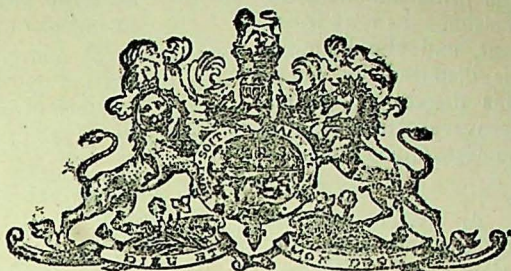


THE



# 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 V.

### PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

*(To be translated into Maráthi, and the translation to be published in the "Bombay Government Gazette." The date of publication to be reported.)*

The following Bill, together with the Statement of Objects and Reasons accompanying it, is published in accordance with Rule 22 of the Rules for the conduct of business at Meetings of the Council of His Excellency the Governor of Bombay for making Laws and Regulations:—

#### Bill No. IV of 1898.

*A Bill to amend the Khoti Settlement Act, 1880.*

WHEREAS it is expedient to amend the Khoti Settlement Act, 1880, in manner hereinafter appearing: It is enacted as follows:—

1. (1) This Act may be cited as the Khoti Settlement Act Amendment Act, 1899.
- Short Title.                      Act,
- (2) This Act shall be read with, and taken as part of, the Khoti Settlement Act, 1880, which is hereinafter referred to as the said Act.
- Construction.

2. In section 17 of the said Act, Amendment of section 17.

(a) after the words "amount of rent" there shall be inserted the following, viz., "if any";

(b) after the words "made under this section" there shall be inserted the following, viz.:

"or under section 33;"

(c) after the words "final evidence" there shall be inserted the following, viz.:

"(a) of all matters therein stated and (b)."

3. To section 31 of the said Act there shall be added the following, viz. :—

Proviso added to section 31.

Provided that notwithstanding anything contained in either of the said sections, the Collector, in any case in

which a share of the gross annual produce of the land is claimed as rent from an occupancy tenant, and the amount of such produce is disputed by such tenant, may, in his discretion, grant assistance for the recovery of a sum not exceeding twice the assessment fixed on that land.

4. After section 31 the following section shall be inserted:  
Insertion of a new section after section 31.

“31A. It shall be lawful for the managing khot to delegate, with the previous consent of the Collector in writing, the performance and exercise of all duties and powers, imposed or conferred upon him either by section 15 or by section 31, to any person duly empowered in writing by him in this behalf; and the person so appointed shall, in respect of the performance of the duties prescribed in section 15, be subject to all the liabilities to which the khot is subject under the said section.”  
Delegation of duties and powers by managing khot.

5. In section 33 for clause (c) there shall be substituted the following, viz. :  
Amendment of section 33.

(c) by any occupancy tenant in each case according to the terms of the entry in the survey record made in respect thereof, and for the time being applicable thereto, under the following rules :

*Rule I.*—An entry of the nature and amount of the rent payable by each occupancy tenant shall be made by recording officers, that is to say,  
Entries to be made by recording officer.

(a) at the time of framing the survey record and of introducing the settlement, by the Survey Officer framing it, hereinafter referred to as the Khoti Settlement Officer,

(b) at any other time by the Collector or such other officer as the Governor in Council from time to time empowers in this behalf.

*Rule II.*—Every such entry shall show whether the rent is payable as  
Form of payment to be entered.

(a) an amount fixed; that is to say, a certain amount, irrespective of

the crop, payable in money or kind, or both; or

(b) a crop-share; that is to say, a fixed proportion of the gross annual produce of the land.

*Rule III (1).*—Amounts fixed shall be entered as determined by agreement of the parties:  
How entries of amounts fixed are to be determined.

(a) at a time of framing the survey record if the Khoti Settlement Officer is satisfied that they have then or at any time previous agreed that such amounts shall be the rent payable during any period subsequent to the introduction of the survey;

(b) at any other time on the parties appearing in person before the Recording Officer and consenting to such entry.

(2).—No crop-share shall at any time be entered as determined by agreement.

*Rule IV (1).*—If at the framing of the survey record there appears to be no amount fixed by agreement of the parties, the Khoti Settlement Officer shall,  
How entries of crop-shares are to be determined.

(a) if he finds that a crop-share has theretofore been paid in accordance with the general custom of the village in respect of similar lands, enter such crop-share;

(b) if he finds in any case that the rent theretofore paid has been different in character or amount from that payable under the general custom of the village in respect of similar land therein, he shall enter the rent theretofore paid in such case, or, if such rent has not been uniform, the average of the rent paid for such land during twelve years last preceding his enquiry.

(2).—Provided that no crop-share shall in any case be entered exceeding in the case of—  
Limits of crop-shares.

(i) rice land one-half,

(ii) varkas land one-third, or in the case of

(iii) the produce of fruit trees, if any, such share as the Khoti Settlement Officer determines to be customary in the taluka.

*Rule V (1).*—Save with the con-

Entries to continue in force and not to be altered except with consent of parties;

sent of the parties given in person before the Recording Officer as to the entry of an amount fixed by agreement, no entry shall after the introduction of an original or revised settlement be made, added to or altered except as in this rule provided, and unless and until so added to or altered every entry made shall, as long as the settlement for which it was made remains in force, continue to be applicable to the land therein referred to.

(2).—Any clerical error in any entry or to correct clerical errors; may at any time be corrected.

(3).—If in any case no entry has been made at the introduction of any settlement introduced prior to the year 1895, or if any entry has by reason of a decree of a competent Court ceased to be applicable to the land in respect of which it was made, and no amount fixed by agreement has been subsequently entered, the Recording Officer may determine the customary rent as if he were the Khoti Settlement Officer acting under Rule 4.

(4) (A).—If in respect of any land the amount fixed, which (including commuted value) has been entered as payable, is not equal to an amount which in the aggregate represents the survey assessment recoverable from the khot in respect thereof together with twelve and a half per cent of such assessment, such amount fixed shall, unless the khot is proved to have expressly and deliberately waived all right to further increase, be raised, on the application of either of the parties, to an amount which shall be the equivalent, in money or in kind or in both, of—

(a) such survey assessment together with

(b) a supplementary rate of two annas on every rupee of such assessment.

(B).—Every decision under this

Revision of such decision.

clause shall, on the application of either party, be liable to revision on the expiry of four years from the date on which it is made, and the amount fixed in such decision shall be entered in the survey record.

(5).—If the survey assessment fixed on any number

Or when the assessment has been remitted or reduced on account of injury to the land;

has been reduced or struck off on account of dilution, deterioration by floods or other cause beyond the control of the occupancy tenant, the Collector or other officer empowered shall reduce the total amount fixed as payable for the portion of that number in such tenant's occupancy by an amount bearing to that total amount the same proportion as the amount of assessment remitted or struck off bears to the total assessment for the entire area in his occupancy, and shall make an entry in the record specifying

(a) the reduced amount, and

(b) the limit of time for which it is without further entry to hold good.

(6).—The Recording Officer shall

or when entry has been obtained by means of an offence;

cancel any entry which he is satisfied has been obtained by means of personation or by other means amounting to an offence under the Indian Penal Code, and the entry for which it was substituted shall thereupon become applicable to the land therein referred to unless and until altered in accordance with these rules.

(7).—On the application of either

or when entry of commuted value of crop-share is made.

of the parties the Recording Officer shall ascertain the average amount of produce payable as crop-share in respect of land specified in the application, such average amount being the average of the amounts of produce which, from such evidence as may be procurable, shall appear to have been paid yearly during the ten years preceding such application; and the Recording Officer shall enter in the survey record, as the rent thence-

forth payable in respect of such land, the commuted value of the amount so ascertained.

(8).—In this rule commuted value means the value of the produce payable, as estimated according to the average market rate prevailing, for the ten years last preceding the application, in the market town which for the purposes of this clause the Collector from time to time declares to be the chief market town for the village in which the land in question is situate.

*Rule VI.*—Throughout these rules the word “parties” means, with reference to an agreement, the tenant and the person who at the time of the agreement is the managing khot.

Provided that if any sharer in a khotki whose interest, or any number of such sharers the aggregate of whose interests exceeds one-half of the entire khotki, shall declare in writing delivered to the Recording Officer at the time of the nomination or appointment of a managing khot that such managing khot shall have no power to bind such sharer or sharers by an agreement with any tenant specified in such writing, no agreement entered into between such managing khot and such tenant shall be binding on such sharer or sharers unless

(a) such sharer or sharers shall appear before the Recording Officer and assent thereto, or unless

(b) written notice of an intention to execute such an agreement has been sent at the cost of such managing khot or tenant through the Recording Officer by post in a registered cover addressed to such sharer or sharers, and such sharer or sharers shall, for a period of not less than three months after such notice has been sent as aforesaid, fail to appear before the Recording Officer and object to such agreement.

6. Clause (a) of section 40 of the said Act is hereby repealed.

7. The following section shall be added after section 42 of the said Act (namely):

“43. And whereas certain lands in villages to which this Act extends, which were held to be uncultivated land within the meaning of section 41, have been constituted reserved forests in accordance with the procedure enacted in Chapter II of the Indian Forest Act, 1878, it is hereby directed that the said reserved forests shall be deemed to have been duly constituted and that, subject to the provisos in section 42, all the provisions of the said Indian Forest Act, 1878, as amended or otherwise modified by any subsequent enactment applicable to reserved forests, shall be deemed to apply thereto.”

## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to put an end, if possible, and with as little modification of the existing law as may be, to the difficulties which have arisen under the Khoti Settlement Act, 1880, in connection with the determination and the recovery of rents payable by occupancy tenants.

\* In the High Court of Judicature at Bombay, Appeal No. 725 of 1891.

Gopal Krishna Panchure (Original Plaintiff), Appellant, *versus* Sakhojirav bin Bhivajirav Chavan (Original Defendant), Respondent.

2. An entry once made under section 17 of the Act is not only final and conclusive so as to shut out any other evidence that might be brought or adduced before a Civil Court,\* but cannot, it would seem, be cancelled or altered until the next settlement.

3. Thus, in some cases rents settled by agreement or by custom prior to the introduction of a settlement have proved smaller in amount than the assessment subsequently made recoverable from the khot.

4. In order to render an equitable re-adjustment possible in such cases, it is necessary to amend both section 17 and clause (c) of section 33 of the Act so as to admit of the necessary revision of the record after due enquiry made in each case.

5. Section 2 of the Bill will validate such revision when effected under the powers to be conferred by section 5 of the Bill amending clause (c) of section 33 of the Act.

6. Further amendments are, however, necessary to render more simple and more certain both the ascertainment and the recovery of rents payable by occupancy tenants.

7. The effect of the Act has been to discourage agreements and rents payable in fixed amounts, even where they had previously been customary.

8. For section 33 (c), in accordance with which entries in the survey record must be made under section 17, leaves no alternative in the absence of an agreement but to declare a crop-share payable as the rent of an occupancy tenant.

9. Rents based on crop-shares necessitate inspection and appraisalment, for the regulation of which section 40 (a) empowers the Governor in Council to frame rules.

10. It has however been found most difficult to frame rules for this purpose sufficiently exhaustive and at the same time entirely free from complexity.

And it is almost impossible to carry out, in the scattered areas and in the brief season available for the purpose, any inspection that would prevent disputes and litigation as to the facts alleged to have been thereby ascertained.

11. It has therefore been considered that disputed claims for a share in a crop should no longer be recoverable by summary process under the Bombay Land Revenue Code, 1879.

Section 3 of the Bill accordingly substitutes for the recovery of such disputable amounts a right to assistance for the recovery in those cases of an amount which shall not exceed twice the assessment fixed on the land in respect of which a claim is made.

12. In order to remove all doubt as to the delegation by managing khots of their duties and powers (under sections 15 and 31 respectively) to duly appointed agents, it is proposed to insert a new section in the Act (as section 31A) by section 4 of the Bill.

13. This section will render unnecessary clause (a) of section 40 of the Act which it is proposed therefore in section 6 of the Bill to repeal.

14. The special encouragement afforded to rents on the crop-share system having thus been removed, section 5 of the Bill has been prepared with the express object of giving every possible facility for the entry at any time of agreements for rents payable in fixed amounts whether of money, produce, or both.

The section however as drafted will require that after a settlement has been introduced the consent of the parties to a modification of the rent should be placed beyond doubt by their personal appearance before the officer making the entry.

15. In section 5 provision is also made for the entry in the record of rents payable as fixed amounts in accordance with the general custom of a village or the special custom of a holding though there may be no agreement to that effect.

16. Further provision is made in the same section for the correction of clerical errors, for the decision and entry of customary rents omitted at the time of settlement, and what is more important, for the increase or decrease within

certain limits of the rent in cases in which it is, owing to a fall in the market rate of produce or other causes, below, or owing to remissions for diluvion and the like, disproportionately above, the assessment recoverable.

17. Section 7 of the Bill is intended to remove all questions as to certain technical difficulties arising from the wording of section 42 of the Act in rendering the Indian Forest Act, 1878, applicable to waste land in a khoti village.

(Signed) H. E. M. JAMES.

30th November 1898.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. H. FAWCETT,

Secretary to the Council of the Governor of Bombay

for making Laws and Regulations.

Bombay Castle, 12th December 1898.

The following Bill, leave to introduce which into the Council of the Governor of Bombay for making Laws and Regulations was granted to the Honourable Mr. Daji Abaji Khare on the 20th August 1898, is published for general information :—

**Bill No. V of 1898.**

*A Bill to amend Bombay Act I of 1880.*

WHEREAS it is expedient to amend Bombay Act I of 1880; It is enacted as follow :—

1. This Act may be cited as the Bombay Act I of 1880 Amendment Act, and it shall come into force retrospectively from 1891-92.

2. To Section 20 of Bombay Act I of 1880, the following paragraph shall be added:

“Every determination and decision under this Part shall be subject to revision by the Governor in Council.”

3. After Section 22 of the said Act the following section shall be inserted:

“22A. All entries, determinations and decisions made or passed under this Part after the passing of this Act shall be notified to the parties concerned within a week from the date of their being so made or passed by public notification put up at the Mámátdár's Kacheri at the táluka in which the khoti village is situate.”

4. The words “as may have been agreed upon or” and the words “or at any subsequent period” in clause (c) and the words “or on the expiry of the term for which any such agreement shall have been or shall be made” and the words “have been or” in the last paragraph of Section 33 shall be omitted.

**STATEMENT OF OBJECTS AND REASONS.**

The object of this Bill is to meet a difficulty which has arisen under the following circumstances.

The Khoti Settlement Act (Bombay Act I of 1880) was passed with a view once for all to settle the rights of the Khotes and the tenants about which there existed many disputes and uncertainties. Under that Act an officer called the Khoti Settlement Officer was created, whose duty it was to specify under Part III the tenure on which a survey number is held, and the nature and amount of rent payable to the Khot by each privileged occupant. Under Sections 17 and 21 of the Act these specifications and decisions of the Settlement Officer are final. Some of them only, *i.e.* those made under Section 16, can be set aside by a Civil Court. No superior Revenue officer, nor the Bombay Government itself can interfere with any of them. As is well known the Khot pays the assessment of the village out of the rents he receives from the tenants and the balance is his profit.

However, in 1890-93 there was a survey, and in the Devgad Táluka the assessment was raised far in excess of the original. At the same time the Khoti Settlement Officer fixed the rents which remained at the old figure, and in some instances were reduced. The result was that the Khotes were called on to pay to Government larger sums by way of assessments than the amount of the rents they were adjudged to receive, and since that time they have been obliged to either hold their villages at a loss or to give them up. These Khotes petitioned the Government. In reply the Government stated that it was true that the combined effect of the new rates and the fixing of the rents by the Khoti Settlement Officer was to make the holding of a khoti village a source of loss in some instances to the Khotes; but the law as it stood gave them no power to interfere.

This Bill is designed to supply this desideratum without disturbing any of the substantial features of the Khoti Act. It provides for retrospective action, because unless it dealt with the settlements in Devgad Taluka, the grievances at present existing could not be removed. The Bill also contains provisions which would obviate the possibility of such difficulties arising in future.

The Bill also contains a provision for making the specifications and the decisions of the Settlement Officer public, so that the parties concerned may come to know about them within a reasonable time.

(Signed) DAJI ABAJI KHARE.

*By order of His Excellency the Right Honourable the Governor in Council,*

C. G. H. FAWCETT,

Secretary to the Council of the Governor of Bombay  
for making Laws and Regulations.

*Bombay Castle, 12th December 1898.*