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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.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information:—

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Saturday the 15th of September, 1888, at 3-15 P.M.

PRESENT:

His Excellency the Right Honourable Lord REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding.*
Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.
The Honourable J. B. RICHEY, C.S.I.
The Honourable J. R. NAYLOR.
The Honourable the ADVOCATE GENERAL.
The Honourable KASHINATH TRIMBAK TELANG, C.I.E.
The Honourable F. FORBES ADAM, C.I.E.
The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.
The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.
The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS.

Papers presented to the Council.

The following papers were presented to the Council :—

1. Letter from the Secretary to the Government of India, Legislative Department, No. 680, dated 11th April, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to declare and amend the law relating to Toda Girás allowances.

2. Letter from the Secretary to the Government of India, Legislative Department, No. 682, dated 11th April, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to further amend the Bombay Local Boards Act, 1884, and the Bombay District Municipal Act Amendment Act, 1884.

3. Memorandum from Mr. Pandurang Ramchandra Desai, Pleader, District Court, Thána, dated 17th April, 1888, regarding the Salt Bill No. 2 of 1888.

4. Letter from the Secretary to the Government of India, Legislative Department, No. 860, dated 23rd May, 1888, stating the reasons which induced His Excellency the Viceroy and Governor General to withhold his assent from the Aden Port Trust Bill.

5. Letter from the Secretary to the Government of India, Legislative Department, No. 947, dated 6th June, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Sind Village Officers' Act, 1881.

6. Petition from Mahamad Jafar valad Gulam Husan Tingikar and others, owners of Salt Works of Uran, dated 12th July, 1888, regarding the Salt Bill.

7. Petition from Hari Janardhan Dewa and others, owners of Salt Works of Pen, dated 26th July, 1888, regarding the Salt Bill.

8. Petition from Jacinto Jão Baretto and others, owners of Salt Works at Mátunga in the Island of Bombay, dated 31st July, 1888, regarding the Salt Bill No. 2 of 1888.

9. Petition from Budhaji Dharmaji and others, owners of Salt Works at Belápur in the Panvel Táluka, dated 9th August 1888, regarding the Salt Bill.

10. Petition from Kabla Bapu Shet and others, owners of Salt Works in the Ghodbandar Táluka, dated 10th August, 1888, regarding the Salt Bill.

11. Report of the Select Committee on the Bill to provide for the Revenue Administration of Estates held by certain superior landholders in the Districts of Ahmedabad, Kaira, Broach and the Panch Mahals, and to limit the further operation of Bombay Act VI of 1862.

12. Letter from the Secretary to the Government of India, Legislative Department, No. 1601, dated 8th September, 1888, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the City of Bombay Municipal Bill.

The Gujarát Talukdárs Bill.

Mr. Richey moves the second reading of Bill No. 6 of 1885.

The Honourable Mr. RICHEY in moving the second reading of Bill No. 6 of 1885, a Bill to provide for the revenue administration of estates held by certain superior landholders in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals, and to limit the further operation of Bombay Act VI of 1862, said :—Your Excellency,—The objects of this Bill were fully elucidated by the Honourable mover of the first reading when he pointed out that the objections which had been raised to the provisions of the Bill were based on a misconception. The Bill was designed in the interests of the tálukdárs, their tenants, and the tax-payers generally. This fact was so fully set forth in the Statement of Objects and Reasons and the speech of the Honourable Mover, that I need not detain the Council very long with any remarks upon that point. The Bill was submitted to the Select Committee a very long time ago, and it has gone through very careful consideration, and the result has been several more or less important changes in the direction of improvement, and some points to which more or less sentimental objection had been taken have been modified, and, as it now stands, the provisions of the Bill, we think, are well calculated to meet the objects for which it was originally drafted. Part I of the Bill is merely preliminary and deals only with definitions. Part II provides for the introduction of a survey and the formation of a settlement register. In all parts of India where land tenure exists it is the custom to prepare a settlement register on behalf of Government and to record sub-tenures. But in the case of tálukdárs we do not propose to record in detail, as was proposed in the original draft of the Bill, the various items of the original tenancies, we merely propose to record such special features of the sub-tenure as are likely to be useful to the tálukdár for his own administration and to prevent disputes as to shares and incumbrances, and to enable Government to make equitable assessments. That part of the Bill as it stands has already been anticipated by the survey made under an order of 1862 ; but there is still a large portion of the tálukdári estates requiring survey, and without such an Act as is here proposed, it would be impossible to

supply such data as would enable the Revenue officers to make an assessment which would be equitable and satisfactory. Part III is new, and its provisions only find a very limited expression in the present law. There is a provision of the law by which the tálukdárs can move the Collector and get a partition; but it is hampered by conditions and inadequate, and does not prevent disputes which are perpetually arising and which prove an endless source of injury to the public, the tenants, and the tálukdárs themselves. They have continual disputes which lead to disintegration of their estates, and it is essential that some remedy should be provided which shall do away with the perpetual intrigue and disorders, and the financial ruin which follows recourse to the Civil Courts. A portion of Part III of the Bill deals with the method of procedure in these cases. In an ordinary case of an undivided estate at present the procedure for the collection of rent is this: The rental being taken in kind, an appraisement of the crop, to ascertain the share due for rent is, necessary. The appraisement is made by the sharers interested or their representatives if a sharer, owing to his being kept out of his due share, has a dispute with the others, he will raise difficulties at the time of appraisement; as the crop cannot be harvested until the appraisement is made, difficulties and delays in settling the appraisement will cause loss in harvesting it to the tenants and tálukdárs alike. I have known many great hardships to arise from this cause and would urge that every legitimate means should be adopted by Government to remove the causes of these disputes, and to facilitate their settlement. The best means are at hand in the office of the Tálukdári Settlement Officer which is familiar to those interested and accessible, and through this agency partitions under the provisions of this Bill could be effected readily, cheaply and equitably. Part IV relates to revenue administration. One of the chief difficulties arising from the working of the existing law is that we have not got a satisfactory assessment of many areas in Gujarát. The Government demand is now not settled field by field, but roughly on the whole area, and thus it cannot be shown that each acre is contributing its quota. We want to fix its proper contribution upon each portion in detail, and this is one of the most valuable provisions of Part IV of the Bill. There are other clauses in it, some of which have challenged objection, one of them especially (Section 26) which authorises the interference of the Governor in Council in certain cases: "If owing to disputes among the sharers in any tálukdári estate, or for other cause, the Governor in Council shall deem that there is reason to apprehend danger to the peace of the country or injury to the well-being of the inferior holders, he may direct the Collector to cause such estate to be attached and taken under the management of himself or any agent whom he appoints for this purpose." Now we have in the Civil Procedure Code provision for action by the magistrate to prevent disputes where the peace is threatened, and under an old regulation Government can interfere, but for political rather than in social causes. These provisions of the law do not meet the requirements of the cases which we have now to deal with in which the interests of the public and of the tálukdárs' tenants are involved. For instance, a step usually taken by a powerful and unscrupulous sharer who wishes to encroach on his co-sharers is to intimidate the ryots who may be willing to take up waste land in the interest of a co-sharer and to prevent its being cultivated. If the portion lies waste the interests of the public as well as of the tenants suffer. Such mischief may now be prevented. Cases have come before my notice where riots, and even murders have resulted from disputes as to whether such and such a field shall be cultivated. Even in my own camp I have had a man set upon in consequence of a strongly-worded claim presented by him for his fair share, and Sir James Peile reported to Government, when he was Tálukdári Settlement Officer, that he had feared that murder might be committed in his camp. It must be remembered that the village police and executive in outlying tálukdári villages is inefficient and weak, and a lawless section of the community are able to commit offences and tyrannize over the more peaceable. I may mention an instance in the Viramgám District where the Kolis, who are the tálukdárs' retainers, answering Sir W. Scott's description of the Highlanders who formed MacGregor's tail, systematically kept in awe the Kunbi population by constantly burning their crops or their stacks. In this case Government, at my instance, imposed a punitive post of police upon the Koli section with the very best results. But when the Collector had power to take hold of an estate for the common benefit of all interested in it, prosperity would be the result. The Tálukdári Settlement Officer has furnished me with a list of twenty-six petitions from sharers and others asking for his interference, and in this respect the new Act would be very welcome indeed. In Part V there is one other section—the limitation of the incumbrances on a tálukdár's estates to the tálukdár's own life-time—

requiring notice. The rules here are similar to those which apply in Native States. When, in the old days, we used to take agreements from tálukdárs, there was a clause to the effect that they should not sell or encumber their estates. The new provisions are justified by the fact that in many cases the incumbrances and alienations are practically illegal, and the principal reason why we have sought to regulate these is to prevent the people becoming impoverished, discontented and dangerous. Other sections of the Bill are mainly directed to remove the tálukdári estates from certain sections of the Land Revenue Code which are not applicable to them. But before closing my remarks I would ask the Council's attention to a memorandum which was given to me last night from the Thákor Sáheb of Limbdi, who represents a small section of the tálukdárs who are in Káthiáwár. The Thákor of Limbdi is the only one of any importance, and he has taken the lead in the expression of what are felt to be their objections to the Bill. I have very carefully gone through the memorandum, but I find nothing in it which has not already been dealt with by the Select Committee. Still it may be well perhaps to notice briefly some of the points which arise in it. The first point of importance is the statement "that the principle of assessment has always been different from what obtains elsewhere. The amount of the *jama* is always fixed *not* on the value of the land belonging to the tálukdár, but upon the rents actually received by him with the customary deduction in respect of *barkhali*, *vanta* and *chakariat* lands; again, the *jama* so levied has nothing to do with the survey rates, though for instituting a comparison they are often brought in aid to gauge the value of the estates, so as to bring the *jama* of each to one and the same proportion of the value." I do not understand how any distinction can be made between the land revenue paid by tálukdárs and any other similar demand from other classes, nor can it be admitted for a moment that the land held by the tálukdár himself or his dependants should be exempted. The whole must be fairly assessed and the revenue levied on the whole of it. As to revenue survey, it is stated "that the first survey in Gujarát, which was in 1824, was not extended to tálukdári estates". That survey was not a revenue survey and we are not concerned with it. "The second survey, which was in 1856-57, was expressly confined to Government villages only; and, *as a fact, tálukdári estates were not surveyed at this time either.*" That is quite true and nothing led to greater hardship than this. The assessments being made without any data of the actual capacity of each estate were often excessive and most burdensome, and I have found the tálukdárs glad to have a proper survey. Then the memorandum goes on to show "as to the Land Revenue Code, that tálukdári estates have always been held exempt from its operation is sufficiently exemplified by the fact that not one instance can be shown of any of the provisions of that Act having been enforced in such estates. There has been no case, for example, of any forfeiture and sale for arrears of revenue under sections 56 and 57, or of alluvial lands being sold by the Collector under sections 63 and 64, or of any building-sites being fixed under section 126, or of any arrest or attachment under Section 150, &c." As to the forefeiture for arrears of revenue under sections 56 and 57 the memorandum is wrong. There has been one in my time; it was sold at the instance of the High Court, but the purchaser was not able to collect his rents; the resident tálukdárs made it too hot for him; he could not pay his land revenue, the estate was forfeited and then restored on certain conditions to the tálukdárs. That the statement is incorrect my experience furnishes a cogent example in this particular case. It is also submitted that "there is no necessity for any legislation on the subject. The possible classes of cases in which tálukdárs may happen to be concerned are four; cases in which questions may arise (1) between them and the Government; (2) between them and their *bháyad;* (3) between them and their tenantry; and (4) between them and their creditors. The relations between tálukdárs and Government are already so well settled and understood that no special enactment is necessary to define those relations; nor do the other classes of cases involving questions between the tálukdárs, their *bháyads*, their tenantry and their creditors call for any special enactment. Cases of disputes about shares (even amongst the *bháyads inter se*) involving parties in a ruinous litigation are not of frequent occurrence; and in respect of cases that may occasionally arise, the ordinary law of the land can quite adequately deal with them." It would not be at all right to leave the tálukdárs outside the law as is here proposed, and it is necessary to define the revenue law applicable to them and their political status. We must take care that they are not wronged either by their own imprudence or by our laws. There have been numerous cases of disputes about shares, and there is an enormous mass of evidence to show how they have involved ruinous liti-

gation, and it is our duty to provide against the possibility of such instances occurring. Then the memorandum asserts that "the legislation now proposed makes no distinction between tálukas forming the domain of a gádi and other petty tálukas on the one hand or between tálukdárs and kasbátis, mevásis and ráiks on the other, but places them all on a footing of equality." There is no occasion for it. You cannot make exceptions in the general law; if we make exceptions for one class, we shall have to go even further than this. Then it is stated that it extends to estates belonging to the Chiefs of Káthiáwár, in some of which the *jama* being fixed by the permanent settlement, there is no occasion for a revenue survey. That may be so: I don't think there is, but occasion may arise. Then it is stated that the legislation "applies to estates in which the rule of primogeniture obtains and in which therefore there is no occasion for a partition." Of course it does, and of course there will in these cases be no occasion for partition. Then the memorandum sets forth that "the proposed legislation reverses the general rule deducible from past history as to the fixity of the *jama* payable by a tálukdár." There is no historical or legal basis for assuming fixity. There are one or two exceptions in which the assessment is not liable to increase or reduction. As regards the revenue liability of tálukdárs, the Bill merely repeats the provision of the Act of 1862; in practice the Government demand has been limited to a maximum of 70 per cent. of the assessment, but it often is as low as 50 per cent. I have examined each of the objections and am convinced that no hardships can accrue from any of the provisions of the Bill. It is objected that the tenants, though admittedly tenants-at-will, are to be *primâ facie* presumed as permanent tenants under section 83, if they have been in possession of their holdings for a long time; all public roads, lanes, rivers, lakes, tanks, &c., in his táluka are *primâ facie* under section 37 the property of Government until he establishes his title thereto, and so on. All these clauses are sections of the Land Revenue Code in which existing custom and right were carefully guarded. In Select Committee all the provisions were fully discussed and very carefully examined, and the Honourable Mr. Telang devoted particular attention to the application of each section of the Land Revenue Code. I would merely repeat that the objections here are based entirely upon misconception and are not such as can influence the Council in the consideration of the Bill. I now move, Your Excellency, that the Bill be read a second time.

The Honourable Mr. TELANG:—Your Excellency,—If I may be allowed I would like to say a few words before the matter is put to the Council. I suggested in the Select Committee that the Bill, instead of saying such and such sections of the Land Revenue Code are inapplicable to tálukdárs, should take a different line and should prescribe the particular sections which are applicable. I made that suggestion, because when I read the Land Revenue Code with special reference to tálukdars, I thought the code was not as a whole an appropriate enactment for them, and was not intended, in fact, to be applicable to them. However as my colleagues did not think that course was advisable, I went through the sections of the code and made suggestions, some of which were accepted, and some negatived. As regards some of these sections I was not satisfied with the view of the majority of the Select Committee, and on some of them I find my views practically repeated in this memorandum. It is perhaps hardly possible at this time to so amend the Bill as will bring it more in accordance with the views expressed in the memorandum. So I will only say that I hope the tálukdárs will hereafter find as little cause to know the contents of Land Revenue Code as they have found hitherto. Only I am not prepared to agree in the view as to the objections of these gentlemen being unreasonable or unfounded. I think there is always fair occasion for alarm in these cases. I feel it would be useless at this stage of the Bill to bring forward the views I take upon the subject. I don't want to say much upon any other portion of the Bill at the present stage. As to one or two matters I have given notice of amendment. It will, however, be more proper that I should refer to them when I bring forward the amendments. I should, however, like to say a word with regard to section 15 which provides that "the procedure to be observed by the Tálukdári Settlement Officer or other officer aforesaid in any such inquiry shall be that laid down by the Code of Civil Procedure, 1882, for the trial of original suits." I suggested in the Select Committee that this provision should be altered, and that whenever questions of title arose the Tálukdári Settlement Officer should be bound to refer the investigation to the regular tribunals. The Tálukdari Settlement Officer is not necessarily an officer trained to judicial investigations, and although section 16, by providing for an appeal from him to

the District Court, may be supposed to do all that is necessary in the matter to secure justice, I am not quite satisfied on that point, as although an appeal may be provided for, a good deal often must turn on the manner in which a case is tried in the Court of first instance. My suggestion, however, did not find favour with the majority of the Select Committee, and upon this, and also on one or two other points, I have somewhat reluctantly and doubtingly yielded to the views of the majority. Upon the points, however, to which my proposed amendments refer, and on which I feel somewhat more strongly, I shall ask the Council to change the text of the Bill as settled by the Select Committee.

Bill read a second time and considered in detail.

The Bill was then read a second time and the Council proceeded to consider it in detail.

The Honourable Mr. RICHEY moved that the following words be added to section 8 (1):—

"and every Registered Tálukdár shall be entitled to receive one copy of the Register, free of any charge, except the cost of copying."

The motion was agreed to.

The Honourable Mr. TELANG moved the following amendment:—

"Section 16. Add (3).—A second appeal shall lie from the decision of the District Court to the High Court in accordance with the provisions of the Code of Civil Procedure, 1882."

He said: Your Excellency,—Having looked into this matter I am inclined to think that under the law as it stands an appeal to the High Court will lie, but I think it desirable to have such a clause as I now propose distinctly inserted in order that the people interested may know that such an appeal exists.

The Honourable Mr. RICHEY:—If the power exists, as I think it does, it seems to me unnecessary to make any specific provision. If it does not, this Council cannot interfere with the jurisdiction of the High Court, and it would be, therefore, *ultra vires*.

The Honourable Mr. NAYLOR:—Your Excellency,—Section 42 of the Act under which this Council is constituted says that it "shall not have the power of making any laws or regulations which shall in any way affect any of the provisions of this Act or of any other Act of Parliament in force." The High Court owes its existence to an Act of Parliament, and it follows that the local Councils of Bengal and Bombay have not the power of affecting in any way the jurisdiction of that Court. This Council cannot, therefore, limit the jurisdiction of the High Court, and it has hitherto been generally thought that it cannot add to it. It is, perhaps, a question whether adding to the jurisdictions of the High Court affects the statute under which that Court is constituted, but the opinion which has always been acted upon with respect to the framing of Bills for this Council is that no attempt should be made either to add to or subtract from the jurisdiction of the High Court. All legislation affecting that Court is undertaken by the Governor General in Council. I think, therefore, that it would be unwise to attempt to add to section 16 of the Bill before us the words set forth in the motion, and for my own part I think that the Honourable Mr. Telang's proposal with regard to the section is unnecessary. The object of section 16 is to provide a cheaper means of obtaining decisions on questions in dispute between tálukdári co-sharers than is provided by the ordinary Civil Procedure Code. The object of empowering the Tálukdári Settlement Officer to deal with such questions in the first instance is to secure this cheap and simple procedure and the District Court has ample power given to it to cure any defects in the decisions of the Tálukdári Settlement Officer. My honourable colleage Mr. Richey and I myself and Sir James Peile also were convinced that this provision would be acceptable to the talukdárs themselves and would save them from the great expense which the ordinary procedure necessarily involves. One further remark I would make, and that is, that even if no appeal lies from the District Court's decisions, there is no reason why the High Court should not, under section 622 of the Civil Procedure Code, set right any illegality or material irregularity in that Court's proceedings. It seems to me, therefore, that no case has been made out for adding the words proposed by the Honourable Mr. Telang and even if it were desirable to add them, that this Council should not attempt to add to the powers of the High Court.

The Honourable the ADVOCATE-GENERAL :—Your Excellency,—As to the power of this Council to give the right of appeal to the High Court, it is quite clear we cannot directly interfere with or take away from the jurisdiction of the High Court. But there is a qualification ; for though we cannot so interfere directly, we can do so indirectly, and thus affect the jurisdiction of the High Court. This Council can increase or diminish the jurisdiction of the District Courts. It seems to me that the Honourable Mr. Telang's purpose is met without expressly giving the right of appeal to the High Court. I think there is clearly under the section as drawn an appeal from the District Court on a point of law, and nothing more is necessary.

The Honourable Mr. TELANG :—Yes, I think so too, as I have said already ; and rather than take the risk of doing what may be *ultra vires* of this Council, I ask Your Excellency's leave to withdraw the amendment.

The amendment was accordingly withdrawn.

The Honourable Mr. RICHEY proposed the following amendment :—

"In section 24, sub-sections (2) and (3), insert the word *mortgagee* after the word 'any' in line 15, after 'such' in line 18, and after 'co-sharer' in line 21."

He said :—Your Excellency,—By this section we are able to assess area and to show exactly what each holder of land in a táluka ought to pay as his *quotum*. The first person to pay is the tálukdár himself ; if he fails, then his co-sharers who pay their respective quota, or any person holding a similar portion of land. We go direct to the inferior holders, but we did not specify the mortgagee who stands as the registered tálukdár himself and it is right to go to him before going to his tenants, and so we propose to specify him.

The Honourable the ADVOCATE-GENERAL :—Does not the honourable gentleman contemplate the *mortgagee in possession*? Otherwise the mortgagee may be residing in Bombay or elsewhere, and have no connection with the land.

The Honourable Mr. RICHEY :—It does not matter where he resides so long as he receives the rents.

The Honourable Mr. NAYLOR :—Whether the mortgagee is in possession or not he is liable.

The Honourable the ADVOCATE-GENERAL :—Surely not, unless he is in receipt of the rents.

The Honourable Mr. TELANG :—No, and he ought not to be made liable.

The Honourable Mr. RICHEY :—We want to get at the man who receives the rents.

The Honourable the ADVOCATE-GENERAL :—Then it is advisable to specify the *mortgagee in possession.*

The Honourable Mr. NAYLOR :—The words "in possession" will cover the case of a man who has virtual possession as well as that of one who has physical possession, and I think the honourable member in charge of the Bill may accept them.

The Honourable Mr. RICHEY :—Then if the Council will allow me I will add the words "in possession" after the word *mortgagee.*

This was agreed to, and the amendment as thus qualified was adopted.

The Honourable Mr. TELANG moved the following amendment :—

"Section 26, instead of (2) insert the following :— (2). When any estate is so attached and taken under management it shall be lawful for the tálukdár to apply to the District Court by petition for the restoration of the management of such estate to him. And the District Court shall, after hearing evidence, make an order for such restoration, unless it is satisfied that there is reason to apprehend danger to the peace of the country or injury to the well-being of the inferior holders in the event of such restoration being ordered."

He said :—Your Excellency,—This is one of the sections about which I have said in signing the report of the Select Committee that I would take objection in Council, not being able to reconcile myself to the views of Sir James Peile and the Honourable Mr. Richey. As the first portion of the section deals with matters that may endanger the peace of the country and must therefore be dealt with by the Executive Government

on its own responsibility, I am content to leave that part alone. But the latter part of the section provides that—

> "When any estate is so attached and taken under management, the management thereof shall not be restored to the tálukdár until it is shown, to the satisfaction of the Governor in Council, that no reason for any such apprehension as aforesaid any longer exists."

The clause as it stands would have no real effect whatever, for the tálukdár would never be in a position to claim restitution under it. We know that when such charges are made against him as are contemplated in this provision, it will be a great undertaking for him to convince the Governor in Council that any such "reasonable apprehension" no longer exists. I believe the clause I propose will meet the just requirements of the case. Under that clause the matter will be discussed in open Court and the procedure strictly in accordance with the usual course. It does not seem to me right that the authority which orders the sequestration as a measure of executive administration should also judicially decide as to the restoration. Besides I think the onus of proof should be thrown upon the former authority and the land should be restored unless that authority can show reason why it should not. I cannot concur in the view, that because the sequestration will be ordered by so high an authority as the Governor in Council, therefore when it comes to be judicially investigated, the landowner should have the burden thrown on him of showing that his rights of property have been improperly interfered with.

The Honourable Mr. RICHEY :—Your Excellency,—I do not altogether share the Honourable Mr. Telang's apprehensions upon this point as to possible injustice or hardship. The onus of proof being thrown upon Government or its officer, no officer would ever be particularly anxious to put his powers into operation. But the District authorities and the power of appeal from them are known to the very meanest in the country, so that it is not possible to suppose any hardship would escape coming to the knowledge of Government. At the same time I feel the necessity of giving a man an easy course of judicial procedure and it seems perhaps ungracious not to specify it and I have, therefore, drafted a clause which I will ask the Council to adopt. It is to add to section 26 (2) and to let it read :—

> "When any estate is so attached and taken under management, the sharers or any one or more of the sharers therein may at any time apply to the District Magistrate to restore the management thereof; and if the applicants shall prove to the satisfaction of the District Magistrate that no reason for any such apprehension as aforesaid any longer exists, the District Magistrate may order restoration of the management to be made to the tálukdár."

This, I think, will meet his view.

The Honourable Mr. TELANG :—I was thinking whether the District Magistrate would not be the original authority from whom this matter would come before Government. Would it not then be an appeal from himself to himself?

The Honourable Mr. NAYLOR :—No; the Collector would merely be the Post Office through whom it would pass. The recommendation to attach would really be that of the Tálukdári Settlement Officer.

The Honourable Mr. MEHTA :—It scarcely seems the right course.

The Honourable the ADVOCATE-GENERAL :—The only difficulty about the Honourable Mr. Telang's amendment is the chance of creating a conflict between the executive and the judicial authorities; for after the District Court had restored the management to the tálukdár, the executive power might at once deprive him of it again. I am not in favour of this, and prefer the Honourable Mr. Richey's amendment to that of the Honourable Mr. Telang.

The Honourable Mr. MEHTA :—Leave it open as to whether the registered tálukdár gets a copy of the reasons on application.

The Honourable Mr. TELANG :—There is much force in the reasons of the Honourable the Advocate-General. I will accept the Honourable Mr. Richey's amendment.

The Honourable Mr. Richey's amendment was accepted with these alterations in section 26 (1), *viz.*:—after the word "purpose" in section 26 (1) add the words *and on*

the application of any registered tálukdár or co-sharer the Collector shall furnish him with a copy of the reasons on which the orders of Government were passed.

The Honourable Mr. RICHEY then moved to add the following proviso to section 27A:—

"(2) Provided that no such application shall be entertained in respect of an undivided share of a tálukdári estate nor, except with the consent of all the co-sharers, in respect of an estate which is held by co-sharers."

He said:—Your Excellency,—Section 27A was inserted to enable the Settlement Officer to take up the management of an estate at a tálukdár's request and occasions frequently arise in which they make such requests. The consequence of the Tálukdári Settlement Officer taking over management of an indebted estate is that money can be borrowed at 5 or 6 per cent. instead of 12 per cent. which the tálukdár has to pay; this reduction of interest admits of the creation of a sinking fund. It enables the tálukdárs to pay their debts and so the procedure is very acceptable. The provision is similar to that in the Court of Wards Act of the North-West Provinces. The addition to the section now proposed was drafted in order to prevent complication by the assumption of management of an undivided share by the Tálukdári Settlement Officer. As a sharer can now speedily and cheaply get partition, it is better that this should precede management by the Táukdári Settlement Officer.

The amendment was accepted.

The Honourable Mr. TELANG moved the following amendment:—

"Section 32 (*e*).—For the last 11 lines beginning with "and provided also" to "this section," substitute the following words:—and provided also that when the estate ceases to be under the management of Government officers, the possession and enjoyment thereof shall revert to the tálukdár, subject only to such agreements as shall have been made in conformity with the provisions of section 28 of the Gujarát Tálukdárs' Act."

He said:—Your Excellency,—The result of this section as it stands would be that during the period of temporary management the old tenants-at-will may be converted into holders with occupancy-right as against the tálukdárs, and this is neither desirable nor just. Under section 28 the provision is this, that no agreement entered into by a Government officer managing an estate under section 26 in respect of any land in such estate shall be for a period exceeding five years from the date thereof and that no such agreement by a Government officer managing an estate under section 27 shall have effect beyond the end of the revenue year in which such officer's management determines, unless the same is ratified by the co-sharer to whose share the said land is finally allotted when the partition of the estate is completed. That seems to me to be quite sufficient. The words as they stand in the Bill before us seem to cover a somewhat larger field than will be included in the words I have suggested, and I think we ought to limit it in the mode I have suggested.

The Honourable Mr. RICHEY:—By section 28 (2) the powers of an officer managing a tálukdár's estate are limited, when the management is due to partition, to giving leases to expire with his management; when the management is due to disputes and is under section 26, he can give leases for five years. The section to which the Honourable Mr. Telang's amendment relates, deals with management on account of arrears of revenue as provided in the Land Revenue Code. Under that law the Collector, managing an estate on account of default of revenue payment, can sell occupancy-rights without any limitation of tenancy. This law applies to the estates of inámdárs, and I cannot see why tálukdárs should be put under a different law. I have very little sympathy, considering how moderate our demands are, with the tálukdár who does not meet them. If an estate has got into such a condition that the Government demand cannot be raised, it is most expedient that the greatest security possible should be offered to cultivators in order to restore the estate, and it is surely more to the advantage of the defaulter that occupancy of his lands should be sold than that the Collector should exercise the power of selling the tálukdár's rights as he might do. I congratulate my honourable friend Mr. Telang upon his scrupulous regard for the rights of property; it is gratifying to see that they are still respected here, though in other countries just now they are being threatened, still we need not carry our scruples too far. As the object of attachment is to clear

off debt to Government, it must be remembered that a lease for five years may be value less if an unscrupulous, tyrannical or rapacious landlord is liable to return to possession.

The Honourable Mr. NAYLOR :—Your Excellency,—I would like to make a few observations upon this point. The Honourable Mr. Telang's proposal is that the last provision of section 111 of the Land Revenue Code, as it is proposed by section 32 of the present Bill to amend it, shall run "and provided also that when the estate ceases to be under the management of Government officers, the possession and enjoyment thereof shall revert to the tálukdár, subject only to such agreements as shall have been made in conformity with the provisions of section 28 of the Gujarát Tálukdárs' Act." If we turn to section 28 of the Bill we find in sub-section (2) two kinds of agreements spoken of, *viz.* agreements which the officer managing an estate under section 26 is empowered to enter into and agreements which an officer managing an estate under section 27 is empowered to enter into. The first class of agreements are to be for a period not exceeding five years from the date thereof, and an agreement of the second class must be such that it shall not have effect after the end of the revenue year in which the officer's management determines, "unless the same is ratified by the co-sharer to whose share the said land is finally allotted when the partition of the estate is completed." The question then arises which class of agreements does the honourable gentleman's motion refer to? Does he mean that in no case in which an estate is under the management of Government officers shall any agreement for a lease or for the management of land be for a term in excess of five years from the date thereof, or that every such agreement shall terminate at the end of the revenue year in which the Government officer's management ceases? The two things are perfectly distinct, and if the honourable member's amendment is to be carried in any form, I would suggest that this ambiguity about it should be cleared away. But I also deprecate the passing of the amendment at all. Section 111 of the Land Revenue Code is a section taken, when that code was passed, from the previous Bombay Survey Act (Bo. Act I of 1865), section 34, and the law which that section contains has been the law of this presidency for at least the last twenty-three years. The purport of the section is that if an alienated village or estate comes under the temporary management of a Government officer it shall be lawful for that officer to sell the occupancy-right of lands by auction and to conduct the revenue management thereof under the same rules which apply to unalienated lands. It enables the Collector, when an inámdár's estate comes under his temporary management, to introduce into it a survey settlement, and to conduct the revenue administration of the estate upon principles precisely similar to those which prevail in Government villages; and by section 217 of the Land Revenue Code it is enacted that when a survey settlement has been introduced under the provisions of any law for the time being in force into any alienated village, holders of land in that village enjoy the same benefits as holders of land in surveyed Government villages. This is the general law of this presidency, *viz.* that if owing to any default of payment of land revenue on the part of the holder of an alienated village, that village comes under the management temporarily of Government officers, the Collector steps in and manages the village precisely as if it were a Government village, taking the Government revenue and keeping the balance of the realizations for the benefit of the inámdár. If the inámdár makes application within the proper time for restitution of the village he may have it back, but he takes it subject to the survey rules. The question is whether this general law should be applied to tálukdárs or not, and I think that it should, for they have no good claim to exemption from any of the general provisions of the Land Revenue Code. The only object of amending section 111 and placing it in the form in which it is given in section 32 of the Bill is to take from it the terms which are inapplicable to tálukdárs. It will be observed that section 32 (1) provides that section 217 of the Bombay Land Revenue Code shall not apply to tálukdári estates, but as regards such estates the purpose of that section will be effected by the last proviso to the amended section 111 of that code, contained in section 32 (2) (*e*) of the Bill. This proviso, which is the one which the Honourable Mr. Telang seeks by his motion to amend, is, therefore, merely an incorporation of the general law of the presidency, and it should be allowed to stand. The Bill is more liberal to tálukdárs than is the Revenue Code to inámdárs; for section 111 of the code applies to the estates of the latter, whatever be the course of their coming under the temporary management of Government officers. But section 28 of the Bill exempts tálukdárs from the ordinary consequences of management by Government officers in certain cases. There is an express provision in sub-section (2) of that section that if the

management is taken up temporarily by Government officers owing to the existence of disputes between co-sharers under circumstances which may lead to a possible danger to the peace of the country or to injury to the well-being of the inferior holders, the power of the manager shall be limited to granting agreements for five years. And we have in the same sub-section a further saving provision for the benefit of tálukdárs that any agreement a managing officer enters into during his management of an estate which is under attachment pending the completion of a partition shall not extend beyond the end of the revenue year in which such office's management determines. Then there is the third case provided for in section 27 A of the Bill. By that section the Tálukdári Settlement Officer is empowered to take up the management of a tálukdár's estate at the request of the tálukdár himself. In this third case the management will be by agreement of the tálukdár only, and it is obivous that it will be open to the tálukdár to stipulate, if he thinks fit, that section 111 of the Land Revenue Code shall not be held to apply to the management. Thus three cases of management of tálukdárs' villages are exempt from the provisions of section 111 of the Land Revenue Code. The only other case in which it is likely that Government officers will have to manage a tálukdár's estate is if the tálukdár should make default in payment of the land revenue due by him. In that case I think the Council will concur with me that it is not desirable that tálukdárs should be exempt from what I have shown to be the ordinary law of this presidency.

The Honourable the ADVOCATE GENERAL:—I would suggest as a means of meeting the difficulty that we add to section 28 (2) words which shall include all agreements, say "provided that no sale of occupancy-rights or agreement entered into, &c."

The Honourable Mr. TELANG's amendment was withdrawn in favour of the following alteration in section 28 which was accepted, *viz.* the insertion of the words *sale of occupancy-rights or* after the word "no" in line 10 and after "such" in line 15.

The further consideration in detail of the Bill was postponed till the next meeting.

His Excellency the President then adjourned the Council.

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

J. J. HEATON,
Secretary to the Council of His Excellency
the Governor for making Laws and Regulations.

Poona, 15th September 1888.

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