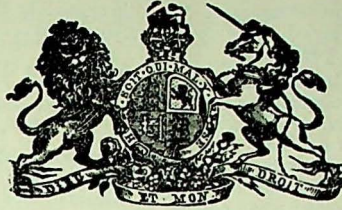


THE



# Bombay Government Gazette.

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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th February 1895:—

#### Bill No. 4 of 1895.

*A Bill to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction.*

WHEREAS it is expedient to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Railway Companies Act, 1895.

Title, extent and commencement.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) "railway" means a railway as defined in section 3, clause (4), of the Indian Railways Act, 1890:

(2) "the railway" means the railway in relation to the construction of which interest out of capital is permitted to be paid as hereinafter provided: and

(3) "Railway Company" means a Company registered under the Indian Companies Act, 1882, and formed for the purpose of making and working, or making or working, a railway in India, whether alone or in conjunction with other purposes.

3. A Railway Company may pay interest on its paid-up share capital out of capital, for the period, and subject to the conditions and restrictions, in this section mentioned, and may charge the same to capital as part of the cost of construction of the railway:—

(1) Such interest shall be paid only for such period as shall be determined by the Governor-General in Council; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the railway shall be actually completed and opened for traffic.

(2) No such payment shall be made unless the same is authorised by the Company's memorandum of association or by a special resolution of the Company.

(3) No such payment, whether authorised by the Company's memorandum of association or by special resolution as aforesaid, shall be made without the previous sanction of the Governor-General in Council.

(4) The amount so paid out of capital by way of interest, in respect of any period, shall in no case exceed a sum which shall,

VI of 1882.

IX of 1890.

[57 & 58  
Vict., c. 12,  
s. 2.]



together with the net earnings of the railway during such period, make up the rate of four per cent. per annum.

- (6) No such payment of interest shall be made until such Railway Company has satisfied the Governor General in Council that two-thirds at least of its share capital, in respect whereof interest is to be so paid, has been actually issued and accepted, and is held by shareholders who, or whose representatives, are legally liable for the same.
- (6) No such interest shall accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear.
- (7) The payment of such interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

[cf. 57 & 58  
Vict., c. 12,  
s. 4.]

4. A railway in course of construction and intended to be made or worked by a Railway Company in addition to or by way of extension of any railway owned or worked by such Company shall be deemed to be the railway of such Company for the purposes of this Act, and all the provisions of the last preceding section shall apply to such

Provisions of section 3 applicable to additional share capital for extensions.

railway and to the share capital issued for the purpose of its construction.

5. When a Railway Company has power to pay interest under this Act, notice to that effect shall be given in every prospectus, advertisement or other document inviting subscriptions for shares therein, and in every certificate of such shares. [cf. 57 & 58 Vict., c. 12, s. 5.]

6. When any interest has been paid by a Railway Company under this Act, the annual or other accounts of such Company shall show the amount on which, and the rate at which, interest has been so paid. [Ib., s. 6.]

7. If by any memorandum of association, articles of association, or other document any power of borrowing money is conferred on a Railway Company, or on its Directors, with or without the sanction of any meeting, and if such power of borrowing is limited to an amount bearing any proportion to the capital of such Company, the amount of capital applied or to be applied in payment of interest under this Act shall, for the purpose of ascertaining the extent of such power of borrowing, be deducted from the capital of such Company. [Ib., s. 7.]

Construction of borrowing powers.

#### STATEMENT OF OBJECTS AND REASONS.

THE restriction against treating any part of the subscribed capital of a Company as income during the time when it is necessarily unproductive, which applies under English law to every Company registered under the English Joint Stock Companies Acts, would probably be held by the Courts in this country to apply to a Company domiciled in India and registered under the Indian Companies Act (VI of 1882). The restriction has been removed so far as Companies domiciled in England, but formed for the construction of railways in India, are concerned, by the Statute 57 & 58 Vict., c. 12, passed by Parliament in the middle of last year. The object of this Bill is to place Railway Companies domiciled in India and registered under the Indian Companies Act, 1882, in the same position in this respect as Companies registered in England.

The 4th February 1895.

(Signed) ALEX. EDW. MILLER.

J. M. MACPHERSON,  
Officiating Secretary to the Government of India.



## LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th February 1895 :—

WE, the undersigned, Members of the Select Committee to which the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report,

From Government, Bombay, No. 6107, dated 5th September 1894, and enclosures [Papers No. 1].

From Her Majesty's Secretary of State for India, No. 37, Legislative, dated 6th December 1894 [Paper No. 2].

with the Bill as amended by us annexed thereto.

2. From section 3 we have omitted the words "and the last seventeen words of section 7" and have added a section 6 to the Bill which slightly amends section 7 of the Dekkhan Agriculturists' Relief Act. This alteration meets to a large extent the views of the Government of Bombay and of the Secretary of State.

3. We have given our most careful consideration to the definition of "agriculturist" in section 5, and, although we might not agree in maintaining the present definition if we were introducing the law for the first time into the Dekkhan or proposing its extension to another Presidency, we have accepted the concurrent views of the Commission, of the Judges of the High Court of Bombay, and of other officers consulted, that no changes which are not absolutely necessary should be made in the existing definition of status. We recognise the force of the arguments, that the law passed in 1882 has been interpreted by the Courts and applied for thirteen years to transactions between debtors and creditors in the Dekkhan, where its effect is fully understood, and that it would be more disadvantageous, to deprive persons now entitled to relief as agriculturists of the benefits of the Act than to admit new classes to those benefits. Such changes as we have made do not materially alter the present definition.

4. Section 7 gives effect to a recommendation made by the Government of Bombay, and is intended to assist the Courts in taking accounts where doubts exist as to the value of the profits of mortgage property. We have, in view of this addition, abandoned the proposed alteration of the existing law regarding agreements to set off profits in lieu of interest and other charges.

At the same time we have adopted a further suggestion of the Government of Bombay in section 9 of the revised Bill by which the Courts will be empowered, in passing a decree for redemption or foreclosure in certain suits, not merely to order payment by instalments, but also to continue the mortgagee in possession until the debt found due by the mortgagor is paid off with interest.

5. Section 10 gives effect to the suggestion that for purposes of execution standing crops should be deemed to be moveable property.

6. Sections 11 and 12 were not in the Bill as introduced in the Council, but they embody the existing practice and give effect to the intentions of certain rules made by the Local Government under the Acts for regulating the procedure of Village Munsifs and Conciliators.

7. Sections 13 and 14 call for no remark.

8. Section 15 replaces section 8 of the Bill as introduced, and enables the Local Government to place the Village Registrars under the control either of the Inspector General of Registration or of the District Officer, or both. The occasion has been taken to give the Local Government power to destroy certain unclaimed documents which, if they were registered under the Indian Registration Act, 1877, and not under Chapter VIII of the Dekkhan Relief Act, might be destroyed.

9. In section 16 we have altered the terms of section 9 of the Bill as introduced so as to meet the views of the Local Government as far as we considered it safe to do so.

10. Section 17 merely re-enacts the existing law embodied in section 14 of the Acts with a view to making its provisions applicable not only to section 13 of the Acts but to the whole of the Dekkhan Agriculturists' Relief Acts.

11. Section 18 is retained as originally drafted in accordance with the conclusion arrived at by the Government of India that it is not expedient to extend the special limitation period, in force in the four districts, to any other district or parts of districts to which the Acts may be extended and in which the ordinary limitation law will run.

12. The publication ordered by the Council has been made as follows :—

		<i>In English.</i>		
		<i>Gazette</i>		<i>Date.</i>
Gazette of India ...	...	...	...	29th March 1894.
Bombay Government Gazette	...	...	...	5th April 1894.
		<i>In the Vernacular.</i>		
<i>Province.</i>		<i>Language.</i>		<i>Date.</i>
Bombay ...	...	Marathi ...	...	14th June 1894.

13. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

(Signed) W. LEE-WARNER.  
 ,, ALEX. EDW. MILLER.  
 ,, C. B. PRITCHARD.  
 ,, A. P. MACDONNELL.  
 ,, PHEROZESHAH M. MEHTA.  
 ,, G. M. CHITNAVIS.  
 ,, MOHINI MOHUN ROY.



*A Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886.*

WHEREAS it is expedient to amend in manner hereinafter appearing the Dekkhan Agriculturists' Relief Acts, 1879 to 1886; It is hereby enacted as follows:—

1. (1) This Act may be called the Dekkhan Agriculturists' Relief Act, 1895; and it and the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1895.

(2) This Act shall come into force on the first day of May, 1895.

2. In this Act, unless there is something repugnant in the subject or context,—

“section” means a section, and “Chapter” a Chapter of the Dekkhan Agriculturists' Relief Act, 1879.

3. Sections 8, 9, 14, 15, 19 and 73 are hereby repealed.

4. To section 1 the following shall be added after the words “Presidency of Bombay,” namely:—

“or to any part or parts of any other such district or districts.”

5. For section 2 the following shall be substituted, namely:—

“2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely:—

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

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

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

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

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

“4th.—‘Money’ shall be deemed to include agricultural produce, implements and stock.

“5th.—‘Lease’ shall be deemed to include a counterpart, kabulyat, an undertaking to cultivate or occupy and an agreement to lease.

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

6. In section 7, before the word “unnecessary” the word “clearly” shall be added.

7. After section 13 the following section shall be added, namely:—

“13A. Where the mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor, and the Court is unable to determine what profits have been actually received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 13:

Provided that, if it be proved that in any year there was an entire or serious failure of the crops, an abatement of the whole or part of such rent may be allowed for the year.”

8. After section 15A the following shall be added, namely:—

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

9. To sub-section (2) of section 15B the following sub-sections (3) and (4) shall be added, namely:—

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

“(4) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid, the Court may in its discretion, instead of making an order for payment thereof,



direct that the mortgagee be continued in possession for such period (to be specified by the Court) as will in the opinion of the Court be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor."

10. In section 22 the words "other than his standing crops" shall be omitted, and in the same section after the word "subsists" the following words shall be inserted, namely:—

"For the purposes of any such attachment or sale as aforesaid standing crops shall be deemed to be moveable property."

11. In section 36, after the words "or misconduct of the village-munsif" and before the words "and pass," the following words shall be added, namely:—

"or on the ground that the village-munsif has exercised a jurisdiction not vested in him by law."

12. Section 44 shall be amended as follows namely:—

"(1) when the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides, and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

"(2) The Court which receives the agreement, shall in all cases scrutinize the same, and if it thinks that the agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

"(3) If the said Court thinks that the agreement is not a legal or equitable one, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall of its own motion issue process for the attendance of the parties, and if after such enquiry as may be deemed necessary the Court finds that such agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed, and from which no appeal lies.

"(4) If, on the other hand, the said Court finds that the agreement does not constitute a legal or equitable agreement, or that it does not finally dispose of the matter, or that it has been made in

fraud of the stamp or registration laws, it shall return the said agreement to the Conciliator, and such Conciliator shall thereupon be bound to furnish on demand to the parties or any one of them a certificate under section 46.

"(5) The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section."

13. In section 51 (b), before the word "transfer" the following words shall be added, namely:—

"transfer any suit from the Court of one Subordinate Judge to another, or any agreement pending before a Subordinate Judge under section 44 of the Act, or."

14. For section 52 of the Act the following section shall be substituted, namely:—

"The Local Government may appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges under Chapter II, Chapter IV and Chapter VI of this Act, and of all Village-munsifs and Conciliators in any district or part of a district to which this Act applies:

"Provided that, if the Local Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts or parts of districts or districts and parts of districts. Any Assistant or Subordinate Judge appointed, under this section may in any district or parts of districts for which he is so appointed, if the District Judge so directs, exercise the powers or any of the powers specified in the direction which vest in the District Judge under section 51."

15. For section 61 of the Act the following section shall be substituted, namely:—

"The Local Government may appoint one or more officers to exercise by themselves or their subordinates a general superintendence over all Village-registrars, and may either make rules, or empower such officer or officers to make rules, from time to time consistent with the Act for regulating the proceedings of the Village-registrars and for providing for the custody of their records.

"The Local Government may, by order to be published in the Government Gazette, declare that any documents other than wills remaining unclaimed in any registration office in any district or part of a district to which this Act applies, for a period exceeding two years, may be destroyed."

16. In Chapter XI the following section shall be added, namely:—

"17. The last clause of section 258 of the Code of Civil Procedure XIV of 1882 shall not apply to payments out of Court made



in any proceeding under this Act, in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved."

Addition of section 71A to the Act.

17. The following section shall be added to the Act, namely:—

"71A. In taking an account under section 13 or in any suit under this Act interest shall be awarded at the following rates:—

Rate of interest allowable on taking an account.

- (a) the rate, if any, agreed upon between the parties or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable; or,
- (b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or, when any agreement between

the parties or the persons (if any) through whom they claim, to set-off profits against interest and assessment and similar charges without an account has been set aside by the Court, such rate as the Court may deem reasonable."

18. In section 72, after the word "agricultural" and before the word "tourist", where that word first occurs, the words "in any of the districts of Poona, Sátára, Sholápur and Ahmadnagar,"

and in the same section, after the same words where that word afterwards occurs, the words "in any of the districts aforesaid,"

shall be added.

J. M. MACPHERSON,

Offg. Secretary to the Government of India.