

BOMBAY LAND REVENUE
CODE

K. S. Gupte

STUDENTS' EDITION

THE

BOMBAY LAND REVENUE CODE

being

Bom. Act V of 1879.

as amended up to date

WITH

Explanatory Notes, Exhaustive Commentary, up-to-date
Case-law, etc., etc.

BY

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THIRD EDITION

(Revised and Enlarged)

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PREFACE TO THE THIRD EDITION.

In this new edition opportunity has been taken thoroughly to revise the whole book. All important High Court rulings and Government orders recently passed have been included to make this book up-to-date. In order to make it more exhaustive notes have been added to several sections for the first time.

Since the publication of the second edition most of the provisions of the Bombay Tenancy Act, 1939 have been brought into force in some parts of this Province. The effect of this on the scope of various sections of the Code in those parts of the Province has been clearly explained.

All Sind amendments to the Code up-to-date have been incorporated in their proper places to make the book useful for the Province of Sind also.

There has been a substantial increase in the number of pages ; in addition to this the prices of printing paper and other materials have risen enormously, but in spite of these the price of this book has been kept as low as possible.

Poona, 1st Jan. 1943.

K. S. Gupte.

PREFACE TO THE FIRST EDITION.

The Bombay Land Revenue Code has been described by the High Court of Bombay as 'technical and difficult Act,' and again as 'particularly difficult one to construe'. The High Court has further remarked: 'It is extremely embarrassing for the ordinary practitioner to try and find his way through the various Acts and amending Acts that have taken place since 1879.' These observations will show that piecemeal legislation has made the provisions of this Act difficult to grasp..... The object, meaning and principles of the sections are carefully explained in the light of leading cases..... The students are referred to the practitioner's edition namely 'the Bombay Land Revenue Code' by the same writer for details.

Poona, January 1935.

K. S. Gupte.

PREFACE TO THE SECOND EDITION.

.....The Adaptation of Indian Laws order in Council, 1937 and the Bombay Land Revenue Code (Amendment) Act, 1939 have effected numerous changes in the Code. Some Chapters and several sections are deleted while modifications in a large number of others have been made.

.....

Poona, October 1940.

K. S. Gupte.

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THE BOMBAY LAND REVENUE CODE

Bombay Act No. V of 1879.

First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 17th July 1879.

Adapted and modified by the Adaptation of Indian Laws Order in Council, 1937 issued under s. 293 of the Government of India Act, 1935.

An Act to consolidate and amend the law relating to Revenue officers, and the Land Revenue in the Presidency of Bombay.

Whereas it is expedient to consolidate and amend the law relating to Revenue officers, and to the assessment and recovery of Land Revenue, and to other matters connected with the Land Revenue Administration; It is hereby enacted as follows:—

Preamble.

Land Revenue Code is a taxing enactment and must be construed strictly in favour of the subject.—*Secretary of State v. LalDas*, 12 Bom. L. R. 20; *Raichand Gulabchand v. Secretary of State*, 41 Bom. L. R. 1077.

It is a technical and difficult Act.—*Dadoo v. Dinkar*, 20 Bom. L. R. 887; *Sir Dolatsinghji v. Oghad Vira*, 25 Bom. L. R. at p. 740.

Scope and character—"There are many sections of the Code which indicate a somewhat larger object, and among them may be noticed ss. 83 and 86."—*Dadoo v. Dinkar*, 20 Bom. L. R. at p. 892.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be cited as "The Bombay Short Title. Land Revenue Code, 1879".

(2) Save as otherwise provided by Chapter XA, this Act extends to the whole of the Local extent. Presidency of Bombay, except the City of Bombay, and the Scheduled District of the Mehwassi Chiefs' villages as defined in the Scheduled Districts Act, 1874.

(3) Provided that Chapter III also extends to the City of Bombay, subject to the modification that the expression "Revenue officer" means every officer of any rank whatsoever appointed under section 5 or 6, of the Bombay City Land Revenue Act, 1876, and employed in or about the business of the Land Revenue in the City of Bombay, or of the surveys, assessment, accounts or records connected therewith, instead of as defined in clause (1) of section 3 of this Act.

Bombay City and Island has a Land Revenue Act of its own, namely the Bombay City Land Revenue Act, 1876.

Opinion of Legal Remembrancer embodied in a G. R. is not binding nor has it any authority or force beyond what may be due to the accuracy of the reasoning contained in it.—Per Batty J. in *Balcant Ramchandra v. Secretary of State for India*, 29 Bom. at p. 501.

Government Resolutions are departmental orders and have not the force of a legislative enactment or statutory rules.—*Nana Bayaji v. Pandurang*, 9 Bom. at p. 99; *Govinda v. Naiku*, 10 Bom. 80; *Emperor v. Moreshwar*, 30 Bom. L. R. 1255 (1928).

2. [*Repeal of enactments.*] *Repealed by Bom. Act IV of 1913, s. 5.*

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

(1) "revenue officer" means every officer of any rank whatsoever appointed under any "revenue officer"; of the provisions of this Act, and employed in or about the business of the land-revenue or of the surveys, assessment, accounts, or records connected therewith and for the purposes of sections 25 and 26 includes a village-officer appointed or officiating under any of the provisions of the Bombay Hereditary Offices Act or the Matadars Act, 1887;

Hereditary Patels and Kulkarnies are not revenue officers (except for the purposes of ss. 25 & 26) within the definition of s. 3 (1) of the Code as they are not appointed under this Act.

Privileges of Revenue Officers.—They are not liable to be sued for damages etc. in Civil Courts for acts done *bonafide*.—S. 7, *Bom. Revenue Jurisdiction Act, 1876*. No suit against the Crown shall lie for an act or

omission of a Revenue Officer until the plaintiff has exhausted right of appeal within limitation period (s. 11, *ibid*) Government has power to refer questions to High Court on which they desire to have its decision even during the course of a trial or investigation of suit, claim or objection, etc (s. 12, *ibid*). A Subordinate Judge of the 1st class (and not a Court of Small Causes) only should receive and entertain and hear suits against an officer of the Crown or the Crown—(S. 32 of the *Bom. Civil Courts Act, 1869 as amended by Bom. Act VI of 1926*).

Previous notice is to be given before instituting a suit against a public officer or the Crown—S. 80, *Civil Procedure Code, 1908*.

(2) "survey officer" means an officer appointed "survey officer;" under, or in the manner provided by section 18;

*[(3) "survey settlement" includes a settlement "survey settlement" made under the provisions of Chapter VIII.A.]

Note—This sub-clause (3) was inserted by Bom. Act XX of 1939, s. 2. It applies to this Presidency only. It is not applicable to Sind.

(3) [*Definition of "Collector."*] *Repealed by Bom. Act IV of 1913, s. 6 (a)*.

For the definition of "Collector." see notes to s. 8 under the head 'Collector' (*infra*).

(4) "land" includes benefits to arise out of land, and things attached to the earth, or "land;" permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory;

A tree in itself is not land though it may be included in the word 'land.' At the best it forms part of the land. It does not mean tree apart from land itself.—*Bapu Vithal v. The Secretary of State for India*. 34 Bom. L. R. 780 (1931).

What is Land Revenue.—There is no definition of the term 'Land Revenue' in the Bom. L. R. Code although in s. 3 of the Bombay City Land R. Act, 1876 (11 of 1876) it is explained; so also in s. 3 of the Bom. Revenue Jurisdiction Act, 1876 (X of 1876). Taking it in its plain meaning land revenue must be taken to mean "money payable to Government in respect of land" observed the High Court in *Secretary of State v. Gorardhandas, A. I. R. 1931 Bom. 464*. In *Jinabhai Nathabhai v. The*

* Note—"(3) 'Survey settlement' includes a settlement made under the provisions of Chapter VIII.A."—*Vide s. 2 of the Bombay Land Revenue Code (Amendment) Act, 1939*. The Bombay Land Revenue Code (Amendment) Act, does not apply to Sind.

Collector and the T. S. Officer, 28 Bom. L. R. at p. 418 Macleod C. J. remarked that "the meaning of the term 'land revenue' in s. 150 of the Code could not be restricted to one particular kind of the land revenue, that is to say assessment, so that, if any other kind of revenue from land is payable to Government by any person on account of any land held by or vested in him, and he falls into arrears in the payment of such revenue, it cannot be recovered from him under s. 150. But for the purposes of s. 153 of the Code local fund cess is not considered as land revenue proper.

(5) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same;

(6) "survey number" means a portion of land of which the area and assessment are separately entered, under an indicative number in the land records;

The original idea of 'survey number' is the extent of land capable of being cultivated by a pair of bullocks, as farming cannot be prosecuted at all with a less number than this. Of course this will vary according to climate, soil, description of cultivation and methods of husbandry.

Note.—In this connection see Land Revenue Rules 3 [1] and 11.

(7) "sub-division of a survey number" means a sub-division of a portion of a survey number of which the area and assessment are separately entered in the land records under an indicative number subordinate to that of the survey number of which it is a portion;

Note.—For previous history and the object of this section see the Practitioner's (big) Edition of the Land Revenue Code by the writer.

(8) "chavdi" means, in any village in which there is no chavdi, such place as the Collector may direct shall be deemed to be the chavdi for the purposes of this Act;

"Chavdi" in Sind includes *Tapedar's Dera*.—Rule 2 (d) Land Revenue Rules (1921). [Vide No. R. 4102-E, (R. D) Sind Secretariat, Karachi, 3-1-1941].

(9) "building site" means a portion of land held for building purposes, whether any building be actually erected thereupon

or not, and includes the open ground or court-yard enclosed by, or adjacent to, any building erected thereupon;

The word 'adjacent' is extremely vague and must be construed within reasonable limitations.—*Secretary of State for India v. Abdul Hussein*, 29 Bom. L. R. at p. 1352 (1927).

(10) "boundary-mark" means any erection, "boundary-mark;" whether of earth, stone, or other material, and also any hedge, unploughed ridge, or strip of ground, or other object whether natural or artificial, set up, employed, or specified by a survey officer, or other revenue officer having authority in that behalf, in order to designate the boundary of any division of land;

Boundary-marks.—These are essential as in their absence the continual changes due to encroachment, divisions, etc. would in a short time result in a complete failure in correspondence between the survey measurements and the facts as found in the fields.

Note.—For history and object of change in the law see the larger edition of the Code by the writer.

(11) "to hold land," or be a "landholder" or "holder" of land," means to be lawfully "to hold land," "landholder," "holder;" in possession of land, whether such possession is actual or not;

The definition of 'holder' in s. 3 (11) is not a satisfactory one, for it includes 'superior holders' and 'inferior holders' as defined in ss. 3 (13) and (14) of that Act.—*Shidharaj v. Dari*, 25 Bom. 903.

Note.—In the Code, however, it is used with reference to alienated land.

An alienee of Government rights is a holder of land as he is entitled to the disposal and enjoyment of it whenever the tenure of the tenants terminates.—*Sursangji v. Narayan*, 2 Bom. L. R., 855.

The term 'holder' is wide enough to include even a tenant who has entered into possession under an occupant.—*Nanabhai v. Collector of Akra*, 32 Bom. 686; 12 Bom. L. R. 707.

Not a holder.—M-re user by rice lands tenants of adjoining waste land with the leave and permission of the Inamdar does not make them holders of lands.—*Fasulco v. Gorind*, 30 Bom. 315.

(12) "holding" means a portion of land held by a "holding;" holder;

(13) "superior holder" means a landholder entitled "superior holder;" to receive rent or land revenue from "inferior holder;" other landholders (hereinafter called "inferior holders"), whether he is accountable or not for such rent or land revenue, or any part thereof, to the Provincial Government: provided that where land has been granted free of rent or land revenue, subject to the right of resumption in certain specified contingencies, by a Jagirdar, Inamdar or other such holder of alienated land whose name is authorizedly entered as such in the land records, such Jagirdar, Inamdar or holder shall, with reference to the grantee, be deemed to be the superior holder of land so granted by him and the grantee shall with reference to the grantor, be deemed to be the inferior holder of such land and for the purposes of section 8 of the Bombay Local Funds Act, 1869, shall, notwithstanding anything hereinafter contained in the definition of the word "tenant", be deemed to be the tenant of such grantor.

The Bom. Local Funds Act, 1869 is repealed by the Bom. Local Boards Act, 1923 which provides for assistance to superior holder.

The relations between superior and inferior holders are attempted to be defined in Ch. VII of the Act. For details see larger Edition; see also Commentary on the Bombay Tenancy Act, 1939, by Gupte.

(14) "tenant" means a lessee, whether holding "tenant;" under an instrument, or under an oral agreement, and includes a mortgagee of a tenant's rights with possession; but does not include a lessee holding directly under the Crown;

Notes—It is surprising that the word, tenant, is not defined in the Bombay Tenancy Act, 1939—See Commentary on the Bombay Tenancy Act by Gupte.

(15) "landlord" means a lessor; "landlord;"

Notes—Though the word 'landlord' occurs frequently in the Bombay Tenancy Act, 1939 no attempt is made there to define the term 'landlord'.

(16) "occupant" means a holder in actual possession of unalienated land, other than a tenant: provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

Note—There was great controversy over this when the Bill was introduced. See the larger edition of Land Revenue Code by the writer for early history, of this section, etc.

Rights of an Occupant—(1) An occupant is entitled to possession and enjoyment of his land on payment of land revenue if any fixed and on fulfilment of conditions if any imposed. [ss. 3 (16) and 68]; (2) He has right to adjacent alluvial land to a certain extent under s. 64; (3) He has right of pre-emption to adjacent Government alluvial land under certain conditions for a limited price (s. 63); (4) Every holder of land has a right to a decrease of assessment if a certain portion of his land above a certain area is lost by diluvion (s. 47); (5) An occupant has a right to trees growing on the land with certain exceptions and under certain conditions laid down in ss. 40 and 41; (6) An occupant has a right to erect farm-buildings, construct wells or tanks and to make other improvements on his land for the better cultivation, etc. under s. 65. *S. 107 states that in revising assessment the increase in the value of land or in the profit of cultivating the same if due to improvement effected by or at the cost of the holder should not be taken into account; (7) An occupant has right of inheritance and is also allowed to transfer his occupancy unless otherwise provided (s. 73); or as laid down by s. 73A. Any person acquiring such rights save by virtue of a registered document is bound by s. 135C to report the acquisition to the village accountant within three months under penalty of fine under s. 135F except under certain circumstances; (8) An occupant has a right to relinquish his land under certain conditions (s. 74); (9) [An occupant has a right to fixity of assessment i. e. when an amount of assessment is fixed under a settlement for a number of years; so also the occupant has a right to hold the land at the fixed assessment till the expiry of the period of guarantee *(s. 102)].

Obligations of Occupants and Occupancies—(1) Liability for land revenue if any fixed (s. 45 states that all land is liable to pay land revenue unless specially exempted, and an occupant's use and occupation of his land is subject to the payment of the land revenue if there be any fixed thereon; (2) He is liable to pay cesses which may be imposed in addition to assessment fixed under s. *102 for local improvements such as roads, wells, etc. and for water rates fixed under s. 55 or under Bom. Irrigation

*Note—S. 107 is deleted by the Bombay Land Revenue Code (Amendment) Act, 1939. This latter Act is for the Bombay Presidency only; it does not apply to Sind.

*Ss. 100, 101, 102, 103, and 104 are deleted by Bom. Land Revenue Code (Amendment) Act, 1939. S. 105 is amended by *ibid.* These changes do not apply to the Province of Sind.

Act, of 1879 * (s. 105); (3) An occupant is primarily liable to Government for payment of land revenue (s. 136). The crop of the land is held liable for land revenue in preference to all other claims if not otherwise discharged (s. 138); (4) The occupant is primarily (it amounts to even personal liability) liable for the land revenue due on the occupancy (s. 136) until such time as the occupancy is lawfully relinquished or transferred to the name of some other persons (s. 74). *Note.*—In order to prevent forfeiture of occupancy certain other persons may pay the land revenue (s. 80); (5) The Collector may take precautionary measures to secure the payment of land revenue under s. 141 by preventing the reaping of crop of the land or the removal thereof or by placing watchmen over it (s. 141). The precautionary measures should be relinquished if costs are paid and security is furnished; (6) Arrears of land revenue shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy with all rights of the occupant over trees, crops, etc. liable to forfeiture (s. 56). *Note.*—For arrears of Local Fund cess land cannot be forfeited. (*G. R. 5673/28 of 38-8-1930.*). Arrears of land revenue may be recovered (a) by serving a notice of demand (s. 152), (b) by forfeiture of the occupancy etc. (s. 153), (c) by distraint and sale of defaulter's moveable property (s. 154), (d) by sale of defaulter's immoveable property (s. 155), (e) by arrest and imprisonment of defaulter (ss. 157-58), (f) by attachment of alienated villages or their shares (ss. 159 to 163). Statement of account certified by competent Revenue authority is conclusive evidence of existence of arrears of amount of land revenue due and of the person who is defaulter (s. 149). Collector of one district may recover demands of Collector of another district (s. 49). [*Note.*—See also the Revenue Recovery Act (1 of 1890)]; (7) By s. 122 landholders are required to construct such boundary marks for their survey members or sub-divisions as may be required by a survey officer and by s. 123 are made responsible for the maintenance of such marks and for charges incurred for alteration, removal or repair (s. 123). Such charges are leviable under s. 187 and may be recovered under Ch. XI of the Code so far as it may be applicable (s. 187); (8) He (landholder) is under obligation to attend and give information in his possession to survey officers on the publication of a general or special notice (s. 96); (9) Landholders are bound to furnish flag-holders for measurement and classification work and, in the event of a necessity for employing hired labour, the cost may be assessed on the lands surveyed (s. 97). By s. 135G (a) the powers conferred by ss. 96-97 may be exercised by village accountants in connection with the preparation of maps or other records for the Record of Rights except the power of assessing cost of hired labour under s. 97. Such power is conferred by s. 135G (b) on revenue officers not lower than Assistant or Deputy Collector; (10) Acquisition of rights as holder, occupant, owner etc. by a person by succession, inheritance, survivorship, partition, etc. are to be reported to village accountant under s. 135C under penalty of fine provided by s. 125F. Further, by s. 135E persons acquiring rights in land are bound on requisition to give all necessary information to a Revenue Officer within one month under penalty of fine upto Rs. 25 (s. 125F).

What an Occupant is not entitled to—(1) An occupant is not ordinarily entitled to mines and mineral products in unalienated land (s. 69). (2) An occupant (of agricultural land) is prohibited by Rule 77 to excavate or remove earth, stones other than loose surface stones, kankar, sand, mud or any other material of the soil thereof if injurious to cultivation

* See notes at the bottom of p. 7.

or if to be used for purposes of trade or profit, etc. Similarly holder of land assessed or held as building site, etc. is prohibited to excavate or remove for whatever purpose any material of the soil other than loose surface stones, etc., except on certain conditions (*Rule 78 of the Bom. L. R. Rules, 1921*).

Unalienated land within site of any city, town or village is not to be excavated except for laying of foundations for building, etc. without permission (*Rule 79 of the Bom. L. R. Rules, 1921*).

(3) Government has reserved rights to certain trees in occupancies and occupants are prohibited to dispose of such trees except under certain conditions (ss. 40 and 41). Disposal of trees on occupied lands is to be made as laid down in Rule 60.

(4) Occupants under certain circumstances and in certain tracts or villages are not to transfer their occupancies without sanction. So also occupants of lands holding under restricted tenure from Government cannot transfer them without sanction (s. 70 and Rules 120 to 124).

(5) Cultivation of unarable land which is not assessed because it is reserved or assigned for public purposes or if it is occupied by a road or recognised footpath or by tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes, etc., is prohibited by Rule 75 under s. 48 (4). (6) Occupant of unalienated land is prohibited from using his land for manufacture of salt except under certain conditions (Rule 76). (7) An occupant of land assessed for use for any purpose (there are three different purposes, viz. for agriculture, building and, other than agriculture or building), is not to use it for any other purpose. If he so uses it the assessment will be liable to be altered and fixed at a different rate as provided by the Rules (s. 48). (8) An occupant of land assessed or held for purpose of agriculture is not entitled to appropriate the land to any other purpose without the permission of the Collector, who may require the payment of fine in addition to any new assessment which he may levy under s. 48 (s. 65). If any such agricultural land be so used without the Collector's permission etc. the occupant and tenants or other persons holding under him will be liable to be summarily evicted from the land so used from the entire field or survey number of which it may form a part and the occupant shall also be liable to pay in addition to new assessment under s. 48 some fine (s. 66). Note.—It is ruled that the occupant is liable if his tenant or any other person holding through him or even a trespasser uses such land for any such purpose even without the occupant's consent (s. 66).

Succession to occupancies.—S. 73 recognises the right of occupancy as an heritable property. That was the law also under Bom. Act I of 1865. S. 135C provides that any person acquiring by succession, survivorship, inheritance, etc., any right as holder, occupant, etc., shall report his acquisition of such right to the village accountant whose duty it shall be under s. 135B to enter in a Register of Mutations every such report. It shall also be his duty to make an entry in such register of the acquisition of any right referred to above which though not reported to him under s. 135C has come to his knowledge.

(17) "occupancy" means a portion of land held by
"occupancy;" an occupant;

(18) "to occupy land" means to possess or take "to occupy land;" possession of land;

(19) "occupation" means possession; "occupation;"

(20) "alienated" means transferred in so far as the "alienated;" rights of the Provincial Government to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any person;

Inam.—The word 'ordinarily' means an alienation without any service in return.

Watan.—This word means an Inam for service. But generally speaking the word Inam [*Barkati in Gujarat*] is used in a wider sense to denote any alienation in cash or land with or without service. In Village Form No. III alienated lands are entered.

There are seven principal classes of Inams. They are as follows: [i] [a] Treaty Saranjams; [b] Non-Treaty Saranjams; [c] Other political tenures. [ii] Personal. [iii] Devasthan [iv] Non-service watans of District and Village officers in Broach, Kaira, Panch Mahals and Surat. [v] Non-Service watans of Village officers and servants. [vi] Village servants: [a] useful to Government; [b] useful to the community; [vii] Revenue-free sites for the construction at the cost of Local, Municipal or other funds of—[a] Schools or Colleges, [b] Hospitals, [c] Dispensaries, [d] other public works (including religious or charitable institutions) from which no profit is expected to be derived.

Note—In each class there are one or more of the following subdivisions:—[1] Lands, [2] Villages, [3] Cash allowances.

Inams and watans are regulated in general by the Bombay Revenue Jurisdiction Act [X of 1876] and the Crown Grants Act [XV of 1895]. However in particular classes of Inams particular enactments apply. They are the following:

Class I is governed by the all-India Act called the Pensions Act, 1871. Besides this, there are Saranjam Rules framed by Government under Rule 10 of Sch. B to the Bombay Rent-free Estates Act [XI of 1852].

Classes II and III are regulated by [a] the Bom. Rent-free Estates Act [XI of 1852]; [b] the Religious Endowments Act [XX of 1863]; [c] The Pensions Act [XXIII of 1871]; [d] the Exemptions from Land Revenue [No. I Act [II of 1863]; [e] the Exemptions from Land Revenue [No. 2] Act [VII of 1863]; [f] the Toda Giras Allowances Act [Bom. Act VII of 1877].

Classes IV, V and VI are governed by [a] the Bombay Hereditary Offices Act [III of 1874]; [b] s. 2 of the Act to Amend the Bom. Hereditary Offices Act [Bom. Act V of 1886]; [c] the Matadars Act [VI of 1887].

Class VII is regulated by the Bom. L. R. Code 1879 and Bom. Land Revenue Rules, 1921 as amended upto-date.

(21) “village” includes a town or city and all the “village;” land belonging to a village, town or city;

(22) the words “revenue year” or “year” means “revenue year;” the period from, and exclusive of, the “year;” thirty-first July of one calendar year until, and inclusive of, the thirty-first July in the next calendar year;

‘Revenue Year’ or ‘Year’—For the purposes of this Code—1st August to 31st July.

Annual Tenancy year.—1st April to 31st March (s 84).

Calendar year.—1st January to 31st December—*Vide* s. 3 (59) of the General Clauses Act, 1897.

‘Financial year’ shall mean the year commencing on the 1st day of April.—S. 3 (19), *Bom. General Clauses Act, 1904.*

(23) [*Definition of “section”.*] *Rep. by Bom. Act III of 1886.*

(24) [*Definition of “this chapter.”*] *Rep. by Bom. Act III of 1886.*

(25) the term “joint holders,” or “joint occupants,” “joint holders;” means holders or occupants who hold “joint occupants;” land as co-sharers, whether as co-sharers in a family undivided according to Hindu law or otherwise, and whose shares are not divided by metes and bounds; and where land is held by joint holders or joint occupants, “holder” or “occupant,” as the case may be, means all of the joint holders or joint occupants;

(26) “land records” means records maintained “land records;” under the provisions of, or for the purposes of, this Act;

Land Records.—As used in this section the term includes survey records, revenue records, the record of rights, village records and in short all records maintained under the provisions of, or for the purposes of the L. R. Code (which itself includes a chapter embodying the provisions of the Record of Rights Act).

(27) “certified copy” or “certified extract” means “certified copy;” a copy or extract, as the case may be, “certified extract.” certified in the manner prescribed by section 76 of the Indian Evidence Act, 1872;

It is the wish of Government that no needless restrictions should be placed on the right of inspection of public documents, which are applied for by parties to suits.—*G. R. 5457 of 3-10-1873*. It is the desire of Govt. to further ends of justice.—*G. R. 865 of 1846; 6499 of 1850*. The only restriction is when such grant of copies would be prejudicial to the public interest (*Rule 139 of L. R. Rules*). It is only in cases (which would be very rare) in which for reasons of State or policy it is inexpedient to give copies of documents that they should be refused. It is never intended that copies should be refused merely because they contain facts which might be used to support claims against Government or used in civil or criminal proceedings; since Courts can always require production of documents and disclosure of evidence, nothing will be gained by attempted concealment.

Public documents are defined to have the same meaning as in s. 74 of the Indian Evidence Act, 1872. A record copy of leases in a bound book for the private use of Government Officers is not a 'public document' since, there is no provision of law that it is incumbent on Government to maintain copies of leases granted to various persons from time to time.—*Secretary of State v. Chimanlal*, A. I. R. 1942 Bom. 161. But printed copies of index register being open to inspection by the public and certified copies being supplied from it is a public document.—(*ibid.*)

All maps and land records are open to public inspection and certified extracts or certified copies thereof should be given (s. 213). *Printed maps* showing different wards in a city are admissible in evidence under ss. 36, 83 and 87 of the Indian Evidence Act as well as s. 213 of L. R. Code.—(*ibid.*)

Documents, maps, registers, accounts and records the rights of inspection of which is provided for in s. 91 of the Indian Registration Act, 1908 and in s. 213 of the L. R. Code and of public documents which could be legally inspected by any person will be open for inspection (*Rule 135*) and certified copies of the same could be obtained (*Rule 138 of L. R. Rules*).

Survey records are open to inspection and copies are available under s. 213.—*Alludomal v. Ali*, 5 S. L. R. 49; See also *G. R. 7065 of 1893*.

Uncertified copies of public documents of which inspection is obtained may be made under Rule 136 of the L. R. Rules, 1921.

Village Accountants and City Surveyors are to grant certified copies of certain records as laid down in Rule 137.

The officer in charge of a public document or in charge of a certified copy of it should give a certified copy under conditions laid down in Rules 139 and 140-A.

The public have a right to inspect and claim copies from Village Form VI and VII (see notes under Ch. XA *infra*) at any time, and also from the heirship and dispute registers. Certified copies of the Record of Rights are required to be attached to every plaint regarding land (s. 135H) and the village accountant must promptly give copies for these and other purposes.

No copy of official correspondence, or of opinion of Government officer or of any Order or Resolution embodying any such opinion should be given by any officer subordinate to Collector or to the Settlement Commissioner without permission.—*Administrative Order No. XLVIII*.

(28) in Sind the word "Mukhtyarkar" shall be deemed to be substituted for the word "Mamlatdar" wherever it occurs in this Act.

*[(29) '*Theodolite or Traverse Station*' means any stane, iron peg or any other mark whether natural or artificial erected, buried, set up, employed or specified by a Survey Officer or other Revenue Officer having authority in that behalf for the purpose of indicating the angular points of the base line taken for the purpose of any survey."]—*Sind Act VIII of 1939.*

CHAPTER II.

CONSTITUTION AND POWERS OF REVENUE OFFICERS.

4. The chief controlling authority in all matters connected with the land revenue is vested in the Commissioner, subject to the Provincial Government.

Chief controlling authority in revenue matters.

There shall be one or more Commissioners as the Provincial Government may direct; and the Provincial Government shall prescribe what territories are to be under the control of each, whether generally or for any specific purpose, and may from time to time alter the limits of such territories, all orders made on this behalf being duly notified.

Extent of territories under the Commissioners.

The territories under each Commissioner shall form, and be called, a division; and for the purposes of this Act the territories comprised in the Province of Sind shall be deemed to form a division and the Commissioner in Sind shall be deemed to be the Commissioner of this division.

The territories under a Commissioner to be a division.

* Note—S. 3, cl. (29) does not apply to Bombay Province. The clause is inserted by Sind Act VIII of 1939 [Bombay Land Revenue Code (Sind Amendment) Act, 1939.]

Powers of Government—The Code confers no power expressly to remit land revenue, but the power to impose implies also the power to remit, and is reserved to Government except in so far as they formally delegate it.

Divisional Commissioner is in charge of a Division in the Bombay Province. The three Divisions in the Province are: (1) The Northern Division, (2) The Central Division, and (3) The Southern Division.

Sind is a separate Governor's Province now. There is a Revenue Commissioner for the Province of Sind.

5. The Commissioners shall be appointed by the
Appointments and duties of Commissioners. Provincial Government and shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force, and so far as is consistent therewith all such other powers, or duties of appeal, superintendence and control within their respective divisions, and over the officers subordinate to them as may from time to time be prescribed by the Provincial Government.

Powers of a Commissioner—The general superintendence of all the administration of the Code is entrusted to the Divisional Commissioner, except the powers expressly reserved by the Code to Government, the Commissioner can exercise all other powers.

6. Each Commissioner shall have such number
Assistants to Commissioners. of assistants as the Provincial Government may from time to time sanction, their appointment being made by the Provincial Government. Assistants so appointed shall perform such duties as the Commissioners to whom they are respectively subordinate may from time to time direct.

There are at present two Assistants to each Divisional Commissioner one in charge of the English branch and the other in charge of the Vernacular branch of the office.

7. Each division, under the control of the Commissioner, shall be divided into such
Division to be divided into districts. districts with such limits as may from time to time be prescribed by a duly published order of the Provincial Government.

And each such district shall consist of such talukas,

A district to consist of talukas comprising such mahals and villages as Provincial Government may direct.

and each taluka shall consist of such mahals and villages, as may from time to time be prescribed in a duly published order of the Provincial Government.

8. The Provincial Government shall appoint in

Collector of the District.

each district an officer who shall be the Collector and who shall be subordinate to the Commissioner of his division and may exercise, throughout his district, all the powers, and discharge all the duties conferred and imposed on a Collector or an Assistant or Deputy Collector by this Act, or any other law for the time being in force, and in all matters not specially provided for by law shall act according to the instructions of the Provincial Government.

“Collector” shall mean in the City of Bombay, the Collector of Bombay, and elsewhere the chief officer in charge of the revenue-administration of a district.—S. 3 (11) of the *Bom. General Clauses Act, 1904*.

9. The Provincial Government may appoint to

Assistant and Deputy Collector;

each district so many Assistant Collectors and so many Deputy Collectors as it may deem expedient; the Assistants shall be called “First” “Second,” “Supernumerary,” etc., as may be expressed in the order of their appointment.

All such Assistant and Deputy Collectors and all other officers employed in the land revenue administration of the district shall be subordinate to the Collector.

Deputy Collectors fall under the following principal designations: (1) Assistant Commissioner. (2) Personal Assistant to the Collector. (3) District Deputy Collector in charge of Talukas. (4) Huzur Deputy Collector and City Magistrate. (5) City Magistrate without treasury work.

10. Subject to the general orders of the Provincial

Their duties and powers.

Government, a Collector may place any of his assistants or deputies in

charge of the revenue administration of one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII, perform all the duties and exercise all the powers conferred upon a Collector by this Act or any other law at the time being in force, so far as regards the tuluka or talukas in his charge:

Provided that the Collector may, whenever he may deem fit, direct any such Assistant or Deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other Assistant or Deputy subordinate to him.

To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of talukas, the Collector shall, under the general orders of the Provincial Government, assign such particular duties and powers as he may from time to time see fit.

"Any other law at the time being in force"—These words are not limited to laws relating to land revenue but include all Acts of the Government of Bombay in which a contrary intention does not appear—*G. R. 5941 of 26-8-1902*; see also *Keshav, v. Jairam*, 36 Bom. 123; 13 Bom. L. R. 1031; *Sonu v. Arjun*, 17 Bom. L. R. 579.

"Subject to the general orders of Government"—The Governor in Council has sanctioned delegation of powers in respect of all executive orders of the Local Government.—See *G. R. 5941 of 26-8-1902*.

The Mamlatdars' Courts Act.—Neither an Assistant Collector nor a District Deputy Collector can revise the orders of the Mamlatdar under s. 23 of the Mamlatdars' Courts Act, 1906—*Sanu Janardan v. Arjuna Barku*, 39 Bom. 552; 17 Bom. L. R. 579, *Venkatesh v. Bhiku* 45 Bom. 1135 (1921).

11. If the Collector is disabled from performing his duties, or for any reason vacates his office or leaves his district, or dies, his Assistant of highest rank present in the district shall, unless other provision has been made by the Provincial Government, succeed temporarily to his office, and shall be held to be the Collector of the district in case of temporary vacancy.

under this Act until the Collector resumes charge of his district, or until the Provincial Government appoints a successor to the former Collector and such successor takes charge of his appointment.

An officer whose principal office is different from that of an Assistant Collector, and who is an Assistant Collector for special purposes only, shall not be deemed to be an Assistant for the purposes of this section.

12. The chief officer entrusted with the local revenue administration of a taluka shall be called a Mamlatdar. He shall be appointed by the Provincial Government.

His duties and powers shall be such as may be expressly imposed or conferred upon him by this Act, or by any other law for the time being in force, or as may be imposed upon, or delegated to, him by the Collector under the general or special orders of the Provincial Government.

The Mamlatdar should exercise such powers as the Collector may delegate to him. But these delegations must be made "under the general or special orders of Government" and also they must be made in all cases by name and not merely in virtue of the office held (*G. R. 7713 of 1913; 229 of 1914*). The Commissioner notifies his appointment.

Security to the extent of Ra. 5,000 should be furnished by a Mamlatdar while a Mahalkari with treasury should furnish security to the extent of Ra. 3,000 [*Administrative Order XII (see notes to s. 23 infra)*]. See *Practitioner's Ebn. by Gupte.*]

13. Whenever it may appear necessary to the Provincial Government, the Provincial Government may appoint to a taluka one or more Mahalkaris and, subject to the orders of the Provincial Government and of the Commissioner, the Collector may assign to a Mahalkari within his local limits such of the duties and powers of a Mamlatdar as he may from time to time see fit, and may also from time to time direct whether the Mahalkari's immediate superior shall, for the purposes of section 203 be deemed to be the Mamlatdar or the

Assistant or Deputy Collector, or the Collector in charge of the taluka.

When a defined portion of a taluka is placed in charge of a Mahalkari, such portion shall be called a mahal.

Immediate superior of the Mahalkari should be the Assistant or the Deputy Collector in charge of the Taluka.—*G. R. 2658 of 1-5-1906.*

It is the Collector who appoints the Mahalkaris and assigns them such of the duties and powers of a Mamlatdar as he deems fit. (*ibid.*)

An Extra Aval Karkun is frequently treated as such a Mahalkari. He has power to try Assistance Suits under s. 86 (*G. R. 8616 of 1891*) and possessory suits under s. 5 of the Mamlatdars' Courts Act, 1906 (*G. R. 72 of 1900 and 5239 of 1906*) [*Administrative Order No X: see the Practitioners' Edition of the Code for Rules and Orders by Gupta.*]

14. It shall be competent to a Mamlatdar or Mahalkari, subject to such general orders as may from time to time be passed by the Commissioner or by the Collector, to employ any of his subordinates to perform any portion of his ministerial duties: provided that all acts and orders of his subordinates when so employed shall be liable to revision and confirmation by such Mamlatdar or Mahalkari.

The powers a Mamlatdar's First or Aval Karkun are regulated by this section. He has been specially given power to sign notices of demand under s. 152 of the Code and may remit the fees if wrongly charged. [*G. R. 5295—(72) and (73) of 1911*]. He is given power to receive Rajinamas under s. 74 (*G. R. 1743 of 1889; 7423 of 1905*).

15. If a Mamlatdar or Mahalkari is disabled from performing his duties, or for any reason vacates his office, or leaves his taluka or mahal, or dies, such subordinate as may be designated by orders to be issued from time to time on this behalf by the Collector, shall succeed temporarily to the said Mamlatdar's or Mahalkari's office, and shall be held to be the Mamlatdar or Mahalkari under this Act until the Mamlatdar or Mahalkari resumes charge of his taluka or Mahal, or until such

time as a successor is duly appointed and takes charge of his appointment.

A substitute appointed under this section by the Collector can exercise powers under the Mamlatdars' Courts Act, 1906 [See the Commentary on the Mamlatdars' Courts Act, 1906, (4th Edn.) by the writer.]

16. In villages where no hereditary Patel or Village Stipendiary Patel and Village Accountant exists, it shall be lawful for the Provincial Government to appoint a stipendiary Patel or a Village Accountant who shall perform respectively all the duties of hereditary Patels or Village Accountants as hereinafter prescribed in this Act or in any other law for the time being in force, and shall hold their situations under the rules in force with regard to subordinate revenue officers.

Nothing in this section shall be held to affect any subsisting rights of holders of alienated villages or others in respect of the appointment of Patels and Village Accountants in any alienated or other villages.

For the purposes of sections 58, 85 and 94A, the expression "Hereditary Village Accountant" or "Hereditary Accountant" shall be deemed to include a talati appointed by the Provincial Government where the liability of such Accountant to perform service has been commuted.

The term 'Village Officer' includes both Patel (Mukhi) and the Village Accountant (who is otherwise known as *Talati* in the Konkan and Gujarati districts, *Shanbhag* in Kanara and *Kulkarni* or *Patwari* in some parts of the Deccan, Khandesh and Southern Maratha Country Districts). In large villages there are separate Patels for police and revenue duties. One or more village accountants are appointed for one village according to size and other circumstances.

It is the duty of Village Officers to warn landholders of the dates on which instalments of land revenue are due and to use their influence in securing prompt payment without resort to notices of demand, etc. (*Rule 119 of Bom. L. R. Rules, 1921*).

Village Officers should report the need for precautionary measures when they are of opinion that instalments will not punctually be paid (*Rule 119, ibid*).

The powers to fine Village, (revenue) Officers is delegated to Mamlatdars or Mahalkaries by G. Rs. 2116 of 1883; 4100 of 1883; 1253 of 1893; 5891 of 1903; 5595 of 1908.—*Administrative Order VII in Bom. L. R. Rules, 1921.*

Security to the extent of Rs. 200 must be furnished by a stipendiary Petel appointed under this section.

Inferior Village Servants—The Code makes no mention of Inferior Village Servants useful to Government such as Mahars since they are not appointed under the Code. Some of their duties are very important. The duties of different classes of 'inferior village servants' have been described in the Practitioner's Edn. of the L. R. Code by Gupte.

17. Subject to the general orders of the Provincial Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts, and other records shall be kept by the Village Accountant.

Village Accountant to keep such records as he may be required to keep by the Collector; and to prepare public writings.

It shall also be the duty of the Village Accountant to prepare, whenever called upon by the Patel of his village, or by any superior Revenue or Police officer of the taluka or district to do so, all writings connected with the concerns of the village which are required either for the use of the Central or the Provincial Government or the public, such as notices, reports of inquests, and depositions and examinations in criminal matters.

Village Accountant is to keep land revenue accounts and statistical returns and other records as prescribed by the Manual of Revenue Accounts.

Village Accountant to grant certified copies of certain records within ten day [See Rule 137 of the Bom. L. R. Rules (1921)].

Duties of Village Officers in the matter of recovery of land revenue and reporting to Mamlatdar the names of probable defaulters to enable him to take precautionary measures are laid down in Rule 119 of the Bom. L. R. Rules (1921).

All payments of land revenue are ordinarily to be made to the village officers of the village in which such revenue is due.—See Rule 114 of the Bom. L. R. Rules (1921). The Village Accountant is to give receipt immediately.

All fees where copies are granted by Village Officers should be retained by them.—*Administrative Order XII in the Bom. L. R. Rules, 1921.*

Security to the extent of Rs. 200 must be furnished by a stipendiary Village Accountant.—*Administrative Order XII in the Bom. L. R. Rules, 1921; See also the Practitioner's Edn. of the Code by Gupte.*

18. † For the purposes of Chapters VIII,¹ [VIII-A]² Survey Officers; IX and X, the Provincial Government may appoint such officers as may from time to time appear necessary. Such officers shall be designated³ ["Settlement Commissioner]" "Commissioner of Survey" "Superintendent of Survey" "Survey Settlement Officers," ["Settlement Officers]" and "Assistant," or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Provincial Government may direct.

Subject to the orders of the Provincial Government their duties and the officers so appointed are vested powers. with the cognizance of all matters connected with survey and settlement, and shall exercise all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.

* [18. For the purposes of Chapters VIII, IX Survey Officers; and X the Provincial Government may appoint such officers as may from time to time appear necessary. Such officers shall be designated "Commissioner of Survey," "Superintendent of Survey," "Survey Settlement Officers," and "Assistant," or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Provincial Government may direct.

Subject to the orders of the Provincial Government the their duties and officers so appointed are vested with the powers. cognizance of all matters connected with survey and settlement, and shall exercise all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.]

† Note—This is in force in the Bombay Presidency only. (1) After the figures "VIII" insert the figures and letter "VIII-A".

(2) After "designated" insert "Settlement Commissioner".

(3) After "Survey Settlement Officers" insert "Settlement Officers."
—Vide s. 3 of the Bombay Land Revenue Code (Amendment) Act, 1939. This amendment does not apply to Sind.

* S. 18 as applied in Sind is given in Italics.

The Director of Land Records who is also Commissioner of Settlements, District Inspectors, and Cadastral surveyors, form the staff of Land Records Department.

19. It shall be lawful for the Provincial Government to appoint one and the same person, being otherwise competent according to law, to any two or more of the offices provided for in this chapter or to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits or otherwise as may seem expedient.

The offices of the Settlement Commissioner, Director of Land Records and Inspector-General of Registration and the Registrar-General of Births, Deaths and Marriages are held by one officer.—*Sec G. R. 8833 of 18-8-1915.*

20. The appointment of all officers mentioned in sections 4 to 13 and 18 and 19 shall be duly notified.

Certain officers' appointments to be notified.

Any officer appointed to act temporarily for any such officer shall exercise the same powers and perform the same duties as might be performed or exercised by the officer for whom he is so appointed to act.

Acting appointments.

Government notifies the appointment of Commissioners, Collectors, Assistant or Deputy Collectors, and Survey Officers mentioned in a. 18 of the Code.

The Commissioner notifies the appointment of Mamlatdars.

The Director of Land Records notifies the appointments of District Inspectors of Land Records.

The Collector makes the appointment of Mahalkaries.

21. [*Establishments.*] Omitted by the Adaptation of Indian Laws Order in Council.

22. The Provincial Government shall from time to time by notification prescribe what revenue officers shall use a seal, and what size and description of seal shall be used by each of such officers.

Seals.

CHAPTER III.

OF THE SECURITY TO BE FURNISHED BY CERTAIN REVENUE OFFICERS AND THE LIABILITY OF PRINCIPALS AND SURETIES.

23. *[Governor in Council to direct what officers shall furnish security, and to what amount.] Omitted by the Adaptation of Indian Laws Order in Council.*

24. *[Fresh or additional Security.] Omitted by the Adaptation of Indian Laws Order in Council.*

25. The Collector or the Superintendent of Survey or any other officer deputed by the Collector or Superintendent of Survey for this purpose shall, in all cases in which he may have a claim on any revenue officer or on any person formerly employed as such in his department or district for public money or papers or other property of the Crown, by writing under his official seal, if he use one; and signature, require the money, or the particular papers or property detained to be delivered either immediately to the person bearing the said writing, or to such person on such date and at such place as the writing may specify.

If the officer or other person aforesaid shall not discharge the money, or deliver up the papers or property as directed, he may cause him to be apprehended, and may send him with a warrant, in the form of Schedule C, to be confined in the civil jail till he discharges the sums or delivers up the papers or property demanded from him;

Provided that no person shall be detained in confinement by virtue of any such warrant for a longer period than one calendar month.

Provided that no person shall be kept in confinement for more than a month.

Notices and Warrants under this section as well as s. 26 of the Code can be issued by Mamlatdars and Mahalkaris.—*G. R. (R. D.) No. 5295 of 1-6-1911.*

Village Officers.—See notes under the next section, *i. e. s. 26 and also under s. 3 (1), supra.*

26. The Collector of his own motion, if the officer or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land revenue from defaulters, and for the purpose of recovering public papers or other property of the Crown may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure.

Public moneys or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land revenue from defaulters, and for the purpose of recovering public papers or other property of the Crown may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure.

It shall be the duty of all persons in possession of such public moneys, papers or other property of the Crown to make over the same forthwith to the Collector, and every person knowing where any such property is concealed shall be bound to give information of the same to the Collector.

Persons in possession of public moneys, etc. bound to give them up.

Public monies due by defaulters to be recovered as arrears of land revenue but not by forfeiture of his lands because lands can be forfeited only if arrears of land revenue are due in respect of them.—(*See s. 153 of the Code and notes thereunder.*)

Hereditary Village Officers appointed or officiating under the provisions of Bombay Hereditary Offices Act or the Matadars Act, 1889 are revenue officers for the purposes of ss. 25 and 26.—*See s. 3 (1) of the L. R. Code. Supra.*

27. The surety or sureties of such officer or other person as is aforesaid, shall be liable to be proceeded against jointly and severally in the same manner as his or their principal is liable to be proceeded against, in case of default, and notwithstanding such principal may be so proceeded against:

Provided always that in any case of failure to discharge or make good any sum of money due to the Crown or to produce any property of the Crown of ascertained value no greater sum than is sufficient to cover any loss or damage which the Provincial Government may actually sustain by the default of the principal, shall be recovered from the sureties as the amount which may be due from such surety or sureties under the terms of the security bond executed by him or them:

And provided also that the said surety or sureties shall in no case be liable to imprisonment in default of producing public papers or property, if he or they pay into the Government treasury the whole or such part of the penalty named in the bond as may be demanded.

28. If an officer or other person as aforesaid or his surety or sureties against whom a demand is made, shall give sufficient security in the form of Schedule D, the Collector shall cause such officer or surety if in custody to be liberated, and countermand the sale of any property that may have been attached, and restore it to the owner.

29. The liability of the surety or sureties shall not be affected by the death of a principal, or by his appointment to a situation different from that which he held when the bond was executed, but shall continue so long as the principal occupies

Liability of surety not affected by death of principal or by his taking a different appointment.

any situation in which security is required and until his bond is cancelled.

The heirs of a deceased officer shall be liable by suit in the Civil Court for any claims of deceased officer. which the Crown may have against the deceased, in the same way as they would be for similar claims made by an individual.

30. Any surety, whether under a separate or joint bond, may withdraw from his suretyship at any time on his stating, in writing, to the officer to whom the bond has been given, that he desires so to withdraw; and his responsibility under the bond shall cease after sixty days from the date on which he gives such writing as to all demands upon his principal concerning moneys, papers or other property for which his principal may become chargeable after the expiration of such period of sixty days, but shall not cease as to any demands for which his principal may have become liable before the expiration of such period, even though the facts establishing such liability may not be discovered till afterwards.

CHAPTER IV.

[OF CERTAIN ACTS PROHIBITED TO REVENUE OFFICERS, AND OF THEIR PUNISHMENT FOR MISCONDUCT.]

Omitted by the Adaptation of Indian Laws Order in Council.

CHAPTER V.

OF LAND AND LAND REVENUE.

37. (1) All public roads, lanes and paths, the bridges, ditches, dikes, and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nallas, lakes, and tanks, and all canals,

All public roads, etc., and all lands which are not the property of others, belong to the Crown.

and water-courses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of the Crown, and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by the Government concerned, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

Explanation.—In this section “high-water-mark” means the highest point reached by ordinary spring-tides at any season of the year.

(2) Where any property or any right in or over any property is claimed by or on behalf of the Crown or by any person as against the Crown, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been given, to pass an order deciding the claim.

(3) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed under sub-section (1) or sub-section (2), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided

that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

(4) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Provincial Government.

Scope of s. 37.—This is one of the most important sections in the L. R. Code. It should be read with s. 61 of the Code. A man cannot be called a trespasser upon land under s. 61 if he has some private rights in the land.

Once a high-way always a high-way.—If a road is a public one, and Government not having reserved to themselves any power to close public roads which have been in existence from time immemorial, cannot close such a road or allow it to be closed in any manner. In *Arlesir v. Aimai*, 31 Bom. L. R. 104 the High Court held: (1) that Government possessed no inherent right to block the public road under s. 37 of the Bom. L. R. Code which specifically preserved "the right of way, and all other rights of the public or of individuals legally subsisting;" (2) that the public right of way over a *gawan* (public cart-road used from time immemorial) was not affected either by the construction of the new road by the Local Board or by the sale of *gawan* land by Government to another private individual; (3) that Government were not empowered by any Statute to divert existing public highways in the village. But see now s. 37A, *infra*.

A highway or public road cannot be said to be the property of Government merely because it is used by the public.—The use of a road by the public for passage as of right is not inconsistent with the proprietorship of a private individual to the soil of the road.—*Naharsingji Ishwarsingji v. Secretary of State for India*, 43 Bom. L. R. 167 (1940).

"Which are not the property of individuals"—These words are not confined in their application to all lands wherever situated but shall apply to roads, bridges, beds of the sea, lakes tanks, etc. Similarly, the words "except in so far as any rights of such persons may be established" govern all the previous expressions and not merely land.—*Naharsingji Ishwarsingji v. Secretary of State for India*, 43 Bom. L. R. 167 (1940).

Spring tide is the tide which happens at or soon after the new and full moon, which rises higher than the common tides.

Fishermen using Govt. sea-shore.—No charge should be levied from fishermen for the use of the Government sea shore for the purpose of drying fish or nets but a small rent may be charged if shed or huts are erected for trade or residential purposes (*G. R. 3005-28 of 17-3-1930*).

Beds of rivers, etc.—Under s. 37 land formed by the waters of sea, river, etc., receding or having diverted from its original course vests in Government.—Land between high and low water-mark is presumably extra-parochial, and vests in the Crown, unless title by grant or prescription is proved.

In an Inam village the ownership of the bed of a stream or river within the limits of such a village vests in the Inamdar.—*Vinayakrao Keshavrao and another v. The Secretary of State for India in Council*, 23 Bom. 39 (1897); *Balvantrao v. F. L. Spratt*, 23 Bom. 761 (1899).

In s. 37 of the L. R. Code the word Property appears to have been used to denote the corporeal things such as lands and others which are the subjects of rights in the nature of ownership and not only such rights.

Waste Lands belong to the Government and a permanent private right cannot be implied from the levy of a rate on a casual and desultory use of the soil.—*G. R. 2493 of 4-5-1881*.

Proprietary right in village sites vests in Government according to the custom of the country, unless it has been unmistakably purchased.—*G. R. 4239 of 24-7-1873*, *Standing Orders of Government in R. D. Vol. II*, p. 1177 or adverse possession for 60 years is proved; See *Vasta v. Secretary of State for India*, 45 Bom. 789.

Abandoned village sites vest in Government as waste land. Recent and ambiguous acts such as depositing, manure and fuel, tethering cattle, are not such as to raise presumption of title under s. 110 of the Evidence Act.—*Framij Cursesji v. Gokuldas Madhewji*, 16 Bom. 338 (1892).

Waste lands—Cultivation of plots in Government waste for a season or two does not constitute 'property or possession' of the person so cultivating. *Dulhi or Kumri* cultivation, for several generations, of pitches of waste or *warkas* land does not create a proprietary title.—*Bhaskarappa v. The Collector of North Kanara*, 3 Bom. 452 (1879).

Onus of proof in unoccupied village sites—S. 37 clearly shows that all unoccupied sites are the property of Government unless an individual can establish in his own right a title to such unoccupied property. "The Secretary of State is able to show by the general law that he is the owner of the land in question. Hence in order to oust him the plaintiff has to prove either that he has got a title better than the title of the Secretary of State or that he has obtained a title by adverse possession that is to say by possession for sixty years."—*Vasta v. The Secretary of State for India in Council*, 45 Bom. 789 (1920).

Presumption under s. 110 of the Indian Evidence Act will apply only if two conditions are satisfied, viz. that the possession of the plaintiff, is not *prima facie* wrongful, and secondly, that the title of the defendant is not proved. S. 110 does not apply in cases where there is a statutory presumption of ownership in favour of Government.—*Secretary of State v. Chimanlal Jamnadas*, 44 Bom. L. R. 295 (1941).

Subject to rights of individuals legally subsisting.—Any order made under s. 37 of the L. R. Code is expressly to be subject to the rights of individuals legally subsisting and if the plaintiff had a right in land any disposition made by the Collector under s. 37 would not deprive the plaintiff of that right, and therefore, the plaintiff could ignore the Collector's order and bring a suit in respect of the land.—Per Beaumont C. J. in *Damolar v. The Secretary of State*, 33 Bom. L. R. at p. 77 (1930).

Rights of Municipalities over public streets.—The only power which Municipality has is to make, repair and keep properly cleaned such high ways and do such things upon them as are necessary for conservancy, but it has no right to obstruct or divert them. It can, however, divert new streets and roads which it may have laid out or made. Any house or building may be set forward for improving the line of any public street, but such permanent alienation would require sanction. [(G. R. 1890, of 13-3-1891) and ss. 90, 150 (2) (f) and 40 of the Bom. District Municipal Act, 1901.]

Municipality can sell or grant any portion of a public street to an individual house-holder under cl. (2) of s. 30 of Bom. Act VI of 1873 [i. e. now s. 90 (1) of Bom. Act III of 1901 [which authorizes Municipalities for the purpose of improving the line of any public street to allow any house or building in that street be set forward.—(G. R. 5965 of 20-8-1886); *Standing Orders of Government in R. D., Vol. II p. 9581.*]

Where there is no Municipality the public streets vest under s. 37 of the Bom. L. R. Code in Government. But they vest in Government like other lands "except in so far as any rights of any persons may be established in or over the same." In public streets the public have a permanent right of way extending to every portion of such streets, and it would be an infringement of this right for Government or their officers to sell or grant any land belonging to a public street to an individual. Where therefore, there is no Municipality the right to dispose of any portion of a public street is more limited than in a Municipal District, for Government have not even the legal power to allow a house to be set forward.—(G. R. 5965 of 20-8-1886); see also *Ardeshir v. Ainaï*, 31 Bom. L. R. 104 (ante).

Tank is a large basin or cistern; an artificial receptacle for liquids (*Webster's Dictionary*). In India it is ordinarily applied to basins in the earth constructed or adopted for storage of water. According to s. 50 of the Bom. Dist. Municipal Act, 1901 all public tanks and also any adjacent land appertaining to it (unless specially reserved by Government) vest in and belong to Municipality.

The word 'stream' means a current of water, and does not seem to include the bed; while the word 'tank' primarily means the basin itself intended for the storage of water.

Suits relating to streets between Municipality and private owner.—These are disputes between private owners and the Municipality and the Government have no manner of interest and the Government is not a necessary party.—*Nathalal v Nadiad Municipality*, 25 Bom. L. R. pp. 61-62. In a suit arising out of the decision of the City Survey Officer that the land which plaintiff claims to be of his ownership had been declared to form part of the public street (which vests and belongs to the Municipality) Government is neither a necessary nor a proper party.—*Bai Parvati v. Nadiad Municipality*, 25 Bom. L. R. at p. 67.

Village roads and tracks—The question whether a particular track vests in a Local Board is a question of fact in each case, but generally speaking, unless the track had vested in the Local Board under the provisions of ss. 41 and 42 of Bom. Act I of 1884 (now) Bom. Local Boards Act, 1923 or the Local Board had acquired an interest in it in some specific manner, a track would not vest in the Local Board.

Bed of rivulet lying in boundary of Inam village belongs to the Inamdar.—Where the plaintiffs own the whole village as Inam, they evidently own the bed of the rivulet that lies within the boundaries of their village. Government has no right whatever, to claim the land of that bed and demand rent from the persons who may cultivate it.—*Vinayakrao v. The Secretary of State*, 23 Bom. 39.

Sixty years of continuous possession in the open assertion of an adverse title would be necessary to bar the Secretary of State from recovery of possession.—*G. R. 728 of 28-1-1891*; *Standing Orders of Govt. in R. D. Vol. I p. 978*; *G. R. 3274 of 12-5-1891*.

Presumption in favour of individuals.—In *Secretary of State v. Chellikani Rama Rao*, 39 Mad. 617, the lands were jungle lands in an island formed in the sea, and the presumption was that such land *prima facie* belonged to Government and the onus was thrown upon the claimants, but where a suit was lodged against Government for possession of lands (other than forest lands) it was found that the plaintiffs had proved possession for more than 12 years (say for 30 or 40 years) and the defendant (Government) had failed to establish their title to the land or any possession within 60 years before the suit it was presumed that the plaintiff had held possession for 60 years and the burden was thrown upon the defendant, (Government) to prove that they have (Government) subsisting title.—*Krishna Aiyar v. Secretary of State*, 33 Mad. 173.

Inquiries under s. 37 are to be conducted by the Collector (or Superintendent of Survey or higher officer, s. 205) as laid down in Rule 29 after giving minimum 10 days' notice (in the form of summons under s. 189) in Form B.

Two months notice to Government is necessary before instituting a suit against them under s. 80 of the Code of Civil Procedure, 1908. It should contain the cause of action, the name of parties, the relief claimed, etc.

The bar of s. 11 of the Revenue Jurisdiction Act, 1876 cannot be pleaded in suits under s. 73 (3) instituted in a Civil Court because cl. (3) of s. 37 allows a suit to be instituted within one year from the date of an order under sub-s. (1) or sub-s. (2) passed by the Collector or a survey officer and in the alternative within one year from the date of any order passed by the final appellate authority if one or more appeals have been made against the order of the Collector or Survey Officer.

Appropriations distinguished from assignments.—Commissioners are empowered within certain limits and with some restrictions to sanction under s. 37 the appropriation of lands for roads, schools, Dharamshalas and other public purposes, while assignments of land are made under s. 33. The grant of land for threshing floors is an instance of an assignment under s. 33 and may be disposed of by the Commissioner in his authority. (*G. R. 3317 of 12-5-1899*).

Assignments are rather easements (*see Indian Easements Act, 1882*) granted by license and are neither disposals (21 Bom. 634) nor transfers to other departments which could be made by the Collector.

Assignments of sites for *itga*, temple, etc. and for the extension of village sites are appropriations under s. 37 rather than assignments under s. 33.—*G. R. 555 of 29-1-1901* and *G. R. 9124 of 3-10-1906*.

Note.—It is clear therefore, that in the disposal of land under s. 37 due regard should be had to all special assignments made under s. 38 of the Code (*See notes to s. 33, infra*).

Suit for injunction restraining Collector to deal with alluvial land in derogation of adjacent owner's rights—The plaintiffs alleged that the land in suit was alluvial land and that under s. 63 the Collector was bound (if with due regard to the interest of the public revenue he thought the land should be disposed of) to offer the same to the occupant of the adjoining land (namely, the plaintiffs), the maximum price being three times the annual assessment. The Collector took the view that the land in suit was not alluvial land; that it was marsh land which vested in the Government and on that view he disposed of the land under s. 37 of the Code. The High Court *held*: "The Collector has never expressed any view as to whether the land can properly be disposed of having regard to the interests of the public revenue on the assumption that it is alluvial land to which s. 63 applies. All they could do would be to get a declaration that the case fell within s. 63 because the land was alluvial, and an injunction to restrain the Collector from dealing with the land in derogation of their rights or something of that sort. Any action which the plaintiffs could bring would, not be an action for the recovery of the land to which s. 144 of the Indian Limitation Act applies, but would have to be some form of action to which Article 120 applies, and any such action would be barred after six years."—*Damodar v. Secretary of State*, 33 Bom. L. R. 772 (1930). See this case under s. 63, *infra*.)

37A. (1) Whenever it appears to the Provincial Government that any public road, lane or path which is the property of the Crown for the purposes of the Province or part thereof, is not required for the use of the public, the Provincial Government may, by a notification

published in the Official Gazette, make a declaration to such effect, stating in such declaration that it is proposed that the rights of the public as well as of all individuals in or over any such road, lane or path, or part thereof, as the case may be, shall be extinguished. On the publication of such notification, the Collector shall, as soon as possible, cause public notice of such declaration to be given at convenient places on, or in the vicinity of, such road, lane or path, or part thereof, as the case may be. Such declaration and notice shall specify, as far as practicable, the situation and limits of such road, lane or path, or part thereof, and shall invite objections to the aforesaid proposal.

(2) Any member of the public or any person having any interest or right, in addition to the right of

Extinction of rights of public and individuals in or over any public road, lane or path not required for use of public.

public highway, in or over such road, lane or path, or part thereof, or having any other interest or right which is likely to be adversely affected by the proposal may, within ninety days after the issue of the notification under sub-section (1), state to the Collector in writing his objections to the proposal, the nature of such interest or right and the manner in which it is likely to be adversely affected, and the amount and particulars of his claim to compensation for such interest or right:

Provided that the Collector may allow any person to make such a statement after the period of ninety days after the issue of the notification under sub-section (1) if he is satisfied that such person had sufficient cause for not making it within the said period.

(3) The Collector shall give every person who has made a statement to him under sub-section (2) an opportunity of being heard either in person or by pleader and shall, after hearing all such persons in such manner and after making such further inquiry, if any, as he thinks necessary, determine the amount of compensation, if any, which should, in his opinion, be given in any case in respect of any substantial loss or damage likely to be caused by the proposed extinction of the rights of the public as well as of individuals as aforesaid. The provisions of sections 9, 10, 11, 12, 13, 14 and 15 of the Land Acquisition Act, 1894, shall, so far as may be, apply to the proceedings held by the Collector for the determination of the amount of compensation under this sub-section:

Provided that no compensation shall be awarded for the extinction or diminution of the right of public highway over such road, lane or path, or part thereof.

(4) The Collector shall submit to the Provincial Government the record of the proceedings held by him

with a report containing his recommendations on the objections, if any, received by him and stating the amounts of compensation, if any, which, in his opinion, are payable to any persons.

(5) If the Provincial Government is satisfied, after considering the record of the proceedings and the report, if any, made under sub-section (4), that the public road, lane or path, or part thereof specified in the notification under sub-section (1) is not required for the use of the public, a declaration shall be published in the Official Gazette that all rights of the public as well as of individuals in or over such road, lane or path, or part thereof are extinguished; and all such rights shall thereupon be extinguished, and such road, lane or path, or part thereof shall be at the disposal of the Crown with effect from the date of such declaration.

(6) The decision of the Collector regarding the amount of compensation and the person to whom such compensation if any, is payable, shall, subject to any modification made by the Provincial Government, be final; and payments shall be made by the Collector to such persons accordingly.

Object of s. 37A—As a consequence of the ruling in *Ardeshir Jivanji Mistri v. Aimai Kurerji*, 53 Bom. 187 Government have been prevented from disposing of any public road or part thereof which is not required for the use of the public. The ruling has also caused serious administrative inconvenience, for instance, in Sind where there has been much realignment of roads on account of new irrigation works under the Barrage Project. As matters stand at present, Government cannot extinguish or modify any right of way over an old alignment even though it may have been fallen into disuse or an alternative roadway may have been provided for the use of the public. Cases have also come to the notice of Government in which portions of disused public roads could not be disposed of to the detriment of Government revenue and public convenience. Therefore it is proposed that Government should be empowered to extinguish the rights of the public as well as of all individuals in or over any roads or lanes or paths which have fallen into disuse, etc.—See *Statement of Objects and Reasons*.

When Government want to take steps under this section they will have to follow the same procedure as is followed under the Land Acquisition Act, or the Forest Act or the Irrigation Act and such other Acts under which the lands are acquired. The idea is that for trivial matters such proceedings will not be started.

38. Subject to the general orders of the Provincial Government, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII and at any other time for the Collector, to set apart lands the property of the Crown for the purposes of the Province and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of village, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be otherwise used without the sanction of the Collector; and in the disposal of land under section 37 due regard shall be had to all such special assignments.

Scope.—This section gives to the Collector the power of setting apart lands for public purposes; the Collector can set apart only lands which are the property of Government and which are not in the lawful occupation of any person or aggregate of persons. No private rights therefore, exist in lands assigned under s. 38, nor do such rights accrue while assignments continue.

Land set apart for special purposes is not confined to land set apart under s. 38. Land which has from time immemorial been used as a public road, is none the less set apart for that purpose though this may have taken place years before survey operations took place under Ch. VIII of Bom. L. R. Code.—*Prantal v. The Secretary of State, P. J. for 1897 p. 366.*

The Collector can appropriate lands for village sites.—*G. R. 5995 of 1-6-1911.* He may also grant sites revenue-free inside a village site where the assessment capitalized at 4% does not exceed Rs. 100.—*G. R. 9193 of 20-9-1911.*

Cattle stands and Dhobies and Potters' grounds—(1) Gurcharan (*nairan*) or grazing ground for cattle, burial and burning grounds, spots near villages on which the village cattle stand, and lands for the use of village dhobies and potters, and for other recognised public needs may be assigned by the Collector under *Rule 73 of L. R. Rules, 1921.*

Civil Courts are precluded from entertaining a claim to have lands set apart for free pasturage for villagers.—The claim to have the Government waste lands set apart at the survey settlement for free pasturage reserved for that purpose was considered by the High Court in *Trimbuk v. Secretary of State for India, 21 Bom. at p. 684 (1896)* to be a claim against Government respecting the occupation of the waste land belonging to Government and the High Court held that s. 4 of the Revenue Jurisdiction Act, 1876 precluded the Civil Courts from entertaining it.

39. The right of grazing on free pasturage-lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector with the sanction of the Commissioner. The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

The right of grazing on road sides should not be sold.—*G. R. 5312 of 28-6-1882.*

Village Cattle—It is the duty of the Collector to insist upon the preservation of the village grazing grounds and the Government forests for the purpose for which they are properly reserved.—*The Collector of Thana v. Bal Patel, 2 Bom. 110 (1877).*

Civil Courts may declare that the villagers of a village are entitled to rights of free pasturage in a village—They cannot enjoin the Collector to pursue any particular course in connection with the lands, while at all events he is acting *bonafide* in pursuance of the power which the provisions of the Statute confer upon him.—*Trimbak v. The Secretary of State for India, 21 Bom. 684 (1896).*

40. In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of the Crown to all trees in unalienated land, except trees reserved by the Crown or by any survey officer, whether by express order made at, or about the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after, such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlements completed before the passing of Bombay Act I of 1865 this provision shall not apply to teak, black-wood or sandal-wood trees. The right of the Crown to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of the Crown to all trees in unalienated land shall be deemed to be conceded to the occupant of such land except in so far as any such rights may be reserved by the Crown, or by any survey officer on behalf of the Crown, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of the Crown to all trees growing on that land which may not have been, or which shall not hereafter be, expressly reserved at the time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey settlement of the said village or portion of a village.

'Trees reserved' means trees existing at the time of settlements and not trees which may afterwards grow.—Under this section all the trees except those that are reserved belong to the occupant. The language applies ordinarily to existing growths of reserved trees at the date of the settlement.

There is nothing in the language of s. 40 to show that all future growths of sandalwood trees or other reserved trees would belong to Government; and the doubt, if any, is removed by the wording of (old) rule 93 (i. e. Rule 62 of the Rules, 1921) which clearly indicates the meaning of the section in that sense. The plain and natural meaning is that the existing reserved trees belong to the Government, and that all future growths belong to the occupant.—*Emperor v. Yellappa*, 22 Bom. L. R. 884; 45 Bom. 110 (1920).

"Government cannot any more than a private person, revoke a gift without donee's consent if there be breach of condition on donee's part," observed the High Court in the *Collector of Ratnagiri v. Vinayak Narayan Surve*, 8 Bom. H. C. R. (1871) where the Collector sought to defeat the operation of Mr. Dunlop's proclamation on the ground that it was rescinded by Government in a subsequent proclamation of 1851. (See the larger edition of the Code by Gupte for the Proclamation.)

The proclamation by Mr. Harris the Collector of Canara issued on the 18th April 1823 is relied upon by landholders there as giving them certain rights to timber. The proclamation is referred to in *Bhaskarappa v. Collector of North Canara* at pp. 728-29 of 3 Bom. 452 (1879). (See the larger edition of the Code by the writer for the proclamation.)

The right to cut down and sell trees upon land is incidental to the proprietorship of the land because the trees upon the land are part of the land.—*Pir Makhdum v. Malik Boola Khan*, A. I. R. 1921 Sind 109; *Rutianjee v. Collector of Thana*, 11 M. L. A. 295 followed; See also the definition of 'land' in s. 3 (4) at p. 3 ante.

Trees standing on rajano wahs (private canals) in front of survey numbers may continue to be the private property of the raj to whom the canals belonged, though those canals have been transferred to Irrigation Department.—*Secretary of State v. Kolumal*, 2 S. D. 320.

Trees belong to the landlord and not to the tenant is the general rule. In the case of a permanent tenant the origin of whose tenancy is lost in antiquity (see s. 83); he is entitled to the trees. See also Bombay Tenancy Act, 1939 by the writer.

Trees are ceded on all land definitely included in the revenue settlement; obviously waste and forest are not so included.

Property in timber on a tenant's holding vests in the Zamindar.—This is the presumption of law and is the general rule in the absence of custom.—*Ganga Dei v. Badam and Others*, 30 All. 314 (1903); See also 38 Bom. 716.

Sandalwood trees grown after Survey Settlements.—The accused were occupants of a survey number in a village. Considerable time after the settlements, sandalwood trees grew on the land. Those trees having been cut and removed by the accused, without the permission of Government the accused were convicted under s. 75, cl. (c) of the Indian Forest Act and punished under s. 76 of the Act. The High Court held: (1) That the trees in question which were not shown to be in existence at the date of the settlements, belonged to the accused as occupants and that they had committed no offence in cutting their own trees; (2) that under Rule 93 (VII) (i. e. Rule 62 of the L. R. Rules, 1921) framed under s. 214 of the Bom. L. R. Code and s. 40 of the Code the right of Government was confined to reserved trees existing at the date of the settlement.—*Emperor v. Yellappa*, 45 Bom. 110; 22 Bom. L. R. 884 (1920).

41. The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brushwood, jungle, or other natural product growing on land set apart for forest reserves under section 32

Trees and forests
vesting in the
Crown.

of Bombay Act I of 1865 or section 38 of this Act, and to all trees, brushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in the Crown for the purposes of the Province; and such trees, brushwood, jungle or other natural product shall be preserved or disposed of in such manner as the Provincial Government may from time to time direct.

The importance of the question of forests can hardly be overrated. The climate of a country, the rainfall, the fertility of the soil, are all affected by the preservation or destruction of its forests. The extension of railways is one of the great necessities of this country; and one of the chief obstacles to the rapid construction of the railways is the scarcity of timber, produced by long years of neglect and improvidence.—*Vaman Janardan Joshi v. The Collector of Thana and the Conservator of Forests* 6 Bom. H. C. R. 195 (1869).

Note—It is obvious that the expression 'or other natural products' is to be understood *ejusdem generis* with trees etc. (see *Mahadeodas v. Secretary of State*, 6 Bom. L. R. 1117). This section does not therefore cover excavated stones, earth, etc. These may be called the 'minor products' of land and their disposal is regulated by Rules 66 to 70 of the L. R. Rules, 1921. See notes to s. 43 *infra*.

42. All road-side trees which have been planted and reared by, or under the orders of, Road-side trees. or at the expense of, the Crown, and all trees which have been planted and reared at the expense of Local Funds by the side of any road, which vests in the Crown, vest in the Crown. But in the event of such trees dying, or being blown down, or being cut down by order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the said holder; provided that the trees shall not be lopped except under the orders of the Collector.

All Road-side trees planted by or under the orders of Government will generally be considered to be reserved by Government.—*Rule 53 of Bom. L. R. Rules*).

43. Any person who shall unauthorizably fell and appropriate any tree or any portion thereof or remove from his holdings any other natural product whether of the like description or not which is the property of the Crown, shall be liable to the Crown for the value thereof, which shall be recoverable from him as an arrear of land revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land or otherwise; and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Crown property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive.

Whether of the like description or not"—These words are inserted to make it clear that s. 43 refers not only to natural products, *ejusdem generis* with trees but also to stones, etc.

44. In villages or lands in which the rights of the Crown to the trees have been reserved under section 40 subject to certain privileges of the villagers or of certain classes or persons to cut fire-wood or timber for domestic or other purposes, and in lands which have been set apart under section 38 for forest reserves subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector or by such other officer as the Provincial Government may direct. In any case of dispute as to the mode or time of exercising any such privileges the decision of the Collector or of such other officer shall be conclusive.

The objects for which free grants may usually be made are: (1) the relief of poor people whose houses have been destroyed either by fire or flood; (2) in special cases the construction of dwellings where members of wild tribes or new settlers are too poor to purchase wood; (3) agricultural purposes (such as implements) in cases in which it is shown that such grants are absolutely necessary.—*G. R. 1051 of 15-2-1887.*

45. All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to the Crown according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with the Crown or any law for the time being in force.

But nothing in this Act shall be deemed to affect the power of the Legislature to direct the levy of revenue on all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary.

And special exemption may in case of necessity be overruled for a time.

There is no limitation as to the period within which assessment can be claimed (see *Secretary of State v. Bai Kuwarbai*; see also *G. R. 1017 of 1908.*)

46. All alluvial lands, newly-formed islands, or abandoned river-beds which vest, under any law for the time being in force in any holder of alienated land, shall be subject in respect of liability to the payment of land revenue to the same privileges, conditions, or restrictions as are applicable to the original holding in virtue of which such lands, islands, or river-beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands, or river-beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

Scope.—This section refers to alluvion formed on alienated lands. Alluvion formed on unalienated lands is dealt with in ss. 63 and 64 of the Code.

Alluvion is interpreted to mean strictly gradual, slow and imperceptible [imperceptible day by day as it occurs but of course perceptible

enough in the long run (*Halsbury's Laws of England*). Accretion by deposit of fresh soil by the water upon existing riparian land.—*Justinian and 2 Beng. L. R. 525 (1870)*.

47. Every holder of land paying revenue in respect thereof shall be entitled, subject to Assessment of land revenue in cases of diluvion. such rules as may be from time to time made in this behalf by the Provincial Government, to a decrease of assessment if any portion thereof, not being less than half an acre in extent, is lost by diluvion.

48. (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land—
Manner of assessment and alteration of assessment. Prohibition of use of land for certain purposes.

(a) for the purpose of agriculture,

(b) for the purpose of building, and

(c) for a purpose other than agriculture or building.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Provincial Government may prescribe in this behalf.

(3) Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

(4) The Collector or a survey officer may, subject to any rules made in this behalf under section 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.

This section does not apply where the land revenue to be altered for an altered purpose is not assessed after 17th July 1879 on which date this Act came into force.

Scope.—This section contemplates the case of a holder of land set apart for one purpose appropriating (now 'using') such land for another purpose, for instance, the holder turning his field into a quarry or a building site.

This section is not intended to meet the case of trespassers or encroachers or unauthorised occupations.—*G. R. 172 of 12-1-1880* nor to trespassers on Government land to whom s. 61 applies.

Construction and scope.—Cl. (1) of s. 48 clearly means that assessments are to be made in future, and shall be deemed to have been made in the past with reference to the use of the land. It may also mean that whether assessments are actually fixed with reference to the use of the land or not, they shall be deemed to have been so fixed.—*Ahmedabad Ginning and Manufacturing Co. Ltd. v. Secretary of State*, 39 Bom. L. R. 266; A. I. R. 1937 Bom. 226.

The mere intention to use property for a particular purpose, without its actual use for that purpose, will not enable Government to alter the agricultural assessment which is the lowest standard of assessment on property under the Code.—*Rai Chand Gulab Chand v. The Secretary of State*, 41 Bom. L. R. 1077; A. I. R. 1939 Bom. 505.

S. 48 makes no distinction between conversion of the land by the occupant or persons holding through or under him, and by trespassers without the knowledge or permission of the occupant.—*Secretary of State for India v. Ganesh Narayan*, 39 Bom. L. R. 885; A. I. R. 1937 Bom. 456.

49. When it has been customary to levy any special or extra cess, fine, or tax, however designated, from any holder of land, which, though nominally wholly or partially exempt from the payment of land revenue, has by the exaction of such cess, fine, or tax been indirectly taxed to the State,

or when any land ordinarily, or under certain circumstances, wholly or partially exempt from assessment, is subject occasionally, or under particular circumstances, to the payment of assessment, or of any cess or tax however designated,

and of land liable to occasional assessment, the said assessment, cess, fine, or tax may be commuted into an annual assessment on the land to be paid under all circumstances, but such commuted assessment

shall not exceed such amount as the Commissioner shall deem to be a fair equivalent of the assessment, cess, fine, or tax for which it is substituted and shall not be in excess of the assessment to which the land would be ordinarily subject, if no right to exemption existed in respect thereof.

50. Whenever any such cess, fine, or tax hitherto payable by an inferior holder shall be made leviable from the superior holder, it shall be lawful for such superior holder to recover from such inferior holder the amount of the commuted assessment fixed in lieu of such cess, fine or tax.

Superior holder may recover commuted assessment from inferior holder.

51. When it has been customary to levy a larger revenue under the name of "*veta*" or any other designation, upon any portion of land than such portion would ordinarily be liable to in consideration of other land being held with it which is wholly or partially exempt from payment of revenue, the excess of revenue payable on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

Excess of assessment may be laid on land inadequately assessed held with it.

*** 52.** On all lands which are not wholly exempt from the payment of land revenue, and on which the assessment has not been fixed under the provisions of * [Chapter VIII A], the assessment of the amount to be paid as land revenue shall, subject to rules made in this behalf under section 214, be fixed at the discretion of the Collector, for such period as he may, be authorized to prescribe, and the amounts due according to such assessment shall be levied on all such lands:

Assessment by whom to be fixed.

* S. 52: For the words and figures 'section 102 or 106' the words and figure "Chapter VIII A" are substituted by s. 4 of the Bombay Land Revenue Code (Amendment) Act, 1939. This change does not apply to Sind. The section (*i. e.* s. 52) as applicable in the Province of Sind is given below in Italics.

Provided that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights.

Proviso.

* [52. *On all lands which are not wholly exempt from the payment of land revenue, and on which the assessment has not been fixed under the provisions of section 102 or 106 the assessment of the amount to be paid as land revenue shall, subject to rules made in this behalf under section 214, be fixed at the discretion of the Collector, for such period as he may be authorized to prescribe, and the amounts due according to such assessment shall be levied on all such lands:*

Proviso.

Provided that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights]

Scope—The effect of s. 52 is to give the Collector the discretion to fix the assessment. It does not affect the right of a party who holds lands under Government or an Inamdar by virtue of a special grant. It does not take away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay the land revenue according to survey rates (*Lakshman v. Govind*, 5 Bom. L. R. 694). In *Damodar v. Kashinath*, 24 Bom. L. R. 1040 (1922) the High Court held: "The special right which a holder claims in virtue of any grant or contract between him and the Inamdar, is not in the slightest degree affected, by s. 217 of the provisions of ss. 65 and 66 of L. R. Code which are rendered applicable to the holders in an alienated village".

In *Kishanlal Ratanlal v. Janmejaya*, 30 Bom. L. R. 992 (1928) the High Court held: "S. 52 which applies to lands which are not wholly

*For Sind:

* S. 52 printed in *Italics* applies to the Province of Sind. It does not apply to the Presidency of Bombay.

exempt from payment of land revenue, contains the proviso that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights."

Effect of amendment—The amended s. 52 gives authority to the Collector to assess unoccupied and unalienated lands which were within the operation of an order under s. 95, but which were left unassessed at the settlement (*Statement of Objects and Reasons*).

Where agricultural lands are appropriated to non-agricultural purposes, i. e. building purposes, with the permission of the Government on payment of fine, and the Government do not then levy an altered assessment on such lands that does not imply that there is any agreement on the part of Government that the assessment would not be altered. It is still open to the Government to levy an altered assessment on a non-agricultural basis. It would be opposed to principle to imply, from the mere circumstance that non-agricultural assessment has not been previously levied, any limitation on the prerogative of the Crown to assess the land to land revenue, and to revise the assessment periodically according to law.—*Ahmedabad Ginning and Manufacturing Co. Ltd. v. Secretary of State*, 39 Bom. L. R. 566; A. I. R. 1937 Bom. 226.

53. A Register shall be kept by the Collector in such form as may from time to time be prescribed by the Provincial Government of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force; and when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated lands has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Provincial Government under section 213, grant to any person whom he may deem entitled to the same a certified extract from the said Register, which shall be endorsed by the Collector to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

The alienation office in charge of the Commissioner C. D. at Poona maintains a separate printed register for each Taluka of this Presidency except Sind. Sind is now a separate Province. Subsequent changes are also entered and the alienation register is kept upto date.

Sanad worn out or lost.—When sanads are worn out or have become useless they should be renewed.—*G. R. 1754 of 4-5-1868 and 6012 of 25-10-75.* A duplicate sanad can be granted, in cases in which a sanad has been lost or destroyed (such a copy would not be good secondary evidence in a Court of Law).—*G. R. 1245-24 of 4-2-1925.*

Importance of Register of Alienations.—The fact that about 5th of the occupied land in the Bombay Province is Inam or alienated is sufficient to show the importance of this Register.

54. The settlement of the assessment of each portion of land, or survey number, to the land revenue, shall be made with the persons who, under section 136, is primarily responsible to the Provincial Government for the same.

Settlement of assessment to be made with the holder directly from Provincial Government.

Settlement.—The process of determining the amount of land revenue payable to Government is called settlement. This is now more clearly defined in s. 117 C. (i); see notes under that section *infra*. The Bombay Land Revenue Code (Amendment) Act, 1939 does not apply to Sind.

55. The Provincial Government may authorize Rates for the use of water. the Collector or the officer in charge of a survey or such other officer as it deems fit to fix such rates as it may from time to time deem fit to sanction, for the use, by land-holders and other persons, of water, the right to which vests in the Crown, and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879. Such rates shall be liable to revision at such periods as the Provincial Government shall from time to time determine, and shall be recoverable as land revenue.

History.—S. 55 is a new law authorising the imposition, and the recovery as land revenue of rates for the use of water the right to which vests in Government or which has been made available by Government works.—*Report of the Select Committee on Land Revenue Code Bill.*

'Such other officer as it deems fit'—These words enable Government to entrust the duty of assessing water to a Canal Officer or to any other special officer.—*Proceedings of the Bom. Leg. Council, 1887 p. 199.*

Scope.—S. 55 does not permit the Collector to levy a penalty but he can levy the maximum rate sanctioned by Government.

No charge for water—From 1st. August 1933 no charge should be made under s. 55 for the provision of water for agricultural purposes from any stream, budki, bandhara, tank or other source of water supply on which no expenditure has been incurred by Government at any time.—*G. R. R. D. 7241-53 of 8-12-1933.*

56. Arrears of land revenue due on account of
 Land revenue to be a paramount charge on the land. land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, or may otherwise dispose of such occupancy or alienated holding under rules made in this behalf under section 214, and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than the Crown in respect of such occupancy or holding.

Object of amendment—S. 56 is so amended as to make it clear that an occupant to whom forfeited land has been restored or transferred otherwise than by sale, will have same rights as if he had purchased it.

In *Abdul Rehiman v. Vinayak*, 29 Bom. L. R. at p. 1061 Baker J. observed that the amendment in s. 56 in 1901 was made to meet the case of a regrant on a 'restricted tenure' to the original occupant after a forfeiture, a case which was not expressly covered by the old s. 56, and as to which there existed some doubt.

The words '*unless the Collector otherwise directs*' provide a safeguard against a fraud on the part of an occupant against his 'mortgagees'. It is just possible that in some cases though a person may have interest in the land, he has through some oversight, not taken steps to maintain it, and if this comes to the notice of the Collector, he has the power to direct that in such a case rights shall not be extinguished by the forfeiture.—(*Debates in the Bom. Leg. Council, p. 379 of the discussion on the Bill No. IV of 1931.*)

'Freed from all tenures, rights ... created in favour of any person other than Government'—This provision shows that *tagavi* arrears due to Government under the Land Improvement Loans Act, 1883 are not extinguished by a forfeiture of the land for the improvement of which *tagavi* was granted. Such arrears are to be recovered from the sale proceeds of the land.

Note—For a detailed discussion see notes under the head 'Recovery of *tagavi*' *i. e.* under the Land Improvement Loans Act, 1883 and the Agriculturists' Loans Act, 1884, in the Practitioner's edition by the writer.

Applicability of s. 56—S. 56 of the Code does not apply where there has been no forfeiture under s. 153 of the Code.—Per Scott C. J. in *Chitta Bhula v. Bai Jamni*, 40 Bom. 483; 18 Bom. L. R. 445 (1916).

Regrant of land forfeited for non-payment of revenue if free from incumbrances—Where a land vests in the original tenure-holder under a new tenure created by s. 56 of the Code as amended by Act VI of 1901, the land vested free from all incumbrances and from all previous equities. The fact that default in the payment of revenue was made is immaterial.—*Vedu v. Kalu*, 37 Bom. 592; 15 Bom. L. R. 817 (1913). In this case reference was made to the rulings in *Ganparshibai v. Timmaya*, 24 Bom. 34 (1899) and *Amolak v. Dhondi*, 30 Bom 466 (1906) but they being decided under s. 56 before its amendment in 1901 they were held to have no application to s. 56 as amended in 1901. In both those cases the forfeiture and the subsequent disposal of the occupancy were before 1901.

The grant of fallow-forfeited land to only one of several co-owners of joint property subsequent to 1901 is in the absence of any other circumstances a grant to him personally and this is more so in survey numbers granted on restricted tenure. S. 56, as amended by Act VI of 1901 has placed fallow-forfeited land disposed of (1) (a) by sale on account of the defaulter, (b) by restoration to him of the said land, (c) by grant to strangers, and (2) by reservation as Government waste land on the same level. The grant of fallow-forfeited land subsequent to 1901 in the absence of any other circumstances is a grant to a person personally and this is the more so in the case of survey Nos. granted to him on restricted tenure. In order to attract the applicability of s. 90 of Trusts Act, it is incumbent on the plaintiff to allege and to prove as a fact that the said person (grantee) by availing himself of the position of a co-owner has gained an advantage in derogation of the rights of the plaintiff. If this person had intentionally allowed the survey Nos. to be forfeited in order to obtain a grant from Government in his own name it would have been another matter. In that case probably on, the strength of the decision in *Deonandan Prasad v. Jankisingh*, 44 Cal. 573; A. I. R. 1916 227 (P. C.) the plaintiff might have succeeded in getting a share therein. The grant by Government on restricted tenure was made on the grantee passing a *kabulayat* on a printed form which every grantee in ordinary course has to execute. It is for the protection of the Government and purports to bind the grantee and his present and future co-occupants to pay Government assessment and to be bound by the terms of the grant. No inference can therefore, be drawn one way or the other in consequence of the *kabulayats* having been executed by the grantee that he obtained the grants on behalf of himself and the plaintiff.—*Abdul Rahman v. Haji Mahomed*, A. I. R. 1929 Sind 12.

This case was followed in *Uttamchand v. Satmatrai*, A. I. R. 1931 Sind 27 where it was held: "The survey numbers were granted to Uttamchand (Appellant) personally after the amendment of s. 56 of Bom. L. R. Code by Act 6 of 1901 and therefore in the absence of any circumstances to the contrary these survey numbers must be deemed to have been granted to him in his individual right as owner. If the plaintiff wished to attract the applicability of s. 90 of Trusts Act, it was incumbent on him to allege and prove that Uttamchand by availing himself of the position of a co-owner had gained an advantage in derogation of the rights of the plaintiff. On this point the first appellate Court has rightly said: "These survey numbers were resumed by Government and were granted to Uttamchand. There is nothing to show that this property was granted for the benefit of the family. Khubchand an elder brother was alive. Uttamchand therefore, cannot be regarded as a trustee or managing member for the family. Therefore in no sense can it be said that these two survey numbers granted by Government were for the benefit of the whole family."

MISCELLANEOUS RULINGS

Limitation for instituting a suit to set aside order of forfeiture.— The plaintiff's land was forfeited in 1911 for failure to pay arrears of assessment. Subsequently the land was disposed of by Government to others. The plaintiff applied to the Collector against the order of forfeiture in the same year. He then appealed to the Commissioner in 1913 but the appeal was returned to him for want of a copy of the order. Nothing more was done afterwards nor was any appeal preferred to Government. Eventually the plaintiff filed a suit in 1915 for a declaration that the proceedings held by the Revenue Authorities in respect of the forfeiture were illegal and *ultra vires*. Macleod C. J. held: "The suit was barred by limitation under Limitation Act, Art. 14 of which provides that if a party wishes to have resort to the Court in order to get the order of the Revenue Authorities set aside, he must put his claim on the file within one year. The argument that if the party aggrieved is appealing to the Revenue Authorities that time should be excluded, cannot be sustained in view of s. 11 of the Revenue Jurisdiction Act, 1876.—*Ganesh v. Secretary of State for India*, 44 Bom. 451; 22 Bom. L.R. 212.

If evidence showed mortgagee's intention to defraud, mortgagor has right to redeem—The plaintiff's grand father mortgaged his lands in 1872 and placed the mortgagee in possession. There was default in payment of assessment as the result of which the property was forfeited by Government under s. 56 of the Bom. L. R. Code as it stood before its amendment in 1901. Government resold the property to the mortgagee in 1884 and transferred its *khata* from the name of mortgagor to that of the mortgagee. In 1921, the plaintiff sued to redeem the mortgage.

The High Court held:—"The right to redeem was lost owing to the forfeiture of the land under the original s. 56 of the Bom. L. R. Code; and that before the plaintiff could succeed he must show that the forfeiture and the revenue sale were due to the default of the mortgagee in not paying the assessment and that the income of the land was sufficient to pay the assessment or that in some way the mortgagor had put the mortgagee in funds wherewith to pay the assessment.—*Abdul Rehman v. Vinayak Gayavantrao*, 29 Bom. L. R. 1056 (1927).

57. It shall be lawful for the Collector in the event of the forfeiture of a holding through any default in payment or other failure occasioning such forfeiture under the last section or any law for the time being in force, to take immediate possession of such holding, and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it according to the provisions of this Act or any other law for the time being in force.

Forfeited holdings may be taken possession of and otherwise disposed.

58. (1) Every revenue officer and every hereditary patel and every hereditary village accountant receiving payment of land revenue shall give a written receipt for the same.

(2) Every superior holder of an alienated village or of an alienated share of a village who is entitled to recover direct from an inferior holder any sum due on account of rent or land revenue shall give to such inferior holder a written receipt for the same.

(3) Every hereditary patel and hereditary accountant who receives, in behalf of a superior holder of an alienated village or of an alienated share of a village, any rent or land revenue from an inferior holder shall give to such inferior holder a written receipt for the same. Such receipts shall be a full discharge to such inferior holder for such rent or land revenue as against such superior holder. A copy of such receipts shall in every case be sent to the superior holder by such patel or accountant.

*** 59.** Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not

Penalty for failure to grant receipts.

* After the word "granted" the word, letters and figures "or Rs. 100" have been inserted by Bombay Tenancy Act, 1939 (29 of 1939), s. 30 (7).

Ss. 2 to 30 of the Bombay Tenancy Act, 1939 are extended to the Districts of Surat, Thana, West Khandesh and Dharwar and to the partially excluded areas in the Province of Bombay. The said provisions are brought into force from 1st April 1941.

exceeding three times the amount received for which a receipt was not duly granted, [or Rs. 100] and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

This section i. e. s. 59 as amended by the Bombay Tenancy Act, 1939 will apply to the four districts and the partially excluded areas only.

Since the Bombay Tenancy Act, 1939 (LXXX of 1939) has not been extended to other parts of this Province the change will not apply to them.

Sind—The Bombay Tenancy Act, 1939 does not apply to Sind.

Note—For the remaining parts of this Province and for Sind see s. 59 given below in *Italics*.

[*59. *Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.*]

For parts of the Bombay Presidency and Sind:—Ss. 2 to 30 of the Bombay Tenancy Act, 1939 (Bom. Act LXXX of 1939) have been extended to the districts of Surat, Thana, West Khandesh and Dharwar and to the partially excluded areas in the Bombay Province. (G. N. 1118-24 (a); *Vide R. G. G. pt. IV-B p. 215 dated 31-3-1941.*) None of the provisions of the Bombay Tenancy Act have been extended to the other parts of the Province of Bombay.

S. 59 printed in *Italics* applies to all parts of the Province of Bombay to which ss. 2 to 30 of the Tenancy Act, 1939 are not extended.

* *Sind*—The Bom. Tenancy Act, 1939 does not apply to Sind. S. 59 printed in *Italics* is in force in the Province of Sind.

* S. 59 as printed in *Italics* is in force in all parts of the Province of Bombay except the districts of Surat, Thana, West Khandesh and Dharwar and the partially excluded areas.

* *Sind*: S. 59 as printed in *Italics* is in force in *Sind*.

CHAPTER VI.

OF THE GRANT, USE AND RELINQUISHMENT OF
UNALIENATED LAND.

60. Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mamlatdar or Mahalkari.

Written permission of Mamlatdar or Mahalkari required previous to taking up unoccupied land.

Written permission.—The permission in writing to be given by a Mamlatdar under s. 60 to enable intending occupant to enter upon occupation is to be in a prescribed form (*Rule 54*). No such permission is to be given until the Mamlatdar has ascertained that either a lease or agreement has been duly executed and delivered under one of the Rules 37 to 47 or 52 as the case may be. (*Administrative Order XXV*; See L. R. Rules). The Mamlatdar who takes the said agreement will be responsible for exercising due care in ascertaining the identity of persons signing the same, and their fitness to be accepted as occupants responsible for the payment of land revenue notwithstanding that the agreement has been duly endorsed by witnesses.—(*Administrative Order XXVI*).

Court Fees.—Application for leave to extend cultivation, when presented to an officer of land revenue by a person holding under direct engagement with Government land of which the revenue is settled, but not permanently is exempt from Court Fees. (*Court Fees Act of 1870, s. 19 clause 11*) Government of Bombay notification No. 590 of 16-9-1921 (*B. G. G. pt. 1, dated 16-9-1921*) exempts with reference to clause II, s. 19 of the Court Fees Act, 1870 from Court fees an application for leave to occupy land when made by a person who does not at the time of application hold the land.

The right of an Inamdar to give out unoccupied lands for cultivation in his village is not interfered with by this section.—*G. R. 5730 of 1-10-1881 and G. R. 959 of 10-2-1882 (Standing Orders of Government in R. D. 1902, pp. 1009-1010)*.

Commissioners have power to revise *ka bulayats* under ss. 60 or 62 and there is no cause of action against Government on account of that officer having exercised his lawful powers under s. 211.—*Parapa v. Secretary of State for India, P. J. for 1893 p. 230*. The Commissioner can only pass an order in exercising his powers under s. 211 as he could properly pass under the Code itself and the rules made thereunder purporting to modify the original order. The Commissioner is not entitled to pass an order the effect of which will be to force upon the occupant terms which he might never have been willing to agree to, originally. The Commissioner might have annulled the order of the Collector or modified the same but cannot make a fresh order which the Collector himself could not have made in the same matter and at the same time.—*Anant Krishnaji v. Secretary of State, 55 Bom. 165 (1930)*.

61. Any person who shall unauthorizedly enter upon occupation of any land set apart for any special purpose, or any unoccupied land which has not been alienated, and any person who uses or occupies any such land to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled shall,

if the land which he unauthorizedly occupies forms part of an assessed survey number, pay the assessment of the entire number for the whole period of his unauthorized occupation, and

if the land so occupied by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land used for the same purpose;

and shall also be liable, at the discretion of the Collector, to a fine not exceeding five rupees, or a sum equal to ten times the amount of assessment payable by him for one year, if such sum be in excess of five rupees, if he have taken up the land for purposes of cultivation, and not exceeding such limit as may be fixed in rules made in this behalf under section 214, if he have used it for any non-agricultural purpose.

The Collector's decision as to the amount of assessment payable for the land unauthorizedly occupied shall be conclusive, and in determining its amount occupation for a portion of a year shall be counted as for a whole year.

The person unauthorizedly occupying any such land may be summarily evicted by the Collector, and any crop raised in the land shall be liable to forfeiture, and any building or other construction erected thereon shall also, if not removed by him after such written notice

as the Collector may deem reasonable, be liable to forfeiture, or to summary removal.

Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land-revenue.

Occupation in the sense of the amount of area which has deteriorated for purposes of cultivation or for quarrying etc, is the area contemplated by the Act as being occupied.—Per Madgavkar J. in *Suleman v. Secretary of State*, 30 Bom. L. R. at p. 432 (1927).

The object of amending para 1 in 1921 is to make it clear that this section applies to a case where a person having been lawfully in occupation of land unauthorisedly continues to hold over.

PUBLIC ROADS

Under s. 37 of the Bom. L. R. Code all public roads are the property of the Crown (*i. e.* of the public—*Ardeshir v. Aimai*, 31 Bom. L. R. 104) and must be taken to be in possession of the Provincial Government officers on behalf of Crown. Hence a person who encroaches on such a road is guilty of criminal trespass, if the encroachment is made with such intent as is contemplated in s. 441 of the I. P. Code.—*Queen Empress v. Fakirgavda*, C. R. 49 of 1888 p. 393.

The complainant built a wall obstructing a public way. Immediately after this the accused who were members of the public, in the *bonafide* exercise of their right of way pulled down the wall; *Held*, that the accused were not guilty either of rioting or of criminal trespass (ss. 147, 426 and 447 of the I. P. Code).—39 Mad. p. 57.

Roads which are the property of Government, in unalienated villages or unalienated portions of villages are governed by s. 61 and not roads of alienated villages unless the right of the Crown to the ownership of such roads has been reserved.—*G. O. 3130 of 12-11-1920*.

S. 61 does not apply to alienated villages or lands.—*G. R. 10386 of 16-11-1913*.

62. It shall be lawful for the Collector subject to such rules as may from time to time be made by the Provincial Government in this behalf, to require the payment of a price for unalienated land or to sell the same by auction, and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under section 60. The price (if any) paid for such land shall include the price of the Crown right to all trees not

Unoccupied land may be granted on conditions.

specially reserved under the provisions of section 40, and shall be recoverable as an arrear of land revenue.

63. When it appears to the Collector that any alluvial land, which vest under any law for the time being in force in the Crown for the purposes of the Province, may with due regard to the interests of the public revenue be disposed of, he shall offer the same to the occupant (if any) of the bank or shore on which such alluvial land has formed.

The price of the land so offered shall not exceed three times the annual assessment thereof.

If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictions as to the price to be asked.

For the purpose of this section, notwithstanding anything contained in section 3, if the bank or shore has been mortgaged with possession, the mortgagor shall be deemed to be the occupant thereof.

Alluvial accretion—Whether particular accretion is alluvial or not is a question of fact in each case. Certain general propositions, however may be stated for the determination of this question—

(1) In order that an accretion may be alluvial it must be slow and gradual and not caused by sudden alteration of the course of the river or by violent avulsion (*1915 A. C. p. 599 as interpreted in 40 Mad. 1083; 27 All. 647*).

(2) It is immaterial whether the accretion is produced or accelerated by artificial means, provided—

(a) The artificial means are lawfully employed by the owner (*33 Mad. 369*); and

(b) the artificial means are not employed solely for the purpose of causing accretion (*1915 A. C. 599 at pp. 615 616; 13 Mad. 369 at pp. 377 and 378*).

(2) A gradual and imperceptible accretion brought about by the operation of nature is a natural accretion ('alluvion' strictly so called) even though it has been *unintentionally* assisted by and would never have taken place but for the erection of groynes provided for the purpose of protecting shores from erosion (*1924 1 Ch. 390*). The principle of accretion therefore applies to all changes caused by natural means or artificial means lawfully employed, for the rule applies to the result and not to the manner of their production (*23 Halsbury, p. 363*).—*G. R. 3018-28, of 10-10-1929*.

64. When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use thereof unless or until the area of the same exceeds one acre. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector subject to the provisions of the last preceding section.

65. An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

But, if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant.

The Collector, on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse the permission applied for :

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the occupant.

When any such land is thus permitted to be used for any purpose unconnected with agriculture it shall be lawful for the Collector, subject to the general orders of the Provincial Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

Fine to be levied for such use in addition to special assessment.

No fine is ordinarily imposed when permission of the Collector is obtained.—(*Rule 99 of the Bom. Land Revenue Rules, 1921; see also the Practitioners' [big] edition by the writer.*)

S. 65 is not applicable to Inam lands. S. 65 does not apply to build ings on alienated lands.—*G. O. R. D. 8561 of 20-8-1918.*

Surveyed alienated villages are governed by Rules 92-93. There the Collector's formal permission seems necessary in view of Rules 95 and 96 of the Bombay Land Revenue Rules, 1921.

Farm buildings.—Buildings erected for the storage of agricultural implements or for sheltering the cattle used in the cultivation of the land as well as houses occupied by the occupants who themselves cultivate survey number on which they stand or by tenants who do the same, or by servants of such occupants or tenants who are actually employed in the cultivation of the same land are held to be farm buildings.—*B. G. G. pt. VII for 1911 p. 195.*

Note—For a discussion as to what is meant by 'agriculture', 'agricul tural use' and 'agricultural purpose' see the Commentary on the Dekkhan Agriculturists' Relief Act, 1879 (3rd 1940 Edn.) by the writer.

A purely arbitrary refusal in order to get indefinite extension of statutory period for decision should not be construed as refusal of permission within the meaning of this section—Where the Collector received an application and (in order to give time) issued a reply that "permission is refused: it may be granted after the enquiry which will now be made," the High Court ruled that the applicant was justified in proceeding with his building; because s. 65, cl. (3) (b) with its proviso, contemplates enquiry and reply to be completed within three months. What is required under this section is a proper decision after due en quiry, and that if he does not receive such permission within three months he will be entitled to be allowed to act as if permission has been granted to build according to the terms of his application.—*Shirpalsing v. Secretary of State, 26 Bom. L. R. at p. 374 (1924)*

The words "makes any other improvements thereon for the better cultivation of the land" in s. 65 of the Bombay Land Revenue Code, ought not to receive a narrow construction limited to some object directly connected with agricultural operations or the act of production merely. Any improvement which conduces to profitable husbandry and

facilitates the marketing of agricultural produce would fall within the class of improvements protected by s. 65. That will include provision for store-houses made by an agriculturist for the protection of his agricultural produce until it leaves his farm. Thus, if grass as agricultural produce is cut, pressed, baled and stored in a godown with the object of eventually selling it when the market improves and it is profitable to sell the produce, the construction of a godown which facilitates that object would be protected. The erection of a godown for such purpose would not be a ground for holding that the land has been "used for any purpose unconnected with agriculture" within the meaning of Rule 80 of the Land Revenue Rules or be a basis upon which altered assessment can be levied.—*Rai Chand Gulabchand v. Secretary of State*, 41 Bom. L. R. 1077=A. I. R. 1939 Bom. 505.

66. If any such land be so used without the permission of the Collector being first obtained, or before the expiry of the period prescribed by section 65, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so used and from the entire field or survey number of which it may form a part, and the occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so used, such fine as the Collector may, subject to the general orders of the Provincial Government, direct.

Any tenant of any occupant or any other person holding under or through an occupant, who shall without the occupant's consent use any such land for any such purpose, and thereby render the said occupant liable to the penalties aforesaid, shall be responsible to the said occupant in damages.

User of agricultural land for non-agricultural purposes by trespasser without consent or knowledge of occupant—S. 66 is not confined to user of agricultural land for non-agricultural purposes by the occupant or any of the persons referred to in the first paragraph of s. 65 i. e. servants, tenants, agents or other legal representatives. The words of the section are quite general and clearly include the case of user by even a trespasser; and an occupant is liable to fine under s. 66, if there is any user of his agricultural land for purposes other than agriculture, whether or not the occupant has consented to or has knowledge of such

user.—*Secretary of State for India v. Ganesh Narayan*, 39 Bom. L. R. 386; A. I. R. 1937 Bom. 456. N. B.—It is doubtful if this view is correct. See Practitioner's Edn. of the Bom. L. R. Code by Gupte.

67. Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in this behalf by the Provincial Government.

68. An occupant is entitled to the use and occupation of his land for the period, if any, to which his tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms or conditions lawfully annexed to his tenure:

Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to rules made by the Provincial Government in this behalf, prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.

69. The right of the Crown to mines and mineral products in all unalienated land is and is hereby declared to be expressly reserved:

Provided that nothing in the section shall be deemed to affect any subsisting rights of any occupant of such land in respect of such mines or mineral products.

70. In any case where an occupancy is not transferable without the previous sanction of the Collector, and such sanction has not been granted to a transfer which has been made or ordered by Civil Court or on which the Court's decree or order is founded,

(a) such occupancy shall not be liable to the process of any Court, and such transfer shall be void, and

(b) the Court, on receipt of a certificate under the hand and seal of the Collector, to the effect that such occupancy is not transferable without his previous sanction and that such sanction has not been granted, shall remove any attachment or other process placed on or set aside any sale of, or affecting, such occupancy.

71. [*Name of heir to be registered when registered occupant dies.*] *Repealed by Bom. Act IV of 1913, s. 29.*

72. If an occupant who is either a Hindu, a Mahomedan, or a Buddhist dies intestate and without known heirs, the Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue, and the law at the time in force concerning property left by Hindus, Mahomedans or Buddhists, dying intestate and without known heirs shall not be deemed to apply to the said occupancy but only to the proceeds of such sale after deducting all

arrears of land revenue due by the deceased to the Crown and all expenses of the said sale.

73. An occupancy shall, subject to the provisions contained in section 56, and to any transferable and heritable conditions lawfully annexed to the tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property.

Scope—This section and s. 63 both in their original and amended form affect only unalienated land.— *G. R. 5024 of 21-7-1902.*

73A. (1) Notwithstanding anything in the foregoing section, in any tract or village to which the Provincial Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) The Provincial Government may, by notification in the Official Gazette, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

74. The occupant may relinquish his land, that is, resign it in favour of the Crown, but subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any person (other than the Crown or the occupant), by giving notice in writing to the Mamlatdar or Mahalkari before the 31st March in any year or before such other date as may from time to time be prescribed in this behalf by the Provincial Government, and such relinquishment shall have effect from the close of the current year:

Provided that no portion of land which is less in extent than a whole survey number or sub-division of a survey number may be relinquished.

75. [*Relinquishment of lands paying lump-assessment.*] *Repealed by Bom. Act IV of 1913, s. 33 (1).*

76. The provisions of the last section shall apply as far as may be, to the holders of alienated land: Provided that,
Relinquishment of land described in paragraph 1 of section 49.

(a) it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances described in the first paragraph of section 49 until the commuted assessment payable in respect of such portion of land has been determined under the provisions of the said section; and that

(b) if any person relinquish land on which, under the circumstances described in section 51, a larger revenue is levied than would ordinarily be leviable on such land, he shall be deemed to have relinquished also the land held with it which is wholly or partially exempted from payment of revenue.
Relinquishment of land described in section 51.

77. If any person relinquishes land, the way to which lies through other land which he retains, the right of way through the land so retained shall continue to the future holder of the land relinquished.
Right of way to relinquished land.

78. Nothing in section 74 shall affect—
Saving of operation of section 74 in certain cases. the validity of the terms or conditions of any lease or other express instrument under which land is, or may hereafter be, held from the Crown.

79. [*Occupant to continue liable for demands until occupancy relinquished.*] *Repealed by Bom. Act IV of 1913, s. 35.*

79A. Any person unauthorizedly occupying, or wrongfully in possession of, any land

Summary eviction of person unauthorizedly occupying land. (a) to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled, or

(b) which is not transferable without previous sanction under section 73A or by virtue of any condition lawfully annexed to the tenure under the provisions of sections 62, 67 or 68,

may be summarily evicted by the Collector.

80. In order to prevent the forfeiture of an occupancy under the provisions of section 56 or of any other law for the time being in force, through non-payment by the occupant of the land revenue due on account thereof, it shall be lawful for any person interested to pay on behalf of such occupant all sums due on account of land revenue, and the Collector shall on due tender thereof receive the same. And in any such case the Collector may under section 86 give to the person

who has paid the land revenue as aforesaid aid for the recovery of any portion of such land revenue which he may consider to be properly payable by other persons:

Collector may assist such persons in recovering the revenue from other parties liable therefor.

Provided that nothing authorized or done under the provisions of this section shall affect the rights of the parties interested as the same may be established in any suit between such parties in a Court of competent jurisdiction.

81. [*When Collector may make co-occupant the registered occupant, instead of selling occupancy to realize land revenue.*] Repealed by Bom. Act IV of 1913, s. 38.

82. It shall be lawful for the Provincial Government by notification in the Official Gazette from time to time;

Provincial Government empowered to suspend operation of section 60 or 74.

(a) to suspend the operation of section 60 or 74, or of both, within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and

(b) to cancel any such notification.

During the period for which any notification under the above clause (a) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

“*[82A. *When an occupancy is sold to, or is for the time being held by, more than one person in defined shares on condition that the occupancy price shall be paid in instalments and default is made in the payment of any such instalment the following provisions shall have effect, namely:—*

Partition of occupancies sold on instalment terms.

(1) *if a co-sharer in such occupancy has paid in respect of his share all the amount due until the date of such default, proportionate to such share, the Collector may, notwithstanding anything contained in the agreement of sale in respect of such occupancy or any law for the time being in force, sub-divide the occupancy and keep the agreement alive with respect to such share and cancel it with respect to the rest of the occupancy;*

(2) *the agreement of sale shall have effect as respects such share as if for the occupancy price and the instalments specified therein an amount proportionate to such share or instalments were substituted;*

* S. 82A is applicable only in the Province of Sind.

(3) when an occupancy has been sub-divided as aforesaid the Collector shall partition the land in accordance with such sub-division.”]—*The Bombay Land Revenue Code (Sind second Amendment) Act, 1941. (Sind Act VIII of 1941).*

CHAPTER VII.

OF SUPERIOR AND INFERIOR HOLDERS.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking, or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be presumed to hold at such rent as, having regard to all of the circumstances of the case, shall be just and reasonable.

And where by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, received, holds or

retains possession of the same, it shall be presumed that he is in possession as tenant.

Nothing contained in this section shall affect the Saving clause. right of the landlord (if he have the same either by virtue of agreement, usage, or otherwise) to enhance the rent payable, or services renderable by the tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively, originally fixed or duly enhanced as aforesaid.

Rent is defined in s. 105 of the Transfer of Property Act (IV of 1882). It is money payable by a tenant to a landlord under a contract between them. In s. 83 the tenant is described as one who is placed in possession of land by another or in that capacity holds, takes or retains possession of land permissively from or by sufferance of another. The payment of money or services made or rendered by such a person is called 'rent', and its amount is determined by contract or custom.—*Vide Salashio v. Ramkrishna*, 25 Bom. 556.

Construction of cl. (2) of s. 83 :—Obviously the legislature intended to lay down a general rule in view of the existence of two sets of facts at the time of the commencement and to a large extent now. Permanent tenancy very often exists particularly in Gujarat and Kathiawar, without a document. But on the other hand an annual tenant is often allowed to hold over without the original rent-note being renewed. To exclude the latter class of cases and to include the former, presumably s. 83 (2) was enacted in its present form.—*Vide Mansukh v. Trikambhai*, 31 Bom. L. R. 1286

'Co-extensive with the duration of the tenure of landlord'.—This means that the tenant cannot be turned out as long as the landlord's tenure continues.—*Vide Suihanath v. Chikko*, 23 Bom. L. R. 533

'As to the duration of such tenancy'.—These words appear to contemplate the production of evidence to prove the duration of a tenancy which is still in existence and of which the origin is uncertain.—*Sursingji v. Manilal*, 32 Bom. L. R. p. 1685 (1930).

'Presumption as to tenure'.—The clause "And where these as tenant" is introduced as it appeared that the first para. of s. 83 as it stood would throw upon the tenant the onus of proving that he is a tenant.—*See Debates in the Bom. Leg. Council, Vol. XVI (1877), p. 156.*

Presumption of permanent tenancy is not destroyed merely because tenancy commenced subsequently to the landlord's tenure.—*Ramchandra v. Anant*, 18 Bom. 433

No stated number of years is required to draw the presumption under s. 83.—*Narayan v. Raghavendracharya*, 2 Bom. L. R. 281 (1900).

Permanent tenancy may not be inconsistent with absence of fixity of rent i. e. of the landlord's right to enhance the rent by agreement, usage etc.—*Raghunath v. Lakshman*, 2 Bom. L. R. 93 (1899).

The mere passing of a kabulayat which purports to be in terms an agreement for an annual tenancy is not sufficient to displace the advantage the tenant has obtained from his long holding subsequent to that kabulayat.—*Rama v. Abdul Rahim*, 22 Bom. L. R. 1216 (1920). *Vijbhukhandas v. Ishwardas*, 25 Bom. L. R. 431 (1923).

The mere recitals in a few rent-notes providing for termination of tenancy at the expiration of the fixed-period or at the will of the landlord are not enough to deprive tenants of the benefit of s. 83.—*Dhanlu Ekoba Wani v. Damodar Shridhar Deshpande*, 37 Bom. L. R. 209 (1934).

Presumption as to permanent tenancy is not directed to be made save upon two conditions (among others): first, that there is no satisfactory evidence of the date of the commencement of the tenancy, and, secondly, this lack is due to the antiquity of the tenancy.—*Shankarrao Dagdujiroo Jahagirdar v. Shambha Nathu Patel*, 43 Bom. L. R. 1 (1940)

NO PRESUMPTION AS TO PERMANENT TENANCY

Mere existence of a building on land leased free of rent in city area does not show that it is permanent. It is for the grantee to prove that the lease is a permanent one. If the lease is for a period of 99 years there is nothing strange if pucca structures are built by the grantee on the land, because in such a case the structures would be built in the expectation that the lease would be renewed even though at a higher rent on the termination of the period.—*Secretary of State v. Chimanlal Jamnadas and others*, A. I. R. 1942 Bom. 161.

Presumption of permanent tenancy is destroyed where tenant executes *Kabulayat* agreeing to give up possession according to terms in the document.—*Vijbhukandas v. Ishwardas*, 25 Bom. L. R. 431 (1923).

Annual tenancy may continue for a century or even more at a fixed rent.—*Gangabai v. Kalapa*, 9 Bom. 419 (1885). This case was followed in *Gangadhar v. Mahadu*, P. J. for 1889 p. 321. Both these cases were referred to in *Ramabai v. Babaji*, 15 Bom. 704.

Even though successful before a revenue officer the plea of permanent tenancy does not give rise to such tenancy by adverse possession.—*Lakhamgonda Basaprabhu Sardesai v. Jambhu Tavanappa Adake*, 37 Bom. L. R. 593 (1935).

Burden of proof in the first instance is on the tenant.—*Sulhanath v. Chikko*, 23 Bom. L. R. (1921).

A permanent tenant has a right to cut trees planted by him on the land.—*Sitabai v. Shambhu*, 38 Bom. 716; 16 Bom. L. R. 595. (See also the Bombay Tenancy Act by Gupte)

There is nothing to prevent a permanent tenant of agricultural land from building on it a house for himself to live in.—*Bhau v. Vithal*, 22 Bom. L. R. 793.

The conduct of the tenants and of the landlord is an important piece of evidence showing the nature of the tenure and would be cogent evidence of usage in the locality as regards the duration of the tenancy.—*Sursingji v. Manilal*, 32 Bom. L. R. p. 1683.

Payment of rent for years even under alleged mistake raises presumption of title in favour of recipient.—*Vithaldas v. Secretary of State*, 26 Bom. 410.

DENIAL OF LANDLORD'S TITLE.

A tenant repudiating the title under which he entered becomes liable to immediate eviction at the option of the landlord.—*Vishnu v. Bulaji*, 12 Bom. 352 (1887).

Variation in terms of agreement about the basis of calculation of rent cannot be made without consent of tenants.—*Vagha v. Manilal Bhogilal Desai*, 37 Bom. L. R. 49 (1934).

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

Annual tenancy terminates on the 31st March.

An annual tenancy shall in the absence of any special agreement in writing to the contrary require for its termination a notice given in writing by the landlord to the tenant or by the tenant to the landlord, at least three months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E, or to the like effect.

Three months' notice of termination of tenancy to be given by landlord to tenant, or vice versa.

The object of s. 84 is to define the nature of the contract creating an annual tenancy, which it is to be remarked may be for agricultural or other purposes both as regards the period during which it runs and the landlord's power of determining it.—Per Sargent C. J. in *Venkaji v. Laxmanappa Ramappa*, 20 Bom. 354 (1895) (F. B.).

'In the absence of any special agreement in writing to the contrary'.—These words were inserted to allow an annual tenancy to be terminated without notice when there was repudiation of the landlord's title. For want of a saving clause to that effect Courts were obliged to pass orders which were 'dead against the equities of the case'.—*Statement of Objects and Reasons to the (Amending) Bom. Act VII of 1914*.

Notice sent by registered post but refused by tenant—All that s. 84 requires the landlord to do is to give to the tenant a notice in writing; if the landlord sends such a notice by registered post or through the village officers, but the tenant declines or refuses to accept the notice, it must be held that the notice is properly served.—*Babasaheb Appasaheb v. Laxmanappa Ramappa*, 40 Bom. L. R. 1015; A. I. R. 1938 Bom. 492.

NOTICE TO QUIT

Notice to quit must be given three months before the time when the yearly tenancy was terminable.—*Ichhalal v. Anjibai*, 30 Bom. L. R. 1602 (1928).

Notice to quit accompanied by an offer to abandon that notice if the tenant agreed to pay further enhanced rent is held to be valid notice in *Faman Vithal v. Khanderao*, 37 Bom. L. R. 376 (1934).

Notice to pay an enhanced rent or to quit in default of so doing must be given at least 3 months before the end of the year of tenancy.—*Bahirs v. Vinayak*, P. J. for 1892, p. 298.

Notice to quit by Manager of estate on behalf of Co-sharers is valid.—*Devji Ajan Dalvali v. Bhoja Vajja Kachar*, 37 Bom. L. R. 220 (1934).

A tenant under Khoti Settlement Act is entitled to notice prescribed by s. 84 of the Code.—*Vishnu v. Babla*, 23 Bom. L. R. 411 (1920).

Notice to quit must be given by landlord to the tenant. The Court cannot give such notice.—*Abu Baker v. Venkatramana*, 18 Bom. 107 (1893).

Notice to quit is not necessary in the case of sub-tenants.—*Timmappa v. Rama Venkanna*, 21 Bom. 311 (1895).

The setting up of permanent tenancy by yearly tenant is not tantamount to disclaimer of the landlord's title and such a tenant is therefore, entitled to a notice to quit before he can be evicted by the landlord.—*Rama v. Abdul Rahim*, 22 Bom. L. R. 1215 (1920).

Setting up of permanent tenancy is not a repudiation of the landlord's title.—*Ochhalal v. Gopal*, 32 Bom. 78 (1907); 9 Bom. L. R. 1332 (1907).

Denial of landlord's title prior to suit is a sufficient cause of action to enable the lessor to recover the possession without notice to quit in the case of an annual tenant to which s. 84 applies.—*Venkaji v. Lakshman*, 20 Bom. 344 (F. B.) (1895). This case was referred to in *Vidya-vardhak Sangh Co. v. Ayyappa*, 27 Bom. L. R. 1152.

• Notice through post if refused:—A notice is said to be duly served if it is sent by registered letter though it is refused by the tenant.—*Jogendra v. Dwarkanath*, 15 Cal. 681 (1888); *Girish v. Kishore*, 23 C. W. N. 319 (1918); *Gobinda v. Dwarka*, 19 C. W. N. 489 (1914); *Mohimbhandra v. Rup Manjari*, 16 Ind. Cas. 213 (1912). The tenant refusing the notice cannot afterwards plead ignorance of its contents, for he will be fixed with constructive notice.—*Ismail Khan v. Kali Krishna*, 6 C. W. N. 134. In *Faman Vithal v. Khanderao*, 37 Bom. L. R. 376 (1935) Beaumont C. J. recently observed: "Even if the refusal of service of a registered letter containing a notice to quit has been proved I should not be prepared to hold that a registered letter tendered to the addressee and refused and brought back unopened, was well-served."

However, in a subsequent case *Babasaheb Appasaheb v. Lazmanappa Ramappa*, 40 Bom. L. R. 1015; A. I. R. 1938 Bom. 492 which was decided

under s. 84 of the Bombay Land Revenue Code the High Court observed; "All that s. 84 requires the landlord to do is to give to a tenant a notice in writing; if the landlord sends such a notice by registered post or through the village officers, but the tenant declines or refuses to accept the notice, it must be held that the notice is properly served".

Affixing notice to conspicuous part of property.—Before such service can be held to be valid, the Court will require strict proof to show that the service by tender or delivery as prescribed by the section was not practicable.—*Biseswar v. Pitambar*, 51 Ind. Cas. 44 (1919).

84A. (1) Whenever from any cause the payment of the whole or any part of the land revenue payable to the Provincial Government by a superior holder in respect of any land is suspended or remitted, the Collector, acting under general or special orders of the Provincial Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of such land by the inferior holder or holders to an amount which—

Order granting suspensions or remissions to inferior holders.

(a) in the case of land in respect of which full assessment is payable to the Provincial Government, shall not exceed double the amount of the land revenue of which the payment by such superior holder has been suspended or remitted by the Provincial Government, and

(b) in the case of land in respect of which land revenue less than the full assessment is payable to the Provincial Government, shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by the Provincial Government in favour of the superior holder if the full assessment had been payable to the Provincial Government in respect of such land.

(2) In the case of land in respect of which no land revenue is payable to the Provincial Government by a superior holder, whenever from any cause the payment of the whole or any part of the land revenue payable to the Provincial Government in respect of any other land

in the same neighbourhood has been suspended or remitted, the Collector, acting under the general or special orders of the Provincial Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of the first mentioned land by the inferior holder or holders to an amount which shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by the Provincial Government in favour of the superior holder if the full assessment had been payable to the Provincial Government in respect of such land.

(3) An order passed under sub-section (1) or under sub-section (2) shall not be questioned in any Court.

Such order not to be questioned in any Court.

(4) If the superior holder collects any rent or land revenue of which the payment has been remitted or before the expiration of the period of suspension collects any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders, the whole of the land revenue remitted or suspended in favour of such superior holder shall, without prejudice to the rights of the inferior holder or holders to recover the rent or land revenue so collected, become immediately payable by the superior holder.

Codsequences following on such order.

(5) No application for assistance under sections 86 and 87 shall be entertained, no suit shall lie, and no decree of a Civil Court shall be executed, for the recovery by a superior holder of any rent or land revenue of which the payment has been remitted, or, during the period of suspension, of any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders; but, where the payment of rent or land revenue by an inferior holder or holders has been suspended, the period during which the suspension has continued shall be excluded from the period of limitation

prescribed for a suit for the recovery of such rent or land revenue.

(6) Nothing in this section shall make it unlawful for the superior holder to take the crop-share fixed by custom or agreement in respect of any land on which rent is payable in whole or in part in the form of a share of the crop.

(7) Explanation—

In respect of land which has not been assessed under the provisions of *[this Act], the term ^{Meaning of assessment.} assessment, for the purposes of this section, includes the rent in land revenue payable by custom or by the usage of the locality.

(8) Nothing in this section shall apply to any land situated in the Province of Sind.

85. (1) Every superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, shall receive his dues on account of rent or land revenue from the inferior holders through such patel and accountant.

(2) Where such patel and accountant fail to recover in behalf of such superior holder any sum due and payable to him on account of rent or land revenue, such superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

(3) Where any such patel or accountant has recovered any sum in behalf of such superior holder and

* S. 84A: (7) For the words and figures "Chapter VIII or under any survey settlement confirmed by section 112" substitute "this Act"—Vide s. 5 of the Bombay Land Revenue Code (Amendment) Act, 1939. (Bom. Act XX of 1939). This change does not apply to Sind. It should however be noted that this section does not apply to Sind at all.

fails to account to him for the same, the Collector shall, on written application from the superior holder, recover such sum from such patel or accountant as an arrear of land revenue.

(4) Where any such superior holder demands or receives any rent or land revenue from any inferior holder otherwise than through such patel or accountant, he shall, on conviction in a summary inquiry before the Collector, be liable to a fine not exceeding three times the amount of the sum so demanded or received.

The main purpose of the section is to protect the tenant. It is not the purpose of the section to provide as to how the dues are to be recovered when the inferior holder fails to pay. When an inferior holder fails to pay the dues, the remedy for the recovery thereof is as provided by ss. 86 and 87 of the Code. But they show that it is a special remedy and the proviso to a. 87 shows that the remedy is of a limited character. It is not an exclusive remedy and it does not prevent the parties to have recourse to Civil Courts.—*Fiskranath v. Kondaji*, 42 Bom. 40; 19 Bom. L. R. 820.

Injunction against Government not to pay superior holder but to pay direct to purchaser of latter's rights.—Under a. 85 the superior holder is entitled to receive his dues through the village officers, and under a. 86 the superior holder only is entitled to assistance from Government. An injunction against Government not to pay to the superior holder but to pay direct to a person who claims to be entitled to payment by reason of his having become purchaser of the rights of the superior holder would be contrary to the spirit, if not to the express terms, of the Land Revenue Code. The relation between the Government and the superior holder is not affected by the sale of the superior holder's rights. The Government cannot therefore be ordered not to pay the superior holder and to pay it to the purchaser direct. But as long as Government is not prepared to pay it to the purchaser direct the superior holder whose rights have been sold may be ordered to pay it to the purchaser who is entitled to the income as purchaser, as soon as the superior holder receives it from the treasury.—*Dattatraya v. Swalshir*, 41 Bom. L. R. 853; A. L. R. 1939 Bom. 513.

86. Superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in section 137, and in the same manner as prescribed in Chapter XI for the realization of land revenue by the Provincial Government:

Superior holders entitled to assistance in recovery of dues from inferior holders, etc.

But application must be made within the revenue year or within the year of tenancy.

Provided that such application be made within the revenue year or within the year of tenancy in which the said rent or land revenue became payable.

Ss. 86 and 87—Co-sharers who are not recognised as managing inamdars.—It is only the registered managing inamdar who has the sole right to manage the village, i. e. to recover revenue, etc. Co-sharers who are not recognised as managing inamdars and whose names are not registered in the Village Form No. III though they are entered as sharers in the *khatauni* cannot file a suit or seek assistance against the *khatedars* directly. Their remedy is to sue the managing inamdars for an account and to recover their share in the land revenue which may have been negligently omitted to be recovered by the managing inamdars.—*Narhar Souaji v. Trimbak Shridhar*, 41 Bom. L. R. 1174.

*87. (1) On application being made under section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer fixing a day for inquiry into the case.

The Collector how to proceed on such application being made.

(2) On the day so fixed he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land revenue as appears to him upon the evidence before him to be lawfully due.

(3) But, if it appears to the Collector that the question at issue between the parties is of a complicated or difficult nature, he may in his discretion either refuse the assistance asked for, or, if the land to which the dispute relates, has been assessed under the provisions of *[this Act], grant assistance to the extent only for the assessment so fixed upon the said land.

Assistance may be refused or granted to a limited extent only.

(4) Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to

Civil suit not to be barred.

* S. 87 (3)—For words and figures “Chapter VIII or under any survey settlement confirmed by section 112” substitute “this Act”—Vide Bombay Land Revenue Code (Amendment) Act, 1939. This amendment does not apply to Sind where the section should be read as it originally stood.

have been levied from him in excess of what was due, as the case may be.

(5) One appeal only shall lie from any order passed under this section.

The object of ss. 86 and 87 is to avoid delay by providing a summary and inexpensive procedure for recovery and it is probably for this reason that verification and personal appearance required in the Civil Court are dispensed with.

The application for assistance may be re-entertained even if struck off the file provided it is within limitation.—*G. R. 8720 of 11-12-1891.*

Superior holder may put as many cases as he can in one application for assistance to collect rent from his tenants provided the total amount of rent for the recovery of which the application is made is sufficiently covered by the stamp.—*G. R. 2818 of 4-6-1874; G. R. 8731 of 23-12-1887.*

Application for assistance may be sent by post.—The Code merely requires from a superior holder an application that is written; neither presentation in person, verification, nor examination of the applicant is required as a condition precedent to the issue of a notice by the Collector or the Mamlatdar as directed in section 87. This obviously does away with the necessity of the personal attendance of the applicant.

To use discretion means to act according to reason and justice.—*Parvati Sonar v. Ganpati, 23 Bom. 513.*

Assistance may be refused when the question at issue between the parties is of a complicated or difficult nature.—*G. R. 168 of 8-1-1884.*

Assistance shall be refused to any superior holder under s. 87, if his claim to such assistance is not supported by an entry or entries duly made in the record of rights, register of mutations or register of tenancies.—*S. 135I of the Bom. L. R. Code (see infra).*

Arrears of rent or land revenue of past years cannot be recovered under this section. The law (proviso to s. 86) does not contemplate the grant of assistance to superior holders for the recovery of land revenue due to them or the rent whatever it may be from their tenants for past years.

The employment by money lenders of the provisions of ss. 86 and 87 as a means of recovering extortionate interest and evading the Dekkhan Agriculturists' Relief Act, 1879, should be discouraged by Mamlatdars and Mukhtiar-kars by declining to recognize transferees whose names are not entered in the records, etc.—*G. R. 1087 of 16-2-1900.*

Vakils of the High Court and District Pleaders are entitled to represent parties before any public officer in proceedings under s. 87 of the Land Revenue Code.—*See ss. 7 and 8 of the Bombay Pleaders Act, 1920.*

Appeals from orders in assistance suits are evidently proceedings under s. 87 of the Code and therefore, pleaders are entitled to appear in proceedings in appeal under this section.

* 88. [It shall be lawful for the Commissioner at any time to issue a commission to any holder of alienated lands, conferring upon him all or any of the following powers in respect of the lands specified in such commission (namely):—

(a) to demand security for the payment of the land revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorized to take under sections 141 to 143 ;

(b) to attach the property of persons making default in the payment of such land revenue or rent, as aforesaid ;

(c) to fix from time to time the times at which, and the instalments in which, the land revenue or rent due to him shall be payable ;

(d) to exercise the powers of a Collector under sections 65 and 66 ;

(e) to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided ;

(f) to take measures for the maintenance and repair of boundary marks in the manner provided for survey officers in section 122 :

* *Notes.*—Ss. 88 to 94 (inclusive) have been deleted by the Bombay Tenancy Act, 1939 (LXXX of 1939), s. 30 (2). See below under 'Extension'.

Extension.—Ss. 2 to 30 of the Tenancy Act have been extended to the districts of Surat, Thana, West Khandesh and Dharwar and the Partially Excluded Areas in the Province of Bombay. The said provisions (ss. 2 to 30, both inclusive) have been brought into force in the above parts of the Bombay Province from 1st April 1941.

Note.—Since the Bombay Tenancy Act, 1939 has not yet been extended to other parts of this Province the change will not apply to them.

Sind.—The Bombay Tenancy Act, 1939 does not apply to Sind and hence ss. 88 to 94 are in force there.

Provided that the powers contemplated in clauses (c) to (f) shall be conferred only on holders of lands to which a survey settlement has been extended under the provisions of section 216.]

* 89. [Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of the Commissioner; and a commission may, if the Commissioner see fit, be issued to one or more agents of a holder of alienated lands as well as to the holder in person.]

* 90. [If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been made, appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of sections 165 to 186.]

But if the holder of the commission is invested, under Regulation XIII of 1830, with civil jurisdiction and with power to execute his own or his agent's decrees, the sale shall be conducted by him and not by the Collector and his subordinates.

* 91 [All compulsory process shall cease: on the defaulter's paying or tendering the amount demanded of him under protest, or

on his furnishing either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D or to similar effect.

*Note.—See bottom notes at p. 77 to s. 88, *supra*.

And any holder of any such commission as aforesaid by himself or his agents, proceeding with any compulsory process after payment made, or tendered as aforesaid, or after the furnishing of such security as aforesaid or after tender thereof, shall be liable, on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process.]

*** 92.** [The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or rent of the current year and of the year next immediately preceding, but not to that of former years.

*** 93.** [The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid, previously to the date of such demand, or of what he may have contracted in writing to pay. In the event of a dispute the Collector shall hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decided to be just.

The person against whom any demand shall have been enforced in excess of the amount of which payment is lawfully enforceable shall be entitled to recover, on conviction of the holder of the commission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land revenue.]

* Note.—See bottom notes at p. 77 to s. 88, *supra*.

*** 94.** [Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or re-settle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.]

But holder of commission may establish his right to enhanced rent in Civil Court.

94A. (1) The superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, and to which a survey settlement has been extended under section 216, may by application in writing to the Assistant or Deputy Collector in charge of the taluka request that the rent or land revenue due to such superior holder may during a period named in the application be recovered as a revenue demand.

(2) The Collector may in his discretion sanction the application for a period not exceeding that named by the applicant, and in such case the following provisions shall apply:—

(a) Any rent or land revenue that accrues or has accrued due to the superior holder during the sanctioned period or a period of six years previous thereto shall, to an extent not exceeding the assessment fixed on the land, be recoverable under the orders of the revenue authorities as a revenue demand during the sanctioned period.

(b) Where any proportion of the land revenue that accrues or has accrued due to the Provincial Government

* Note.—See bottom note at p. 77 to s. 88, *supra*.

in respect of unalienated land in the same neighbourhood during the said sanctioned or previous period has been suspended or remitted by proper authority, the Collector may suspend or remit an equal or lesser proportion of the rent or land revenue that accrues or has accrued due to the superior holder during the corresponding period. Any such suspension or remission shall, notwithstanding anything in the Bombay Revenue Jurisdiction Act, 1876, be binding upon the superior holder in any subsequent proceedings in any Civil Court between the superior and inferior holders or their legal representatives, and any proceedings pending at the date of such suspension or remission shall abate to the extent of any claim that may be inconsistent therewith; and no Civil Court shall entertain any suit against the Crown in respect of any such suspension or remission.

(c) Where any such suspension or remission has been granted to an inferior holder, the land revenue (if any) payable by the superior holder shall be suspended or remitted, as the case may be, to a proportionate extent.

(d) The balance of any sum recovered under clause (a) shall be paid to the superior holder after deduction of the costs, if any, of recovery and of any sum lawfully chargeable upon the sum recovered.

CHAPTER VIII.

OF SURVEYS, ASSESSMENTS AND SETTLEMENTS OF LAND REVENUE.

95. It shall be lawful for the Provincial Government, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose and

Revenue survey may be introduced by Provincial Government into any part of Presidency.

such survey shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Provincial Government may direct; and subject to the orders of the Provincial Government it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

The control of every such revenue survey shall vest in and be exercised by the Provincial Government.

Control of revenue survey.

"Surveying" is the art of ascertaining by measurements and of representing the form of the earth's surface and the relative position of objects upon it, as projected on a horizontal surface. The surface of the earth includes not only its visible portion, but also the bottoms of lakes, rivers, the interior of mines and so on.

The objects of the operations included under the head of survey are the following: (i) The measurement of the village lands and the preparations of the Survey Records based thereupon. (ii) The construction of maps—village, taluka and district. (iii) The demarcation of boundaries by means of boundary marks.

96. It shall be lawful for the survey officer deputed to conduct or take part in any such survey, to require by general notice or by summons, the attendance of holders of lands and of all persons interested therein, in person, or by legally constituted agent duly instructed and able to answer all material questions, and the presence of taluka and village officers, who in their several stations and capacities are legally, or by usage, bound to perform service in virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith, as may not be inconsistent with the position of the individual so called on.

Survey officer may require by general notice or by summons, suitable service from holders of land, etc.

97. It shall be lawful for the survey officer to call upon all holders of land and other persons interested therein to assist in the measurement or classification of the lands to which the survey extends by furnishing flagholders; and in the event of a necessity for employing hired labour for this or other similar object, incidental to survey operations, it shall be lawful to assess the cost thereof, with all contingent expenses on the lands surveyed, for collection as a revenue demand.

Assistance to be given by holders and others in the measurement or classification of lands.

98. Except as hereinafter provided, no survey number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the sanction of the Provincial Government. A record of the minima so fixed shall be kept in the Mamlatdar's office in each taluka, and shall be open to the inspection of the public at reasonable times.

Survey numbers not to be of less than a certain extent.

These provisions shall not apply to survey numbers which have already been made of less extent than the minima so fixed, or which may be so made under the authority of the Commissioner of Survey given either generally or in any particular instance in this behalf; and any survey number separately recognized in the land records shall be deemed to have been authorizedly made whatever be its extent.

Exception.

99. [*Provisions applicable to recognised shares of survey-numbers.*] Repealed by Bom. Act IV of 1913 s. 44.

* 100. [Subject to rules made in this behalf under section 214, the officer in charge of a survey shall have authority to fix the assessment for land revenue at his discretion on all lands within the local operation of an order made under section 95 not wholly exempt from land revenue, and the amounts due according to such assessment shall, subject to the provisions of section 102, be levied on all such lands.]

In fixing such assessment, regard shall be had to the requirements of the proviso to section 52.

Regard to be had to proviso to section 52.

But nothing in this section shall be deemed to prevent the survey officer aforesaid from determining and registering the proper full assessment on lands wholly exempt from payment of land revenue or on lands especially excepted under section 95 from the survey settlement, or from dividing all such lands to which the survey extends into survey numbers].

Proviso.

* 101. [The power to assess under the preceding section shall, in the case of lands used for purposes of agriculture alone, include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in respect of which no rate is levied under section 55 or under the Bombay Irrigation Act, 1879, or in any other manner whatsoever that may be sanctioned by the Provincial Government.]

The assessment so made may be on land or on means of irrigation, etc.

* Ss. 100 and 101: So far as the Bombay Province is concerned these sections are now repealed. *File s. 6* of the Bombay Land Revenue Code (Amendment) Act, 1939. This change does not apply to Sind where the sections should be read as they stand.

* 102. [The assessment fixed by the officer in charge of a survey shall not be levied without the sanction of the Provincial Government. It shall be lawful for the Provincial Government to declare such assessments, with any modifications which it may deem necessary, fixed for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding ninety-nine in the case of all other lands.]

Assessment so made not leviable without the sanction of Provincial Government. But may be fixed, with or without modification by Provincial Government for a term of years.

* 103. [When the levy of the assessment fixed under sections 100 and 101 upon any land has been sanctioned under section 102, and notice of the same has been given in accordance with rules made by the Provincial Government in this behalf, the settlement shall be deemed to have been introduced with respect to the lands of which the assessments have been sanctioned.]

Introduction of settlements.

* 104. [In the year in the course of which a survey settlement, whether original or revised, may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

Excess assessment not to be levied in the year in which a survey settlement is introduced;

In the year next following that in which any original or revised survey settlement has been introduced, any occupant who may be dissatisfied with the increased rate imposed by such new assessment on any

nor in the following year if the number is resigned that year.

* Ss. 102, 103, 104—So far as Bombay Province is concerned these sections are now repealed.—*Vide* s. 6 of the Bombay Land Revenue Code (Amendment) Act, 1939. This change does not apply to Sind where they should be read as they stand.

of the survey numbers or sub-divisions of survey numbers held by him shall on resigning such number or sub-division in the manner prescribed by section 74 on or before the 31st March, receive a remission of the increase so imposed.]

* 105. The fixing of the assessment under the provisions of * [this Act] shall be strictly limited to the assessment of the ordinary land revenue, and shall not

The fixing of assessment under section 102 limited to ordinary land revenue. operate as a bar to the levy of any cess which it shall be lawful for the Provincial Government to impose under the provisions of any law for the time being in force for purposes of local improvement, such as schools, village, and district roads, bridges, tanks, wells, accommodation for travellers, and the like, or of any rate for the use of water which may be imposed under the provisions of section 55 or of the Bombay Irrigation Act, 1879.

† 106. It shall be lawful for the Provincial Government to direct, at any time, a fresh survey and revision of assessment. †* * * * †* * * * †* * * * †* * * * †* * * *

Provided that when a general classification of the soil of any area has been made a second time, or when

* S. 105: In section 105 of the Code, for the word and figures "section 102" the words "this Act" shall be substituted.—*Vide s. 7 of the Bombay Land Revenue Code (Amendment) Act, 1939.* This change does not apply to Sind where instead of 'this Act' the original words "section 102" should be read.

† S. 106: (a) The word "revenue," and the words and figures "but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102" shall be omitted; and

† (b) after the words "original classification" the words "of the soil" shall be inserted.—*Vide s. 8 of the Bombay Land Revenue Code (Amendment) Act, 1939.* This is for the Bombay Province only. For Sind see s. 106 in *Italics at p. 87, infra.*

any original classification †[of the soil] of any area has been approved by the Provincial Government as final, no such classification shall be again made with a view to the revision of the assessment of such area.

For Sind :

‡ S. 106. [*It shall be lawful for the Provincial Government to direct, at any time, a fresh revenue survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102*”

“Provided that when a general classification of the soil of any area has been made a second time, or when any original classification of any area has been approved by the Provincial Government as final, no such classification shall be again made with a view to the revision of the assessment of such area.”]

* 107. [In revising assessments of land revenue regard shall be had to the value of land and, in the case of land used for the purposes of agriculture, to the profits of agriculture:

Provided that if any improvement has been effected in any land during the currency of any previous settlement made under this Act, or under Bombay Act I of 1865, by or at the cost of the holder thereof, the increase in the value of such land or in the profit of cultivating the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof.]

† S. 106 : See bottom note to s. 106 at p. 86 *supra*.

‡ S. 106 printed in Italics is in force only in Sind.

* S. 107 : So far as the Bombay Province is concerned this section is repealed.—Vide s. 6 of the Bombay Land Revenue Code (Amendment) Act, 1939. This does not apply to Sind, where the section should be read as it stands.

* 108. It shall be duty of the surver, * [or the settlement officer] on the occasion of making or revising a settlement of land revenue, to prepare a register, to be called "the Settlement Register," showing the area and assessment of each survey number, with any other particulars that may be prescribed and other records in accordance with such orders as may from time to time be made on this behalf by the Provincial Government.

Preparation of statistical and fiscal records.

109. [*Officers to correct clerical and admitted errors in settlement-register, and inquire into and pass orders on applications for mutations of names.*] Repealed by Bom. Act IV of 1913, s. 49.

110. [*Collector to keep survey-records and frame village-records in accordance therewith; and to register changes, etc.*] Repealed by Bom. Act IV of 1913, s. 49.

111. In the event of any alienated village or estate† coming under the temporary management of servants of the Crown, it shall be lawful for the Collector to let out the lands thereof, at rates determined by means of a survey settlement or at such other fixed rates as he may deem to be reasonable, and to grant unoccupied lands on lease and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands, so far as such rules may be applicable, and for so long as the said village or estate shall be under the management of servants of

Revenue management of villages or estates not belonging to the Crown that may be temporarily under the management of Provincial Government.

* S. 108—After survey officer "insert "or the settlement officer." Vide s. 9 of the Bom. L. R. Code (Amendment) Act, 1939. This change does not apply to Sind.

† S. 111: In Sind the words: "not falling under sub-section (1A) of section 216," shall be added after the first 'estate'.—Vide Bombay Land Revenue Code (Sind Amendment) Act, 1941 (V of 1941).

the Crown: provided, however, that any written agreements relating to the land, made by the superior holder of such village or estate, shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of the Crown on the land.

112. Existing survey settlements of land revenue made, approved and confirmed under the authority of the Provincial Government shall be, and are hereby declared to be, in force subject to the provisions of this Act.

Maintenance of existing settlements of land revenue.

113. Expenses properly incurred in making partition of estates paying revenue to the Provincial Government shall be recoverable as a revenue demand in such proportions as the Collector may think fit from the sharers at whose request the partition is made, or from the persons interested in the partition.

Partition.

114. Whenever anyone or more co-sharers in a khoti estate, into which a revenue survey has been introduced or in a talukdari estate, consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him in this behalf, to divide the said estate into shares according to the respective rights of the co-sharers, and to allot such shares to the co-sharers:

Partition of certain estates by the Collector on application by co-sharers.

Provided that no such partition shall be made, unless—

(a) all the co-sharers are agreed as to the extent of their respective rights in estate, and

(b) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one half of the assessment of the entire estate.

In such cases the expenses of partition shall be recovered as a revenue demand from all the co-sharers in the estate divided.

115. [*Sub-division of numbers at time of revision of survey.*] *Repealed by Bom. Act IV of 1913, s. 53.*

116. When any portion of cultivable land is permitted to be used under the provisions of section 65 or 67 for any non-agricultural purpose or when any portion of land is specially assigned under section 38, or when any assessment is altered or levied on any portion of land under sub-section (2) or sub-section (3) of section 48, such portion may, with the sanction of the Collector, be made into a separate number at any time notwithstanding the provisions of section 98.

117. Nothing in section 116 shall affect the provisions of Bombay Act V of 1862 not affected.

117A. (1) Survey numbers may from time to time and at any time be divided into so many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason.

(2) The division of survey numbers into sub-divisions and the fixing of the assessment of the sub-divisions shall be carried out and from time to time revised in accordance with rules made by the Provincial Government in this behalf:

*Provided that the total amount of the assessment of any survey number or sub-division shall not be enhanced during any term for which such assessment may have been fixed under *[the provisions of this Act], unless such assessment is liable to alteration under section 48.

(3) The area and assessment of such sub-divisions shall be entered in such land records as the Provincial Government may prescribe in this behalf.

117B. If any sub-division of a survey number is relinquished under section 74 or is forfeited for default in payment of land revenue, the Collector shall offer such sub-division at such price as he may consider it to be worth to the occupants of the other sub-divisions of the same survey number in such order as in his discretion he may think fit; in the event of all such occupants refusing the same, it shall be disposed of as the Collector shall deem fit:

Provisions applicable on relinquishment or forfeiture of a sub-division.

Provided that until the said sub-division shall be occupied or until the entire survey number shall be relinquished, whichever event may first occur, the assessment of the said sub-division shall be levied from the occupants of the other sub-divisions of the survey number in proportion to the amount of assessment due from such occupants on account of their sub-divisions.

For the purposes of this section notwithstanding anything contained in section 3, if any of the other sub-divisions have been mortgaged with possession, the mortgagors shall be deemed to be the occupants thereof.

* 117A:—In the proviso substitute "the provisions of this Act" for "section 102"—*Vide* s. 10 of the Bom. L. R. Code (Amendment) Act, 1939. This change does not apply to Sind, where the section should be read as it stood before the change.

* CHAPTER VIIIA.

ASSESSMENT AND SETTLEMENT OF LAND REVENUE
OF AGRICULTURAL LAND.

* **117C.** In this Chapter, unless there is anything
 Interpretation repugnant in the subject or context—
 section.

(1) 'Settlement' means the result of the operations
 "Settlement." conducted in a taluka or part of a
 taluka in order to determine the land revenue assess-
 ment.

(2) 'Term of a settlement' means the period for
 "Term of a settle- which the Provincial Government has
 ment." declared that a settlement shall re-
 main in force.

(3) 'Group' means all lands in a taluka or part of
 'Group.' a taluka which, in the opinion of the
 Provincial Government, are sufficiently homogeneous in
 respect of the factors enumerated in sub-section (2) of
 section 117G to admit of the application to them of the
 same standard rates for the purpose of assessment of
 land revenue.

(4) 'Classification value' means the relative valua-
 'Classification tion of land as recorded in the survey
 value.' records having regard to its soil, water
 and other advantages.

(5) 'Standard rate' means, with reference to any
 'Standard rate.' particular class of land in a group, the
 normal assessment per acre on land in that class of
 sixteen annas classification value.

* Chapter VIIIA is inserted by s. 11 of the Bombay Land Revenue Code (Amendment) Act, 1939. This chapter does not apply to the Province of Sind. *

(6) 'Class of land' means any of the following 'Class of land.' classes of land, namely, dry crop, rice or garden land.

(7) 'Rental value' means the consideration (including 'Rental value.' premia, if any, or any sum of money paid or promised, or a share of crops, or service or any other thing of value rendered periodically or on specified occasions) for which land is or could be leased for a period of one year for its most advantageous use.

(8) 'Prescribed' means prescribed by rules made 'Prescribed.' under section 214.

* 117D. (1) The Provincial Government may at any time direct a settlement, hereinafter referred to as an original settlement, of the land revenue of any land of which a revenue survey has been made under section 95.

Government may direct an original or revision settlement of land revenue of lands comprised in a revenue survey.

(2) The Provincial Government may also direct at any time a fresh settlement, hereinafter referred to as a revision settlement, of the land revenue of such land :

Provided that no enhancement of assessment shall take effect before the expiration of the settlement for the time being in force.

* 117E. A settlement shall remain in force for a period of 30 years:
The term of settlement.

Provided that in the case of any particular settlement, the Provincial Government may, for reasons to be recorded, direct that the settlement shall remain in force for any period less than 30 years:

Provided further that, when in the opinion of the Provincial Government a revision settlement is inexpedient, or when the introduction of such settlement has,

* Note.—Ss. 117C to 117R do not apply to the Province of Sind.

for any cause, been delayed, the Provincial Government may extend the term of the settlement for the time being in force for such period as it may think fit.

~ *117F. (1) The aggregate existing assessment of lands in a taluka shall not be increased at a settlement by more than 25 per cent.

(2) The aggregate existing assessment of lands in a group shall not be increased at a settlement by more than 25 per cent.

(3) The aggregate existing assessment of lands in a village shall not be increased at a settlement by more than 50 per cent.

(4) The existing assessment of a survey number or a sub-division thereof shall not be increased at a settlement by more than 50 per cent.

(5) Notwithstanding anything contained in this section the Provincial Government may, by notification in the official Gazette, exclude any lands from the operation of this section.

*117G. (1) The land revenue assessment on all lands in respect of which a settlement has been directed under sub-section (1) or sub-section (2) of section 117D and which are not wholly exempt from the payment of land revenue shall, subject to the limitations contained in the proviso to section 52, be determined by dividing the lands to be settled into groups and fixing the standard rates for each group:

Provided that the standard rates so fixed shall be such that the aggregate assessment on the occupied lands in any group shall not exceed thirty-five per cent. of the average of the rental values of such lands for a period of 5 years immediately preceding the year in which the settlement is directed.

* Note.—Ss. 117C to 117B do not apply to the Province of Sind.

(2) The groups shall be formed on a consideration of the following factors:—

- (i) physical configuration,
- (ii) climate and rainfall,
- (iii) markets,
- (iv) communications,
- (v) standard of husbandry,
- (vi) population and supply of labour,
- (vii) agricultural resources,
- (viii) the variations in the area of occupied, and cultivated lands during the last 30 years,
- (ix) wages,
- (x) prices,
- (xi) yield of the principal crops,
- (xii) ordinary expenses of cultivating such crops, including the wages of the cultivator for his labour in cultivating the land,
- (xiii) rental values of lands used for the purposes of agriculture,
- (xiv) sales of lands used for the purposes of agriculture.

(3) The land revenue assessment of individual survey numbers and sub-divisions shall be based on their classification value in the manner prescribed.

•117H. If during 30 years immediately preceding the date on which the settlement for the time being in force expires any improvements have been effected in any land by or at the expense of the holder thereof, the increase in the rental value

Increase in value due to improvements at the expense of holders not to be taken into account.

* Note.—Ss. 117C to 117B do not apply to the Province of Sind.

of such land due to the said improvements shall not be taken into account in fixing the revised assessment thereof.

* 117I. In making a settlement the Settlement Officer shall proceed as follows :—
 Settlement Officer how to proceed for making a settlement. (1) He shall hold enquiry in the manner prescribed by rules made under this Act.

(2) He shall divide the lands to be settled into groups.

(3) He shall ascertain in the prescribed manner the rental value of lands for the purposes of the settlement.

(4) He shall then fix standard rates for each class of land in each group on a consideration of all the factors mentioned in sub-section (2) of section 117G.

(5) He shall submit to the Collector a report, hereinafter called the settlement report, containing his proposals for the settlement.

* 117J. (1) After the settlement report has been submitted to the Collector, the Collector shall cause such report to be published in the prescribed manner.
 Settlement report to be printed and published.

(2) There shall also be published in each village concerned in the regional language of such village a notice stating for each class of land in the village the existing standard rate and the extent of any increase or decrease proposed therein by the Settlement Officer. The notice shall also state that any person may submit to the Collector his objections in writing to the proposals contained in the settlement report within three months from the date of such notice.

* Note.—Ss. 117C to 117R do not apply to the Province of Sind.

***117K.** After taking into consideration such objections as may have been received by him, the Collector shall forward to the Provincial Government, through such officers as the Provincial Government may direct, the settlement report with his remarks thereon.

*** 117KK.** Any person aggrieved by the report published by the Collector under section 117J may within two months from the date of notice under sub-section (2) of section 117J apply to the Provincial Government for reference to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939. On such person depositing such amount of costs as may be prescribed the Provincial Government shall direct the report to be sent to the Revenue Tribunal for enquiry. The Revenue Tribunal after making an enquiry in the manner prescribed shall submit its own opinion on the objections raised and on such other matters as may be referred to it by the Provincial Government. The Provincial Government may make rules for the refund of the whole or any portion of the costs in such cases as it deems fit.

***117L. (1)** The settlement report together with the objections, if any, received thereon and the opinion of the Revenue Tribunal on a reference, if any, made to it under section 117KK shall be laid on the table of each Chamber of the Provincial Legislature and a copy thereof shall be sent to every member of each such Chamber. The said report shall be liable to be discussed by a resolution moved in each Chamber of the Provincial Legislature at its next following session.

* Note.—Ss. 117C to 117R do not apply to the Province of Sind.
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(2) After the termination of such session the Provincial Government may pass such orders as it may deem it:

Orders on the Settlement Report. orders as it may deem it:

Provided that no increase in the standard rates proposed in the settlement report shall be made unless a fresh notice as provided in section 117J has been published in each village affected by such rates and objections received, if any, have been considered by the Provincial Government. The provisions of sub-section (1) shall, so far as may be, apply to orders to be passed regarding such increase.

(3) The orders passed by the Provincial Government under sub-section (2) shall be final and shall not be called in question in any Court.

*117M. (1) Notwithstanding anything contained in this Chapter the Provincial Government may, by notification published in the official Gazette at the time of passing orders under sub-section (2) of section 117L, declare that the provisions of sub-sections (2), (3) and (4) of this section shall apply to any settlement.

Power of Government to declare particular settlement to be made with reference to prices.

(2) The settlement rates may be declared to have been fixed with reference to specified prices of specified classes of agricultural produce. When such a declaration has been made under sub-section (1), it shall be lawful for the Provincial Government to enhance or reduce the assessment in such area in any year by granting a rebate or placing a surcharge on the assessment by reference to the alteration of the prices of the classes of agricultural produce specified in the declaration.

(3) The prices of agricultural produce shall be recorded and published in the official Gazette and shall

* Note.—Ss. 117C to 117R do not apply to the Province of Sind.

be taken into account in granting a rebate or placing a surcharge under sub-section (2).

(4) The surcharge shall be levied or the rebate shall be granted under sub-section (2) according to the scale prescribed by rules made in this behalf.

*** 117N. (1)** The Provincial Government may at the time of passing orders under sub-section (2) of section 117L exempt any land from assessment under this Chapter for any advantage or specified kind of advantage accruing to it from water.

Power to Government to exempt from assessment for water advantages.

(2) The Provincial Government may at any time during the term of the settlement, after publishing a notice in the village concerned in the regional language of such village and after the expiry of a period of six months from the date of the publication of such notice, withdraw any exemption granted by it under sub-section (1) and direct that such land shall be assessed for such advantage.

*** 117O.** After the Provincial Government has passed orders under section 117L and notice of the same has been given in the prescribed manner the settlement shall be deemed to have been introduced and the land revenue according to such settlement shall be levied from such date as the Provincial Government may direct.

Provided that in the year in course of which a survey settlement, whether original or revised, may be introduced under this section, the difference between the old and the new assessment of all lands on which the latter may be in excess of the former shall be remitted

*Note.—Ss. 117C to 117R do not apply to the Province of Sind.

and the revised assessment shall be levied only from the next following year:

Provided further that in the year next following that in which any original or revised Survey Settlement has been introduced any occupant who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey numbers or sub-divisions of survey numbers held by him, shall, on relinquishing such number or sub-division in the manner prescribed by section 74 on or before the 31st March, receive a remission of the increase so imposed.

***117P.** Nothing in this Chapter shall be deemed to prevent the Settlement Officer from determining and registering the proper full assessment on lands wholly exempt from the payment of land revenue.

Assessment of lands wholly exempt from payment of land revenue.

***117Q.** Notwithstanding anything contained in this Chapter the Provincial Government may direct at the time of passing orders under sub-section (2) of section 117L that any land in respect of which a settlement is made under this Chapter shall be liable to be assessed to additional land revenue during the term of the settlement for additional advantages accruing to it from water received on account of irrigation works or improvements in existing irrigation works completed after the Provincial Government has directed the settlement under section 117D and not effected by or at the expense of the holder of the land. Such land revenue shall be leviable only when no rate in respect of such additional advantages is levied under the Bombay Irrigation Act, 1879:

Power to Government to direct assessment for water advantages.

Provided that the Provincial Government shall, before making such direction, publish a notice in this

* Note.—Ss. 117C to 117E do not apply to the Province of Sind.

behalf in the village concerned in the regional language of such village and shall consider the objections, if any, received to the proposal contained therein and no such direction shall be issued until after the expiry of a period of six months from the date of publication of such notice.

***117R.** All settlements of land revenue heretofore made and introduced and in force at the date of the commencement of the Bombay Land Revenue Code (Amendment) Act, 1939, shall be deemed to have been made and introduced in accordance with the provisions of this Chapter and shall, notwithstanding anything contained in section 117E, be deemed to continue to remain in force until the introduction of a revision settlement.

Settlements made before this Act to be deemed to be made under this Chapter.

made and introduced and in force at the date of the commencement of the Bombay Land Revenue Code (Amendment) Act, 1939, shall be deemed to

have been made and introduced in accordance with the provisions of this Chapter and shall, notwithstanding anything contained in section 117E, be deemed to continue to remain in force until the introduction of a revision settlement.

CHAPTER IX.

THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY MARKS.

118. The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined by survey officers, or by such other officers as may be nominated by the Provincial Government for the purpose, who shall be guided by the following rules:—

Rule 1.—When the patels and other village officers of any two or more adjoining villages, and, in the case of an alienated village the holder thereof or his duly constituted agent, shall voluntarily agree to any given line of boundary as the boundary common to their respective villages, the officer determining the boundary shall

Determination of village-boundaries.

Village boundaries may be settled by agreement.

Note.—Ss. 117C to 117R do not apply to the Province of Sind.

require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon. And any village boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means.

Rule 2.—If the patels and other village officers, and, in the case of an alienated village, the holder thereof or his duly constituted agent, do not agree to fix the boundaries of their respective villages, in the manner prescribed in the preceding rule, or if it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means, or if there be any pending dispute, the said officer shall make a survey and plan of the ground in dispute, exhibiting the land claimed by the contending parties, and all particulars relating thereto, and shall hold a formal inquiry into the claims of the said parties and thereafter, make an award in the case. If either of the villages concerned, be alienated, an award made by a survey officer shall, unless the officer making it be the Superintendent of Survey, be subject to his confirmation, and an award made by any other officer shall be subject to confirmation by such other officer as the Provincial Government may nominate for the purpose.

119. If at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation, and, if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the land records and according to occupation as ascertained

from the village officers and the holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time after the completion of a survey a dispute arise concerning the boundary of any survey number or subdivision of a survey number, it shall be determined by the Collector, who shall be guided by the land records if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

120. If the several parties concerned in a boundary dispute agree to submit the settlement thereof to an arbitration committee, and make application to that effect in writing the officer whose duty it would otherwise be to determine the boundary shall require the said parties to nominate a committee of not less than three persons, within a specified time, and if within a period to be fixed by the said officer the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the said officer, or if the said officer be a survey officer lower in rank than a Superintendent of Survey, by the Superintendent of Survey, shall be final :

Provided that the said officer, or the Superintendent of Survey, shall have power to remit the award, or any of the matters referred to arbitration, to the reconsideration of the same committee, for any of the causes set forth in paragraph 14 of the Second Schedule to the Code of Civil Procedure, 1908.

If the committee appointed in the manner aforesaid fail to effect a settlement of the dispute within the time specified, it shall be the duty of the survey officer to settle the dispute.

duty of the officer aforesaid, unless he or, if the said officer is a survey officer lower in rank than a Superintendent of Survey the Superintendent of Survey see fit to extend the time, to settle the same as otherwise provided in this Act.

121. (1) The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative—

(a) of the proper position of the boundary line or boundary-marks, and

(b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

(2) Where a boundary has been so fixed, the Collector may at any time summarily evict any landholder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

Scope and interpretation.—The Collector's decision under this section amounts to nothing more than the determination of the position where the boundary line lies and thereupon the titles of the parties as owners of the particular survey numbers or sub-divisions of survey numbers concerned as determined according to the position of the boundary lines. The Collector's decision regarding the boundary line does not however preclude any one of the then disputing parties from invoking the aid of a Civil Court on the ground that he has acquired a portion of the other survey number otherwise than merely as owner of a particular survey number or sub-division thereof, *e. g.* by adverse possession.—*Govt. Cir. No. 8101/24 (R. D.) dated 2-8-1939.*

The Revenue Officer or Survey Officer has the right to settle conclusively the boundary dispute between the parties and determine the title of the parties concerned *as flowing from the position of the boundary line* but has no jurisdiction to decide whether or not a holder of one survey number has acquired by prescription, title over any land out of the adjoining survey number by adverse possession.

The Revenue Officer or Survey Officer has the right to settle conclusively the boundary dispute between parties and determine title of parties following from the position of the boundary line but that he has no jurisdiction to decide whether or not a holder of one survey number has acquired by prescription, title over the land of adjoining survey number by adverse possession.—*Secretary of State v. Javerchand Panaji, 35 Bom. L. R. 583.*

The Revenue Officer or Survey Officer could also determine the title of parties to the land in dispute, flowing from the position of the boundary line. (See the case quoted above).

The Revenue or Survey Officer has jurisdiction to decide whether the applicant or the opponent has acquired title to any such land by adverse possession.

Instructions—Where the opposing party in his application given to the Collector stated that the main dispute was regarding the fixing of the boundary line between the fields of the contending parties there is no objection to treating the dispute as a boundary dispute and passing an order of eviction. If the opposing party claims title to the land by adverse possession it is appropriate that it should be left to that party to go to a Court of Law and establish his claim and that the original owners of the land (as determined by fixing the boundary) should not be compelled to do so.—*G. R. No. 5540/33 (R. D.) dated 17-12-1936.*

N. B.—The case law on the question of boundary disputes has been exhaustively given in Gupte's Land Revenue Code (Practitioner's Edn.)

122. It shall be lawful for any survey officer, authorised by a Superintendent of Survey, or Settlement officer, to specify or cause to be constructed, laid out, maintained or repaired boundary-marks of villages or survey numbers or sub-divisions of survey numbers whether cultivated or uncultivated, and to assess all charges incurred thereby on the holders or others having an interest therein.

Such officer may require landholders to construct, lay out, maintain or repair their boundary-marks, by a notification which shall be posted in the chavdi or other public place in the village, to which the lands under survey belong, directing the holders of survey numbers or sub-divisions to construct, lay out, maintain or repair, within a specified time, the boundary-marks of their respective survey numbers or sub-divisions and on their failure to comply with the requisition so made, the survey officer shall then construct lay out or repair them and assess all charges incurred thereby as hereinbefore provided.

Requisition on landholders to erect or repair boundary-marks.

A general notification, issued in the manner aforesaid, shall be held to be good and sufficient notice to each and every person having any interest in any survey numbers or sub-divisions within the limits of the lands to which the survey extends.

The boundary-marks shall be of such description, shall be constructed, laid out, maintained or repaired in such manner and shall be of such dimensions and materials as may, subject to rules made in this behalf under section 214, be determined by the Superintendent of Survey, according to the requirements of soil and climate.

If Khatedars fail to carry out repairs to their marks by the prescribed date the Circle Inspectors should get the repairs effected at Government cost by a contractor who should, as far as possible, be a resident of the village if available. The cost should be recovered from the khatedars concerned as is done at present. [G. R. (R.D.) No. 9715/33, of 21-6-39.]

123. Every landholder shall be responsible for the maintenance and good repair of the boundary-marks of his holding, and for any charges reasonably incurred on account of the same by the revenue officers in cases of alteration, removal, or disrepair. It shall be the duty of the village officers and servants to prevent the destruction or unauthorized alteration of the village boundary-marks.

124. When the survey settlement shall have been introduced into a district, the charge of the boundary-marks shall devolve on the Collector, and it shall be his duty to take measures for their construction, laying out, maintenance and repair, and for this purpose the powers conferred on survey officers by section 122 shall vest in him.

* 125. Any person convicted after a summary inquiry before the Collector, or before a survey officer, Mamlatdar, or Mahalkari, of wilfully erasing, removing or injuring a boundary-mark, *shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed, or injured.

One-half of every fine imposed under this section may be awarded by the officer imposing it to the informer, if any, and the other half shall be chargeable with the cost of restoring the mark.

CHAPTER X.

OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS AND CITIES.

126. It shall be lawful for the Collector, or for a survey officer, acting under the general or special orders of the Provincial Government, to determine what lands are included within the site of any village, town, or city, and to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of landholders.

127. Act XI of 1852, and Bombay Acts II and VII of 1863 shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 which

* S. 125: For the Province of Sind—After the word “boundary-mark” the words “theodolite or traverse station” shall be inserted.—*Vides* s. 3 of the Bombay Land Revenue Code (Sind Amendment) Act, 1939 (VIII of 1939).

have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said Acts shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

128. The existing exemption from payment of land revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868, shall be continued—

Existing exemption when to be continued in case of certain lands in towns and cities in which Bombay Act IV of 1868 has been in operation.

First—if such lands are situated in any town or city where there has been in former years a survey which the Provincial Government recognize for the purpose of this section; and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land revenue ;

Second—if such lands have been held wholly or partially exempt from the payment of land revenue for a period of not less than five years before the application of Bombay Act I of 1865, or IV of 1868 to such town or city;

Third—if such lands, for whatever period held, have been held wholly or partially exempt from payment of land revenue under a deed of grant or of confirmation issued by an officer whom the Provincial Government recognize as having been competent to issue such deed.

129. (1) Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

Right to exemption to be determined by the Collector.

(2) Any suit instituted in a Civil Court to set aside any order passed by the Collector under sub-section (1),

in respect of any land situate within the site of a village, town or city, shall be dismissed (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the order.

130. In towns and cities to which section 128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been unauthorizably occupied for a period commencing less than two years before Bombay Act I of 1865 or IV of 1868 was applied to the town or city in which the said lands are situate, shall be liable to pay a price for the said lands in addition to the land revenue assessed thereupon.

The said price shall be determined according to the provisions of section 62.

131. If the Provincial Government shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town, or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII and IX of this Act:

Proviso. Provided that nothing contained in sections 96, 97, 101, 104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

132. When a survey is extended under the provisions of the last preceding section to the site of any town or city containing more than two thousand inhabitants,

In certain cases a survey-fee to be charged.

each holder of a building site shall be liable to the payment of a survey-fee to be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by the Provincial Government, provided that the said fee shall in no case exceed ten rupees for each building-site or any portion thereof held separately.

The said survey-fee shall be payable with six months from the date of a public notice to be given in this behalf by the Collector after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.

133. Every holder of a building-site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H, or to the like effect specifying by plan and description the extent and conditions of his holding:

Sanad to be granted without extra charge.

Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Proviso.

Every such sanad shall be executed on behalf of the Crown by such officer as may from time to time be lawfully empowered to execute the same.

A Sanad is a document affecting rights only between the Crown and the person to whom it is granted. It is not a document of title.—*Nerbheramji v. Vivekramji*. 41 Bom. L. R. 939.

Ex-parte grant of Sanad at City Survey confers no title.—*Trimbal v. Damu*, 27 Bom. L. R. 656.

134. If any land within the site of any village, town, or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between the Crown and the holder under the provisions of any law for the time being in force, be used for any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

135. [*Limitation of certain suits.*] Repealed by Bom. Act XI of 1912, s. 3.

CHAPTER X-A.

OF THE RECORD OF RIGHTS.

135A. The Provincial Government may, by notification in the Official Gazette, direct that this chapter, or any specified provisions thereof, shall not be in force in any specified local area, or with reference to any lands or any class of villages or lands, or generally.

What is the Record-of-Rights—It is a Register giving, first, in a Diary form, particulars of all private rights over land whether they have been acquired by registered or unregistered documents, by successions, by oral agreements or otherwise; rights of owners, occupants, mortgagees, tenants or assignees of the rents or revenue thereof and also some public rights, easements, and Government rights (which are also recorded in Village Forms I and III).

Importance of entries in Record-of-Rights and register of mutations etc.—The Privy Council decided in an appeal from a decree of the High Court of Bombay in *Gangabai v. Fakirgauda*, A. I. R. 1930 (P. C.) 93 that the entries in the Record-of-Rights, etc. though not conclusive are evidence of facts recorded therein under s. 35 of the Evidence Act.

135B. (1) A record of rights shall be maintained in every village and such record shall include the following particulars:—

The record of rights.

the lands to which such maps or plans relate, and such costs shall be recoverable as revenue demand.

135H. (1) The plaintiff or applicant in every suit or application as hereinafter defined relating to land situated in any area to which this chapter applies shall annex to the plaint or application a certified copy of any entry in the record of rights, register of mutations or register of tenancies relevant to such land.

Certified copy of record to be annexed to plaint or application.

(2) If the plaintiff or applicant fails so to do for any cause which the Court or conciliator deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the Court or conciliator, and if such certified copy is not so annexed or produced the plaint or application shall be rejected, but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject-matter, with a certified copy annexed.

(3) After the disposal of any case in which a certified copy of any such entry has been recorded, the Court shall communicate to the Collector any error appearing in such entry and any alteration therein that may be required by reason of the decree or order, and a copy of such communication shall be kept with the record. The Collector shall in such case cause the entry to be corrected in accordance with the decree or decision of the Court, so far as it adjudicates upon any right required to be entered in the record of rights, register of mutations or register of tenancies. The provisions of this sub-section shall apply also to an appellate or revisional Court: provided that, in the case of an appellate or revisional decree or order passed by the High Court or the Court of the Judicial Commissioner of Sind, the

communication shall be made by the Court from which the appeal lay or the record was called for.

(4) In this section—

(a) “suit” means a suit to which the provisions of the Code of Civil Procedure, 1908, or of the Mamlatdars’ Courts Act, 1906, apply;

(b) “application” means an application—

(i) for the execution of a decree or order in a suit;

(ii) for the filing of an agreement stating a case for the opinion of the Court under the Code of Civil Procedure, 1908;

(iii) for the filing of an agreement to refer to arbitration under paragraph 17 of the Second Schedule to the said Code;

(iv) for the filing of an award under paragraph 20 of the said Schedule;

(v) to a conciliator under section 39 of the Dekkhan Agriculturists’ Relief Act, 1879;

(vi) of any other kind to which the Provincial Government may, by notification in the *Official Gazette* direct that this section shall apply;

(c) an application shall be deemed to relate to land if the decree or other matter, with respect to which the application is made, relates to land;

(d) a suit, decree or other matter relating to land shall, without prejudice to the generality of the expression, be deemed to include a suit, decree or other matter relating to the rent or tenancy of land.

The Legislature does not intend that the failure to attach a certified copy of Record-of-Rights should render all proceedings null and void if the omission is noticed after the trial has ended.—*Girijabai v. Hemraj*, 23 Bom. L. R. 595 (1921).

135I. Notwithstanding anything in section 87, the Collector shall refuse assistance to any superior holder under the said section, if his claim to such assistance is not supported by an entry or entries duly made in the record of rights, register of mutations or register of tenancies.

Refusal of assistance under section 87.

135J. An entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Presumption of correctness of entries in record of rights and register of mutations.

Entry in Record-of-Rights by itself does not vest the property in the person in whose favour it is made.—*Dhondi v. Appa*, A. I. R. 1928 Bom. 269.

Proper effect should be given to the statutory presumption under s. 135J especially when it is supported by strong independent considerations and unless there is something sufficiently strong in the evidence produced by the opposing party to overthrow the presumption it is entitled to the full benefit of s. 135J.—*Shankarrao Dagduji Rao v. Shambhu Nathu Patil*, 43 Bom. L. R. [(P. C.) 1940].

135K. Applications for certified copies of entries in the record of rights, the register of mutations and the register of tenancies may be made to, and such copies may be given by, the village accountant, Mahalkari or Mamlatdar.

Certified copies.

135L. (1) No suit shall lie against the Crown or any servant of the Crown in respect of a claim to have an entry made in any record or register that is maintained under this chapter or to have any such entry omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this chapter.

Bar of suits and exclusion of Chapter XIII.

(2) The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof revised, by such Revenue officers and in such manner and to such

Appeal.

extent and subject to such appeal as the Provincial Government may from time to time by rules prescribe in this behalf.

One appeal only shall lie against an entry certified as found to be correct by a revenue officer not lower in rank than the Mamlatdar's first karkun.—[*Rule 107 (2) (5) of Land Revenue Rules, 1921*].

One appeal only shall lie against an incorrect entry corrected by the Circle Inspector about which no dispute was brought to his notice.—[*Rule 107 (3) (5), ibid*].

CHAPTER XI.

OF THE REALIZATION OF THE LAND REVENUE AND OTHER REVENUE DEMANDS.

* 136. (1) In the case of unalienated land the Liability for land occupant, and in the case of alienated revenue. land the superior holder, shall be primarily liable to the Provincial Government for the payment of the land revenue, including all arrears of land revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.

*(2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears as aforesaid, shall be recoverable from any person in possession of the land :

* Provided that where such person is a tenant, the amount recoverable from him shall not exceed the demands of the year in which the recovery is made:

* Provided further that, when land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.

* This applies to the Presidency of Bombay only. S. 136 given in Italics at p. 12) *infra* applies to the Province of Sind.

*[**136. (1)** *In the case of unalienated land the Liability for land occupant, and in the case of alienated revenue. land the superior holder, shall be primarily liable to the Provincial Government for the payment of the land revenue, including all arrears of land revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.*

(2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears, for the current year shall be recoverable from any person in possession of the land in that year and the arrears of land revenue, if any, of previous years shall be recoverable from any person who was in possession of the land in the year or years in which such arrears fell due.

Provided that, when land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.”]—**Vide the Bombay Land Revenue Code [Sind Amendment Act, (VIII of 1941) 1941.]**

137. The claim of the Provincial Government to any moneys recoverable under the provisions of this chapter shall have precedence over all other debt, demand, or claim whatsoever whether in respect of mortgage, judgment-decree, execution, or attachment, or otherwise howsoever, against any land or the holder thereof.

Public moneys due by officers in default have no priority over other debts.—*Balmukund v. Collector of Ahmednagar*, 36 Bom. L. R. 1103 (1934).

* S. 136 as applicable to Sind is given in Italics.

The above mentioned case *Balmukund v. Collector of Ahmednagar* 36 Bom. L. R. 1103 (1934) was followed in *Secretary of State for India, v. Veerayas Venkatesh Bhatta*, 38 Bom. L. R. 276 where the question of claims of Government over debt secured as well as unsecured owing to other persons went before the High Court for consideration.—*Secretary of State for India v. Veerayas Bhatta*, 38 Bom. L. R. 276.

Government has no preferential claim over mortgagee of stock of wines for default in payment of dues of Abkari license by mortgagor.—*People's Bank of Northern India v. Secretary of State for India*, A. I. R. 1935 Sind 232.

138. In all cases the land revenue for the current year of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject to the same.

The liability of the crop for the revenue of the land.

The expression 'Land Revenue for the current year' includes suspended revenue payable in that year as well as revenue for that year.—*G. R. 6461 of 14-6-1915*, but see the remarks of Beaumont C. J. in *Balmukund v. Collector of Ahmednagar*, 36 Bom. L. R. 1103 wherein he has expressed the view that the preference given by s. 138 shall apply only to demands for the 'current' year.

139. The land revenue shall be leviable on or at any time after the first day of the revenue year for which it is due; but, except when precautionary measures are deemed necessary under the provisions of sections 140 to 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

Land revenue may be levied at any time during the revenue year.

140. When the crop of any land or any portion of the same is sold, mortgaged or otherwise disposed of, whether by order of a Civil Court or other public authority or by private agreement, the Collector may prevent its being removed from the land until the demands for the current year in respect of the said land have been paid, whether the date fixed for the payment of the same under the provisions hereinafter contained, has yet arrived or not.

Removal of crop which has been sold etc. may be prevented until revenue paid

But in no case shall a crop or any portion of the same, which has been sold, mortgaged or otherwise disposed of, be detained on account of more than the demands of the year in which the detention is made.

141. It shall be lawful for the Collector, in order to secure the payment of the land revenue by enforcement of the lien of Provincial Government on the crop—

In order to secure the land revenue the Collector may prevent the reaping of the crop, or

(a) to require that the crop growing on any land liable to the payment of land revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him, in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt ;

(b) to direct that no such crop shall be removed from the land on which it has been reaped, or from any place in which it may have been deposited without the written permission of himself or of some other officer as aforesaid ;

(c) to cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of land revenue due in respect of the land to which such crop belongs.

142. The Collector's orders under either clause (a) or clause (b) of the last preceding section may be issued generally to all the holders of land paying revenue to the Provincial Government in a village or to individual holders merely.

Collector's orders under last section how to be made known.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chavdi or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Any person who shall disobey any such order after the same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code, abet the disobedience of any such order, shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land revenue due on the land to which the crop belongs in respect of which the offence is committed.

143. The Collector shall not defer the reaping of the crop, nor prolong its deposit unduly, so as to damage the produce; and if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal costs, and release the rest.

144. If owing to disputes amongst the sharers, or for other cause, the Collector, shall deem that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management

Reaping, etc., not to be unduly deferred.

Crop when to be released.

Temporary attachment and management of a village or share of a village.

of himself or any agent whom he appoints for that purpose.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of the land revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector may direct.

145. The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which, it is payable under the provisions hereinafter contained.

146. Land revenue, except when it is recovered under the provisions of the foregoing sections 140 to 144, shall be payable at such times, in such instalments, to such persons and at such places as may from time to time be determined by the orders of the Provincial Government.

147. Any sum not so paid becomes thereupon an arrear of land revenue, and the persons

responsible for it, whether under the provisions of section 136 or of any other section, become defaulters.

148. If any instalments of land revenue be not fully paid within the prescribed time, it shall be lawful for the Collector to impose as a penalty or as interest such charge on such instalments, and on the arrears, if any, of former years, as may be authorised according to a scale to be fixed from time to time under the orders of the Provincial Government, and further to proceed to levy at once the entire balance of land revenue due by the defaulter for the current year:

Provided that no such charge shall be imposed on any instalment, the payment of which has been suspended by order of the Provincial Government, in respect of the period during which the payment remained suspended.

149. A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land revenue due, and of the person who is the defaulter.

On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this chapter as if the demand arose in his own district.

A similar statement of account certified by the Collector of Bombay may be proceeded upon as if certified by the Collector of a district under this Act.

150. An arrear of land revenue may be recovered by the following processes:—

(a) by serving a written notice of demand on the defaulter under section 152;

- (b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153;
- (c) by distraint and sale of the defaulter's moveable property under section 154;
- (d) by sale of the defaulter's immovable property under section 155;
- (e) by arrest and imprisonment of the defaulter under sections 157 and 158;
- (f) in the case of alienated holding consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

151. The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year:

Revenue demands of former years how recoverable. **Provided** that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed within that year.

Priority of Government dues and scope of s. 151.—When public moneys (other than land revenue in its true sense) due from a person are to be recovered in the same manner and subject to the same rules as laid down in the Bombay Land Revenue Code for recovery of arrears of Land Revenue from defaulters, only the machinery for the recovery of arrears of land revenue is to be made applicable. S. 137 which confers priority upon the Crown for land revenue over other debts of the person liable for land revenue cannot be said to provide a method or be a rule for the recovery of arrears of land revenue for the purposes of provisions such as s. 26 of the Bombay Land Revenue Code.—*Balmukund v. Collector of Ahmednagar*, 36 Bom. L. R. 1103 (1924).

Priority of Government dues is restricted to demands of current year.—*Secretary of State for India v. Fedaryas Bhatta*, 38 Bom. L. R. 276.

152. A notice of demand may be issued on or after the day following that on which the demand may issue. When notice of demand may issue. arrear accrues.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Provincial Government shall fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such notices shall be issued.

The issue of notice is not compulsory under s. 152 according to law before any other kind of coercive process is undertaken.—*G. R. 6557-B/28 of 16-1-1931.*

153. The Collector may declare the occupancy or alienated holding in respect of which an arrear of land revenue is due to be forfeited to the Provincial Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's accounts: The occupancy or alienated holding for which arrear is due may be forfeited.

Provided that the Collector shall not declare any such occupancy of alienated holding to be forfeited— Proviso.

(a) unless previously thereto he shall have issued a proclamation and written notices of the intended declaration in the manner prescribed by sections 165 and 166 for sales of immoveable property, and

(b) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 166.

154. The Collector may also cause the defaulter's moveable property to be distrained and sold. Distrain and sale of defaulter's moveable property.

Such distraints shall be made by such officers or
 By whom to be class of officers as the Commissioner
 made. under the orders of the Provincial Go-
 vernment may from time to time direct.

155. The Collector may also cause the right, title
 and interest of the defaulter in any im-
 Sale of defaulter's and interest of the defaulter in any im-
 moveable prop- moveable property other than the land
 erty. on which the arrear is due to be sold.

156. All such property as is by the Civil Proce-
 dure Code exempted from attachment
 Exemption from or sale in execution of a decree, shall
 distraint and sale. also be exempt from distraint or sale, under either of
 the last two preceding sections.

The Collector's decision as to what property is so
 entitled to exemption shall be conclusive.

157. At any time after an arrear becomes due,
 the defaulter may be arrested and det-
 Arrest and deten- tion of defaulter. tained in custody for ten days in the
 office of the Collector or of a Mamlatdar or Mahalkari,
 unless the revenue due together with the penalty or in-
 terest and the costs of arrest and of notice of demand,
 if any, have issued and the cost of his subsistence during
 detention, is sooner paid.

If, on the expiry of ten days the amount due by
 the defaulter is not paid, then, or if
 Imprisonment in the Collector deem fit on any earlier
 civil jail. day, he may be sent by the Collector with a warrant,
 in the form of Schedule C, for imprisonment in the civil
 jail of the district:

Provided that no defaulter shall be detained in
 imprisonment for a longer period than
 Defaulters not to the time limited by law in the case of
 be detained in cus- the execution of a decree of a Civil
 tody longer than Court for a debt equal in amount to
 debtors may be de- the arrear of revenue due by such defaulter.
 tained by the Civil Court.

158. The Commissioner may, with the sanction of the Provincial Government, from time to time, declare by what officers, or class of officers, the powers of arrest conferred by section 157 may be exercised, and also fix the costs of arrest and the amount of subsistence-money to be paid by the Provincial Government to any defaulter under detention or imprisonment.

159. If the holding, in respect of which an arrear is due, consists of an entire village, or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

160. - The lands of any village or share of a village so attached shall revert to the Crown unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as are interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals;

and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

161. All surplus profits of the lands attached, beyond the cost of such attachment and management, including the payment of

the current revenue, and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111 shall be applied in defraying the said arrear.

162. The village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the first of August next after the attachment—

if at the time that such application is made it shall appear that the arrear has been liquidated;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of the Provincial Government.

163. If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in the Crown for the purposes of the

Restoration of village so attached.

Disposal of surplus receipts.

Village, etc., to vest in the Crown for the purposes of the Province if not redeemed within twelve years.

Province free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors-in-title, or in anywise subsisting has against such superior holder or any of the sharers, but without prejudice to the rights of the persons in actual possession of the land.

164. Any defaulter detained in custody, or imprisoned, shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector, or to such other person or officer.

And any person against whom proceedings are taken or on amount demanded being paid under protest. under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

165. When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property whether the sale is subject to confirmation or not, and, when land paying revenue to the Provincial Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Such proclamation shall be made by beat of drum at the head-quarters of the taluka, and in the village in which the immoveable property is situate, if the sale be of immoveable property; if the sale be of moveable property the proclamation

shall be made in the village in which such property was seized, and in such other places as the Collector may direct.

166. A written notice of the intended sale of im-
 Notification of moveable property, and of the time and
 sales. place thereof, shall be affixed in each
 of the following places, viz., the office of the Collector
 of the district, the office of Mamlatdar or Mahalkari of
 the taluka or mahal in which the immoveable property
 is situate, the chavdi or some other public building in
 the village in which it is situate, and the defaulter's
 dwelling-place.

In the case of moveable property, the written notice
 shall be affixed in the Mamlatdar's or Mahalkari's office,
 and in the chavdi or some other public building in the
 village in which such property was seized.

The Collector may also cause notice of any sale,
 whether of moveable or immoveable property, to be pub-
 lished in any other manner that he may deem fit.

167. Sales shall be made by auction by such per-
 Sale by whom to be made. sons as the Collector may direct.

No such sale shall take place on a Sunday or other
 Time when sale may be made. general holiday recognized by the Pro-
 vincial Government, nor until after the
 expiration of at least thirty days in the case of immove-
 able property, or seven days in the case of moveable
 property, from the latest date on which any of the said
 notices shall have been affixed as required by the last
 preceding section.

The sale may from time to time be postponed for
 Postponement of sale. any sufficient reason.

168. Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by auction with the least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

169. If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale, to the person appointed under section 146 to receive payment of the land revenue due, or to the officer appointed to conduct the sale or if he furnishes security under section 164, the sale shall be stayed.

170. Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales, may be confirmed.

171. When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

172. When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold. The full amount of purchase-money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money, the purchaser shall be granted a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

Ditto when sale is subject to confirmation.

173. In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Deposit by purchaser in case of sale of immoveable property.

174. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immoveable property took place, or, if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

Purchase-money when to be paid.

175. In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to the Provincial Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any

Effect of default.

part of the sum for which it may be subsequently sold.

176. If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

Liability of purchaser for loss by re-sale.

177. Every re-sale of property in default of payment of the purchase-money, or after postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

Notification before re-sale.

178. At any time within thirty days from the date of the sale of immoveable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

Application to set aside sale.

but, except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale and direct a fresh one.

179. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale: Provided that, if he shall have reason to think that the sale ought to be set

Order confirming or setting aside sale.

aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

180. Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

Refund of deposit or purchase-money when sale set aside.

181. After a sale of any occupancy or alienated holding has been confirmed in manner aforesaid, the Collector shall put the person declared to be the purchaser into possession of the land and shall cause his name to be entered in the land records as occupant or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the land to which the certificate refers.

On confirmation of sale, purchaser to be put in possession. Certificate of purchase.

182. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

Bar of suit against certified purchaser.

183. When any sale of moveable property under this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land revenue,

Application of proceeds of sale.

and the surplus (if any) shall be paid to the person whose property has been sold.

The expenses of the sale shall be estimated at such rates and according to such rules as Expenses of sale how calculated. may from time to time be sanctioned by the Commissioner under the orders of the Provincial Government.

184. The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

Surplus not to be paid to creditors, except under order of Court.

185. Notwithstanding anything in section 136, the person named in the certificate of title as purchaser shall not be liable for land-revenue due in respect of the land for any period previous to the date of the sale.

Certified purchaser liable only for land-revenue subsequently due.

186. If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice. If the claim be admitted wholly or partly, the property shall be dealt with accordingly. Except in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as hereinbefore directed.

Claims to attached moveable property how to be disposed of.

187. All sums due on account of land-revenue, all quit-rents, nazranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines, and costs payable or leviable under this Act or under any Act or

What moneys leviable under the provisions of this Chapter.

Regulation hereby repealed, or under any Act for the time being in force relating to land-revenue;

and all moneys due by any contractor for the farm of custom-duties, or of any other duty, or tax, or of any other item of revenue whatsoever, and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement;

and also all sums declared by this or by any other Act or Regulation at the time being in force or by any contract with the Crown to be leviable as an assessment, or as a revenue demand, or as an arrear of land revenue;

shall be levied under the foregoing provisions of this chapter and all the foregoing provisions of the chapter shall, so far as may be, be applicable thereto.

And all persons who may have become sureties Sureties liable as revenue defaulters. under any of the provisions of this Act, or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid for any sum of money shall, on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to be proceeded against under the provisions of this chapter as revenue-defaulters and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such persons.

And in the event of the resumption of any such On resumption of a farm, no payments made to contractor in advance to be admitted. farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

And any person who has received from the Provincial Government a free grant of money for any agricultural purpose, subject to the proviso that he shall refund the same on failure to observe any of the conditions of the grant, shall, on failure to observe any such condition and to repay the said sum to the Provincial Government be liable to be proceeded against under the provisions of this chapter as a revenue-defaulter; and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such person.

Charges in connection with boundary marks.—The effect of s. 187 is to make the provisions of ss. 153 and 156 and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks.

Such charges may be recovered either by forfeiture of occupancy in respect of which the arrear is due, or by sale of the defaulter's immovable property other than the land on which the arrear is due. In the former case the land is sold free from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched.—*Venkatesh v. Mhal Pai*, 15 Bom. 67.

CHAPTER XII.

PROCEDURE OF REVENUE OFFICERS.

188. In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time and manner of performing his duties to the direction and control of the officer to whom he is subordinate.

189. Every revenue officer not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments, shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness, or

The recovery of free grants as arrears of revenue in case of misuse.

Subordination of revenue officers.

Power to summon persons to give evidence and produce documents.

to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct: Provided that exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908, shall be applicable to requisitions for attendance under this section;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements, and to produce such documents and other things as may be required.

A Mamlatdar holding an enquiry relating to Record of Rights under Chapter XII of the Land Revenue Code, is a Revenue Court within the meaning of s. 195 (1) (c) of the Criminal Procedure Code, 1883.—*Emp. v. Narayan*, 16 Bom. L. R. 678.

190. Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal;

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

Summons to be in writing, signed, and sealed.

Service in district other than that of issuer.

191. Every notice under this Act unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any;

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced substantial injustice.

192, In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the Code of Civil Procedure, 1908, for parties applying for summonses for witnesses.

A formal or summary enquiry is, under s. 196, deemed to be a "judicial proceeding" and the officer holding it is deemed a Civil Court for the purposes of such enquiries and according to s. 192, in such enquiries any party desiring the attendance of witnesses is required to pay the necessary expenses of such witnesses into the Court. Officers holding such enquiries can be deemed Revenue Courts and process fees sanctioned by Government for Revenue Courts are applicable to them. It is for the Court to direct by whom the costs of each party are to be paid, whether by himself or by any other party to the enquiry and whether in whole or in what part or proportions. Such costs can be levied under the provisions of Ch. XI of Land Revenue Code.

193. In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of, the officer making the investigation or inquiry, and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall,

as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in the language of the district, embracing the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same:

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

196. A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219 and 228 of the Indian

Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Hearing and decisions. Notice to parties.

197. An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Provincial Government, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Ordinary inquiries how to be conducted.

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them, or to persons claiming under them on due application being made for the same, subject to such charges for copying, etc., as may, from time to time, be authorized by the Provincial Government.

Copies and translations, etc., how to be obtained.

199. Whenever it is provided by this Act that a defaulter, or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

Arrest of a defaulter to be made upon a warrant.

200. It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing, or inspecting boundaries, classification of soil, or assessment, or for any other purpose connected with the lawful exercise of his office under the provisions of this Act, or of any other law for the time being in force relating to land revenue, any lands or premises, whether belonging to the Crown or to private individuals, and whether fully assessed to the land revenue or partially or wholly exempt from the same: Provided always that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also that in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Proviso. Power of revenue officer to enter upon any lands or premises for purposes of measurement etc.

201. The Provincial Government may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

Provincial Government to determine the language of a district.

202. Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, viz. :—

Collector how to proceed in order to evict any person wrongfully in possession of land.

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance.

The notice given under s. 202 amounts to a decision or order within the meaning of s. 204 of the Code. It is not necessary that before the notice under s. 202 is given the Government should actually pass an order and communicate it to the party concerned.—*The Secretary of State for India v. Chimanlal Jamnadas and others*, 44 Bom. L. R. 295 (1941).
=A. I. R. 1942 Bom. 161.

CHAPTER XIII.

APPEALS AND REVISION.

203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

L. B. C. (STD.) 19

The Bombay Revenue Tribunal is authorised to entertain appeals and revise decisions in 'revenue cases' and in such other cases in which the Provincial Government may have jurisdiction to entertain and decide such appeals and applications. These will be notified by the Provincial Government in official Gazette.—S. 4 of the *Bombay Revenue Tribunal Act, 1939*. So far as the Bombay Land Revenue Code is concerned the Tribunal shall have jurisdiction in appeals and revisions in 'revenue cases' under s. 204 and 211 only. (vide Schedule to the Bombay Revenue Tribunal Act, 1939.) 'Revenue cases' are cases where the revenue of Government is likely to be affected and where for this reason Government is directly or indirectly an interested party. It is important to note that no appeal or application for revision shall lie to the Commissioner in cases in which jurisdiction is vested in the Tribunal. The decisions of the Tribunal will not be subject to any appeal or revision by any authority (s. 6 *ibid*).

Appeals and revision applications in all cases which do not come within the jurisdiction of the Tribunal are heard and decided as laid down in the Bombay Land Revenue Code as before.

Note—For the Bombay Revenue Tribunal Act, 1939 and Rules and Regulations framed under that Act, see Supplement A to the Bombay Land Revenue Code (2nd, 1937 Practitioners Edn.) by Gupta.

Sind also has a separate Sind Revenue Tribunal (*Vide ibid*).

204. An appeal shall lie to the Provincial Government from any decision or order passed by a Commissioner or by a Survey Commissioner except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

Appeal when to lie to the Provincial Government.

Note :—See notes under s. 203 (*Supra*.)

An appeal to the Provincial Government need not be stamped with any Court Fee label.

205. No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

Periods within which appeals must be brought.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

206. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Provincial Government to whom or to which he appeals, that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order passed under this section admitting an appeal.

207. Whenever the last day of any period provided in this chapter for the presentation of an appeal falls on a Sunday or other holiday recognized by the Provincial Government the day next following the close of the holiday shall be deemed to be such last day.

208. Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

209. The appellate authority may for reasons to be recorded in writing either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence:

Provided that it shall not be necessary for the appellate authority to record reasons in writing

- (a) when an appeal is dismissed summarily, or
- (b) when the decision or order appealed from is itself a decision or order recorded in appeal, or
- (c) when an appeal is made to the Provincial Government under section 204.

210. In any case in which an appeal lies, the appellate authority may, pending decision of the appeal direct the execution of the decision or order of the subordinate officer to be suspended.

*** 211.** The Provincial Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying itself or himself as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely,—a Mamlatdar, a Mahalkari, an Assistant Superintendent of Survey and an Assistant Settlement officer.

If in any case, it shall appear to the Provincial Government, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit:

Provided that an Assistant or Deputy Collector shall not himself pass such order in any matter in which

* S. 211: Revision applications, etc. in 'revenue cases' from the orders of Collectors etc., are now entertained and heard by a 'Tribunal'—*Vide* Bombay Revenue Tribunal Act, 1939, in Supplement to Bombay Land Revenue Code 2nd (1937) Edn. by Gupte.

Sind too has a separate Sind Revenue Tribunal for such purposes.

a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

Commissioner's power to modify Collector's orders.—The Collector has no power under Rule 19 of the Rules of 1905 made under the Land Revenue Code, 1879, s. 214. (now Rule 39) to make the order of May 21, 1919 in the absence of the previous sanction of the Commissioner; and because under s. 211 of the Code the Commissioner had power to modify the order of the Collector and by his order of December 6, 1921 he had done so.—*Secretary of State v. Anant Krishnaji Nulkar*, 36 Bom. L. R. 242 (P. C.)=58 Bom. 111.

No stamp necessary—Applications to the Provincial Government need not be stamped with a Court fee label.

The Bombay Revenue Tribunal is empowered to revise decisions in 'revenue cases' under s. 211. See notes under s. 203 *supra*. Sind also has a 'Sind Revenue Tribunal'. *Vide* the Bombay Revenue Tribunal Act, 1939 in the Supplement to Bombay Land Revenue Code (2nd, 1937 Practitioner's Edn.) by Gupte.

212. Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

The Provincial Government alone shall be competent to modify, annul or reverse any such decision or order under the provisions of the last preceding section.

CHAPTER XIV.

MISCELLANEOUS.

213. Subject to such rules and the payment of such fees as the Provincial Government may from time to time prescribe in this behalf, all maps and land records shall be open to the inspection of the public at reasonable hours, and certified extracts from the same or certified copies thereof shall be given to all persons applying for the same.

Maps and land records open to inspection. Extracts and copies shall be given,

N. B.—See notes under s. 3 (27) *supra*.

Survey records are open to public inspection and copies are available under s. 213 of the Bombay Land Revenue Code.—*Abudomal v. Ali*, 5 S. L. R. 49=10 I. C. 554.

'Land Records' are defined in s. 3 (26) as records maintained under the provisions of, or for the purpose of, this Act, i. e. the L. R. Code.

Note.—These include survey records, revenue records, the record of rights, village records and in short all records maintained under the provisions of or for the purposes of the Code.

214. (1) The Provincial Government may, by notification published in the *Official Gazette*, make rules not inconsistent with the provisions of this Act to carry out the purposes and objects thereof and for the guidance of all persons in matters connected with the enforcement of this Act or in cases not expressly provided for therein.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made—

(a) regulating the appointment of revenue officers and the exercise by them of their powers and duties;

(b) regulating the assessment of land to the land revenue and the alteration and revision of such assessment and the recovery of land revenue;

(c) prescribing the notice to be given in the case of inquiries and orders under section 37;

(d) prescribing the purposes for which unalienated land liable to the payment of land revenue may or may not be used, and regulating the grant of permission to use agricultural land for non-agricultural purposes;

(e) regulating the disposal of land and other property vesting in the Crown for the purposes of the Province;

(f) regulating the disposal of forfeited land;

(g) prescribing the terms and conditions on which, and the periods for which, unoccupied unalienated land may be granted;

(h) fixing the maximum amount of fine leviable under section 61;

* (i) [regulating the conduct of surveys and settlements of land revenue and prescribing the notice to be given under section 117 O before the introduction of the settlement];

(j) regulating the division of survey numbers into sub-divisions and the fixing of the assessment of sub-divisions under section 117A;

(k) regulating the construction, laying out, maintenance and repair of boundary marks;

(l) regulating the compilation, maintenance and revision of the record of rights and the registers of mutations, disputed cases and tenancies, and prescribing the forms in which they are to be compiled and the officers by whom the said records and registers are to be tested and revised;

(m) regulating the exercise by village accountants and revenue officers of the powers of a survey officer and the assessment of costs and expenses under section 135G;

(n) prescribing the mode, form and manner in which appeals under Chapter XIII shall be drawn up and presented;

(o) prescribing the records, registers, accounts, maps and plans to be maintained for the purposes of this Act and the manner and forms in which they shall be prepared and maintained.

* s. 214 (2) (i) : This is substituted for the original clause (i) by the Bom. Land Revenue Code (Amendment) Act, 1939 which applies to the Bombay Province only and not to Sind. Hence for the Province of Sind the clause (i) should be read as it stood before the Bombay Amendment of 1939 i. e. as follows :

For the Province of Sind : "(i) regulating the conduct of surveys and settlements of land revenue, and prescribing the notice to be given under section 103 before the introduction of a settlement;"

* (p) [the manner in which the assessment of survey numbers and sub-divisions thereof shall be based on their classification value;]

* (q) [the manner in which enquiry is to be held under section 117I ;]

* (r) [the manner in which the rental value of land is to be ascertained by the Settlement Officer;]

* (s) [the manner in which the settlement report shall be published under section 117J]

* (t) [the manner in which and the places at which the notice inviting objections to the settlement proposals shall be published under sub-section (2) of section 117J;]

* (u) [the scale according to which the surcharge shall be levied or the rebate shall be granted under sub-section (2) of section 117M;]

(3) The power to make rules under this section shall be subject to the condition of previous publication.

215. It shall be lawful for the Provincial Government, in making any rule under section 214, to prescribe that any person committing a breach of the same shall on conviction by a Magistrate be punished with imprisonment for a term not exceeding one month or with fine not exceeding five hundred rupees, or with both, in addition to any other consequences that would ensue from such breach.

‡ **216.** (1) The provisions of [Chapters VIII, Chapters VIII to X how far applicable to alienated villages. VIII-A, IX and X] shall be applicable to—

(a) all unalienated lands situated within the limits of an alienated village;

* S. 214: Clauses (p), (q), (r), (s), (t) and (u) are added by s. 12 of the Bombay Land Revenue Code (Amendment) Act, 1939. They do not apply to the Province of Sind.

‡ S. 216: This applies to the Province Bombay only. S. 216 as applicable to Sind is given below in Italics.

(b) unalienated shares of villages of which a definite share defined by metes and bounds is alienated;

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess above such amount belongs to the Crown.

(2) Save as is otherwise provided in section 111 and in this section, no provision of the said Chapters shall be applied to any other alienated village except for the purposes of fixing its boundaries and of determining any disputes relating thereto, unless the extension of the provision is authorised by the Commissioner acting on the written application of the sole holder, or, if there be more than one holder, of the holder or holders representing in the aggregate not less than one-half of the total interests in the village in respect of its alienated revenue. If any share of the village is unalienated the prescribed proportion of one-half shall be reckoned as if the village were wholly alienated, the Crown being considered as the holder in respect of the unalienated share.

(3) In any case in which action under sub-section (2) is taken lawfully by the Commissioner on the application of some only of the holders of the village any covenant or agreement relative to the extension of the said Chapters or incidental thereto, entered into by such holders shall also be binding on the remaining holders of the village in respect of their shares in the revenue of the village as if such covenant or agreement had been entered into by them.

(4) All survey settlements heretofore introduced in alienated villages shall be valid as if they had been introduced in accordance with the provisions of this section.

* [216. (1) *The provisions of Chapters VIII to X shall be applicable to —*
(a) all unalienated lands situated within the limits of an alienated village;

Chapter VIII to X how far applicable to alienated villages.

* S. 216: This sec. as printed in 'italics' applies the Pro. of Sind only.

(b) unalienated shares of villages of which a definite share defined by metes and bounds is alienated;

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess above such amount belongs to the Crown.

(1A) Notwithstanding anything contained in this Act, the Revenue Commissioner for Sind shall, within a period of three years from the date of the commencement of the Bombay Land Revenue Code (Sind Amendment) Act, 1941, extend the whole of Chapter VIII and IX or such of the provisions thereof as may be applicable to all culturable alienated lands or villages commanded by irrigation canals.

(1B) Subject to the provisions of sub-section (1A) and notwithstanding anything contained in this Act, the Revenue Commissioner for Sind may, at any time, extend the whole or any part of Chapters VIII and IX to any alienated land or village other than those mentioned in sub-section (1A).

(1C) Where a survey is directed under Chapter VIII, either under sub-section (1A) or (1B), half of the cost of the survey shall, notwithstanding anything hereinbefore contained, be borne by the Provincial Government and half by the Mukhadim of the land concerned, or, if there is no Mukhadim, by the Jagirdar.

(2) Save as is otherwise provided in section III and in this section, no provision of the said Chapters shall be applied to any other alienated village except for the purposes of fixing its boundaries and of determining any disputes relating thereto. * * * *

(3) * * * *

(4) All survey settlements heretofore introduced in alienated villages shall be valid as if they had been introduced in accordance with the provisions of this section.]—
[The Bombay Land Revenue Code (Sind Amendment) Act, 1941 (Sind Act No. V. of 1941)].

217. When a survey settlement has been introduced under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as holders of land in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to holders of land in unalienated villages shall be applicable, so far as may be, to them.

218. Nothing in this Act, which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land, or the rights of holders of alienated land or of the Crown in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

SCHEDULE A.

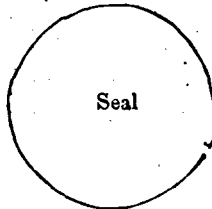
Repealed by Bom. Act IV of 1913, s. 81.

SCHEDULE B.

[Omitted by the Adaptation of Indian Laws Order in Council.]

SCHEDULE C.

FORM OF WARRANT TO BE ISSUED BY THE
COLLECTOR UNDER SECTION 25 OR 157.



To

The Officer in charge of the Civil Jail at

Whereas *A. B.* of was on the day of
187 , ordered by to (*here state the substance of
the demand made*); and whereas the said *A. B.* has neg-
lected to comply with the said order, and it has therefore
been directed, under the provisions of section of the
Bombay Land Revenue Code, that he be imprisoned in
the Civil Jail until he obey the said order or until he obtain
his discharge under the provisions of section 25 or 28 (*or*

section 157 or 164, *as the case may be*) of the said Code; you are hereby required to receive the said *A. B.* into the Jail under your charge and to carry the aforesaid order into execution according to law.

Dated this _____ day of _____ 187

(*Signature of Collector.*)

SCHEDULE D.

Form of Bond to be required under section 28 or 164.

Whereas I, _____, have been ordered by _____ to (*here state the nature of the demand*) and whereas I dispute the right of the said _____ to make the said order, I hereby bind myself to file a suit within fifteen days from the date of this bond in the District Court of _____ to contest the justice of the demand, and do agree that in the event of a decree being passed against me I will fulfil the same and will pay all amounts, including costs and interests, that may be due by me, or that if I fail to institute a suit as aforesaid, I will, when required, pay the abovementioned amount of _____ rupees (*or will deliver up the abovementioned papers or property, as the case may be*), and in the case of my making default therein, I hereby bind myself to forfeit to the Crown the sum of _____ rupees.

Dated _____

(*Signature.*)

FORM OF SECURITY TO BE SUBJOINED
TO THE BOND OF THE PRINCIPAL.

We,
hereby declare ourselves securities for the abovesaid,
that he shall do and perform all that he has above under-
taken to do and perform, and in case of his making de-
fault therein we hereby bind ourselves to forfeit to the
Crown the sum of _____ rupees.

Dated

(Signature.)

SCHEDULE E.

(See section 84.)

I.—Form of Notice to be given by Landlord to Tenant
to quit.

To

A. B.

I do hereby give you notice that I do intend to enter
upon, and take possession of, the land (*here give the des-
cription*) which you now hold as tenant under me, and you
are therefore required to quit and deliver up possession
of the same at the end of this current year, terminating
on the _____ of _____ 187

(Signed) C. D.

Dated this _____ day of _____ 187.

II.—Form of Notice to be given by Tenant to Landlord of his intention to quit.

To

C. D.

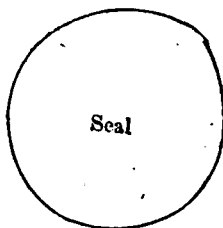
I do hereby give you notice that I shall quit and deliver up to you, at the end of this current year terminating on the _____ of _____ 187____, the land (*here give the description*) which I hold from you.

(Signed) A. B.

Dated this _____ day of _____ 187____

SCHEDULE F.

FORM OF COMMISSION TO BE ISSUED TO A HOLDER OF ALIENATED LANDS OR VILLAGES OR HIS AGENT, UNDER SECTION 89.



The Commissioner, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you (*Jagirdar, etc., or, Agent, etc., as the case may be*) power to in (*or in respect of*) the villages and lands specified in this Commission, in the manner prescribed in (*or in section of*) the said Code.

The villages and lands over which the power thus conferred upon you extends are as follows :—

(Here enter the description.)

The within delegated power is vested in you during the pleasure and subject to the recall of the said Commissioner.

(Signed)

SCHEDULE H.*

(See section 133.)

[FORM OF SANAD FOR BUILDING SITES.]

(Royal Arms.)

The Government of Bombay.

To _____

Whereas the Provincial Government, with a view to the settlement of the land revenue, and the record and preservation of proprietary and other rights connected with the soil, has, under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the _____ of _____ and ordered the necessary inquiries connected therewith to be made, this sanad is issued under section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the _____

* There is no Schedule G.

division of the _____ of _____, register No. _____, in the map marked sheet _____, No. _____ and facing towards the _____, the road leading from _____ to _____, containing about _____ square yards and of the following shape and about the following dimensions:—

You are hereby confirmed in the said occupancy exempt from all land revenue (*or*) subject to the payment of Rs. _____ per annum to the land revenue.

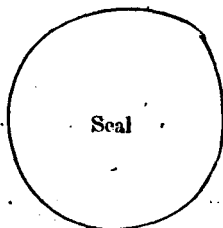
The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by the British Government, without any objection or question as to title, to whosoever shall from time to time be its lawful holder (subject only to the condition of the payment annually of the above land revenue according to the provisions of the Bombay Land Revenue Code or of any other law for the time being in force, and to the liability to have the said rate of assessment revised at the expiration of a term of _____ years reckoned from the

and thereafter at successive periods of _____ years in perpetuity; and to the necessity for compliance with the provisions of the law from time to time in force as to the time and manner of payment of the said assessment, and to the liability of forfeiture of the said occupancy and of all rights and interests connected therewith in case of your failure to pay the said assessment as required by law.)

(Signed)

SCHEDULE I

Form of warrant to be issued by the Collector
under section 202.



To

The Officer in charge of the Civil Jail at
Whereas *A. B.* of has resisted (*or* obstructed)
C. D. in removing *E. F.* (*or* himself, that is, the said
A. B.) from certain land in the village of
in the taluka, and whereas it is necessary,
in order to prevent the continuance of such obstruction
(*or* resistance), to commit the said *A. B.* to close custody;
You are hereby required under the provisions of section
202 of the Bombay Land Revenue Code to receive the
said *A. B.* into the Jail under your charge and there to
keep him in safe custody for days.

Dated this

day of

187.

(Signature of Collector.)

ANNOTATED EDITIONS OF LAW BOOKS

BY

K. S. Gupte, B. A., LL. B PLEADER,

691 Budhwar, POONA 2.

- | | | |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1 | Bombay Village Police Act, 1867. (Contains exhaustive Commentary with upto-date Instructions, G. Rs, Govt, Circulars, High Court Rulings, Notes for Departmental Examinations, etc.) Very useful for Police Patels, Police Officers, Dist. & other Magistrates, etc., 1945 Edn.] ... | Rs. a. p
3 0 |
| 2 | Bombay District Police Act (for Bombay and Sind) [Contains exhaustive commentary, upto-date case-law, etc., etc.]. Invaluable for Police Officers, Magistrates, Police Prosecutors, Pleaders, etc. ... | 5 8 |
| 3 | The Bombay Shops and Establishments Act, 1939 with Rules. This Manual contains exhaustive Commentary, full notes, Procedure for Inspectors & Magistrates. G. Rs., Orders, Notifns. etc. ... | 3 0 |
| 4 | Bombay Land Revenue Code (2nd Edn.) pp. 1600.
<i>Under patronage of the (governments of Bombay & Sind by G. R., R. D. 1556/28 of 15-9-1937 & G. R., R. D. 6859 of 20-10-1937 respectively).</i> ... | 12 0 |
| 5 | 'Supplement A' to "Land Revenue Code by Gupte" (2nd 1937 Edn.) containing the Bombay Land Revenue Code (Amendment) Act, 1939 with Rules and Bombay Revenue Tribunal Act, 1939 with Rules, Regulations, etc. etc. (1942 Edn.)]. ... | 2 0 |
| 6 | Dekkhhan Agriculturists' Relief Act with Rules [3rd Edn.: Revised and Enlarged; Case-law upto 1943]. ... | 5 8 |
| 7 | Bombay Co-operative Societies Act with Rules Upto date i. e. Rules upto 1943 [<i>Highly Recommended by the Registrar, Co-operative Societies (B. P.)</i>]. ... | 7 2 |
| 8 | Mamlatdars' Courts Act [<i>Popular, 4th Edn.</i>] ... | 5 8 |
| 9 | The Land Revenue Rules (1921) Bombay and Sind as amended upto 1944. ... | 2 8 |

STUDENTS' EDITIONS

- | | | |
|---|-------------------------------------------------------------------------------------|-----|
| 1 | Bombay Land Revenue Code (Std'. 3rd. 1944) Edn. Case-law, etc. upto date. ... | 3 0 |
| 2 | Dekkhhan Agriculturists' Relief Act (Std'. 3rd Edn. Case-law, etc. upto date). ... | 1 8 |

Ready Shortly

- | | | |
|---|--------------------------------------------------------------|-----|
| 1 | Bombay Agricultural Debtors Relief Act, 1939 with Rules. ... | 6 0 |
| 2 | Bombay Tenancy Act, 1939 with Rules. ... | 5 0 |