from time to time require by written notice the attendance of the parties in order to ascertain their wishes, or to obtain information which he may consider necessary to enable him to provide satisfactorily for the execution of the Court's order; and if any party fail to attend in pursuance of such notice, the Collector or other officer aforesaid may decide the matter in his absence, and he shall not be entitled to be heard afterwards with respect thereto.

9. If the property of which possession has been taken by or on behalf of the Collector is in the occupation of a tenant paying rent or a share of the produce to the judgment-debtor or insolvent, the Collector or other officer aforesaid shall issue a written notice to such tenant, requiring him to pay the rent or share to him for so long as his tenure subsists.

If there be no tenant in possession, or, on the expiration of the tenure, if the land is in the occupation of a tenant, the Collector or other officer aforesaid may let, for a term not exceeding the seven years to which his management extends, with or without payment of a premium, the whole or any part of the said property to the highest bidder; or may let on farm or manage by himself or another, the whole or any part of such property, or may adopt partly one of such modes and partly another or others of such modes as he may deem most convenient and profitable.

The person to whom the Collector or other officer aforesaid lets the property or through whom he manages it, may be the judgment-debtor or an insolvent, or any person who holds a decree against the judgment-debtor or insolvent or a third party as may appear most convenient and beneficial to the parties.

10. The Collector shall from time to time render to the Court an account of all monies which come to his hands or to the hands of the officer aforesaid, and of all charges incurred in respect of the property in his management, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property, or any part thereof, and the rent, if any, from time to time due to a superior holder in respect of such property or part.

11. Where the management is at an end and all monies which have come into the Collector's hands have been disposed of, he shall re-transmit the papers received by him under rule 1, together with the proceedings connected with the management of the property, to the Court by post or in such manner as may be most convenient.

12. Every notice issued by the Collector or other officer aforesaid under these rules, may be served in the manner prescribed

by section 191 of the Bombay Land Revenue Code, or if the person to be served is a party to the proceedings in the Court and has a pleader, by forwarding a copy thereof to the Court to be served upon the pleader.

Procedure before Village-Munsifs.

In exercise of the power conferred by section 37 of this Act the Governor-in-Council is pleased to prescribe the following rules for regulating the procedure of Village Munsifs* :—

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

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

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

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

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

* Notification No. 7635 of 1879, B. G. G. for 1879 pt. 1, pp. 1001, 1002. as amended by subsequent notifications : 5585 of 1880, 6585 A of 1898, 4431 and 3634 of 1903.

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

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

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

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

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

* Any Village-Munsif specially authorized in this behalf by the District or Special Judge may, in cases where other means fail,

* This para is substituted by Notification No. 4431, B. G. G. for 1903, pt.1, page 1009, for the para which was added by Notification No. 5585 (1880).

exercise the powers of a Civil Court for the purpose of enforcing the attendance of defendants and witnesses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Register of applications for execution of decrees in the Court of the Village-Munsif of _____ in the Taluka _____ of the District _____ during the year _____

	Serial number.
1	Date on which the application for execution was presented.
2	
3	Names of the parties and the number of the suit.
4	Name of the party or other person presenting the application for execution, caste, age, occupation and residence.
5	Name of the person or persons against whom execution is sought, caste, age, occupation and residence.
6	Date of the decree.
7	Amount awarded in the decree.
8	Payment made through Court or privately after decree.
9	Amount claimed on the present application for execution.
10	Date on which the warrant of attachment was sent to the Nazir or village-officers for execution.
11	Date fixed for the return of warrant.
12	Amount realized, if any.
13	Result of execution in short.
14	Remarks.

21. On application as aforesaid by the decree-holder the Village-Munsif may, after making such inquiry as he deems

† This rule was added by Notification No. 6545 A (1898), B. G. G. for 1898, pt 1, p. 894.

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

† The Village-Munsif may also, if he thinks fit,* *but subject to the provisions of clause (h) of the proviso to section 266 of the Code of Civil Procedure,** cause the decree to be executed by attachment* of the whole or part* of the salary of the judgment-debtor if he be in the receipt of a salary. In such case the attachment shall be made by a written order addressed to the officer or person who disburses the salary, requiring him to withhold every month such portion as the Village-Munsif may direct and to pay the same to the judgment-creditor. Such order may be issued by the Village-Munsif, whether the officer or person who disburses the salary is resident and the salary is payable within his local jurisdiction or not.

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

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

† This para was added by Notification No. 6585 of 1886, B. G. G. for 1886, pt. I, pp. 708, 709.

— The words in the *Italics* in para 2 of rule 21 and rule 21A have been inserted by Notification No. 3634 of 1903; B. G. G. for 1903, pt. I p. 870.

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

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

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

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

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

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

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

29. The Village-Munsif shall be entitled to employ the agency of the inferior Village-servants for carrying out his orders in any suit or execution-matter pending before him under the Act: and it

† This para was added by notification No. 5685 of 1880.

shall be the duty of the Revenue and Police Patels and Kulkarnis throughout the local area of his jurisdiction to render him all the assistance in their power in connection with the discharge of his duties under the Act.

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

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

Rules for the guidance of Conciliators.



The form of the Kabuliyat under s. 43.†

Register No.....190 .

Before the Conciliator of _____

Applicant.

Opponent.

Claim for Rs. _____ awarded claim Rs. _____

On.....190 , the applicant made on application that :—

(Here enter—(1) The contents of the application, (2) attendance of the parties, (3) the contentions of the parties and the amicable settlement to which the parties have arrived).

When the time allowed in the Kabuliyat for the payment of any sum or any instalment, or for the delivery of possession of any property expires before the filing of the Kabuliyat in Court, such time shall be deemed to extended to three months from the date of the filing of the Kabuliyat.

Date _____ 190 .

We agree to this Kabuliyat which has been read aloud in our presence and to which we put our signatures with full knowledge of our rights.

(Signature or marks (as the case may be) of the parties.

This Kabuliyat has been agreed to by the parties; and is signed by them in my presence.

Date _____ 190 .

Conciliator.

† This form is not notified in the Gazette; but we have taken it from the rules made by the Special Judge for the guidance of Conciliators.

Procedure.

Demand of certificate—When the right to claim a certificate under section 46 accrues, the prescribed fee shall be paid and the certificate demanded within ten days from the accrual of such right, otherwise the conciliator shall dismiss the application.¹

Service of notice—The delivery of the written notice referred to in section 44 of the Act shall be effected through the Subordinate Judge, to whom it should be sent for service by the Conciliator at the same time that he forwards the agreement. The Subordinate Judge immediately on receipt of the agreement and of the written notice, shall cause the latter to be duly served on the party named therein, and the date of such service shall be endorsed by the Subordinate Judge upon the agreement.²

Charges.

Charges to be made by Conciliators and the rules as to the record and accounts to be kept by them.³

A.—Table of charges.

- | | | |
|--|---|---|
| (1) For forwarding an agreement under section 44 to the Court. | } | One-half per cent. of the amount or value of the subject-matter of the agreement. |
| (2) For Ditto. Ditto. under section 45. | | |
| (3) For granting a certificate under section 46. | } | Four annas. |
- { One-half per cent. of the amount or value of the subject-matter of the agreement; provided that the charge shall be in no case less than four annas or more than Rs. 5.

The above charges shall not be payable in cash but in Court fee-labels, which shall be affixed to the documents in respect of which the charges are respectively payable.

If the percentage calculated according to item No. 1 or 2 of the foregoing table amounts to a sum which cannot be exactly represented by Court-fee-labels of procurable values, the charge shall be enhanced to the nearest amount which can be so represented.

(1) See notification No. 8125, B. G. G. for 1880, pt. I, p. 1072.

(2) See notification No. 5370, B. G. G. for 1882, pt. I, p. 682.

(3) See notification No. 7538, B. G. G. for 1879, pt. I, p. 999.

A charge at the following rates shall be levied by Conciliators from every applicant in consequence of whose application a summons is issued under section 40 (namely) :—

if only one person be summoned.....two annas;

if two or more persons be summoned... } two annas for the first person and one anna for each of the other persons.

The said charge shall be levied by means of Court-fee labels which shall be attached to the applications in respect of which the charges are respectively made and shall be cancelled by the Conciliators previous to the issue of summonses.

Records and Accounts

B—Every Conciliator appointed under this Act shall keep a General Register in the following form :--

1	2	3	4	5	6	7	8	9	10	11	12	13
Serial Number.	Date of application.	Name, caste, residence and occupation of applicant.	Name, caste, residence and occupation of the person against whom the application is made.	Concise statement of the case.	Date and place fixed for parties to appear.	Date of actual appearances.	Result of the endeavour for reconciliation.	Date of forwarding the agreement or reference to arbitration, to Civil Court.	To what Court forwarded.	Date of certificate, if any, under section 46 and to whom granted.	Remarks.	Signature of Conciliator.

† See notification No. 7095; B. U. G. for 1884, part I, p. 784.

Explanations.

(1) When an application is made to a Conciliator he should immediately fill in the first five columns, giving each application a serial number in the order of its presentation; the concise statement of the case required to be taken down in writing by section 40 of the Act should be written in the fifth column.

(2) If all the parties to a dispute apply jointly at the same time to a conciliator, their names should be entered in column 3 as joint applicants, and columns 4, 6 and 7 need not be filled up.

(3) In the 6th column the adjourned date or dates, if any, should also be shown below the date first fixed, and an entry should be made in the same column showing the mode adopted for securing the presence of the opposite party, whether by summons, message, or personal oral communication, (as the case may be).

(4) If the opposite party fails to appear on the date first fixed or within the time, if any, subsequently extended, this fact should be noted in column 7.

(5) In column 8 if an agreement finally disposing of the matter is arrived at, an abstract of such agreement should be given, or if a reference to arbitration is agreed to, the name of the arbitrator should be entered, or if the endeavour to bring about an amicable settlement fails, the fact should be recorded.

(6) The date of the certificate, if any, granted under section 46 should be particularly noted in column 11.

(7) If cross-applications in the same matter are made at different times, the fact should be noted by a cross-reference in the column of remarks. Any fact connected with the application or dispute which the Conciliator thinks it worth while or important to record may be noted in this column.

(8) The Conciliator should attach his signature in the last column, when the application is finally disposed of by him.

C—Every Conciliator shall also keep an account of all fees received by him in the following form.

Village registration rules.

Rules made by the Inspector-General of Registration, empowered by and with the previous sanction of the Governor of Bombay in Council, under the provisions of section 61 of the Deccan Agriculturists' Relief Act, 1879 to 1895, for regulating the proceedings of Village-Registrars and for providing for the custody of their records; in supersession of all previous rules on the same subject.

I.—Preliminary.

Definitions.

1. In these rules :

(a) "Registrar" means the Registrar of a District appointed under the Indian Registration Act, 1877 ;

(b) "Taluka or Petha Village Registrar" means a Village-Registrar having concurrent jurisdiction over the whole taluka or petha of which he is Taluka or Petha Village Registrar and who is also a Sub-Registrar under the Indian Registration Act, 1877.

(c) "Special Village Registrar" means a Village Registrar of a circle consisting of one or more villages.

N. B.—Taluka and Petha Village Registrars may be also Special Village Registrars of circle.

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

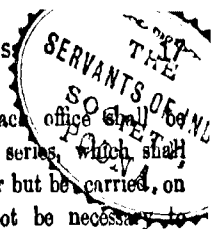
(a). - Register Book.

2. The Register prescribed by section 58 of the Deccan Form of Register Agriculturists' Relief Act, 1879, shall be a Book. ; book kept in the form of Appendix A.

3. A Village Registrar before bringing a new Register Book into use shall count the pages, and satisfy himself that the number thereof corresponds with that given in the certificate on the title page. If the number be found correct, he shall certify to that effect on the title page. If there be a discrepancy, he shall return the book for correction to the officer from whom it was received.

See Notification No. 7189, B. G. G. for 1896, pt. I, p. 957, as amended by subsequent notifications as denoted hereafter.

Village-registration Rules



4. The volumes of Register Books in each office shall be numbered in a consecutive series, which shall not terminate with the year but be carried on perpetually. It shall not be necessary to commence a fresh volume at the commencement of a new year. When the amount of copying is great, two volumes of a Register Book may be employed simultaneously, instruments bearing an even serial number being copied into one and those bearing an odd serial number into the other.

(b)—Index of Register.

5. An index of all entries in the Registers shall be prepared in the form of Appendix B. The Index shall be prepared alphabetically in each Taluka Village Registry Office, Petha Village Registry Office and Village Registry Office, and shall in the last mentioned case be forwarded on or before the 5th of each calendar month by the Village Registrar to his Taluka or Petha Village Registrar.

6. It shall be the duty of the Taluka or Petha Village Registrar to arrange the Index of each of the Village Registry Offices of his taluka or petha-circle, including that of his own immediate circle, in due order for binding, taking especial care that no Index-sheets of one Village Registry Office are mixed up with those of another, and seeing that all sheets bearing one and the same letter are, for each Village Registry Office, brought together for the year according to the order of their preparation before being bound. A blank page should be inserted in each Index file, before being bound, at each place where the Index for one Village Registry Office terminates and that of another commences. At the end of the year the Index for the taluka or petha shall be bound into Volumes,

7. A synoptical table, as per form given in Appendix C, should be inserted at the commencement of each volume of the Taluka or Petha Index, the pages in each volume being numbered and the name of the Village Registry Office to which the succeeding sheets belong shall be written in bold characters on the blank page.

8. The name of the village to be entered in the first column of the Index shall be in the case—

(a) of an instrument purporting to affect immoveable property, that of the village in which that property is situate;

(b) of any other* instrument, that of the village in which the party or parties executing it resides or reside.

9. In case of a document executed by a guardian on behalf of a minor the name of the minor shall be entered first in column 4 and below it in brackets should be shown the name of the guardian. In the case of a claiming party appearing before a Village Registrar by an agent, the name of the principal shall be entered in column 6 and below it shall be shown in brackets the name of the agent.

10. When the property is situated or when the executants reside in different villages, a separate entry shall be made under the name of each village in its proper alphabetical place in this form, *e. g.* "Arle and three others."

11. Index sheets will be supplied to Taluka Village Registrars, Petha Village Registrars, and Village Registrars in loose sheets bearing all letters of the alphabet printed on their lower margins. In employing one of such sheets for the purpose of indexing under any particular letter, all the letters below the required Index letter should be removed by cutting them out and all those appearing above such required letter shall be cancelled by drawing an ink line through them.

12. The date to be entered as the date of registration in the last column of the Index is the date of registration endorsed on the original instrument as required by the third paragraph of section 58 of the Act.

(c).—Claim-Note and Day-Books.

13. A Claim-Note Book in the form of Appendix D, and a Forms and uses of Day Book in that of Appendix E shall be Claim-Note and Day Books. kept by each Village Registrar.

(a) If the registration of an instrument is completed on the day for the attestation of the instrument and before the claiming party under such instrument leaves the office,

* The word 'other' was substituted for 'another' by notification No. 9381, dated 24th November, 1898, B. G. G. for 1898, pt. I, p. 1178.

no claim-note from this book need be granted to such party.

It shall be the duty of the Village Registrar, if possible, to complete the registration of an instrument on the same day on which such instrument is prepared and attested by him.

(b) If, however, when a party claiming under an instrument leaves the office, the registration of such instrument is not complete, the Village Registrar shall grant to such party a claim note with the amount of fee endorsed thereon, which shall afterwards be taken back and filed when the instrument to which it relates is delivered to the party who claims it, or to such other person, if any as he has nominated in writing in that behalf *on the reverse of* the claim-note, and the signature of such party shall be taken in the Day-Book acknowledging receipt of such instrument.

(d).—Cash Book.

14. Every Taluka and Petha Village Registrar and Village Registrar shall keep a cash book in the form given in Appendix F, and in this book shall be entered all fees paid for registration or for searches or copies granted. All moneys recovered from Village Registrars in the shape of fines, percentage-allowance on fees refunded to parties, &c., shall also be brought to account, and the correctness of each day's total attested by the Village Registrar's signature in this book.

Cash Book.

(e)—General Provisions.

15. The office of every Taluka or Petha Village-Registrar shall be the local office of issue for books, forms, &c., to the other Village-Registrars of the Taluka or Petha in which such office is situate.

Local offices of issue for Books and forms.

16. The office of each Taluka or Petha Village Registrar shall be a central office of record for the Village Registry Offices of the Taluka or Petha, and the Register, Day and Cash Books of the latter Village Registry Offices shall be forwarded to the said Taluka or Petha Village

Transfer of records to office of Taluka or Petha Village Registrar.

* These words were added by notification No. 9381, cited on p. 18.

Registrar for the purpose of being recorded as they, from time to time, become complete, and have, when complete, undergone scrutiny at the hands either of District Registrar or District Inspector. Subject to the sanction of the District Registrar,† a Cash or Day Book may be destroyed after a lapse of six years from the date of the final entry appearing therein.

17. Each Village Registrar, not being a Taluka or Petha Village Registrar, shall hold office in the chavdi of the village, which is the head quarters of the circle, or where the village chavdi is not available, in a hired building, office-hours being from 11 A. M. to 5 P. M. On closing the office, the Registration books, &c., shall be secured in a box or otherwise, and if the office be held in the chavdi, given in charge of the Village Police for safe custody.

* 17A. In cases of grave emergency, it shall be permissible for a Village-Registrar including a Taluka or Petha Village Registrar to draw up and register deeds at his office or his private residence, or the private residence of some person other than himself, on any day whether a Sunday or Government Holiday or not, and at any hour of the day. In all such cases the Village Registrar shall at once report to the Registrar to whom he is subordinate, the fact of his having drawn up and registered a deed as above and the reasons for his action.

18. All Taluka or Petha Village Registrars and Village Registrars shall provide, out of the amount received by them as remuneration, whatever writing materials they may require for the work of their respective offices, excepting such blank forms and books as are supplied by Government. They shall be responsible that all instruments drawn up by them or under their superintendence are written intelligibly, legibly and distinctly, and that their records are kept neatly and in order.

† The words 'District Registrar' have been substituted for the words "Inspector General of Registration," by notification No 768 A dated 4th Feb. 1902, B. G. G. for 1902 pt. I. p. 214.

* This rule is added by notification No. 7683, dated 4th November, 1903, B. G. G. for 1903, pt. I, p. 1392.

19. No Village Registrar shall destroy any of the old papers of his office without having first obtained the sanction of the Registrar through the Taluka or Petha Village Registrar.

Destruction of old papers.

The following papers, &c., in the Taluka or Petha Village Registry offices and Village Registry offices shall be destroyed after the lapse of two whole years from the date on which such papers, &c., or the proceedings to which they relate were finally disposed of, subject to the sanction of the Registrar of the District. A list shall be kept of the papers so destroyed in the form given in Appendix G.

(1) Receipts (claim-notes) granted under rule 13 and taken back, and counterparts of such receipts. (2) Contingent Bills. (3) Indents for Dead Stock. (4) Indents for Books and Forms. (5) Applications for searches and inspections and applications for copies. (6) Applications for attendance at private residence. (7) Applications for leave and reports of delivering over and receiving charge of office. (8) Ordinary correspondence, excepting circular orders, standing orders and other papers which may be considered by the District Registrar to be of importance.

Every Village Registrar shall submit yearly, in the month of January, a list of those papers of his office, not less than two years old on the preceding 31st of December, which he proposes to destroy, to the Registrar of the District through the Taluka or Petha Village Registrar.

* Any papers other than the foregoing may also be destroyed with the previous sanction of the District Registrar.*

III.—Procedure.

(f)—Execution and registration of Instruments under sections 57 and 58.

20. Village Registrars shall duly satisfy themselves of the identity of each executant, and shall receive the fee for registration before the instrument is written. They shall also satisfy themselves that no agriculturist purporting to be an executant is a lunatic, an idiot or a minors

Preliminary measures to be taken before an instrument is written.

— This matter has been substituted, by notification No. 798 A, dated 4th February 1892; B. G. G. for 1902, pt. I, p. 214.

Village-registration Rules.

and shall pay careful attention to the requirements of the Stamp Act and the rules issued under it.

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

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

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

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

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

	Rs.	A.	P.
“ Fee received for preparation and registration &c, &c....	0	0	0”
Total...	0	0	0”

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

“This instrument written by me (or under my superintendence), after having been read aloud within his hearing, has been executed in my presence, this day, by *A.B. of C.D.*, whom I know (or of whose identity I have duly satisfied myself.)”

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

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

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

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

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

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

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

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

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

The endorsement shall be signed by the Village Registrar.

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

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

23. It shall be the duty of the Village Registrar to enquire whether the instrument about to be executed will modify or wholly

or partly supersede any previous instrument; and if the parties answer in the negative, the following declaration shall be endorsed on the instrument and signed by the claiming party or parties or by his or their authorized agent.

“ I (or We) hereby declare that this instrument does not modify or wholly or partly supersede any previous transaction or instrument.”

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

Marking of previous instruments for identification.

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

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

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

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

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

* The word ‘ or ’ was inserted by notification No. 9381, dated 24th Nov. 1923. B. G. G. for 1898, pt. I, p. 1178.

‡ This proviso was added in substitution of a note to rule 24 by the notification No. 21 dated 6th Jan, 1903 ; B. G. G. for 1903, pt. I, p. 29.

- A. The contents of the certified copy shall be fully described in the modifying or superseding instrument and the said copy shall be marked by the Village Registrar under his hand for identification with the words "the instrument of which this is a certified copy has been modified (or wholly or partly superseded) by instrument No. of executed in favour of Q. R. of S. T. and attested by me this day," and shall then be dated and delivered to the person who produced it.
- B. If the previous instrument is lost, or has been destroyed and the registered entry thereof is in the Village Registrar's custody, he shall endorse on such entry a note under his hand as to the modification or supersession of the said instrument, to the following effect :

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

- C. If the previous instrument is in the custody of a Court, or if it is lost, or has been destroyed, and the registered entry thereof is in the custody of another officer, the Village Registrar shall forward a certified copy of the entry in his Register relating to the modifying or superseding instrument to such Court or officer, after writing an endorsement of the despatch of such copy below the registered entry in column 3 of the Register book, with a report explaining the circumstances. If the officer be a Village Registrar, he shall, on receipt of such a report, endorse on the registered entry a note under his hand as to the modification or supersession of the instrument in the form prescribed in clause B above.

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

25. In ordinary cases all instruments shall be drawn up and registered at the office of the Village Registrar authorized to prepare

Preparation and registration of instrument at private residence.

the same. But on special cause being shown, such officer may attend at the residence of any person desiring to have any instrument prepared and shall charge an additional fee as laid down in the Fee Table prescribed under section 63 of the Act. A Village Registrar receiving *batta* under Article V of the Fee Table for attendance at a private residence for the preparation of an instrument, or for the attestation of a power-of-attorney, shall grant a receipt in writing for the money so received by him to the party on whose application he proceeds to the private residence.

(g).—Provisions applicable to Registration by Village Registrars under section 58 of the Act.

26. If in writing an instrument it has been found necessary to make any corrections in the nature of erasures, interlineations, &c., the same shall be initialled by the Village-Registrar and clearly noted at the end of the instrument immediately above the signatures of the executants.

Corrections in the original instrument to be attested.

27. If in any case the space afforded by a single piece of paper is found insufficient to contain all the writing of an instrument and it is necessary to attach an extra piece or pieces thereto, the Village Registrar shall write his signature across the junction of the two or more pieces of paper of which the instrument consists, both on the front and on the reverse side, and make a note in the Register Book at the foot of the entry of how many pieces of paper in addition to the stamp paper the instrument consists.

Provisions when space afforded by single piece of paper is insufficient to contain all the writing of an instrument.

28. A Taluka or Petha Village Registrar who registers any instrument in the exercise of concurrent jurisdiction, or the Village-Registrar when registering a document relating to immoveable property situate either wholly or partly in some circle other than his own, shall, on such registration being completed, forward to the Village Registrar within whose circle the property affected by the instrument is situated

Memorandum of instrument registered by a Taluka or Petha Village Registrar to be sent to Village Registrar of circle in which property is situated or in which executant resides.

or in case of an instrument relating to moveable property to the Village Registrar of the circle in which the executant or executants of such instrument resides or reside, or if the property be situated or executants reside in different circles, to the Village Registrar of each such circle, a memorandum of the instrument so registered in the form of Appendix H.

When memoranda are despatched under this rule by a Taluka or Petha Village Registrar to Village Registrars in his Taluka or Petha or by a Village Registrar to another Village Registrar, a note shall be made in the Register-Book below the true copy certificate to the effect that such memorandum has been sent and specifying the Village Registrar to whom and the date on which such memorandum was sent.

All such memoranda sent to a Village Registrar's office shall be filed in that office for two calendar years, at the end of which period they may, with the sanction of the Registrar conveyed through the Taluka or Petha Village Registrar, be destroyed.

29. In copying an instrument into the Register Book, the endorsements prescribed by rules, 22, 23 and 24 shall be copied in column 2 and the contents of the instrument itself shall be copied in column 3. When the instrument is stamped, the value of the stamp and stamp-vendor's endorsement appearing on the original instrument shall be copied in column 3 of the Register Book above the entry.

30. Errors, erasures, or alterations appearing in original instruments or in the endorsements thereon shall be copied into the Register exactly as they appear in those instruments or endorsements, marginal notes being written explanatory of such errors, erasures, and alterations, *e. g.*, "so in the original" or corresponding words in the vernacular, with a * over the error, erasure, and alteration and a corresponding mark over the marginal entry relating thereto.

31. On the copy in the Register Book being completed, the Village Registrar having carefully compared it with the original

shall certify under his signature, with his official designation attached, that it is a true copy. Any mistakes made at the time of copying shall be corrected by the words written by mistake being bracketed and the corrected words being written above, or by the words omitted being neatly interlineated; but the Village Registrar shall attest all such corrections in the Register Book by attaching his initials thereto, and certify at the foot of the entry that these mistakes were made at the time of copying.

When any such corrections are made, the form of certificate shall be as follows :

“ True Copy ”

“ The words line page having been unnecessarily written at the time of copying, have been placed in brackets ” or “ the words line page having been written by mistake at the time of copying, have been placed in brackets and the words have been written above, ” or “ the words having been omitted by mistake from line page at the time of copying, have been written above the line. ”

A. B.

Village Registrar.

32. All entries in a Register Book shall be numbered in a consecutive series which shall commence and terminate with the calendar year, a fresh series being commenced at the beginning of each year. The serial number shall appear in column 1, being distinguished in the case of instruments relating to immoveable property by the letter A and in that of instruments relating to moveable property by the letter B.

Termination of one entry and commencement of next to be shown in the Register Book.

An ink line shall be drawn from left to right across the page of the Register Book to show where one entry terminates and where the next begins, such line being drawn immediately below that portion of the copy, whether in column 2 or 3, which appears lowest down on the page.

The entry relating to one instrument in one column shall in no case be made alongside of the entry relating to any other instrument in the other column.

Where owing to the document being short, the marginal entries in the Register Book extend lower down in column 2 than the copy of the document in column 3, the blank space left in the last named column shall be cancelled by cross lines in ink being drawn over it.

(h).—Copies and Searches.

33. All errors, interlineations, &c., appearing in the registered entry shall be shown in any copy granted under the fourth paragraph of section 58 of the Act, in the same manner as they appear in the Register as required by rule 30, and mistakes made in preparing the copy shall be corrected in the manner prescribed in rule 31 for correcting mistakes when copying instruments in the Register. In certifying any copy of Registered entry, a Village Registrar shall attach his full official designation thereto as well as his signature. On furnishing a copy as aforesaid the Village Registrar shall make a note immediately below the last endorsement appearing in column 2 of the Register Book as follows :—“Copy of the original of this entry or copy of this entry granted free of charge to ... on ...

34. Subject to the payment of the fees prescribed in this behalf by Government under section 63 of the Act, Register Books and Indexes and memoranda filed under rule 28 shall be open to the inspection of any person applying to inspect the same, and copies of entries therein shall be given to, or may be taken by, any person applying for such copies. Provided that no Register Book or other record of a Village Registrar's office shall be inspected by any person other than a Government officer, save in the presence of the Village Registrar and in the place used by him as his office, and that all applications for inspection or for copies shall be in writing.

Any person permitted to inspect such records may search for any entry therein, or if he shall so desire, such search shall be made for him as aforesaid by the Village Registrar.

On every application for search, or for inspection or for a copy, there shall be endorsed by the Village Registrar the date of receipt,

the date on which the requisition is satisfied and the amount of fee received.

For every payment made under this rule a receipt in the form of Appendix I shall be granted by the Village Registrar.

(i).—Returns.

35. At the close of each month every such Village Registrar as aforesaid shall forward to the Taluka or Petha Village Registrar a statement in the form of Appendix J, showing the number of instruments registered by him and all fee collections made by him, during that month including those on account of searches, inspections &c., and copies granted under rule 34. From the Returns thus sent and from the information to be gathered from the books of his own office, the Taluka or Petha Village Registrar shall prepare a general Monthly Return from the whole of the Village Registry Offices of the Taluka or Petha in the form of Appendix J, and shall submit the same to the Registrar, in whose office again a general District Monthly Return of the same kind shall be prepared and forwarded to the Inspector General of Registration.

(j).—Remittances.

36. Remittances on account of Registration fees, &c., shall be sent as follows to the Treasury :—
Remittance to the Treasury how to be made.

- (a) by Taluka and Petha Village Registrars, to the Taluka or Petha Treasury along with the collections of the office under the Indian Registration Act, 1877; and
- (b) by Village Registrars by means of the Village Mahars, monthly to the Taluka or Petha Village Registrar, who shall immediately on receipt enter the same in his Cash Book and pay the amounts into the Treasury as ordered above.

The amounts thus remitted monthly shall be sent so as to reach the Taluka or Petha Village Registrar not later than the 25th, or in the case of the Taluka or Petha Village Registry Offices, where there are no treasuries, not later than the 20th of each month; or if these dates fall upon a Sunday or gazetted public holiday, not later than

the day preceding such Sunday or holiday. In the month of March remittances may be made so as to reach the Taluka or Petha Village Registrar not later than the 31st of that month.

A remittance by a Taluka Village Registrar shall be accompanied by his Cash Book, in which, on the remittance being paid in, the receipt of the Treasury Officer for the amount shall be obtained.

In the case of a Petha Village Registrar at whose head-quarters there is no Treasury, the receipt for the remittance to be obtained from the Treasury Officer at Taluka head-quarters shall be kept in a separate file.

Remittances by Village Registrars shall be accompanied by a chullan, which chullan shall be countersigned by the Taluka or Petha Village Registrar as an acknowledgment of the receipt of the money, and the chullan so countersigned shall be retransmitted by the Taluka or Petha Village Registrar to the Village Registrar in whose office it shall be filed.

(k).—Correspondence.

37. Taluka and Petha Village Registrars shall, as regards Taluka and Petha Village Registrars to be the medium of communication between Village Registrars and the Registrars, official correspondence, be the medium of communication between the Village Registrars and the Registrars,

Where there is no post office, correspondence from and to the offices of Village Registrars shall be sent by means of the Village Mahars.
Correspondence how to be sent.

References from Village Registrars regarding matters of procedure, when the point involved is in the opinion of the Taluka or Petha Village Registrar of minor importance, and the Taluka or Petha Village Registrar to whom the reference is addressed entertains no doubt as to what the answer should be, may be disposed of by such Taluka or Petha Village Registrar without further reference to the Registrar. The reply of the Taluka or Petha Village Registrar to a reference of the above nature shall, however, be in the shape of advice, not in that of an order. A Register of such references,
References from Village Registrars how to be disposed of in certain cases.

showing also the manner in which they have been disposed of, shall be kept by each Taluka or Petha Village Registrar, who shall be responsible for the exercise of due discretion in replying thereto. When in doubt on any point, the Taluka or Petha Village Registrar shall refer the matter to the Registrar.

(1).—Refund of Fees.

38. If for any reason the execution and registration of an instrument for which the fee has been paid are abandoned, one-half of such fee shall be refunded to the person who paid the same. A register of such refunds and of refunds of fees surcharged and of safe custody fees which have been remitted shall be kept by each Village Registrar in the form of Appendix K.

39. If an original instrument which has been executed and registered under the provisions of section 58 of the Act, being unclaimed by the party entitled to the custody of the same, has remained in the custody of a Village Registrar for sixty days from the date of its registration by such Village Registrar, such Village Registrar shall forward such original instrument to the Taluka or Petha Village Registrar for safe custody.

When a document owing to its not having been taken away within sixty days from the date of the completion of its registration is forwarded by a Village Registrar to his Taluka or Petha Village Registrar, and the document is delivered by such Taluka or Petha Village Registrar on receipt of safe custody fee, intimation of such delivery stating the date of such delivery shall be given by the Taluka or Petha Village Registrar to the Village Registrar from whom the document was received, and the latter shall enter in the last column of his Day Book the date of delivery of the document by the Taluka or Petha Village Registrar.

40. No document of which, if it remains unclaimed for a period exceeding two years, the destruction is authorized under sub-section (2) of section 61 of the Act shall be destroyed without the previous sanction of the Registrar of the District, nor until sixty days' notice of proposed destruction has been duly issued to the parties concerned.

When a document is destroyed a note recording its destruction shall be entered in the Register Book at the foot of the copy of the

document. The note shall record the fact that the document has been destroyed under the sanction of the District Registrar.

A list of documents destroyed shall be kept in :

- (1) Each Taluka and Petha } for the Taluka or Petha,
 Village Registry office,
 (2) Each Registrar Office | for the district.*

Appenices of Rules under section 61.

Appendix A—(see Rule 2)

Serial Number.	Endorsements.	Copy of Instruments.

* Rule 40 has been substituted for the original by notification No 4457A dated the 27th June 1899. B. G. G. for 1899, part I, p. 979; and it has been amended by notification No. 768A dated 5th February 1902, B. G. G. for 1902, part I, p. 214.

Appendix B—(see rule 5).

Form of Index under Rule 5 framed under Act XVII of 1879.†

Name of Village in which property is situate.	Description of property.	Name of office in which instrument is registered.	Name and place of residence of executant or executants.	Nature of instrument and consideration or value.	Name and place of residence of claiming party.	Occupation of claiming party.	Date of Registration and reference to Register.

N. B.—In case of instruments relating to moveables, the name of village in which the executant or executants reside, should be entered in Column I.

Appendix C.—(see rule 7).

Form of Synoptical Table of Contents of Volume of Taluka or Petha Index in Taluka or Petha Village-Registrar's Office.

Contents of Volume of Index of the Taluka or Petha for the year

No.	Name of Village Registry Office.	From page.	To page.	Remarks.
1	Satara ...	1	100	
2	Arle ...	101	206	
3	Ankle ...	207	350	
4	Parli ...	351	460	
5	Kumteh ...	461	534	

† This form of index has been substituted by notification No. 1128 dated 16th February 1903. B. G. G. for 1903, part I, p. 155.

Appendix D.—Form of Claim-Note (*Rule 13*).

Daily No.	❦	Daily No.
Date of 189 .	❦	Date of 189 .
Nature of document.	❦	Nature of document—
Amount of value or consideration—	❦	Amount of value or consideration—
Name of claiming party—	❦	Name of claiming party—
Received fees as follows :	❦	Received fees as follows :
For preparation and registration Rs.	❦	For preparation and registration Rs.
Extra fee for registration at private residence. }	❦	Extra fee for registration at private residence. }
Extra fee under Note D of the Fee Table. }	❦	Extra fee under Note D of the Fee Table. }
_____	❦	_____
Total...Rs.	❦	Total...Rs.
_____	❦	_____
Village Registrar.	❦	Village Registrar.

If the within named deed be not taken away within sixty days from the date of completion of its registration, it will be forwarded to the Taluka [or Petha]† Village-Registrar and be liable to extra or safe custody fee of one anna for every day for which it may remain in the custody of Taluka or Petha Village-Registrar, subject to a maximum fee of Rs. 3.

If the within named deed be not taken away within sixty days from the date of completion of its registration, it will be forwarded to the Taluka [or Petha]† Village Registrar and be liable to extra or safe custody fee of one anna for every day for which it may remain in the custody of Taluka or Petha Village-Registrar, subject to a maximum fee of Rs. 3.

† The words in brackets have been added by notification No. 9381—B. G. G. for 1893, pt. I, p. 1173.

Appendix E.—(see Rule 13).

Daily Number.	Description of Instrument and Value of Property affected thereby.	Fees.			Reference to Register.	Date on which Registration of Instrument is completed.	Date on which Instrument is returned to the party.	Date on which Instrument is despatched to Taluka or Petha Village-Registrar for safe custody.	Signatures of Claiming Parties or their Agents acknowledging receipt of Instruments
		Rs.	a.	p.					

Village Registrar of

Appendix F.—(see Rule 14).

FORM OF CASH BOOK.

Wednesday, 21st August 1895.

	Rs. a. p.
Fee for search of Registers for 1891 on application of A. B. dated	0 2 0
Amount of percentage repaid by undersigned Village Registrar on Rupees 2 refunded to A. B. on document Serial No. of	0 6 5
Fee for copy granted of Serial No. 565 of 1885 on application of A. B. dated	0 2 0
Fees for attesting a special Power-of-Attorney executed by A. B. in favour of C. D. this day in my presence	0 2 0
Total fees for preparation and Registration of documents as shown in Day Book of this day's date	10 8 0
Remitted to the Taluka Village Registrar or Treasury Rs.	11 4 5

Date*

Village Registrar of .

Appendix G.—(see Rule 19).

List of papers destroyed.

Number and date of the Paper, if any.		Subject of the Paper.	Date of Destruction.	Remarks.
No.	Date.			

Village Registrar of .

* See notification No. 9381. B. G. G. for 1898 pt. I, p. 1173.

APPENDIX H.

Memorandum under Rules 28 framed under Act XVII of 1879.

Serial Number.	Copy of Endorsements.	Nature of document.	Description and value of Property affected by the Document.	Situation of property.	Names of Executing parties.	Place of Residence.	Profession, Rank, or Title.	Names of Claiming Parties.	Place of Residence.	Profession Rank, or Title.	Reference to Register.

Forwarded to the Special Village Registrar of

Date of receipt—

Date..... }
}

Taluka or Petha Village Registrar.

Appendix I—(see Rule 34, Clause 4.)

Received from

for

(search, or grant of copy, or inspection, or for attendance at private residence or attestation or a power-of-attorney, &c.)

Village Registrar.

APPENDIX J—(see Rule 35.)

Detailed Statement showing the Classification of all Instruments registered.

Nature of Instruments.	IMMOVEABLES.				MOVEABLES.				Grand Total.
	New transactions.	Novation of old transactions.	Instruments partly relating to old and partly to new transactions.	Total.	New transactions.	Novation of old transactions.	Instruments partly relating to old and partly to new transactions.	Total.	
Deeds of Sale									
Mortgages with Possession ...									
Mortgages without Possession									
Deeds of Gift									
Leases for periods not exceeding one year									
Leases for periods exceeding one year									
Bonds									
All other Deeds									
Total...									

Registrar of

Village-registration Rules.

Statement of instruments registered during the month ending

Preparation and registration of the instruments

Nature of instrument			The value or consideration not exceeding Rs. 20.
	No.	Fees.	
		1	
		2	The value or consideration exceeding Rs. 20, but not exceeding Rs. 50.
		3	The value or consideration exceeding Rs. 50 but not exceeding Rs. 100.
		4	The value or consideration exceeding Rs. 100 but not exceeding Rs. 200.
		5	The value or consideration exceeding Rs. 200 but not exceeding Rs. 300.
		6	The value or consideration exceeding Rs. 300 but not exceeding Rs. 400.
Deeds of sale...			
Mortgages with possession ...			
Mortgages without possession ...			
Deeds of gift...			
Leases for periods not exceeding one year...			
Leases for periods exceeding one year			
Bonds ...			
All other deeds ...			
Total...			

Statement of Instruments registered during the month ending
Preparation and registration of instruments

Nature of instruments.	15		The value or consideration not exceeding Rs. 20.
	No.	Fees.	
	No.	16	The value or consideration exceeding Rs. 20 but not exceeding Rs. 50.
	Fees.		
	No.	17	The value or consideration exceeding Rs. 50 but not exceeding Rs. 100.
	Fees.		
	No.	18	The value or consideration exceeding Rs. 100 but not exceeding Rs. 200.
	Fees.		
	No.	19	The value or consideration exceeding Rs. 200 but not exceeding Rs. 300.
	Fees.		
	No.	20	The value or consideration exceeding Rs. 300 but not exceeding Rs. 400
	Fees.		
Deeds of sale...			
Mortgages with possession			
... ..			
Mortgages without possession			
... ..			
Deeds of gift...			
... ..			
Leases for periods not exceeding one year.			
Leases for periods exceeding one year			
Bonds			
All other deeds			
Total...			

Statement of instruments registered during the month ending
in the Village-Registration Office of _____ Taluka _____

Nature of instruments.	Expenditure.						
	Furniture.	Postage.	Remuneration to Mahars.	Miscellaneous.	Total.	Surplus.	Deficit.
	43	44	45	46	47	48	49
	Amount.	Amount.	Amount.	Amount	Amount.	Amount.	Amount
Deeds of sale... ..							
Mortgages with possession.							
Mortgages without possession							
Deeds of gift... ..							
Leases for periods not exceeding one year..							
Leases for periods exceeding one year							
Bonds.							
All other deeds.							
Total...							

Monthly Statement of Arrears in the Circle of on the 1st 189

*Village Registrar or Taluka or Petha Village Registrar.	Number of Documents to be copied.	Number of Copies to be prepared.	Number of Documents, &c., of which registration is completed, remaining unclaimed in Office.		Details of Documents in hand.
			Instruments.	Copies.	
					10 instruments from April 1882. 5 instruments from May 1882. 20 copies from May 1882. 20 copies from June 1882.

Detailed Statement showing Number of Transactions of each Nature in each Registration Circle according to Number of Column in Statement of Instruments registered during the month.

Name of Circle.	Deeds of Sale.	Mortgages with Possession.	Mortgages without Possession.	Deeds of Gift.	Leases for periods exceeding one year.	Leases for periods not exceeding one year.	Bonds.	All other Deeds.
	5 of 1, 2 of 3, 3 of 5, &c.	5 of 2, 3 of 4, 6 of 6, &c.	1 of 1, 2 of 3, 5 of 4, &c.	1 of 1, and 1 of 16	2 of 2 and 7 of 9.	1 of 3 an 8 of 5	7 of 15 2 of 16 1 of 20 1 of 24	1 of 1 2 of 4 7 of 5 8 of 15 2 of 24

N. B.—To be prepared by Taluka Village-Registrar from the various returns received from Village-Registrars and sent with his general statement.

* The heading of this column has been amended by notification No. 9381 dated 20th November 1898. B. G. G. for 1898 pt. I, p. 1178.

Village-registration Rules.

Appendix K—(see Rule 38).

Register of Refunds.

Register of Refunds on account of Surcharge of Fees, Safe Custody Fee remitted, and Fees on Deeds remaining incomplete.

	Date of receipt by Village-Registrar of Refund Bill.
	Date of Delivery of Refund Bill to Party claiming under the same.
	Amount of Bill.
	Reference to pages of Day or Cash Book in which entry regarding Document or Fee appears and date of such entry.
	Date of submission of Refund Bill for sanction.
	Signature (in acknowledgment of Receipt of Bill) of Party claiming the Refund.
	Signature of Village-Registrar.

Appendix L—(see Rule 40).

List of Documents destroyed.

	Date of Preparation of Deed.
	Office in which prepared.
	Nature of Document and Value or Amount of Consideration.
	Name or Names of executing Party or Parties.
	Name or Names of Persons in whose favour executed.
	Date of Registration and Reference to the Register.
	Date of Order of Destruction by the Inspector General.
	Date of actual Destruction.
	Remarks.

Appointments, Salary, &c., of District-Inspectors and Village-Registrars.*

41. Every Inspector shall be appointed by and may be suspended or dismissed by the Inspector-General of Registration and Stamps; but shall not be dismissed without the sanction of Government being first obtained.

Appointments, suspension and dismissal of District Inspectors.

42. Every Village Registrar not being a Sub-Registrar shall be appointed by, and may be suspended, and, with the concurrence of the Inspector-General, may be dismissed by the Registrar.

Appointments, suspension and dismissal of Village Registrars.

Every Sub-Registrar appointed under the Indian Registration Act, 1877, in the districts to which the Deccan Agriculturists' Relief Act extends, shall be *ex-officio* Taluka or Petha Village Registrar for the Taluka or Petha of which he is Sub-Registrar.

43. In addition to any fixed salary all Taluka and Petha Village Registrars and Village Registrars shall draw 20 per cent. on the fee collections of their respective offices, and in addition to the above, Taluka and Petha Village Registrars shall draw 5 per cent. on the gross collections of their respective Talukas or Pethas.

Percentage commission to Taluka and Petha Village Registrars and Village Registrars.

44. In cases of neglect of duty, carelessness, or other official misconduct in contravention of the Deccan Agriculturists' Relief Acts, 1879 to 1895, the Registrar may fine any Taluka or Petha Village Registrar or Village Registrar a sum not exceeding half a month's salary drawn under the said Acts, and shall report the case to the Inspector-General.

Fines to Taluka and Petha Village Registrars and Village Registrars for neglect of duty, &c.

45. No security for the due performance of their duties shall be required from Taluka and Petha Village Registrars who are required to furnish security as Sub-Registrars; but every Village Registrar shall be required to give security to the extent of Rs. 100. The security bond of a Village Registrar shall be in the form in use in

Village Registrars to give security.

* Notification No. 7189A B. G. G. for 1896, part I, p. 971; and No. 8381; B. G. G. for 1896, pt. I, p. 1178.

the Revenue Department. The securities may be one or two in number as the Collector in whose charge the bond should be kept directs.

46. In case of a Village Registrar being unable to attend to his duties owing to sudden illness or other cause he shall make an immediate report to the Taluka or Petha Village Registrar of the Sub-District, who shall forthwith report the absence of the Village Registrar to the Registrar. If a *locum tenens* be appointed, his salary shall be regulated by the existing rules. Pending arrangements being made by the Registrar the office of such Village Registrar shall be considered as closed and applicants shall be directed to the Taluka or Petha† Village-Registrar.

47. The fees to be levied by Registering officers shall be as follows, namely,—

For writing or superintending the writing and for attesting and registering any instrument.

(a) *If the amount or value of the consideration therefor or of the property to which such instrument relates is expressed therein :*

				Rs.	a.	p.
(1)	When the amount or value does not exceed Rs. 50...			0	4	0
(3)	Do.	do.	exceeds Rs. 50 but does not exceed Rs. 100	0	8	0
(3)	Do.	do.	100 „ 200	1	0	0
(4)	Do.	do.	200 „ 300	1	8	0
(5)	Do.	do.	300 „ 400	2	0	0
(6)	Do.	do.	400 „ 600	3	0	0
(7)	Do.	do.	600 „ 1,000	4	0	0
(8)	Do.	do.	1,000 „ 1,500	5	0	0
(9)	Do.	do.	1,500 „ 2,000	6	0	0
(10)	Do.	do.	2,000 „ 3,000	8	0	0
(11)	Do.	do.	3,000 „ 4,000	10	0	0
(12)	Do.	do.	4,000 „ 5,000	12	0	0
(13)	Do.	do.	5,000 „ 7,500	14	0	0
(14)	Do.	do.	7,500 „ 10,000	16	0	0
(15)	Do.	do.	10,000 „ 15,000	18	0	0
(16)	Do.	do.	15,000 „ 20,000	20	0	0
(17)	For every Rs. 500 or part thereof in excess of Rs. 20,000		0	8	0

† See notification No. 9381, B. G. G. for 1896, part I, page 1178.

* *Note I* :—Where property subject to a mortgage is sold to the mortgagee, the difference between the purchase-money and the amount of the mortgage in respect of which registration fee has already been paid shall be considered as the amount of consideration for the deed of sale, provided the mortgage-deed is proved to the satisfaction of the registering officer to have been duly registered. When there is no difference between the purchase money and the amount of mortgage, the registration fee leviable shall be annas 4.

† *Note II* :—The registration fee leviable upon a document purporting to give collateral or auxiliary or additional or substituted security, or security by way of further assurance, where the principal or primary mortgage is proved to the satisfaction of the registering officer to have been duly registered, shall be the same as for the principal or primary mortgage, if the same does not exceed Re. 1: otherwise it shall be Re. 1

(b) *If the amount or value is not expressed :*

(18) A fixed fee of 2 0 0

(c) *If the instrument is a Will :*

(19) A fixed fee of 2 0 0

(d) *if the instrument is one which cannot be brought under the above ad valorem scale and is not a Will :*

(20) A fixed fee of 1 0 0

II.—For granting a copy of an instrument as entered in the Register, or of a memorandum filed under rule 28† to any person who is not a party to the instrument to which such entry or memorandum relates or the agent or representative of a party thereto 0 4 0

III.—For a search for or inspection of any entry in a Register by any applicant 0 2 0

Note (a)—When the applicant is a party to an instrument or is an agent or representative of such party, no fee for a copy or for search shall be levied if the applicant or his principal has not previously been furnished with a copy of such instrument or has not made any previous application for such search.

* See notification No. 912, (11th Feb. 1902), B. G. G. for 1902, pt. I, p. 25L

† See notifications Nos. 6794 and 7317 of 1903; B. G. G. part I, pages 1254 and 1340 respectively.

‡ See notification No. 9381 cited *ante*.

Village-registration Rules.

IV.—For a search for or inspection of any entry in a Register, when the search is made by Village Registrar 0 4 0

V.—For attendance at a private residence for the preparation of an instrument or for the attestation of a power-of-attorney { An extra fee equal to the ordinary fee in addition to *batta* at the usual rates.

VI.—For the attestation of a power-of-attorney :

(a) if special 0 2 0
 (b) if general 0 4 0

Note (a).—In the case of leases, the amount or value of the consideration on which the *ad valorem* fee is to be assessed under Item I (a) of the above table shall be as follows :

If the lease is granted : The fee will be assessed on :

- (1) in consideration of the payment of a fine or premium only, { the amount of such fine or premium paid or payable ;
- (2) in consideration of the payment of a fine or premium, in addition to rent reserved, { the average annual rent reserved, in addition to the amount of fine or premium ;
- (3) in consideration of the payment of an annual rent, without the payment of fine or premium, { the average annual rent reserved ;
- (4) for a period less than a year, { the total sum payable under the lease ;
- (5) for an indefinite period, { the average annual rent payable for the first ten years.

Note (b).—If a *patta* or lease be given to a cultivator and a *kabulajat* or counterpart of such *patta* or lease be prepared and registered in the same office and on the same day as the *patta* or lease, the fee chargeable in respect of the two documents shall not be greater than the fee chargeable for the *patta* or lease alone.

Note (c).—In the case of annuity-bonds and service-bonds and agreements to hire moveable property, the amount or value of the consideration on which the *ad valorem* fee is to be assessed under the item aforesaid shall be as follows :—

- If the annuity-bond, service-bond or agreement is granted or passed : } The registration fee will be assessed on ;
- (1) for a definite period exceeding one year, } the average annual amount to be paid during the period ;
- (2) for an indefinite period, } the average annual amount to be paid during the first ten years;
- (3) for a period less than a year, } the total amount payable under the annuity-bond, service-bond or agreement.

Note (d).—If in any of the above cases the rent, annuity or remuneration is payable partly in money and partly in kind and the money value of the portion payable in kind is not expressed, the fee will be charged at twice the amount of the *ad valorem* fee chargeable in respect of the amount payable in money. And if the rent, annuity or remuneration is payable entirely in kind and the money value thereof is not expressed, a fixed registration fee of Rs. 2 will be charged.*

VII.—For the safe custody and return of any original instrument which, having remained in the hands of the Village Registrar for sixty days from the date of its registration, as unclaimed by the party entitled to the custody of the same, has been forwarded under Rule 39 to the Taluka or Petha Village Registrar—

Rs. a. p.

For every day that such original instrument remains in the custody of the Taluka or Petha Village Registrar up to the day when it is claimed by a party entitled to its custody 0 1 0

Provided, however,

- (1) that no fee in excess of Rs. 3 shall in any case be levied for the custody and return of any such original instrument;
- (2) that the Inspector-General shall be empowered to remit any such fees in whole or in part in any particular case.

* This item No. VII is amended by Notification No. 9381. B. G. G. for 1896 pt. I, p. 1173.

Appendix to rules under S. 63 (See rule 43.)†

Her Majesty's Government of Bombay

The amount of percentage at 20 and 5 per cent. due to the Taluka or Petha Village Registrars & Village Registrars on the fees Collected and paid into _____ the Treasury of _____ with credit of Government during the month of _____ 189

1	2		3			4						5						6		
Taluka.	Names of Taluka or Petha Village Registrars and Village-Registrars.		Collection			How and when Collections were credited to Government in the Treasury Officer's cash account.						Percentage payable.						Remarks.		
			Fees.			Total amount paid into the Treasury.	Month.	Heading under which credit.	Item in which it is included.	No percent on fees		Five percent on gross collection of the Taluka or Petha.		Deduct fines.		Net amount of percentage payable.				
			Rs.	a.	p.	Rs.	a.	p.			Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	

Date. } Certified that the amount entered in column four has been credited to Government as above _____
 Taluka or Petha Village Registry Office. Date 189 .
 Mamlatdar or Officer in charge of Taluka Treasury Taluka or Petha Village-Registrar,

† See notification No. 9381 dated 24 November 1896. B. G. G. for 1896, pt. I, p. 1178.

Rules for carrying out the provisions of
this Act.*

“The Act” means the Deccan Agriculturists’ Relief Act, 1879,
Definition. as amended by subsequent enactments.

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

Certain Village
Registrars not to pre-
pare or register instru-
ments in which they
are interested.

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

Recital as to pay-
ment of consideration.

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

Powers-of-attorney
recognizable for pur-
poses of sec. 57.

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

* See Notification No. 7189 B dated 11th September 1896. B. G. G. for
1898 pt. 1, p. 974.

authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of her Majesty or of the Government of India.

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

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

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

Miscellaneous.

Description of suits to be heard by the Subordinate Judge of Poona.†—It is directed that any suit of the descriptions mentioned in section 3, clauses (w) and (x) of the said Act, which the Subordinate Judge of Poona would be precluded from hearing by section 12 of Act XI of 1865 shall, if the defendant or any one of the defendants, not being merely a surety of the principal debtor, is an agriculturist, be heard and determined by him and not otherwise.

Description of suits to be heard by Subordinate Judges of Hyderabad, Shikarpur, Hala and Larkhana.‡—It is directed that any suits of the descriptions mentioned in clauses (w) and (x) of s. 3 of the said Act which the Subordinate Judges of Hyderabad, Shikarpur, Hala and Larkhana, respectively would ordinarily hear as Courts of Small Causes under the jurisdiction in that behalf conferred on them under s. 28 of the Bombay Civil Courts Act 1869, shall, notwithstanding the provisions of s. 16 of the Provincial Small Cause Courts Act 1887, be heard and determined by them in the exercise of their ordinary jurisdiction as suits which are not cognizable by a Court of Small Causes, and not otherwise.

† Notification No. 7957 dated the 22nd November 1879. B. G. G. for 1879, part I, p. 934.

‡ Notification No. 1664 dated 13th March 1901, B. G. G. for 1901, part I, p. 490.

Form of Summons to defendant in suits under this Act.*

(TITLE).

To.....

Dwelling at Whereashas in-

Notice.—Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness and the production of any document that you have right to call upon the witness to produce on applying to the Court at any time before the trial, and depositing the necessary travelling and subsistence money.

stituted a suit against you for..... you are hereby required to appear in person before this Court to give evidence on the day of at the hour of A. M.

As the day fixed for your appearance is appointed for the final disposal of the suit you must be prepared to produce all your witnesses on that day; and you will bring with you.....which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

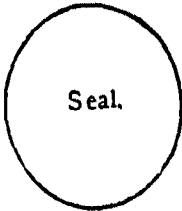
A sum of Rs. being your travelling and other expenses, and subsistence allowance for one day, is herewith sent.

(*Note.*—The following notice to be pasted on the above summons in cases where the plaintiff asks that this should be done).

You are further informed that the said plaintiff has presented with his plaint the following documents, namely: (Describe documents).

You are hereby required, within four days from the receipt of this summons, to file in this Court a written admission, signed by you, that the aforesaid documents are genuine, or within four days to appear in person and make such admission. If you fail to do this, you will be liable, whatever may be the result of the suit, to bear the expense which the plaintiff may incur in proving the aforesaid documents.

Given under my hand and the Seal of the Court this
day of 190 .



Judge.

* See H. C. Circular order form No. LXXVIII. B. G. G. for 1903, pt. I. pp. 388, 389.

The above form of summons should be used only in the case of suits other than suits for an account under section 16 of Act XVII of 1879.

Execution of decrees § :—Decrees of the nature shown against the following Districts shall be transferred to the Collector for execution :—

Poona Satara Sholapur Ahmednagar.	}	Decrees ordering the sale of any immoveable property belonging to a person who is an agriculturist within the meaning of the D. A. R. Act, which has been specifically mortgaged for the repayment of the debt to which any such decree relates.		
*	*	*	*	*

Concession in Process-fees † :—1 The fees levied for all processes in suits to which Chapter II of this Act applies, except suits of the description mentioned in section 3, clauses (w) and (x), to which an agriculturist is not a party, shall be one half the fees which would be leviable in similar suits to which the said Act does not apply.

2 No fee shall be levied for the service of any notice or other process issued in proceedings taken under Chapter IV of this Act.

3 Nothing contained in these rules (or in any rules heretofore made by the High Court under section 20 of the Court Fees Act) shall apply to process issued by a Village-Munsif, under Chapter V of this Act.

Records :—In the Districts in which this Act is in operation, the records of all suits, decided by Subordinate Judges under the provisions of Chapters II and IV of the said Act, shall be forwarded quarterly to the Record-keeper of the District Court, instead of monthly, as directed in clause (i) of No. 142 of the High Court Circular orders Chapter III.†

§ See H. C. Circular order No. 17 ; B. G. G. for 1903, pt. I, p. 306.

† do. do. do. 117 notes IX-XI ; B. G. G. for 1903, pt. I, p. 312.

† do. do. do. 142 ; B. G. G. for 1903, pt. I, p. 316.

The destruction of records in the Courts of Village-Munsifs is regulated by the same rules as regulate the destruction of records in the District and Subordinate Courts.‡

The agreements or Kabuliyats made before Conciliator are preserved under High Court Circular order noted below.*

Reduction and remission of Court-Fee.§

Under section 35 of the Court Fees Act (VII of 1870) the Governor-General in Council has been pleased to make the following reductions and remissions;

- (1) To remit the fees chargeable on plaints under section 16 of this Act, except in the District of Satara, where the said fees shall be reduced to one-half.
- (2) To remit the fees chargeable in respect of the documents specified in the 1st and 2nd Schedule in the case of suits for the redemption of mortgaged property, when the plaintiff or (where there are several plaintiffs), any one of the plaintiffs, is an agriculturist, and when such suits are instituted within the districts of the Bombay Presidency in which this Act is for the time being in force, except in the District of Satara, where the fees shall be reduced to one-half.

No Court-fee is payable on an appeal by a non-agriculturist defendant in a redemption-suit brought by an agriculturist.†

- (3) To remit the fees chargeable in respect of powers-of-attorney, furnished to relatives, servants, or dependants under section 68 of this Act.
- (4) To remit the fees chargeable in respect of the documents specified in the 1st or 2nd Schedule in the case of suits instituted before Village-Munsifs under Chapter V of this Act.

‡ See H. C. Circular order No. 143; B. G. G. for 1903, pt. I, pp. 316, 317.

* do. do. do. 12; do. 1904, do. p. 1353.

§ Notification No. 4650, dated 10th September 1889 paras 28 to 34; the Gazette of India for 1889, pt. I, pp. 506 to 509.

† *Lukshman v. Ramji*, 1883. P. J. 163.

Exemptions under the Stamp Act.

- (5) To remit the fees chargeable in respect of proceedings taken under section 19, second clause of this Act.*
- (6) to remit the fees chargeable in respect of proceedings in matters relating to insolvency under Chapter IV of this Act.
- (7) To reduce to one-half the fees chargeable in the case of suits to which Chapter II of this Act applies, except suits of the description mentioned in section 3, clause (w) or clause (x) of that Act to which an agriculturist is not a party :

Provided that, when the reduced fee amounts to a fraction of an anna, the fee chargeable shall be one anna :

His Excellency the Governor-in Council has been pleased to authorize the Sub-Judges of the 12 Talukas named below to refund to the plaintiff one half of the institution fee in all cases in which one of the parties is an agriculturist, as defined in this Act and in which the Court passes a consent-decree at the 1st hearing of the suit.†

<i>Taluka.</i>	<i>District.</i>
Khed	Poona.
Akola, Parner, Sanganner, Jamkhed, Karjat	Ahmednagar.
Sangola, Malsiras	Sholapur.
Patan, Khanpur, Man, Javli	Satara.

Exemptions under the Stamp Act.‡

The following instruments are exempted from Stamp duty :—

- (1) Agreement of the kind described in s. 43 of this Act.
- (2) Power-of-attorney furnished to a relative, servant or dependant under s. 68 of this Act.
- (3) Copy of an instrument which a Village-Registrar has to deliver to a party under s. 58 of this Act.

* This remission is now of no avail inasmuch as s. 19 itself has been repealed.

† Notification No. 6822, dated 27th September 1884, B. G. G., part I, p. 868.

‡ See Notification No. 785, paras 2, 46 and 47 ; Gazette of India for 1899, pt. I, pp. 250, 252.

The duties chargeable under Article No. 15 of Sch. I to the Stamp Act (II of 1899), on a promissory-note payable on demand or otherwise than on demand and not payable at more than one year after date or sight, to a certain person and not to order or bearer when such note is executed by an agriculturist, and is attested at the time of execution by a Village-Registrar, under s. 57 of this Act, is reduced to the amounts respectively chargeable under Sub-heads (a) and (b) of Article No. 13 of the said Schedule, on bills of exchange payable on demand or otherwise than on demand as the case may be,.....‡

‡ See Notification No. 1472 ; B. G. G., for 1904, B. G. G., part I, p. 255.



PART III.

CONTAINING

The Proceedings of the Legislative Council

WITH RESPECT TO

THE

Dekkhan Agriculturists' Relief Act,

1879 to 1902.

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PART III.

Proceedings of the Supreme Legislative Council.

Statement of Objects and Reasons

FOR

Act XVII of 1879.

1. The inquiries made into the causes of the riots which occurred in the Dekkhan districts in 1875 and the discussions which have since taken place show that the difficulties under which the agriculturists in those districts labour are due, in a great measure, to the unsatisfactory nature of the relations at present subsisting between them and the money-lending classes.

2. In order to put those relations on a better footing, it is deemed necessary—

First, to provide some safeguards against the 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.

Secondly, to arrange disputes by conciliation as far as possible; to increase the number of Courts, and to simplify and cheapen the administration of justice, and thus to afford facilities to the agriculturist to defend any suit that may be brought against him;

Thirdly, to insist that in suits against agriculturists the Court shall in certain cases of its own motion investigate the entire history of the transactions between the parties, and do substantial justice between them;

Fourthly, to restrict the sale of the raiyat's land in execution of decree, and to provide an insolvency-procedure more liberal to the debtor than that of the Code of Civil Procedure.

The present Bill has been drafted with a view to securing these objects, in so far as they can be secured by legislation. It extends only to the four districts in which the agricultural distress has been most felt.

3. An attempt has been made to secure the first object by sections 55 to 63, providing for the appointment of Village-Registrars before whom every written obligation for the payment of money by an agriculturist must be registered; by sections 64 to 67, requiring money-lenders to give receipts to agriculturists for all payments made by them, to render accounts, and to furnish a pass-book in which the agriculturist's account will be periodically written up; and by section 71, which invalidates all mortgages created by an agriculturist otherwise than by a written instrument.

4. With a view to the second of the proposed objects, the Bill provides in sections 40 to 50 for the establishment of a system of conciliation under which it is hoped a large number of disputes will be settled out of Court; and in sections 36 to 39 for the appointment of Village-munsifs, like those in the Madras Presidency, to dispose of petty cases. A further addition to the machinery for the disposal of suits will be made by an increase of the number of Subordinate Judges; but as this is a matter which it is competent to the Local Government to deal with under the existing law no reference to it will be found in the Bill.

5. As regards procedure, it is proposed, with a view to a more rapid despatch of business and to diminishing the cost of litigation, to simplify the record in certain respects (sections 10 and 11), to discourage the employment of pleaders in petty suits (section 69), and to substitute for the present system of appeals a very strict and searching supervision (sections 51 to 54).

6. Sections 12 to 16 provide in certain cases for a thorough investigation into the history of the transaction between the parties (the third of the four objects mentioned above). They prescribe the system in which the raiyat's account is to be made up in cases where the Court finds it necessary to set aside oppressive or inequitable arrangements between the parties, and they guard especially against exorbitant demands for interest.

7. The presence of the defendant being essential for the thorough investigation proposed, and the raiyats being, through various difficulties, apt to leave their suits undefended, it has been provided (in section 9), that except for special reasons, no suit shall be decided *ex parte*, but that the Court shall compel the defendant to appear.

8. The last of the four objects proposed will be found provided for by sections 25 and 33, which enact that land shall not be sold to pay the debt of the owner except where it has been specifically pledged, but admit of its profits being made available to the creditor for a term of years, and by the sections relating to insolvency.

9. The chief points in which the provisions of the insolvency chapter differ from those of the Code are that they allow an agriculturist to apply to be adjudicated an insolvent, though no process in execution has been issued against him, that they entitle him to an adjudication in all cases in which, as a matter of fact, he may be insolvent, leaving any misconduct on his part to be punished under the Code of Civil Procedure; and that they similarly entitle him in all cases to complete discharge from debts which, after all reasonable enforcement, he is unable fully to pay.

10. This insolvency procedure is further supplemented by section 20, which gives the Court a summary power in petty cases to discharge a judgment-debtor who is clearly insolvent, and by section 22, which abolishes imprisonment or debt.

11. The only other provisions of the Bill which appear to call for special notice are section 70, which empowers the Court to direct the Government pleader to appear on behalf of a raiyat when he is unable to engage the services of a professional advocate and the opposite side is represented by a pleader, and section 72, which extends the period of limitation in suits for debt instituted against agriculturists. This latter provision has been introduced into the Bill, as there appears to be a pretty general consensus of opinion to the effect that the difficulties of the raiyat are much aggravated by the present law of limitation which compels the money lender at very short intervals to sue him or take a fresh bond either of which steps commonly entails a considerable addition to the debt.

OPENING SPEECH.

An extract. from the Speech of the Hon'ble Mr. Hope made on the occasion of introducing the Bill in 1879, for the relief of agriculturists in certain parts of the Dekkhan—*

“The ‘Dekkhan riots’ began in May 1875. They extended to 33 Villages in the Districts of Poona and Ahmednagar and many more were threatened; but order was restored within a month’s time. . . . The movement was simply an organised, and temperately but determinedly conducted effort, directed to the definite object of obtaining and destroying the bonds, decrees and account-books of the money-lenders. No persons except the latter were molested. The mobs were composed of respectable members of the community and were often led or encouraged by the headmen of the Village. On attaining their object, they dispersed as rapidly and quietly as they had come together.....

The riots have been followed by investigations in various forms. A Special Commission, in the first place, was without delay appointed by the Bombay Government. . . . Their report, in five volumes and above 1,500 pages, is a very able survey of the difficulty in all its aspects..... The Central Dekkhan, which is the locality principally distressed,.....consists of four districts, Poona, Ahmednagar, Sholapur and Satara ...The state is the landlord.... The peasant-proprietors themselves cultivate about three-fourths of their land and sublet the remainder.....The proportion and extent of indebtedness are not easy to ascertain...As compared with former times and with Native States, indebtedness now in the Dekkhan extends to smaller numbers, but is heavier in individual incidence, followed by consequences infinitely more serious, and decidedly abnormal.....and...we must enter into a critical examination of its probable causes before we can hope to apply an effective remedy. These causes...may be conveniently classed as ‘normal’ and ‘special.’ The normal causes are those which may be found at work, more or

* Vide Proceedings in Governor-General’s Council for the purpose of making laws and regulations (for the year 1879) Vol. XVIII, pp. 116 to 153.

less, at all times, and some in all parts of India, others only in certain localities. First of these stands *poverty*....Next to poverty comes *ignorance*, which renders the unlettered peasant unable to read, and often to understand, the documents and accounts in which he is vitally concerned, or to state and substantiate in a Civil Court a good defence when he has one, and thus makes him a tempting subject for every kind of roguery. *Social observances*, such as marriage, birth and funeral expenses, also swell the roll of obligations...*Improvvidence* must be admitted to contribute its share to the catastrophe.. ...To this may be added an honest and confiding, rather than vigilant, temperament, a soil yielding but one crop, and therefore the whole year's income at one period, a climate so capricious as to preclude at seed-time any safe estimate of what the harvest, if there be one, will be worth, and prices varying above cent-per cent.

Besides these normal causes conducive to indebtedness, there exists a long array of special ones: some general in their operation, others peculiar to the Bombay Presidency or the Dekkhan alone. These I propose to notice in four groups—namely, those increasing credit, diminishing ability to repay, proceeding from the revenue-system, and comprised in the term ‘arming of the money-lender.’

Increased credit obviously flowed from our establishment of a settled Government, and the consequent immunity of the raiyat from being plundered and murdered by hostile armies, or drawn from his fields, perhaps killed in battle, on his own side, as also from the grosser forms of private crime. A like effect followed our land-settlements...Under the Native Government a cultivator could not, according to custom, be ejected as long as he paid the revenue demand; but that demand was so high that his right of occupancy was worth little or nothing, and was besides mostly not recognized as saleable....Under our settlement, however, ‘this right of conditional occupancy’ (to quote Bombay Act I of 1865) ‘is declared to be a saleable and transferable property’.....*The arming of the money-lender* is a general term which I shall apply to the process of increasing in numberless ways the legal power of creditor over debtor, which has been synonymous with the elaboration of our Indian law procedure...The procedure is highly elaborate and technical; the penalties for contravention of it severe, and litigation dangerous without the guidance of a pleader...The procedure is the

same for a debt of Rs. 5 and Rs. 5,000, except in the rare instances where Small Cause Courts are established. Stamp and Court expenses have nearly doubled. Arbitration has been gradually shouldered out...Suits may be heard *ex parte* in the absence of the defendant, and are found to be so, in the four Dekkhan districts, in above half of the cases. Great weight is attached by the Courts to bonds.....However fraudulent, extortionate or in excess of consideration a bond may be, the burden of proof lies on the debtor, and in practice his defence is generally hopeless....The reduction of the limitation period for bonded debts from twelve to six and in some cases three years, and for simple money debts from six to three years, respectively, has subjected the debtor to compound interest, frequent suits, extra costs and a vast increase of his liabilities. The power of obtaining arrest and imprisonment gives the creditor the means of extorting almost any terms for his forbearance in exercising it. The power of sale in execution extended till 1877, to *everything* the debtor possessed; since then certain bare necessities have alone been exempted.....Of all sales it is a characteristic that the property, through technical difficulties, constantly goes for a mere song, and the creditor is the purchaser.....If the persecuted debtor turned towards the law of insolvency,.....until actually arrested or in jail, he could not resort to it at all; and whether, after doing so, he escaped its pitfalls and two years' imprisonment or not, his subsequently acquired property and earnings were liable (unless his debt was under Rs. 100 and the judge chose to discharge him) until the last pice due, with interest, had been repaid. Finally, the increase of work entailed delay, with loss of time and money, in the disposal of cases.....The tendency of the change of relations thus gradually brought about by the law will be seen to have been all one way—in favour of the party possessing the most intelligence and money....

Having thus enumerated the various causes of the raiyat's indebtedness, I will briefly classify them according to the possibility or expediency of remedial measures....Ignorance, improvidence and extravagant ceremonial or social expenditure can never be eradicated from the world, either in the Dekkhan or elsewhere, though time, experience and education may reduce their strength...As causes regarding which interference is undesirable may be mentioned the increased credit due to orderly Government, property in land and

competition of money-lenders, and the lessened ability to repay arising from the diminution of waste land for fallows and grazing by the extension of cultivation and forest reserves.....Respecting the other causes, action, either executive or legislative, seems open to us... Legislatively, what we can do,...what we undoubtedly ought to do promptly and effectively, is to restore, as far as may be, the rude balance between debtor and creditor, which has been disturbed by our own legal institutions. We may take back many of the weapons inconsiderately placed in the money-lender's hand and shown to have been misused.....The problem before us is how to keep the money-lender in his place, to encourage and support him in all useful functions, but to restrain him from becoming the enemy and oppressor of the poor? The leading principles of our new measure then should be to give both sides fair play, instead of setting the two classes by ears We must foster due credit, check that which is undue, and allow free scope to all civilizing processes and healthy relations between capital and labour.....

I will now endeavour to set forth, as clearly and fully as time and the occasion permit, the principle provisions of the bill I am introducing ... and I shall discard its arrangement, and endeavour to express in plain English the effect which its provisions (coupled with the Code) are intended to produce.

The first object aimed at is to establish precautions against fraud by either debtor or creditor in their original transactions with each other, and so keep them on good terms and out of Court, as far as possible. The Commission thus enumerate the chief frauds which are practised:—

By creditor—(1) forging bonds; (2) withholding the consideration mentioned in bond; (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.

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 raiyat should at least know what he signs, and both parties should receive due protection. Chapter IX, directed against the remaining three kinds of fraud, provides, under a penalty, for the grant to raiyats 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. These two chapters are based on recommendations of the Commission.

The next step contemplated is that, whenever serious misunderstanding unfortunately arises between money-lender and raiyat, either party should be able to resort to a friendly non-judicial authority bound to use his best offices to reconcile the two, and that no litigation should be commenced without a certificate from the Conciliator (as the authority constituted by Chapter VI will be termed,) that his endeavours in this behalf have failed.....

Supposing that, notwithstanding all the preceding precautions, the dispute unfortunately develops into litigation, the Bill next endeavours to place the Courts of law within easier distance from the homes of the people, and to make them more absolute, less technical, less dilatory and less expensive. In pursuance of the objects just named, Chapter V empowers the Local Government to appoint any Patel of a Village, whom it deems competent, to be Village-Munsif for his own Village, or, if desired, for other Villages also within a radius of two miles. The Munsif's jurisdiction will be limited to suits for money not exceeding ten rupees, and will generally follow the model of the Madras Village-munsif's system, constituted under Madras Regulation IV of 1816, except that the Munsif will not have, as there, a further jurisdiction, by consent of parties, extending up to Rs. 100. This Madras system is well worthy of attention These Munsifs dispose of nearly one-fourth of the whole Civil litigation of the Presidency Although, however, Village munsifs may thus be a fairly efficient institution in Madras, where they are a survival of the ancient times, and where society is still in a comparatively simple state, it would be impossible at the present day to constitute them by law through-

out all Villages or Village-circles in our Dekkhan districts Our advanced conditions postulate a more skilled judicature, better Judges, and, consequently, fewer of them ; and these the Government must in the main provide. At the same time, there can be no harm in taking advantage of the present opportunity to empower the Government to invest with petty jurisdiction up to Rs. 10 any Village Patels whom it may here and there find to be qualified by education and character.

Next above these new Munsif's Courts come the existing Courts of Subordinate Judges, who are all trained officers. Their powers will be considerably increased. By Chapter II of the Bill all Subordinate Judges in the four districts will be invested with what are termed Small-Cause-Court powers, but enlarged so as to include mortgage-cases of the class in which agriculturists are so commonly involved. And by Chapter IV they will all receive jurisdiction in insolvency. The question of how far the summary jurisdiction, not open to appeal, which the Small-Cause-Court model implies, might safely be entrusted to the Subordinate Judge has received careful consideration It is considered that such jurisdiction may be conferred on the first class Subordinate Judges up to the full limit allowed in the Moffusil Small-Cause-Court's Act namely, Rs. 500, and on the second class Subordinate Judges up to Rs. 100 absolutely and up to Rs. 500 by consent of the parties..... But three special safe guards are proposed in Chapter VII. *Firstly, Inspection* :—A Special Judge will be appointed to inspect, supervise and control the proceedings of the Subordinate Judges, Munsifs and Conciliators under the Act in all the four districts, and see its new principles and policy effectively carried out. The Special Judge will be aided by a Special Assistant Judge or Subordinate Judge *Secondly—Revision*.—The power of revision vested in the High Court by section 622 of the Code of Civil Procedure is extended.....to the Special Judge, who will be enabled to call for and examine the record of any case and correct failure of justice, as also similarly to deal with cases called for and referred to him by his assistants just mentioned. The powers of the High Court under the same section will remain intact. *Thirdly—'Sitting in banco'*.—The Special Judge and the assistants with his authorization are enabled to stay the proceeding in any case pending in a Subordinate Court,

and to sit with the Judge as a Bench to try it. The power of withdrawing a case and trying it himself, or transferring it to another Court, which the District Judge possesses under s. 25 of the Code of Civil Procedure, will also be exercised by the Special Judge, and by his assistant with his authorization.

The procedure followed by the Courts under their new jurisdiction will be pretty nearly that of Small-Cause-Courts One exception, however, is so important as to require special mention. The Commission pointed out that the proportion of cases decided in Bombay *ex parte*, or in the absence of defendant, vastly exceeded that in any other part of India. This has been ascribed to a variety of causes, of which the chief probably are ignorance of the raiyat that he has a defence, want of means to pay a pleader, conviction that the Court, for want of time or other reasons, will not go into the merits of his case or look behind the bond, fear of irritating his creditor by a defence or fraudulent non-service of summons. The various provisions of the present Bill, however, completely alter the position. The obligation laid on the Court of going into the whole merits of the case, and behind the bond, if necessary, to which I shall presently allude, will remove the first three of the above causes of backwardness on the raiyat's part, and will probably lead to his more frequent voluntary appearance. Compulsory attendance will meet the other two causes of absence above mentioned.

Closely connected with the question of procedure is that of how far effect should be given to the suggestion of the Secretary of State that possibly it would be desirable to exclude professional pleaders from the 'Courts with summary jurisdiction and without appeal up to a limited amount' which he desires. Upon this point we have two precedents. The French Code excludes all skilled advocacy from the Courts of the *Judges de Paix*, whether in conciliation or trial of suits. The Madras Regulation for Village-Munsifs excludes professionals, but allows the deputation of a relative, servant or dependent—so that, for instance, a *saukar* could send his *Gumashita*, and a raiyat could send or bring with him a clever son or, nephew educated in a Government School. It may be true that where a case, involving even a moderate amount, is intricate owing to mortgages or other exceptional circumstances, a competent pleader

may be of much use both to the parties and the Court. On the other hand, it must be admitted that a pleader is a weapon at the command of the rich alone (one Subordinate Judge even states that a pleader who often took raiyats' cases would lose his best customers); that in simple suits a pleader can often add nothing of value to what is in evidence, but only wastes time and introduces confusion; that the presence of pleaders pre-disposes some Judges to decide on what counsel put before them instead of going independently into the merits. Upon a balance of such considerations, the draft Bill followed the Madras law in excluding pleaders, but admitting non-professionals, in all cases before a Village-Munsif or Conciliator The appointment of a pleader by the Court in cases where the debtor needs counsel but cannot obtain it is also provided for.

Having thus noticed the proposed reorganization of the Courts, I proceed to explain some important changes contemplated in the substantive law which they administer. These group themselves round two main heads,—the definition of a debtor's liability, and the mode and extent of its enforcement.

A Court proceeding to determine the amount of a debtor's liability is met by the undeniable fact that 'the passing of a bond by a Native of India is often of no more value as proof of a debt he thereby acknowledges than the confession by a man under torture of the crime he is charged with.' That the money-lenders do obtain bonds on false pretences; enter in them sums larger than agreed upon; deduct extortionate premiums; give no receipts for payments and then deny them; credit produce at fraudulent prices; retain liquidated bonds and sue upon them; use threats and warrants of imprisonments to extort fresh bonds for sums not advanced; charge interest unstipulated for, over-calculated—or in contravention of Hindu Law, and commit a score of other rogueries—these are facts proved by evidence overwhelming Hence arises the question whether, 'the Courts should be obliged to enter into the merits of every money-claim, whether secured by bond or not, and should award only such sums, whether for principal or interest, as they deemed just, and should in no case give compound interest, or a larger amount of interest than the principal sum.'

The answer in the affirmative has been maintained, in various quarters of not inconsiderable authority, to be in accordance with sound general principles of equity. Upon this subject not only opinion but precedents are forthcoming. Of the manner in which our Government, a few years ago, deemed it necessary to protect the raiyat, we have a striking instance in a clause (still unrepealed*) of the Bombay Regulation V of 1827. It runs thus :—

‘ Clause 2.—And in the case of a cultivator of the soil sued upon a written acknowledgement executed at a place which was not at the time of such execution under British jurisdiction, if the circumstances are such as to convince the Court that the creditor might reasonably be expected to possess other proof of the amount besides such written acknowledgment (the consideration received for the same being contested), then the said writing shall not be held conclusive as to the amount, whether the defendant prove a deficiency in the consideration or not, but the Court shall pass a decree for only such amount as the claimant may otherwise prove to be due.’

The law which preceded it, Regulation I of 1823, was even more explicit :

‘ Section 36.—Whenever a cultivator of the soil is sued upon an acknowledgment in writing executed by him before the territory where it was executed came into the possession of the British Government, it shall be competent for him to plead that he did not receive a full consideration for the same, whereupon the plaintiff shall be required to prove his debt in the same manner as if no acknowledgment had been executed; and such sum only as in the circumstances of the case is just and equitable shall be allowed in the decree.’

What the Bombay Government of Sir Richard Temple have from the first substantially advocated, and what we really need, is something approaching to a restoration of this early law, together with power to cut down unreasonable interest. The Court should set itself to do substantial justice in every case which came before it instead of being satisfied with the letter of a bond or the bare assertions of either party, and it should of its own motion make such inquiry as it found necessary to this end. There appears no reason to fear that such an exercise of its discretion by the Court would be either unfair to the creditor or demoralizing to the debtor. Where the rate of interest is regulated by the ordinary laws of supply and demand, interference is indefensible. But where

* The D. A. R. Act repeals it,

..... 'the conditions depend more upon the degree of simplicity in the borrower and of rapacity in the lender than on anything else,' no such respect need be paid to them. It may be pointed out that Lord Cranbrook appears to look with approval on 'extending the powers of Judges to modify the contracts entered into between man and man.' In accordance with this view, the first four sections of Chapter III have been framed, and will apply to all determination of the debts of agriculturists which may take place under the Act. The history and merits of disputed or doubtful cases will be enquired into, and an account will be taken in a certain way if the Court considers the agreement not fair and equitable. Regarding this safe-guard and those of registration and accounts already explained, I should perhaps observe that any ingenious person can imagine methods by which debtor and creditor in collusion may evade them. But the same may be said of many other most beneficial enactments. We can only help those who will help themselves.

A second important question affecting the determination of the amount of the debtor's liability is that of the period of limitation. The old law of Bombay (Regulation V of 1827, sections 3 and 4) fixed twelve years in the case of debts supported by a bond, and six years in the case of debts not so supported, as the period within which Civil suits for recovery must be brought respectively. By Act XIV of 1859 these periods were reduced to six and three years respectively, with the further restriction that a debt supported by written contract was to come under the three years' period, unless it was registered. This is the present law, Acts IX of 1871 and XV of 1877 having made no material change. There is an almost universal consensus of opinion that, as the Commission say, 'the reduction in the periods of limitation has been the cause of considerable hardship to the debtor.' Under the old law, the debtor was rarely sued or called upon to renew the bond till near the expiration of twelve years, and then he was, at most, sued under the provision of *dam-dupat* for twice the principal sum lent. But under the law since 1859, the creditor is forced within every three years either to sue the debtor, or to obtain from him a fresh bond for principal and any accumulated interest. In practice, he does so nearly every two years, in order to make sure of not missing the period through any accident or default.

..... The debtor thus suffers the cost of writing and stamping a new bond, is charged compound interest instead of simple, often has to bear the expenses of a suit, and, finally, is frequently obliged also to submit to a large nominal increase of the principal, as the price of the creditor's forbearing to sell him entirely up, or to have him arrested and imprisoned. The only plea which has, as far as I am aware, been advanced in favour of the three years' period is that it obliges the making up of accounts at short intervals, thus enabling the raiyat to know how he stands, and preventing his being deeply involved without his knowledge. This objection had, undoubtedly, very considerable weight at the time it was made But the aspect of the question seems to be changed by the provisions in Chapter IX of the Bill regarding receipts and statements of account. Taken in connection with s. 17, which enables any agriculturist to sue for an account, and to get a declaration of the amount really due to him under all the new and searching provisions of the Act, it would appear that the object of short accounts will now be attained, and perhaps more efficiently than it ever could have been by the indirect expedient of a limitation-law.

I now proceed to the second head—the mode and extent of enforcement of equitably determined liability. In the execution of a decree by sale of moveables, the necessary wearing apparel of the judgment-debtor and his wife and children, his implements of husbandry, and such cattle as the Court may deem necessary to enable him to earn his livelihood as an agriculturist, are now protected by the amended Code of 1877. So it has not been thought necessary to go further. As to execution against the person by arrest and imprisonment, I rejoice to state that it is now considered expedient to abolish it altogether. Imprisonment will still be inflicted as a punishment for fraud detected on insolvency; but that is a totally different thing.....Imprisonment was, at best, a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. I trust that no hesitation will now be felt by the council in abolishing a system which has been proved to be grossly abused as an engine of extortion, and is in opposition to the legislation of the civilized world.

The case of execution of a decree by sale of immoveable property remains for notice. The problem of whether such sales

should be enforced is entirely the creation of British Rule. Although the later Hindu Law permitted the sale of land 'on proof of necessity,' and Mohamadan Law placed no bar to it whatever, the general feeling of the country against alienation of ancestral lands, coupled with the trifling value of the right of occupancy and the political objections to expropriation felt under the Native Government appear to have co-operated to prevent sales to any noticeable extent. But under our judicial system, 'the sale of land registered in the Collector's books is the most ready way of enforcing a judgment: it gives the least trouble to both the creditor and the Court, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other, even in the most trifling cases.' The Code provides, indeed, an alternative to sale of the nature of an eligit, or temporary alienation, by allowing the land to be placed under the management of the Collector for a term of years, not exceeding twenty, whenever there is reason to believe that the liability can be thereby cleared off. Practically ... sale has hitherto stood in the Code unfettered The position of the question is generally admitted to be unsatisfactory... The alternatives of making land by law absolutely unsaleable for debt; of enabling proprietors to make it so by voluntary trusts or entails; of limiting sale to any surplus unnecessary for the subsistence of the proprietor and his family; of replacing sale in execution by usufructuary mortgages for the debtor's life or a maximum term of years; of restricting sales to specifically pledged land and of confining the power of sale to the Chief Court of a District all these have found powerful & zealous advocates.

..... The conclusion of this Council when passing the Civil Procedure Code, was that, though special measures might be admissible in particular localities, the plan of temporary alienation through the Collector for a term of years, whenever the property would be ultimately saved thereby, being in accordance with the past course of Legislation regarding land in England and not inequitable, deserved a fair trial. My object in this statement of the position of the land question is to account for the absence in the Bill of any attempt at a final comprehensive settlement of it, and at the same time to show the connection and admissibility of the two limited measures which are proposed. Section 23 exempts the

land of agriculturists from attachments and sale unless it has been specifically pledged. I must confess to some misgivings as to how the exemption may work in practice. The money-lender may everywhere make the execution of a bond, laying on the land all his existing unsecured advances, and indispensable condition of further accommodation. At the same time, the exemption rests as to the past upon a perfectly intelligible and reasonable basis, while as to future, the proposed village registration will atleast ensure that every raiyat when he pledges his land shall understand what he is doing and insolvency will open to him a loophole of escape when unreasonably pressed by an extortionate creditor, if he prefers the alternative. The second measure also contained in section 23, is the grant of power to the Court, when passing a decree or subsequently to direct the Collector to pay off the amount by managing for not more than seven years any land not specifically pledged, after deducting a modicum sufficient for the support of the debtor and those of his family dependent on him. This course, which is only a new application of the principle of temporary alienation will add greatly to, the creditor's security, while diminishing the worry and expense to both himself and the debtor.

While thus contemplating the continued recovery of debts from moveables and land, however, policy no less than justice demands that the last refuge of an effective insolvency-law should be provided for the debtor. Such a law is really the bottom of the whole matter The need for it has been generally admitted for a long series of years, and has led to various legislative efforts and measures. Sir George Wingate so recently as December 23rd, 1877, wrote thus :—" Of all the remedies proposed I estimate the Insolvency Act as of the highest importance, and as likely to prove the most efficacious." Sir Bartle Frere in 1853, when Commissioner in Sindh, issued rules which worked well, but were superseded in 1861 by the Code of Civil Procedure. Sir William Frere, member of Council at Bombay, introduced into the Legislative Council there in 1863 a Bill based on these rule and the Insolvent Act of the Presidency-Town (11 and 12 Vic., Chap. 21) but applicable to the whole Presidency. It was carefully matured in Select Committee, but was eventually withdrawn in 1867 for variety of reasons Sir James Stephen in 1870 introduced

into the Legislative Council of the Governor-general an Insolvency Bill applicable to all India. It was taken almost entirely from the English Bankruptcy Act of 1869; and on circulation to the Local Governments was generally held to be too complicated and unsuited to the circumstances of the Indian mufassal. In 1872 Mr. (now the Hon'ble Justice) West, Judge of the Sadr Court in Sindh, proposed a Bill with the essential features of the original Rules of that Province; but the matter was not proceeded with. The measure generally is also advocated in his well-known pamphlet 'The land and the Law.' In 1872, also, the Panjab made a material step in advance in the Land Act then passed.

Upon the acknowledged harshness of the Indian law of insolvency as it stood up to 1878 I need not enlarge. The new Code of that year, together with the amending Bill, which will, I hope, be passed at our next sitting, have so far relaxed it, that a debtor arrested or imprisoned, whose property has been attached, may by application obtain a general inquiry into his affairs, a declaration of insolvency, and a release if in jail (with immunity from subsequent arrest for the scheduled debts) on *bona fide* surrender of all his property. A judgment-creditor also may apply for such declaration. A final discharge may also be granted by the Court at its discretion when the debts do not exceed Rs. 200, and is in any case acquired on payment of one-third of the Scheduled debts, if the assets do not produce more, or after the lapse of twelve years. The law is still, however, most defective. Application may not be made by a debtor until process has issued against him; arrest is retained; and imprisonment, though for a short period; all property except the moveables exempt from sale in execution must be surrendered; the debtor may be summarily imprisoned for a year, at the instance of any creditor, for concealment or bad faith, while no such penalty awaits the creditor; and in some cases the debtor's future earnings will be unreasonably burdened while in others the creditor will not get what might fairly be recovered for him. Finally, the whole becomes a farce through the restriction that the Court may not grant a declaration unless it 'is satisfied' that the debtor 'has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts,' as if

persons able to pay in full were the usual customers of the money—lender!

The fact is that insolvency-law for the Indian mufassal made an altogether false start.....In England insolvency has hitherto been treated more leniently than in India. Misfortune has here been made a crime, for which even life-long slavery might not atone. Surely, we must divest ourselves of much confusion of ideas. Whether a man *is* insolvent or not is a mere question of fact, quite unconnected with the inquiry how he came to be so. How much he *can* repay, without being made a useless or dangerous member of society is a mere matter of calculation, into which the moral aspects of his past conduct cannot enter.....To declare an agriculturist insolvent when he is so; to set a reasonable time before him during which he shall work himself free and reserve the means therefor; and eventually to start him afresh with the lesson of experience, seem more sensible than to lock him up for a time while his family are starving, and then turn him adrift a beggar. To the creditor certainly the former course will be the more profitable, as also to society.

In accordance with these principles, the Bill, in the first place provides (section 20) for the numberless petty cases in which the means of the debtor, the claims against him and his partial or total inability to satisfy them come before the Court in the course of the suit or application for execution Where the case is quite simple, the Court will therefore release the debtor from any balance which it is satisfied he cannot pay. When there are several creditors or other complications and the amount exceeds Rs. 50 it may at once direct the taking of insolvency-proceedings. Reviewing the Bill broadly, if I am asked what I think will probably be the effects of the measure... I must reply that...I think that it cannot but be most beneficial and that it will to a great extent meet the needs of the Dekkhan...Of course no one expects from it the abolition of indebtedness for all time."

DISCUSSION.

The Honourable Sayyad Ahmad Khan said:—

“ Before the Bill goes to the Select Committee I wish.....to make a few observations with regard to the principles upon which the proposed legislation is based.....My Lord, no doubt a case has been made out for the application of special measures of relief, and I fully admit that that relief should take the form of a law providing facilities for the release of debtors from debts which they can have no hope of discharging and which, while they remain subject to them, deprive them of the ordinary motives for exertion—the attainment of something more than bare livelihood. But My Lord, while it is desirable to give greater facilities to the ryots of the Deccan,.....care must be taken that the remedies are such as will not deter the people from having recourse to them, nor impair the credit which is ordinarily given to agriculturists, and without which they would be unable to meet the demand for revenue, or to sustain themselves from harvest to harvest.

The requirements of the present Bill as to registration appear to me so onerous, that they will operate to deter persons from committing their transactions to writing. Registration affords a very doubtful proof of the payment of money. It is a common experience in this Country that money paid in the presence of the registration-officer is in part or wholly returned when the parties leave the presence of the registrar. It is rarely denied that a transaction has taken place; but if a dispute arises, it is as to the amount received.

The portion of the Bill which relates to conciliation also deserves serious consideration. The Bill provides for the appointment of Conciliators, who having invited the parties to attend, are to use their best endeavours to induce them to agree to an amicable settlement. Now, the matter on which the parties are supposed to be at variance is not a mere dispute arising out of domestic or friendly relations, in which the impartiality of a stranger or the influence of a neighbour can be hopefully introduced, to persuade the parties to make mutual concessions; and, therefore, I am not hopeful that this pro-

vision will be of practical use..... My Lord, in my judgment there is more reason to expect that a creditor will abate his claims when the parties are brought face to face in a public Court of Justice than at a private sitting held by a Conciliator.

My Lord, I now come to the provisions relating to the procedure in the civil Courts.....The first deviation from the ordinary procedure which I find in the Bill is the compulsory enforcement of the attendance of the defendant. My Lord, if I am right in supposing that in the majority of cases the claim is just, it follows that in the majority of cases in which the defendant does not appear, it is because he knows the complaint is just, and does not desire to lose the labour of several days, possibly at a critical season for his crop, and incur the expense of going to and from, and attending the Court. It would perhaps be sufficient to require the Court to exercise the power, it already possesses of enforcing the attendance of the defendants only in those cases in which, on looking into the account, it sees reason to believe the claim is fraudulent or extortionate.....

The provisions of the Bill which direct the Court to go into the history of the case from the commencement of the transactions, I think, also require modification. They may involve an inquiry imposing on a Court many days' labour, and affording it no certain conclusions. It is scarcely reasonable to expect either of the parties to produce reliable evidence of petty money transactions extending over a number of years and commencing, it may be, a quarter of a century ago, especially seeing that the limitation-law has encouraged them to believe that such evidence would not be required of them. I, therefore, think that some definite and not too remote period should be prescribed for such enquires. So also a definite limit of time should be prescribed for re-opening statements and settlement of accounts. Some debts which will come before the Courts will be the result of transactions commenced and settled before the life-time of either party to the suit. The consequence of imposing on the Courts a duty they cannot possibly discharge would be to encourage them to evade it.....The provisions of the Bill tending to prevent the employment of Vakils appear to me to be of very doubtful expediency. Having exercised judicial functions for many years I

am bound to say the Courts receive considerable assistance from Vakils.....I would prefer to see provision made for the employment of Government pleaders to appear on behalf of debtors in all cases, rather than discountenance the employment of pleaders at all.

With regard to appeals, which are entirely prohibited in the Bill I admit that they entail evils, in that they prolong litigation and increase expense; but it seems to me better to experience these evils than the greater evil of imperfect justice. Cases triable by the Courts of Small Causes ordinarily present very simple issues, and do not call for the intervention of a Superior Court; but questions relating to land are far more complicated, and involve frequently questions on which the law is not well settled. I can see no reason why appeals should in these cases be refused in the Dekkhan when they are allowed elsewhere. Revision is, at the best, an imperfect substitute for the right of appeal.

For similar reasons I considered the expediency of introducing special rules of limitation, proposed in the Bill, open to serious doubt. If it is desirable in the interest of the debtor to extend the period of limitation for the recovery of debts, the benefit should be given to agriculturists everywhere, and, indeed, to debtors of all classes.

The provisions of the amended Code of Civil Procedure relating to insolvency will afford sensible relief—and relief that was needed—to agricultural and other debtors in all parts of the Country. The insolvency provisions in the present Bill go beyond the general law. I am not prepared to dissent from them on that account; I have only to observe that I can see no reason why a fraudulent insolvent in the Deccan should be exposed to less penalties than a fraudulent debtor elsewhere.”

[Honourable Mr. Cockrell's speech is omitted. It is almost in the same terms as that of the above speaker.]

His Honour the Lieutenant-Governor said:—

It seemed to him that.....the Government in this Bill proposed to take very stringent measures to protect the ryot from the demands of the money lenders; but the provisions of the Revenue—law for the realization of the Government demand had apparently been in no way altered. Every one knew the great stringency of those regu-

lations, and it seemed to him unreasonable that, while we upheld them for the realization of our own revenue, we should make such alterations in the ordinary law in regard to private contracts.*

The Honourable Mr. Stokes said:—"I shall vote for referring this Bill to a Select Committee, and I do not intend to esoddo it, so far as it carries out the express orders of the Secretary of State, that is to say, so far as it requires the Courts to enter into the merits of all money-claims by Sowkars against Deccan ryots, and forbids them to compel a ryot to pay a Sowkar compound interest or an amount of interest exceeding the principal sum lent; so far as it provides that the principle of the Presidency-towns Insolvent Act (11 and 12 Vic., Chap. 21) shall be applied to the Deccan ryots; that their land shall not be sold in execution, unless specially pledged by a bond duly registered; that Courts of Conciliation shall be established. The remark with which I shall venture to trouble the Council have reference merely to the additions which the Bombay Government and the Honourable Member have thought fit to make to the simple scheme recommended by the Secretary of State.

The first of these accretions to which I shall call your attention is s. 73. The effect of this section, coupled with section 3, will probably be the reverse of what is intended. It shuts out from appeal the decisions in almost all mortgage-suits. The object of doing so is, of course, to relieve indebted ryots from expense and prolonged litigation. But, first, I am informed by Mr. Justice West that in the Bombay Presidency, the Courts of first instance, in dealing with these suits, usually apply the harsh letter of the law in favour of the creditor. Relief is got from the higher Courts, in which modifications favourable to the ryot are much more frequent than

* In the opinion of the His Honour the Lieutenant-Governor, the Dekkhan ryots to a great extent came into difficulties owing to the stringent method adopted by Government for the realization of revenue: "The peasant proprietor who had become indebted to a banker was still obliged to satisfy the Government demand in cash: to procure that cash he had again to resort to the money-lender and as the Government demand came upon him at the usual season of the year with regular recurrence he was obliged to resort again and again to the money-lender in order to procure the cash."

those in favour of the Sowkar. And, secondly, the useful power which the Appellate Court now possesses under section 551 of the Code of Civil Procedure of confirming the decision of the Lower Court without sending or serving notice has in most cases rendered the cost of an appeal quite insignificant. The result of this part of the Bill will, therefore, be on the whole, to place the indebted ryot in a worse pecuniary position than he is in at present. As to cutting off all appeals in order to shorten litigation, the remedy will be worse than the disease. The errors arising from corruption, incapacity laziness, precipitation, ignorance and love of arbitrary power, which are certain to be committed in these difficult land-suits, especially where the Judges are inexperienced and unaided by a Bar, will remain uncorrected and cause hardship and discontent. The barring of an appeal in cases of the Small-Cause type may be justified because, as a rule, those cases are simple and easy, and practically it is better, on the whole, for the community that in such cases the decision should be rapid, that it should be careful and correct. But mortgage-cases sometimes involve the investigation of difficult questions of title, priorities, marshalling securities, contribution, and rights of maintenance, and always the taking of complicated accounts. A Judge who does all this rapidly will simply scamp his work ; and the power of calling for and revising his imperfect records will be a very inadequate substitute for an appeal. The power given by section 54 to the Special Judge to call for and examine the records of suits tried by Subordinate Judges is intended as a substitute for appeals. But, first, the records of cases tried by second class Subordinate Judges at Rs. 150 a month will generally be defective ; and the Bill (section 11) expressly provides that in the bulk of cases (those of which the subject-matter does not exceed Rs. 10 in amount or value) there need not be even a memorandum of the evidence. Under the Bill, therefore, the revising Judge will constantly have to exercise his jurisdiction on imperfect materials. Secondly, the revising Judge, no matter how carefully he is selected and how highly he is paid, will be greatly inferior in learning, ability and experience to the Judges of the High Court, who now form the ultimate Court of appeal in the Presidency. Thirdly, those records will be masses of ill-written documents in a Native character and language which, it is

safe to say, no revising Judge will have time or skill to decipher and translate. The business of revision will, therefore, be placed in the hands of the Shirastedars, who are notoriously open to the Sowkars' bribes; and here, again, the Bill will work to the injury rather than the benefit of the ryot.

Chapter VIII, which requires all money-obligations executed by ryots to be written by or before Village-Registrars, also seems to be a specimen of blundering benevolence. The chief result of this well-meant attempt to ensure the authenticity of documents will...be to discourage the use of written agreements and to force *oral* contracts on persons who would otherwise have expressed themselves in writing. If the scheme succeeds, it will also add greatly to the cost of all loans, such cost falling finally on the ryots, who cannot pay their revenue without occasionally borrowing. But wherever sowkars are concerned, the scheme is, I think, pretty sure to fail. The sowkars will give up mortgages and written instruments altogether. He will say to the ryot: 'I will lend you money at 60 per cent. but, mind, if you do not repay me on the day fixed, I shall never lend to you again, nor will any of my brother sowkars.' The ryot will borrow on the terms proposed, and his last state will be worse than his first.....

The provisions which I have hitherto noticed are in my opinion, unwise; but those to which I shall now ask the attention of the Council are grossly unjust and (if I may use the expression in India) unconstitutional. Both sections 20 and 49 are retrospective in their operation. They relate to decrees passed *before* the proposed Act will come into force, and the former section at least seriously interferes with the vested rights of the holders of such decrees... Remedial Statutes may be retrospective when they only go to confirm rights already existing and add to the means of enforcing existing obligations. But sections like these, that disturb absolute vested rights against which there is no equity are founded on unconstitutional principles and I, for one, will never be a party to passing them into law."

[The Hon'ble Sir Alexander Arbuthnot and the Hon'ble Mr. Rivers Thompson and Hon'ble Sir John Strachey are not quoted.]

The Honourable Mr. Hope's Reply.



The Honourable Mr. Hope said:—"I am glad to find that the main principles of the Bill, are ... accepted by this Council, and that my task is confined to replying upon what are, by comparison, matters of detail.

In the first place, it was suggested by the Honourable the Law member that Chapter XX of the Civil Procedure Code, as amended in the Bill presented yesterday, would meet all the wants of our Dekkhan districts in respect of insolvency. But I must altogether demur to accepting it as sufficient or suitable for that purpose. The objections to the law which I stated yesterday need not be repeated; but I may add to them that the provision for granting a discharge when an insolvent has paid one-third of the scheduled debts, which has been imported from the Presidency Insolvency Act, seems to me false in principle, and likely to work unreasonably in practice, sometimes giving the creditor less than might be recovered for him and sometimes pressing harshly on the debtor. It has, moreover, been discarded from bankruptcy legislation in England. I admit that by the Bill in question an advance has been made; but an advance somewhat haphazard, tentative and restricted. Finally, one thing which that amended chapter does *not* do is, singularly enough, the very thing which has been represented in the official correspondence, and is indicated in the Secretary of State's despatch, as urgently required—namely, the allowing a debtor to apply for declaration of insolvency, though no process has issued against him.

Another remark of the Honourable Law member was that it would be sufficient, as to jurisdiction of the Courts, if Small-Cause-Court powers were conferred on all of them. But it seems to me that the only course open to us—consistent with common sense is that the Courts should have power to deal with all the sorts of cases in which ryots are ordinarily involved. That such cases must very frequently comprise mortgages, is clear from the fact ascertained by the commission that in the Villages in Poona tested by them

two-thirds of indebted ryots' land was mortgaged. To provide Courts professing to deal with ryots' difficulties but unable to touch, perhaps, one-half of the cases in which ryots are concerned, would be a half-measure, from which no good results could be expected.

The next question raised is that of appeals, for which the Honourable Law member considers the revision provided for by the Bill an inadequate substitute. Here I may point out that the Bill provides the safe-guard of a thorough supervision. It is a misapprehension to suppose that the supervising agency will be a special one. It will be merely a strengthening of the regular staff for the purpose of thoroughly carrying out section 9 of the Bombay Civil Courts Act (XIV of 1869). The officers appointed will be members of the regular judicial department subordinate to the High Court: they will work the law subject to its general control; the Local Government will have no special jurisdiction over them, and will be unable to make them a machine for carrying out the policy of the day. As to the merits of allowing appeals, compared with a system of revision, I would point out that by the former from three to four per cent. of the cases tried are brought before the Courts, while by the latter the proportion is probably not less than from fifty to sixty per cent. Moreover, the cases which come up in appeal are often not those which deserve to come. As an illustration of the persistency of monied litigants, I may mention that I have heard that Sir Barnes Peacock, with reference to the petty appeals, about Rs. 5 sometimes, by which the High Court was troubled, remarked that it would be more economical for Government to pay the amount of the appeals than to keep up Judges and establishments to hear them. Again, the Honourable Law member has said, as an objection to revision, that the record called for will be inaccurate, incomplete and in the vernacular. As to inaccuracy and incompleteness, the objection, if good at all, applies just as much to appeals as to revision. As to the third point, I feel it my duty to repudiate, on behalf of the Bombay Civil Service, of which I have the honour to be a member, the suggestion that they are unable to deal with cases in the vernacular.

In favour of the retention of appeals, much stress has been laid on the mortgage cases, which are said to be intricate, involving

difficult questions of account. But this is a misapprehension. Mortgage cases in which ryots are concerned are not necessarily intricate, and do not involve more accounts than simple money-cases. This can easily be seen by reference to the actual cases of ryots Mortgage-cases are usually only difficult if they happen to involve questions of priorities and the like, or there are several creditors."

[The Honourable Sir Alexander Arbuthnot enquired whether there might be questions of title.]

The Honourable Mr. Hope replied :—" Under the Bombay Revenue system the name of the owner of every field is entered in the Government books. It would only be in most rare instances that the man whose name appeared was not the real owner ; and so questions of title are not likely to give trouble.

I may mention to the Council that, as regards this question of appeals, contrasted with revision, I happen to have had a very considerable experience—if not actually in civil cases, still in criminal ones, which for this purpose come to the same thing. My experience was that all the serious abuses and irregularities came to light in examination and revision : scarcely anything ever came out in appeal.

The Honourable Law-member has expressed his fears that section 46, about agreements before Conciliators, and also the registration provisions, may be defeated by collusion and fraud. As to agreements.....I would point out that the case is analogous to that of awards filed under section 525 of the Civil Procedure Code... As to both the agreements and the registration, I would repeat my observation of yesterday, that the same objection as to being open to fraud may be made to any other good laws. The Registration Act may be easily defeated by one party to the Bill returning to the other at home the consideration which they have paid and received before the registrar. The stamp-laws are constantly evaded by the re-use of spoiled stamps, &c., and the coinage laws do not prevent the circulation of false money yet we do not think it necessary on this account to abolish registration, stamps and our coinage. The Bill will help those who help themselves : if any persons prefer collusive evasion of it, they will suffer accordingly, and rightly so."

*Report of the Select Committee on the Bill introduced
in 1879 for the relief of indebted agriculturists
in certain parts of the Dekkhan.*

We, the undersigned members of the Select Committee, to which the Bill for the relief of indebted agriculturists in certain parts of the Deccan was referred, have the honour to report that we have considered the Bill.....

2. We have not been so fortunate as to agree among ourselves on all the points presented for our consideration, but we do not deem it necessary to refer in the body of this report to such differences of opinion as have arisen. The most convenient course, we think, will be to treat the conclusions of the majority as the conclusions of the committee, leaving individual members to record separate dissents upon such points as they think fit.

We shall refer to such of the amendments made by us as seem to us to call for special notice in the order of the sections of the Bill as introduced.

3. Section 8, providing for the service of summons by patels, which was inserted on a suggestion made here at the time the Bill was prepared, has been struck out as it has not met with the approval of the Government of Bombay.

4. Section 9, empowering the Courts, instead of hearing the case *ex parte*, to issue a warrant for the apprehension of a defendant who does not appear and requiring them to adopt this procedure as the general rule, has given rise to some difference of opinion. On the one hand, it has been urged that the habits which the ryots of the Deccan have fallen into of allowing suits instituted against them to be undefended, have contributed in no small degree to produce the evils which this Bill is intended to remedy. On the other hand, the obvious hardship of forcibly dragging a man away from his home and his cultivation, perhaps at a season when every day is of importance to him, merely with a view to compelling him to appear in a suit to which he has no defence, has been much dwelt on by Mr. Justice West, Mr. Naylor and others.

After weighing the arguments on both sides, we have come to the conclusion that those which may be urged against the introduc-

tion of this novel and very stringent rule preponderate; and we are confirmed in this conclusion when we remember that under section 12 of the Bill the Court is bound to make investigation into the history of the case, even though it is not defended, and that, if it is necessary for the proper conduct of such investigation to have the defendant in Court, the Civil Procedure Code gives power to summon him as a witness.*

5. In order to prevent the provisions of Chapter III of the Bill being evaded, as it has been pointed out to us they might be, by entering into contracts with the agriculturists of the four districts to which the Bill extends at places beyond the limits of those districts, we have introduced a section in the beginning of Chapter III, requiring suits against such agriculturists to be brought where the defendants reside.

6. The next provisions of the Bill calling for notice are those contained in sections 12 to 15, commonly described as the sections requiring the Court "to go behind the bond," and they are by far the most important we have had to consider.

Section 12 is in the main merely introductory to those that follow. It provides that, when the amount of a claim is disputed, the Court shall inquire into the history and merits of the case, partly with a view to ascertaining whether there is any defence to the suit on the ground of fraud, &c, and partly with a view to taking the account between the parties according to the rules laid down in the following sections; but that, when the account of the claim is admitted, the Court shall not be bound to institute such inquiry, unless it sees reason to doubt the truth of the admission.

7. The Government of Bombay object to the latter portion of the rule. We have felt some doubt as to the precise grounds of their objection as set forth in paragraph 10 of their letter of the 27th August; but we understand that their view is that it is necessary to institute the inquiry in *every case*, even though the defendant may admit the claim, and there may be no reason to doubt the truth of his admission.

* The Legislative Council, however, added a paragraph to the effect that, as a rule, the defendant should be examined, [vide para 2 of a. 7.]

We are not prepared to go quite this length. There must, it appears to us, be some cases in which it will be clear enough for all practical purposes that the admission of a defendant is true and reasonable—cases, for example, in which, though the defendant is an agriculturist within the meaning of the Bill, he is a man of some little education and as well able to keep an account of his transactions and understand his position as the plaintiff. In such cases, we think, we should be inflicting an unnecessary hardship on both parties and wasting the time of the Court by insisting on an inquiry which, even where both parties were agreed, would, if the Judge were to be put in possession of the whole history of the case, often be lengthy and troublesome. We have, however, introduced an amendment which we believe will, in practice secure all that the Government of Bombay desire by providing in section 12 that, in cases where the defendant admits the claim, the Court shall nevertheless inquire into the history of the case, unless, for reasons to be recorded by it in writing, it believes that the admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor. The result of this amendment will be that it will no longer be possible for an indolent Judge, as it would be under the Bill as introduced, to shirk the labour of the inquiry by saying that he sees no reason to doubt the truth of the admission. The inquiry must be made, unless the Judge is prepared to give some special reason for accepting the admission—some such reason, *e. g.*, as might be given in a case of the description just referred to.

8. Section 13, which lays down the mode in which, after the inquiry prescribed by section 12 has been made, the account between the parties should be taken, has been recast in order to bring it as nearly as possible into accordance with the views of the Government of Bombay.

As it originally stood, it provided that, if the court found that there was any agreement between the parties as to the mode of taking the account, and considered such agreement fair and equitable, the account should be taken in accordance with such agreement but that otherwise the account should be taken according to certain rules the principal of which were:—

First, that compound interest should not be allowed in any shape or under any circumstances;

Secondly, that all profits and advantages received by the plaintiff in connection with the transaction should be brought to credit at a value to be determined by the Court; and

Thirdly, that the Hindu rule of *dam-dupat*, by which the sum recovered on account of interest shall not exceed the sum recovered *on the same occasion* on account of principal, should be observed in all cases without reference to the relation of parties.

9. Government of Bombay desire to have the two first of these rules applied absolutely and in all cases without any regard to the agreement between the parties, even where such agreement may, under the circumstances, be a fair and equitable one.

The third rule they desire to have similarly applied, but with a modification in favour of the debtor of so extensive a nature as to make it in form and in substance a completely new rule.

In short, the Bill as it at present stands, goes far in the direction of setting aside contracts which under the law hitherto in force have been held good. The Government of Bombay desire to make it go much further.

10. The question is accordingly one of those of degree, on which opinions will necessarily differ.

On the one side, it is urged that it is necessary, on political grounds, to adopt strong unusual measures in favour of the ryots in order to prevent irritation and discontent.

On the other hand, it is urged that in so far as the question can be considered to have assumed a political aspect, we must be careful lest by going so far in our efforts to allay the discontent of one class we excite the disaffection of the other.

11. Turning from the political to the economical aspect of the question, we have, on the one hand, the very obvious arguments as to the desirability of providing for the ryots some means of escape from their present thralldom and of giving them a fresh start on something like a solvent footing. On the other, we have

been much pressed with the argument that by going too far in subverting contracts we may destroy the credit of the roys and thus in the long run both aggravate their pecuniary difficulties and place the Government revenue in jeopardy.

12. Amid these conflicting considerations, we have, we need hardly say, desired to be guided, as far as possible, by the view of the Government of Bombay. There is indeed much in the Bill as now settled by us which, if it were not for the deference we feel for the strongly expressed opinion of that Government, we should propose to alter. But we cannot altogether devolve upon others, whatever our respect for their views may be, the duty of forming an opinion on the important questions submitted to us.

Looking at the matter in this way, and having given it our most anxious consideration, we find ourselves in a position to recommend that the views of the Government of Bombay be adopted fully in regard to one of the three rules above referred to, and partially in regard to the other two.

13. To begin with the rule as to crediting profits irrespective of any agreement which may have been made regarding them, we think that that rule may, without any danger of injustice, be made, as the Government of Bombay wish it to be, applicable to all cases.

It is true that, in the case of a usufructuary mortgage, it sets aside agreements which have hitherto not only been enforced when expressly entered into by the parties, but which the law in Bombay (Bombay Regulation V of 1827, section 15) presumes, in the absence of any express agreement, to be implied: we mean agreements to the effect that the profits of the mortgaged property shall be taken by the mortgagee without account in lieu of interest. But such agreements, when made between the parties to a mortgage whether expressly or by tacit reference to the Regulation just mentioned, usually proceed on the calculation that the profits of the property will be equivalent to reasonable interest on the loan; and there can accordingly be no great hardship in providing that the approximate estimate of the profits made by the parties shall be set aside and an actual account taken, reasonable interest being at the same time allowed to the mortgagee.

14. In regard to the matter of compound interest, we are unable to adopt in their entirety the proposals of the Government of Bombay. We have no doubt that, in a very large proportion of the cases that will come before the Courts under this Bill, it will be found that the debt has been unduly swollen by frequent rests and consolidations of interest with principal; but it seems to us that there must be some cases in which a consolidation of interest with principal, or perhaps a novation, as a lawyer would term it, of the entire transactions, has taken place under such circumstances that the refusal to recognise it would work a gross injustice. This being so, we deem it impossible to lay down any absolutely hard-and-fast rule on the point; but in order to bring the Bill in this particular, as nearly as we can venture to do, into conformity with the views of the Government of Bombay, we have, following a course similar to that which we have adopted in regard to section 12, provided that compound interest shall be disallowed, unless the Court, *for reasons to be recorded by it in writing*, is of opinion that it is fair and equitable to allow it. We may add that we feel confident that the law as thus amended will fully secure the object which we understand the Government of Bombay to have in view.

15. As regards the Hindu rule of *Dam-dupat*, it has, at the desire of the Government of Bombay, been extended to the whole agriculturist-population of the four districts, without reference to creed or sect. We now propose, in further compliance with the view of that Government, to make it an absolute rule overriding all contracts between the parties; but it is in our opinion quite impossible to adopt the extensive modification of the rule, or, speaking more properly, the completely new rule which is now proposed. That new rule, which would provide that the total amount claimable *from first to last* on account of interest shall in no case exceed the principal, has not, like the rule of *dam-dupat*, the authority of Native law or ancient custom to support it. It rests on no principle that we have been able to discern; and from the tenth paragraph of a letter from the Government of Bombay, No. 4579, dated 5th September 1878, which has been laid before us by the Secretary, it would appear that it was introduced merely in order to provide an additional mode of reducing the claims of Sowkars. We would further observe that no attempt has been made, as far as appears, to

estimate its effect upon existing claims; but we gather from the paper before us and the report of the Decoan Riots Commission that in the case of a very large proportion of those claims, interest in excess of principal has already been paid ; and wherever this is so, the result of the rule would be that, when the claim had been cut down in the various modes required by the very stringent provisions of section 13, it would be necessary again to reduce it by one-half. It appears to us impossible to enact arbitrarily a new rule of this description.

16. We have next to refer to a section which appeared in the drafts submitted by the Government of Bombay in January 1878 and in April last, but which was omitted from the Bill as prepared here, and for the re-introduction of which the Bombay Government now strongly press.

The section in question, as it appeared in the Bill submitted in January 1878, provided that where the nature or extent of the transactions between the parties was doubtful, the Court should determine the " amount of money lent upon an equitable estimate with reference " to such considerations as the means and position of the parties, the state of the borrower's credit at the time, the occasion on which the money was advanced, the needs of the borrowers, &c. Mr. Naylor, the Legal Remembrancer to the Government of Bombay, in the able paper submitted by him, seems still to press for the introduction of the section in this form. He considers it to be one of the two essential points of the proposed measure that the Courts should be empowered, when " the evidence is doubtful, to determine the amount payable upon equitable considerations."

Now, it is common enough to speak of adjusting *rights* on equitable grounds; but we are altogether at a loss to understand what is meant by deciding a *pure question of fact* " upon an equitable estimate " or " upon equitable considerations."

We apprehend, however, that if we adopted the section in this its original form, as Mr. Naylor would apparently have us do, it would probably be construed by the Lower Courts as an instruction to them in default of satisfactory proof to make a guess at the amount of the loan, and in making such guess to have a special regard to circumstances which would, as a rule, tell in favour of the debtor.

17. In the Bill submitted in April last, this section appeared in a new shape, namely, as a provision simply to the effect that the circumstances above referred to, namely, the means of the parties, &c., should upon any question arising as to the extent of a transaction, be relevant facts; and it is apparently in this shape that the Government of Bombay now advocate its re-introduction. In pressing us to re-introduce it, however, they are apparently influenced by what appears to us to be a misapprehension as to the existing state of the law. They speak of it as "a relaxation of the rigour of the existing practice as to the admission of evidence." This, as it appears to us, it would not be. We are clearly of opinion that the facts referred to, though their weight in evidence would, as a rule, be small, would be relevant facts within the meaning of the Evidence Act, and that accordingly the proposed section would be simply nugatory, that is to say, without any legal operation.

We are by no means sure, however, that if it became law it would not indirectly work mischief. We are inclined to think that an enactment expressly requiring the facts referred to to be treated as relevant facts would lead the Courts to attach an artificial weight to them over and above the weight which naturally belongs to them; and we are strengthened in this opinion when we see the extraordinary importance which the Government of Bombay and some of the local authorities appear to attach to the proposed section, an importance which could scarcely be attributed to it if the facts to which it refers were to be estimated at their natural value.

The great anxiety shown by the Government of Bombay for the re-introduction of this section must be our excuse for stating at such length our reasons for rejecting it.

18. Ss. 16 and 24, which go to relieve an heir from a portion of his ancestor's debt, though he may have inherited from that ancestor property sufficient to pay that debt, have been struck out.*

The Government of Bombay do not appear to attach much importance to them, the Judges of the High Court have objected to them, and it is hard to see why, when the ancestor's debt was under the ample powers contained in sections 12 to 15 of the Bill been fully inquired into and reduced to its just limits, the heir should not

* See the foot-note on the next page.

be bound to pay it to the extent of the property he has inherited. The obligation binding him to do so is, as observed by the Honourable Sayyad Ahmad in his speech when the Bill was introduced, a matter of natural equity common to the English, Hindu and Muhammadan legal systems. Moreover, it is an obligation with the force of which the people of this country are perhaps more strongly impressed than those of any other country, and the sense of which, as observed in a letter from the Government of Bombay of the 6th April 1877, is one of the best traits in their character.*

19. Section 30 of the Bill, which empowers the Insolvency Court, instead of selling the moveable property of an insolvent, to insist on one of his creditors accepting it at a valuation in payment or part-payment of his claim, has given rise to much discussion. On the one hand, the danger of property being sold at a great loss when put up to public auction has been much dwelt upon; on the other, the hardship of forcing upon a creditor an article for which he may have no use for himself, and which *ex-hypothesi* it is not easy to sell, has been urged especially by Mr. Justice West. On the whole, it appears to us that the arguments against this section preponderate over those in its favour, and we have accordingly struck it out.

20. We have, in accordance with the view of the Government of Bombay, removed the restriction in section 36 of the Bill under

* Section 16 as proposed was:—

If the debt, or any portion thereof, was not contracted by the person from whom the creditor seeks to obtain recovery, but by such person's father or other ancestor, the said person shall be called upon to state whether he is willing to accept the full responsibility for such debt or for such portion thereof;

and, if he accepts such responsibility, shall be held liable for the full amount payable on account of such debt, or of such portion thereof subject to the other provisions of this Act, or of any law for the time being in force relating to ancestral debts;

but if he declines to accept such responsibility, he shall not be held liable for more than the principal amount of such debt, or of such portion thereof, with interest up to the date of the death of the person who incurred such debt, or of such portion thereof, if such person was related to him in the first degree, and otherwise only for the principal amount of such debt or of such portion thereof.

which no one but a Patel could be appointed to the office of village-munsif. Under the section as now amended any person possessing local influence may be appointed.

21. Section 35, limiting the power of the Subordinate Judges to commit fraudulent insolvents to jail under s. 359 of the Code of Civil Procedure, has been omitted, and a section providing for an appeal from the orders of Subordinate Judges in such cases substituted for it, at the instance of the Government of Bombay.

22. We have deemed it necessary to guard against the dangers averted to by the Honourable Sayyad Ahmad in his speech, by the introduction of words in section 40, excluding revenue and police officers from the office of Conciliators.*

We have further, in order to furnish a simple and inoffensive means of getting rid of a Conciliator who proves unfit for the position, added a clause in the same section providing that Conciliators shall vacate their office at the end of three years, but shall be re eligible.

23. In sections 49 we have, adopting the view of the High Court and the Legal Remembrancer, struck out the words which made the Conciliation system applicable to proceedings in execution of decrees passed before the new law comes into force as well as to suits.

We find it difficult to understand why this system should be applied to decrees passed before this Bill becomes law and not to those passed after, unless upon the assumption that the decrees already passed were unfair to the judgment-debtors, and that some pressure should be brought to bear to induce the holders of such decrees to forego some portion of what they are entitled to claim under them. We can give no countenance to any such assumption. The Courts will no doubt, if this Bill becomes law, proceed in future on principles more favourable to the debtor than those on which

* The appropriate section in the Act regarding this point is s. 38. As originally drafted the section empowered the Local Government to appoint any person to be a Conciliator. The Select Committee recommended the exclusion of revenue and police officers from the office of Conciliators. The Legislative Council, however, only excluded the Police Officers.

they have been hitherto proceeding ; but when a man has obtained a decree from our Courts in accordance with the law for the time being in force, we cannot think it right to enact that his decree should be placed on the same footing as an unproved claim. If the judgment-debtor requires time to pay, the Bill gives the fullest power to the Court to allow time. If he is altogether unable to pay, the Insolvency Courts are open to him ; but we cannot admit that under any circumstances the rights of the decree-holder under his decree should be brought in question.*

24. The question whether appeals should be allowed in any cases tried under Chapter II of the Bill or whether we should trust entirely to the powers of Superintendence and revision conferred by Chapter VII has given rise to much discussion. It is not so important as might at first sight appear, inasmuch as there can be little doubt that, if the right of appeal were withheld, petitions for revision would take the place of petitions of appeal, and then the chief difference would be that an application for revision, not being,

* The section was restored to its original condition and the recommendation of the Select Committee here made was disapproved by the Legislative Council. (5 voting in favour of the Select Committee and 9 against it.) The Select Committee based its recommendation on the following grounds :—

- (1) that every existing decree must be assumed to just ;
- (2) that no influence, however mild, can rightly be applied to induce a decree-holder to forego any part of his legal rights under the decree ;
- (3) that, if the debtor cannot pay, he may resort to the Insolvency Court.

But the recommendation was opposed for the following reasons :—

- (1) that it is wrong to assume that every existing decree is just ;
- (2) that friendly mediation may rightly be used to obtain an early settlement of old decrees, which, owing to fraud in execution, may have really been satisfied over and over again ;
- (3) that the Select Committee laboured under complete misapprehensions when they believed that the Act contemplated that " a decree should be placed on the same footing as an unproved claim." What is really intended is simple mediation and nothing beyond that.

like the presentation of an appeal, a matter of right, might be more summarily dealt with by the Superior Court. Having considered all that has been said on both sides, we have come to the conclusion that in mortgage cases, in which questions of difficulty and importance are likely to arise, an appeal should be allowed, and we have amended the Bill accordingly.*

25. If an appeal is to be allowed in these cases, which form a very large class, and the most important class, of cases to be heard under the Bill, we think that the Special Judge, who was to have been appointed to strengthen and superintend the Staff of officers employed in the work of revision, will no longer be required and we have accordingly omitted all reference to him, and transferred his duties to the District Judge.

26. We have omitted section 69, which empowered the Subordinate Judge to refuse to allow any costs between parties, on account of pleader's fees; as it has been argued, and we think with great force, that owing to the smallness of the fees in such cases, it would rarely effect the object desired, namely that of deterring parties from employing pleaders; and further that, in so far as it had any effect, it would tend to render the pleaders subservient to the Judges.

27. We have been urged to introduce in the place of this section the provision of the draft Bill submitted by the Government of Bombay, which would have, as a rule, excluded pleaders in these cases altogether; but we deem it undesirable to do so.

28. The only other amendment made by us which calls for special notice in this report, is the insertion of s. 71 of the Bill as now amended, requiring all mortgages below Rs. 100 in value executed before the Bill becomes law to be registered within one year. This section has been inserted at the instance of the Government of Bombay and of some of the other authorities consulted, and it appears to us to be necessary in order to guard against documents being forged with dates prior to the passing of the Bill with a view to evading the provisions of the Chapter on Village-Registration.

* This amendment was not accepted in the Legislative Council.

Amending Act XXIII of 1881.

Statement of Objects and Reasons.

The Bombay Government have brought to notice difficulties in the working of the Dekkhan Agriculturists' Relief Act, for the removal of which it appears necessary to make certain amendments in that Act, and to carry out those amendments this Bill has been prepared.

The first amendment provided for is in section 2 of the Act. That section enacts in effect that every agriculturist shall be deemed for the purpose of the Act to reside where he works as such. This rule is found to give rise to difficulties in the case of agriculturists holding land in more than one place, and it is accordingly proposed to repeal it altogether.

2. The first portion of section 19 of the Act confers on the Courts power to discharge an insolvent who owes a sum of less than fifty rupees under a decree, and against whom there is no other claim; but it makes no provision for the case of an insolvent judgment-debtor, against whom there are other claims, but of amounts so trifling that, taken with the amount of the decree, they do not amount to fifty rupees. There appears to be no reason why this latter case should not be treated on the same footing as the former, the insolvency chapter of the Bill being equally in-applicable to both; and the Bill accordingly amends the Act so as to give power to discharge the judgment-debtor from the balance due under the decree in either case.

3. Section 38 of the Act prohibits the appointment of " an officer of police " as a conciliator. A doubt has arisen as to whether a police patel is to be deemed an officer of police within the meaning of this provision, and at the instance of the Local Government an explanation has been added to the section to show that he is not.

4. The amendment proposed in section 48 of the Act merely corrects an oversight in drafting.

5. The addition which it is proposed to make to section 56 of the Act, is intended to dispense with the necessity of having an instrument executed before the Village-Registrar, merely because a party executing it *as a surety* is an agriculturist.

The changes made in sections 57 and 58 are intended merely to make the meaning clearer.

6. The new section which it is proposed to substitute for section 71 of the Bill, differs materially from the original one, though the object of both is the same, *viz.*, to prevent the fabrication of mortgage deeds purporting to have been executed before the Act came into force.

The section as it now stands in the Act aims at effecting this object by requiring all existing mortgage—deeds to be registered before a certain date under the Indian Registration Act; but it has found that the practical difficulties in the way of such registration are so great that it is necessary to abandon this procedure and substitute for it the simple expedient proposed by the Bill of requiring such deeds to be merely produced before and marked by the Village Registrar before a certain date.

7. Section 72 of the Act, which prescribes period of limitation longer than the ordinary periods for certain suits against agriculturists, applies in every case in which the defendant is an agriculturist at the time the suit is instituted. This would in some cases, where the defendant had become an agriculturist shortly before the institution of the suit, lead to anomalous results.

To prevent this, the Bill amends the section, so that it will apply only when the defendant was an agriculturist at the time the cause of action arose.

8. Difficulties having arisen as to the construction of the definition of "agriculturist," section 75 of the Act, which gives the Local Government a power to make rules, has been recast so as to admit of rules being made among other matters, to define more precisely what classes of persons shall be deemed to be agriculturists for the purpose of the Act.

9. Section 12 of the Bill is intended to put mortgage-deeds executed before the Act came into force, and registered under a

system of questionable legality established by the Local Government on the same footing as if they had been marked by the Registrar under the new section 71.

*Extract from Proceedings in Governor-General's
Legislative Council Vol. XX, p. 87.*

“The Honourable Mr. Gibbs moved for leave to introduce a Bill to amend the Dekkhan Agriculturists' Relief Act, 1879 and for other purposes. He said .. . ‘the amendments were not of very great importance, with the exception of one, relating to the registration of documents. Some practical difficulty had arisen on the point and it had been found that it would be quite sufficient, instead of the documents in question being registered and a copy kept in full, if they were simply ear-marked to prevent any falsification after a certain date.’.....”

Speech of the Honourable Mr. Gibbs,

*Made while presenting the report of the Select
Committee on the Bill of 1881- Honourable Mr. Gibbs
said:—*

The Bill had been sent to Bombay and had been carefully considered by that Government and by the Special Judge, Dr. Pollen, and they had proposed certain amendments and alterations in the Bill. Those alterations had been fully considered by the Select Committee and the Bill had been altered in accordance with what was considered to be the wishes of the Bombay Government. The first alteration made was the insertion of a new definition of ‘agriculturist.’ The definition originally given was considered not to have worked well, or to have carried out what was the intention of the proposers of the Bill; it was also objected to by the Bombay Government. It had been suggested to leave that Government to

decide as to who should be considered an agriculturist, but taking into consideration the difficulties this would give rise to, the Select Committee had introduced into the Bill a new definition of 'agriculturist' and had added two explanations which would make that definition clear. They had also added in one of the sections the words "not being merely a surety for the principal debtor," chiefly owing to a decision given by the High Court of Bombay in which the wording of the Act as originally framed was found to have had anything but a beneficial effect. Other alterations were made to which he need hardly allude. There was one made at the suggestion of the Bombay Government, namely, to give to the District Judge power to transfer applications pending before one Conciliator to the file of another Conciliator. The reason for this was that he found that these Conciliators were gentlemen who had a great deal of labour thrust upon them without any pay, and who in consequence found it necessary for their bodily or spiritual health to take a pilgrimage to Benares or elsewhere, leaving their work behind them. Another and an important alteration had been made at the request of Dr. Pollen, the Special Judge, and that was in the provision of the original Act, which prohibited the legal practitioners of any kind from appearing in suits before a Village-Munsif or Subordinate Judge. We had considered the question carefully, and had come to the conclusion that it would be advisable to allow pleaders to appear before the Subordinate Judge in cases that came before them.....

The only other matter he need mention was one to which he had already referred at a previous meeting of the Council, about allowing Police Patels to act as Conciliators. The Police Patel in the Bombay Presidency was not the ordinary policeman in blue coat and metal buttons; but was very often the most respectable man in the village and often the most influential person there.

Amending—Act XXII of 1882.

Statement of Objects and Reasons.†

The Dekkhan Agriculturists' Relief Act 1879, was, as stated at the time it was passed, essentially an experimental measure, and owing in part to this, and in part to certain difficulties attending its passage through the Council, it was found, after some experience of its working, to be defective in some particulars, and it was accordingly amended by Act XXIII of 1881.

The additional experience gained since the passing of the last-mentioned Act shows that further amendments, chiefly in matters of detail, are required, and the present Bill has been framed for the purpose of effecting those amendments.

2. The first amendment it is proposed to make is intended merely to remove a doubt which has recently been suggested, as to whether the provisions of Chapter II of the principal Act apply to suits for accounts without any limit of value. Section 3 of the Bill will make it clear that these provisions do so apply. This appears to have been the intention of the framers of the Act, and to have been accepted as such until quite recently.

3. The next amendment, by which it is provided that redemption-suits are not to be dismissed as premature merely because the time for redemption as fixed by the mortgage has not arrived, appears essential in order to give full effect to the provisions of sections 12 to 14 of the Act, which empower the Courts to set aside the terms of the agreement between a mortgagor and mortgagee and declare the mortgage-debt paid off whenever the mortgagee has received the amount of his advance with reasonable interest thereon.

4. The amendment made by the introduction of the new section 15B merely extends to decrees in mortgage-cases the rule of sections 17 and 20 of the Act empowering the Court to direct that the amount of a decree shall be paid by instalments. If it is allowable

† Taken from Bombay Govt. Gazette for 1882, pt. VI, pp. 308—309.

to empower a Court to give such a direction in regard to an unsecured claim, it seems to be *a fortiori* allowable in the case of a secured claim.

5. Section 6 and the 1st and 3rd clauses of section 7 of the Bill are intended to make applicable to decrees passed before the principal Act came into force, the provisions of that Act which prohibit the arrest of a debtor and the sale of his immoveable property in execution. These provisions were intended by the author of the Act to have retrospective effect, and it is clear that if they have not such effect, the relief afforded by them would fall very far short of what is needed; but owing to some misunderstanding, they were so drawn as to apply only to decrees passed after the Act came into force.

6. The provisions of section 19 of the principal Act, which empower the Court to relieve a judgment-debtor from the balance of a petty debt which he is unable to pay, and in the case of his liabilities being more extensive, to order insolvency-proceedings to be instituted regarding him, and the provisions of sections 22, 29 and 30 of that Act which empower the Court to order the Collector to deal with the immoveable property of an insolvent in certain ways for the benefit of his creditors, were intended to enable the Court to act of its own motion, and it is believed that if properly construed they have this effect; but as the Courts have felt some hesitation in accepting this view and as the provisions in question are likely to prove almost a dead-letter unless the Courts act upon them of their own motion, words have been added by sections 5, 7 and 10 of the Bill to make it clear that they should do so.

7. Sections 22 and 29 of the principal Act are framed so as to secure to the agriculturist against his creditors the possession of as much of his land as is required for his support and the support of the members of his family who are dependent on him; but this, it has been represented, is of no avail if the crops he grows on that land are liable to be seized at the instance of his creditors. To prevent this, it is proposed to insert a new section (22A) in the Act (based on section 30 of the Ajmere Courts Regulations, 1877) which will exempt from attachment in execution such agricultural produce as may be required for the subsistence of the debtor and his

110 Statement of Objects and Reasons—(1882).

family and as seed, or as fodder for cattle used for agricultural purposes; and to insert (section 9 of the Bill) words in section 29 which will prevent such produce vesting in the receiver in a case of insolvency.

8. Section 40 of the principal Act gives to a Conciliator whose assistance is invoked by one party to a dispute no power to compel the attendance of the opposite party. It was so drawn in deference to the opinion of the late Governor of Bombay, who apprehended that such a power might be liable to abuse. The want of such a power has, however, been found in a large number of cases to render the Conciliation Chapter of the Act practically a dead-letter, and on a reconsideration of the point, the conclusion arrived at is that the risk of abuse is not so serious as to warrant our withholding from the Conciliators a power which is clearly essential to the effective working of the system. Section 40 has accordingly been amended by section 11 of the Bill so as to give the Conciliator power to direct the attendance of a party, and to make the party liable to criminal proceedings if without sufficient excuse he fails to obey the summons.

9. Section 47 of the Act, which prohibits the entertainment of certain suits and applications except on the production of a Conciliator's certificate, will be amended by section 12 of the Bill, so as to make a certificate of no effect after a year from the date on which it is granted. This is thought necessary in order to prevent these certificates being used *in terrorem*, and it will probably operate beneficially in another way, inasmuch as, when more than a year has elapsed from the time at which the attempt at conciliation has failed, it may not unreasonably be hoped that a fresh attempt may be successful.

10. The most important alteration proposed by the Bill is the substitution of the system of superintendence and revision established by Chapter VII of the Act for appeal in all cases dealt with under Chapter III. That system has worked most satisfactorily in the class of cases in which it has been hitherto tried, and it is anomalous and inconvenient that the Subordinate Judges should be subject to one system of control in some of the cases falling under Chapter III of the Act and to another system in other cases. Section

8 of the Bill accordingly inserts a new section (22B) in Chapter III to bar appeals, and section 13 makes a corresponding extension of the powers of superintendence and revision conferred by Chapter VII.

11. A further extension of the application of Chapter VII, but one of less importance, is effected by adding (section, 13) the Conciliation Chapter (Chapter VI) to the portions of the Act in carrying out which Subordinate Judges are subject to superintendence and revision. The functions of Subordinate Judges under the Conciliation Chapter are limited to filing agreements under sections 44 and 45; but as the filing of those agreements has important legal effects, it is thought well to place it under some control.

12. Section 14 of the Bill gives the Courts, which exercise the functions of superintendence and revision, power to refer points of law to the High Court under section 617 of the Code of Civil Procedure. This has become necessary as the High Court has recently held that these Courts do not at present possess that very necessary power.

13. The repeal of the last thirteen words of section 68 of the principal Act as amended by Act XXIII of 1881 merely correct what would appear to have been a slip in the drafting of the latter Act. The object of those who proposed the amendment of the section last year would seem to have been merely to admit legal practitioners before the Subordinate Judges; but the amendment actually made admits them also in cases before Conciliators and Village-Munsifs in which the amount or value of the subject-matter exceeds one hundred rupees.

OPENING SPEECH.

Extract from the proceedings of the Legislative Council of the Governor-General of India. Vol. XXI, pp. 389 to 391. (1882)

The Honourable Mr. Hope moved for leave to introduce a Bill to amend the Dekkhan Agriculturists' Relief Act, 1879. He said :—

“ I think that the fact of this being the second application which it has been necessary to make to this Council for the amendment of the Act of three years ago is a very remarkable illustration of the capabilities of language for concealing our thoughts. The alterations which it is proposed to make in the Act are, in the main, three. The first consists of two or three provisions which deal with the subject of redemption. It is proposed that the provisions relating to suits for an account should apply to suits for an account and redemption where mortgaged property is concerned, and that redemption itself should be allowed to take place though the period fixed for it may not have arrived. Moreover, it is desired to carry out the intention of the original Bill, that the instalments contemplated by section 20 should be allowed in redemption-suits as well as in other suits.

Under the second head is an amendment of sections 21 and 22, so as to carry out the original intention that they should be retro-active, and should apply to all the enormous number of old decrees which were then in existence. In consequence of their having been interpreted not to have retro-active effect, it has occurred, first, that whereas we thought that we had put an end to imprisonment for debt, some sixty persons have been imprisoned during the last two years, besides such a considerable number of warrants have been issued but not executed ; and, secondly, that management by the Collector, which is a suitable measure for dealing with such old cases, has been held to be inapplicable.

Next it is proposed to make clear what was always intended, that the Courts, when directing insolvency-proceedings to be instituted, should be able to do so of their own motion, and not simply when they were moved by the judgment-creditor in the suit, who perhaps would be a person interested in the opposite direction.

These are the three principal alterations which it is proposed to make. Besides these, there are two or three minor alterations or improvements in the detailed machinery, by which it is proposed to make the Act more consistent and harmonious. The first is that of providing for a revision instead of an appeal in all suits to which sections 12 to 15 apply, so as to avoid the anomaly of different controlling authorities dealing with the same subject. Secondly, we propose to allow the Conciliators to summon either of the parties in a case who does not make his appearance, and also to limit the certificate which the Conciliator gives to a certain fixed time in its operation, so as to prevent its being used as a means of intimidation for an indefinite period. Thirdly, it is proposed to give to the Special Judge power to refer any difficult case that may arise for the opinion of the High Court.”



*The Honourable Mr. Hope's Speech on the report
of the Select Committee—(1882).*

“As to the contents of the report I should allude to one or two of them. One of the most important provisions of contemplated by the Bill as introduced was one which substituted a revision for appeal in all cases under Chapter III of the Act. This provision was inserted, as we understood, on the recommendation of the Bombay Government, The Bombay Government, however, on further consideration, have withdrawn their original suggestion. They think that it would be better to leave that portion of the matter as it stands, partly on general grounds and partly because the change might augment and interfere with the work of the Supervising Officers. So in accordance with this recommendation of the Bombay Government, the Committee propose to withdraw that provision altogether. The next point which perhaps is of some importance relates to suits for an account. The Bombay Government have always been anxious from the first that the raiyat should be able to bring a suit for an account as distinct from an ordinary suit for redemption. The effect of a suit for redemption is that ordinarily a decree is passed and a time is perhaps fixed for payment; but if there was default, a foreclosure would then follow. On the other hand, what the Bombay Government appear to have wished was that a man should be able to bring a suit for an account simply in order to learn how he stood and then he should have the option of afterwards proceeding on the same suit to secure what the redemption suit would have given to him or of dropping the whole matter.

As far as the Bill goes, I think these are the only two points which need special remark.

Amending Act No. XXIII of 1886.

Statement of Objects and Reasons.†

The object of this Bill is to make in the Dekkhan Agriculturists' Relief Act, 1879, certain amendments suggested by a report on the working of the Act and by the further experience gained during the four years which have elapsed since the Act last underwent revision.

2. By section 3 of the Bill it is proposed to empower the Local Government, with the previous sanction of the Governor-General in Council, to extend the Act wholly or in part to any district in the Presidency of Bombay. The effect of this provision will be to render it unnecessary for the Council of the Governor-General to undertake legislation whenever it may be deemed expedient to extend to any district either the whole of the Act or any particular provisions of it, such as those requiring the history of transactions with agriculturist-debtors to be investigated or those relating to the mode of taking accounts.

3. By section 4 the expression 'lease' is defined as in the Indian Registration Act, 1877. The insertion of this definition in section 2 of the Act is deemed desirable because in s. 56 the word 'lease' must be taken to mean a kabuliyat or undertaking to cultivate or occupy rather than a lease in its ordinary sense.

4. Section 5 has been introduced, on the recommendation of the Special Judge, for reasons which are stated as follows:—

“Section 7 of the Act merely makes the examination of the defendant compulsory in all suits under Chapter II, which includes even non-agriculturist suits; but sections 12-14 apply to many suits which affect agriculturists only and do not fall under Chapter II, and it is even more important that the defendant should be examined as a witness in such suits than in many of the suits to which Chapter II applies. The defendant is generally the debtor, but in redemption-suits it is the plaintiff who is the debtor, and it is his examination that is most necessary. It is, moreover, almost impossible for the Courts to investigate the past history of an old debt in a satisfactory manner without examining both creditor and debtor

† Taken from Bombay Govt. Gazette for 1886 p. VI pp. 220, 221.

as witnesses. Again, unless a provision against *ex-parte* decrees be inserted in Chapter III, it will not be possible to guard against *ex-parte* decrees in other districts to which the Act may hereafter be extended without also extending the other provisions of Chapter II at the same time. ”

5. Standing crops are usually the legitimate security for an advance for the purposes of cultivation. It is proposed, therefore, by section 6 of the Bill, to make the standing crops of an agriculturist liable to be taken in execution of a decree even though they have not been specifically mortgaged for the repayment of the debt to which the decree relates.

6. The proposal to confer on Conciliators the power to require the attendance of persons against whom applications are made under section 39 of the Act was negated by the Council of the Governor-General in 1882. The Government of Bombay has now urged the reconsideration of the proposal on the ground that the present law deprives the Conciliator in a large proportion of cases of all chance of exercising his functions. The statistics of late years fully support this view, while they prove that, where parties have attended before Conciliators, conciliation has been annually more and more successful*. It is proposed, therefore, by section 7 of the Bill, to empower selected Conciliators not only to invite, but to require, the attendance before them of persons against whom applications are made.

7. Sections 8, 9 and 10 of the Bill modify those provisions of the existing law which relate to registration, by requiring documents of which registration is compulsory under the Indian Registration Act 1877, to be registered by Registering-officers appointed under that Act instead of by Village-Registrars appointed under the Dekkhan Agriculturists' Relief Act, 1879. But Registering-officers under the former Act are, where the executants of those documents are agriculturists, to observe the procedure prescribed for observance by Village-Registrars under the latter Act. Village Registrars are to continue to register documents of which the registration is not compulsory under the Indian-Registration Act, 1877.

* The report of the Special Judge published this year shows that of late the success of the conciliation system has been to a great extent limited,

They are, however, to be relieved of much of the clerical labour imposed on them by the existing law. Instead of making at least two copies of the documents which they register, they are to enter in their registers, in such form as may be prescribed, abstracts only of the documents; and provision is made for granting copies of the abstracts free of charge, and for the admission of the copies as evidence of the contents of the documents.

8. The reasons for the amendments which it is proposed by section 11 of the Bill to make in section 72 of the Act are stated by the Special Judge as follows :—

“ The words ‘not being merely a surety for the principal debtor’ were introduced by Act XXIII of 1881, in order to prevent the anomaly of the agriculturist surety of a non-agriculturist principal being held liable for a debt, after such debt has become time-barred as against his principal; but the amendment has itself produced a converse anomaly, namely, that when principal and surety are both of them agriculturists, the extended period of limitation applies to the principal and not to the surety. As soon as the recent decisions to this effect become generally known, the result will be that even the principal debtor will lose the supposed benefit of the extended period of limitation, because few creditors will care to wait for the extended period when such waiting will deprive them of their remedy against the surety. I may mention here that the expression *suits under this Act* at the beginning of section 72 is objectionable because there are no suits properly speaking under the Act. I think the words should be *suits of the description mentioned in section 3, clause (w)*. This would include all suits on bonds, khatas, written acknowledgments, and the like, and would exclude suits for rent, suits for damages &c., to which there is no necessity of applying a special law of limitation.”

OPENING SPEECH.

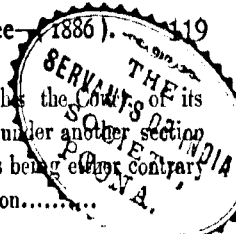
The Honourable Sir Theodore Hope moved that the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1882, be referred to a Select Committee. He said :—

“I do not think that it is necessary for me to trouble the Council with what,.....as regards the majority of the amendments which this Bill proposes to effect, would be hardly more than a repetition of my remarks on the last occasion. But there is one of those amendments,.....on which I shall be expected to give a little further explanation ; that is the section relating to conciliation, by which it is proposed to invest the Conciliators with power to require the attendance of either of the parties to the conciliation. At present the Conciliator possesses the power of requiring the attendance of the applicant, but only of inviting that of the defendant.

In the first place, I may take the opportunity of pointing out the very important position which this system of conciliation has now obtained in the four Dekkhan Collectorates to which the Act is applied.We find that, during the past year, the proportion of cases in which the parties came to terms (which means that they settled their disputes without it being necessary to go to a Civil Court) was no less than 78 per cent.; or to put it in another form, more than 3 out of 4 of the cases, or nearly 4 out of 5, were settled in this simple and inexpensive way, instead of being subjected to the costly and dilatory machinery of the Civil Courts. This percentage of 78, moreover, is the more satisfactory, for we find that the proportion has been growing every year since the Act was introduced. In the year 1880 the percentage of such cases was 52; in the following year it was 44; in the third year it was 58; in the fourth 64; in the fifth year 73; and now we have it at 78.....With regard to the quality of the Conciliators' decisions, which might seem open to question, it is very remarkable that, out of the whole of these 8,990 cases, only 77 were objected to within the period for which the law provides that objections to the arrangement may be filed in the Civil Court by either party. Out of all these 77, the objections

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were allowed in only 37 instances. Besides the the Courts of its own motion, under the powers which its has under another section of the Act, disallowed 38 of the agreements, as being either contrary to law or improper for some other obvious reason.....



Passing now from the circumstances in which the conciliation has had a satisfactory effect to the opposite, we find that the cases in which conciliation could not come into play owing to the non-appearance of the parties without apparent cause are on an average about 64 per cent..... In order to secure this attendance of parties, I may state that various expedients have been suggested short of allowing a power of summons and warrant; but, after full deliberation, it has been considered best to adopt the simple means already in vogue in the ordinary Courts of the Country, that is to say, that the summons should issue, and that in the case of non-compliance with the summons attendance should be required by warrant.

The Report of the Select Committee on the Bill of 1886.

We the undersigned members of the Select Committee to which the Bill to amend the D. A. R. Acts, 1879-1882, was referred, have now the honour to submit this our report:—

2. We have, on the suggestion of the Governor of Bombay in Council, defined the expression "Standing Crops," and so amended section 58 that, while the whole of an instrument will be copied by the Village-Registrar into his register; it will not be incumbent on him to deliver a certified copy of the instrument, or of the copy of it in the register to the parties except on their application.

3. We have corrected in s. 3, clause (y), a misprint which has been brought to our notice by the officiating Special Judge.

4. We have added to the Bill a section in the terms of s. 19, Act XXII of 1882, in order that persons having claims of the descriptions mentioned in s. 3, clause (x) may not be prejudiced by the application of the special rules of limitation prescribed in s. 72 being restricted to suits of the description mentioned in s. 3, cl. (w).

Amending Act VI of 1895.

*Statement of Objects and Reasons.**

The object of this comparatively short Bill is to introduce into the law known as the Dekkhan Agriculturists' Relief Acts a few changes suggested by a Commission which was appointed by the Government of India in 1891 to inquire into the working of the Acts. The larger projects recommended by that Commission have no bearing upon this Bill except in one particular which will be noticed presently, and but for one reason the Government of Bombay would have been quite content to leave the law as it stands and to defer the alterations now proposed until the Acts could be consolidated into one enactment. The reason which mainly induces the Local Government to approach this Council now is to be found in section 4 of this Bill. Already the law permits the extension of the Act to any other districts, but it happens that the physical and agricultural condition of various talukas in the same district differs greatly and the Government of Bombay in pursuance of past policy desires only to extend the Acts to those areas where they are really needed. Since this amendment required legislation, the opportunity has been taken to give effect to some of the recommendations of the Commission by repealing sections 8, 9, 15, 19 and 73 of the present law. Section 14 of the existing law is only repealed because it gains a wider application by being transferred to Chapter XI as 69B under section 9. By section 5 of the Bill the definition of "agriculturist" is slightly changed so as to make clearer the intention of the Legislature in the second rule and to exclude from the special law intended for agriculturists an owner of alienated land whose only title to be deemed an agriculturist in one of the districts to which the Acts apply arises from his receipt of rents from his tenants in that district. Section 6 is drafted in deference to the views of the Commission with only such conditions as appear indispensable. Section 7 provides an obviously

* Taken from Bombay Govt. Gazette for 1894, part VI, pp. 77, 78.

desirable interval to enable the mortgagor in certain cases to find the money payable under a decree; and section 9 recognises under s. 69 A a practice common in the Dekkhan. Section 10 limits the special Limitation Law to the four districts in which the Act runs, and thus endeavours to meet the recommendation of the Commission who have proposed an alteration in the general Limitation Law. The other changes require no special notice.

Opening Speech of the Honourable Mr. Lee Warner.



*Extract from the Report of the Speech given in
Vol. XXXIII, pp. 330 to 332 of the Proceedings in the
Legislative Council of the Governor-General—1894.*

The Honourable Mr. Lee Warner moved for leave to introduce a Bill to amend the D. A. R. Acts, 1879 to 1886. He said:—
“ My Lord, before explaining the amendment, I will briefly recall to mind the course of events leading up to the recent Commission which has now brought us to further legislation. On the 17th of July 1879, The Honourable Mr. Hope introduced a Bill for amending the procedure of the Courts in certain classes of litigation in four districts in the Dekkhan, and relieving, so far as any Legislature can deal with a great agrarian and social problem, certain incidents of agricultural distress and discontent which had attracted prominent notice in that part of India. The Bill as amended became law in October, and in 1881, 1882 and 1886, the Act XVII of 1879 was further amended by this Council.

A healthy and most beneficial criticism of the Act was excited both in this Council and elsewhere. Some of the fears which then racked the minds of observant critics may be mentioned. It was feared that any attempt to place the peasant-debtor, weighted with ignorance and inherited debt, and his creditor, with his superior advantages of purse and intelligence, upon a fairer footing would produce injustice by interrupting some of the legitimate profits of the money-lender's trade. The exercise of a correctional power over contracts and improvident bargains seemed a novel and dangerous task, and it was anticipated that the money-lending class would soon discover methods of evading the law. The demoralisation of rural society was predicated as a consequence of the temptations offered by paternal legislation to the setting up of false defences. Errors due to corruption, incapacity and irresponsibility were expected to flow from the substitution of revision for regular appeals. The system of conciliation would only create delay and offer op-

portunities for evasion of the Act and for corrupt practices. The 'blundering benevolence' of the provisions as to registration would lead to oral contracts. Such were some of the criticisms offered in this Council which found echo elsewhere. The Government of India decided to appoint an independent Commission, under the presidentship of Mr. J. N. Neill, to ascertain how far the results of the legislation had justified the anticipations of its promoters. The report of the Commissioners, dated 11th June 1892, confirmed the opinions expressed by those who preceded them that a load of debt had been taken off the raiyat's shoulders without demoralising him or shaking his credit and without ruining the money-lender. They affirmed the success of the six leading provisions of the Act, namely, (1) the provisions against *ex parte* decrees, (2) those for going behind the bond, (3) those for redemption-suits, and suits for account, (4) those for payment by instalments, (5) the abolition of imprisonment for debt, and (6) the limitations upon sales of immoveable property to cases where it was specially pledged; and recommended the retention of conciliation and compulsory registration. They criticised each section of the Acts and advocated a series of amendments. They went further and proposed an outline of the general Act for agriculturists through out India. Upon this report the matured views of Sir Raymond West are not wanting and a paper, which he read before the Society of Arts in London on the 18th of May, 1893, will no doubt have attracted the attention of those who are interested in the whole question. Meanwhile, the Government of Bombay had in March of last year arrived at its conclusions upon the report, so far as that report dealt with the law actually in force in the Dekkhan, and addressed the Government of India. The Bill which I seek to introduce gives effect to the final decision of the Government of India upon the particular issues so raised....."†

† What has been omitted here refers to the amendments proposed in the Bill and that portion of the speech is not given here, because the statement of Objects and Reasons given above contains a very nearly similar treatment of the amendments.

Report of the Select Committee on the Bill, presented to the Council of the Governor General of India, on the 7th February 1895.

“ We, the undersigned, members of the Select Committee to which the Bill to amend the Dekkhan Agriculturists’ Relief Acts, 1879 to 1886, was referred, have considered the Bill and have now the honour to submit this our report,

2. From section 3* we have omitted the words “ and the last seventeen words of section 7” and have added a section 6† to the Bill which slightly amends section 7 of the Dekkhan Agriculturists’ Relief Act. This alteration meets to a large extent the views of the Government of Bombay and of the Secretary of State.

3. We have given our most careful consideration to the definition of ‘ Agriculturist ’ in section 2, and although we might not agree in maintaining the present definition if we were introducing the law for the first time into the Dekkhan or proposing its extension to another Presidency, we have accepted the concurrent views of the Commission, of the Judges of the High Court of Bombay, and of other officers consulted, that no changes which are not absolutely necessary should be made in the existing definition of status. We recognize the force of the arguments, that the law passed in 1882 has been interpreted by the Courts and applied for thirteen years to transactions between debtors and creditors in the Dekkhan, where its effect is fully understood, and that it would be more disadvantageous to deprive persons now entitled to relief as agriculturists of the benefits of the Act than to admit new classes to those benefits. Such changes as we have made do not materially alter present definition.

4. Section 7‡ gives effect to a recommendation made by the Government of Bombay, and is intended to assist the Courts in

* The reference is to the section in the Bill as drawn up before it was presented to the Select Committee. The Bill is published in part VI of the Bombay Government Gazette, issued on the 5th April, 1894. The section as drawn up was :—“ Sections 8, 9, 14, 15, 19, and 73 and the last seven words of a. 7, are hereby repealed.”

† The section was :—“ In section 7 before the word unnecessary ” the word ‘ clearly ’ shall be added.

‡ This is s. 13A of the D. A. B. Act.

taking accounts where doubts exist as to the value of the profits of mortgaged property. We have, in view of this addition, abandoned the proposed alteration of the existing law regarding agreements to set off profits in lieu of interest and other charges. At the same time we have adopted a further suggestion of the Government of Bombay in section 9 of the revised Bill by which the Courts will be empowered, in passing a decree for redemption or foreclosure in certain suits, not merely to order payment by instalments, but also to continue the mortgagee in possession until the debt found due by the mortgagor is paid off with interest.

5. Section 10* gives effect to the suggestion that for purposes of execution standing crops should be deemed to be moveable property.

6. Sections 11† and 12‡ were not in the Bill as introduced in the Council, but they embody the existing practice and give effect to the intentions of certain rules made by the Local Government under the Acts for regulating procedure of Village Munsifs and Conciliators.

7. Sections 13¶ and 14|| call for no remark.

8. Section 15§ replaces section 8 of the Bill as introduced, and enables the Local Government to place the Village-Registrars under the control either of the Inspector-General of Registration or of the District Officer, or both. The occasion has been taken to give the Local Government power to destroy certain unclaimed documents which, if they were registered under the Indian Registration Act, 1877, and not under Chapter VII of the Dekkhan Relief Acts, might be destroyed.

* This is an amendment to s. 22, as indicated in the text.

† This is an amendment to s. 36.

‡ This is section 44 of the D. A. R. Act.

¶ This is an amendment to section 51 (b).

|| This s. 52 of the Act.

§ This is s. 61 of the Act, reproduced as drawn out by the Select Committee with a few modifications. Vide proceedings in Supreme Legislative Council for 1895, Vol. XXXIV, p. 178.

9. In section 16 we have altered the terms of section 9* of the Bill as introduced so as to meet the views of the Local Government as far as we considered it safe to do so.

10. Section 17† merely re-enacts the existing law embodied in section 14 of the Acts with a view to making its provisions applicable not only to sections 13 of the Act but to the whole of the Dekkhan Agriculturists' Relief Acts.

11. Section 18‡ is retained as originally drafted in accordance with the conclusion arrived at by the Government of India that it is not expedient to extend the special limitation period, in four districts, to any other districts or part of the districts to which the Acts may be extended and in which the ordinary limitation law will run.

* The s. 9 was follows:—“ 69A. The last clause of section 258 of the Code of Civil Procedure shall not apply to payment out of Court made in any proceeding under this Act.

† This is section 71A of the Act; the word “ where interest is chargeable as such,” in s. 71A being added in the course of the discussion while passing the amendment. Vide proceedings in Supreme Legislative Council, for 1895, Vol. XXXIV, p. 178.

‡ This refers to the amendment in s. 72 of the Act.

The Hon'ble Mr. Lee Warner's Speech on the Report of the Select Committee.

*Extract from the proceedings of the Supreme Legislative
Council for the year 1895, Vol. XXXIV, pp. 169-173.*

The Honourable Mr. Lee Warner moved that the Report of the Select Committee on the Bill to amend the D. A. R. Acts, 1879 to 1886, be taken into consideration. He said:— "My Lord, the first material changes occur in s. 2, where that difficult crux arises— who or what is an agriculturist? The solution necessarily gave rise to differences of opinion, and I may admit that, if we had been legislating for another part of India in which the village-system and the land-tenure differed, an agreement in favour of the definition adopted might have proved more difficult of attainment. In Bombay you have a large peasant proprietary and numbers of village-servants who are holders of alienated land. In view of these facts the Select Committee, whose report was signed on 15th December 1882,recorded an opinion to which the Select Committee of this year paid due deference. It must not be forgotten that twice before 1882 had this Council defined the status of an agriculturist, and its third attempt was justified by the Select Committee in these terms:—

' It would probably be impossible to frame a definition which would not go too far one way or the other.....'

Those who desire to appreciate the difficulties of the question will do well to read Dr. A. P. Pollen's letter, No. 386, dated 7th June 1880, to the Bombay Government, in which in paragraph 64 he asked, in reference to nine classes of proprietors or land-workers, whether they were agriculturists. In a letter, dated Simla 30th July 1881, Mr. Hope expressed his opinion upon Dr. Pollen's letter and the final issue was the Amending Act XXII of 1882, which with the rules 5 and 6 added in 1886 gave us the existing definition. The Select Committee has, I think, wisely resisted the temptation to insert the doubtful words ' by members of his family,'

or to exclude the whole class of inamdars and even holders of unalienated land who might, but do not, cultivate their lands. In the Dèkkhan the Village-servants are ranked amongst holders of alienated land, and the Acts of 1879 to 1886 were deliberately devised by Sir Theodore Hope in order to bring peace and improved procedure both to the agricultural classes of the four districts and to others also. There are, however, some important changes now introduced which deserve attention. In the first place the repeal of s. 73 opens to revision a decision as to status and leaves it to judicial determination in the same way as any other question of fact. In the next place, the words added to Rule 2, namely 'within the meaning of the word as then defined,' fix the date from which the status created by any of the Acts must have been acquired. The Committee, whilst it generously refrained from material alterations in the definition of status, decided however to protect the agriculturist worn out by old age, crippled by disease, or absent on military duty, from loss of his status. I must confess that.....I felt, and still feel, some fear that the operations of sections 11 and 56 acting upon the addition now made to the Bill will prove inconvenient in the case of the peasant-soldier engaging in loan transactions in a distant cantonment, and I should have wished that the whole definition had been left alone.....The definition of 'standing crops' is only made clearer, not altered. But with this must be read section 10, which is devised to make standing crops moveable property for the purpose of attachment under the Act... ..The last word has not yet been said upon s. 7 of the Acts as amended by s. 6 of the Bill. The proposal which I submitted to the Committee was threefold: first, to make s. 7 which requires the summons to be for final disposal of the suit and the Court to examine the defendant as a witness one of universal application, not only to suits under Chapter II of the Act, but also to suits under the Acts. Secondly, I wanted to secure that the cost of issuing the subsequent summons after the first appearance of the defendant should not fall on the plaintiff; and, thirdly, in view of the repeal of section 8 of the Act, to add a proviso that a written statement would not render the examination of the defendant unnecessary.....The Committee decided that the section should remain in Chapter II, that no legislative direction as to relieving the plaintiff of the cost

of issuing summons was desirable; and, as regard the explanation, they hoped that the addition of the word 'clearly' would emphasize the necessity to examine the defendant.....In section 11, I was personally anxious to obtain a power of revising the Munsif's decision, if he acted with such irregularity as to cause a miscarriage of justice. There are 89 Village-munsifs before whom 7,665 suits were instituted in 1893. Their decisions can only be revised for misconduct or corruption. They are honest men whose knowledge of law is very limited, and I do not think their usefulness would be impaired if their decisions were revised when they were guilty of material irregularity causing miscarriage of justice. A majority of the Select Committee, however, held the view that the finality of the munsif's decisions was most desirable, and that it was not amiss if this village Hampden acted in consonance with village sentiment, although it might be in opposition to the view which the revising judge might take. It was pointed out that in Madras the munsifs exercised a final judgment on the questions brought before them. I doubt whether in Bombay our Village-munsifs, new to the work, can be put into the same category as the Madras munsifs, but I am not prepared to appeal to the Council on this matter of opinion...There remains only s. 18*, which to my regret limits the special periods of limitation to the four districts in which they now run, and denies them to the districts or parts of districts to which this law may be hereafter extended. In the Dekkhan, with its uncertain rainfall and the natural tendency of a money-lender to take advantage of his debtor's difficulties, a short limitation means frequent renewal of bonds at enhanced amounts and a rapid accumulation of debt.....†”

* This refers to the amendment in s. 72 of the Act.

† That part of the speech which refers to s. 71A has been omitted, as it appears in a note to the said section.

Amending Bombay Act No. I of 1902.

Statement of Objects and Reasons.

The object of this short Bill is to introduce into the law, known as the Dekkhan Agriculturists' Relief Acts, an amendment, which appears calculated to obviate an inconvenience to which attention has been directed by the Inspector-General of Registration and Stamps. Paragraph 3 of section 59 of the Act (XVII of 1879) requires that the original of any instrument, which is to be modified, or wholly or partly superseded by a fresh instrument, shall be produced before the Village Registrar. It has been found that the absence of any exception to provide for cases in which the original may have been lost or destroyed, or is otherwise for good reasons not available, occasionally produces hardship; and the Local Government after consulting officers of experience are of opinion that such an exception, provided with adequate safe-guards against the possibility of its being used as a means for fraud, should be embodied in the Act. It is considered that this end may be effectively secured by the proposed amendment of section 59 of the Dekkhan Agriculturists' Relief Act, 1879, to which the previous sanction of the Governor-General, has been obtained, as required by section 5 of the Indian Councils Act, 1892.

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