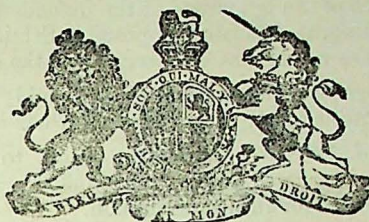


THE



Bombay Government Gazette.

Published by Authority.

SATURDAY, 18TH DECEMBER 1875.

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 Report of the Select Committee of the Council of His Excellency the Governor of Bombay on the "Bill to consolidate and amend the Law relating to the powers and procedure of Mamlatdars' Courts," and the Bill as amended by the Committee are, in accordance with Rule 25 of the Rules for the conduct of Business at Meetings of the Council, published for general information:—

REPORT of the Select Committee appointed to consider the "Bill to consolidate and amend the Law relating to the powers and procedure of Mamlatdars' Courts."

The Select Committee appointed to consider and report on Bill No. V. of 1875 (a Bill to consolidate and amend the Law relating to the powers and procedure of Mamlatdars' Courts), beg to submit to the Council the following Report.

2. The Committee have considered the provisions of the Bill and approve its principle. They have made verbal alterations, the object of which will, they think, be sufficiently apparent from a perusal of the amended draft which accompanies this report. The following are, however, some of the points which the Committee consider deserving of notice.

The word use has been uniformly adopted in preference to the term enjoyment or right.

The IVth Section has been rendered clearer by the addition of four illustrations, which will serve to illustrate the proviso attached to that section. In the same section, instead of the expression "the right of way to any land," the words "of the use of roads to fields" have been adopted from Regulation XVII. of 1827, Section 31, Clause 4.

In the XIth Section it seemed desirable to fix a date earlier than which the trial of the case should not commence except with the consent of both parties. By this means the defendant will be enabled to prepare his defence, and in order to prevent a decision being given *ex-parte* in consequence of the ignorance of the defendant, whether by fraud or accident, that the case was pending, it has been proposed in Section XIII. that the Mámlatdár should satisfy himself that the notice was duly served on the defendant.

The Committee see no reason why the defendant should not appear by duly authorised agent, and the form of notice to be served upon him has been altered accordingly.

Some of the members of the Select Committee object to the execution of the decrees of Mámlatdárs' Courts being entrusted to the village officers, but the further consideration of this subject has been reserved for future discussion.

The Committee have obtained a return showing the number of cases decided during the past two years in each district of the Presidency by the Mámlatdárs and Máhalkaris under the provisions of Bombay Act V. of 1864, a copy of which is appended to this report.

(Signed) A. ROGERS.
 „ J. GIBBS.
 „ W. C. ANDERSON.
 „ VISHVANATH NARAYAN MANDLIK.
 „ BECHERDASS AMBAIDASS.

17th December 1875.

Number of Cases decided by Mámlatdárs and Máhalkaris under Act V. of 1864.

	1873-74.	1874-75.
Ratnágiri	435	681
Khandesh	318	299
Kaira	496	537
Colaba	82	61
Belgaum	75	195
Kanara	43	69
Tanna	254	274
Broach	165	183
Panch Máháls	84	56
Surat	84	56
Dharwar... ..	69	185
Ahmedabad	28	158
Kaládgi	276	229
Sholapur	349	247
Násik	269	284
Satara	929	958
Ahmednagar	336	300
Poona	655	485

Bill No. 5 of 1875.

A Bill to consolidate and amend the Law relating to the powers and procedure of Mámlatdárs' Courts.

WHEREAS it is expedient to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts; It is hereby enacted as follows:—

I. This Act may be called "The Mámlatdárs' Courts Act, 1875."

Short Title.

II. Clause 2, Section I. of Act XVI. of 1838 and (Bombay)

Repeal of Acts. Act V. of 1864 are repealed: and all refer-

ences made to either of the above Acts so repealed in subsequent Acts shall be read as if made to this Act.

III. In this Act, unless there be some-

Interpretation Clause. thing repugnant in the subject or context,—

(1.) The word "Mámlatdár" shall include any Revenue Officer ordinarily exer-

cising the powers of a Mámlatdár or any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mámlatdár under this Act;

(2.) The words "Plaintiff" and "Defendant" shall include the recognized Agents of a plaintiff or de-

fendant as defined in Section 17 of the Code of Civil Procedure (Act VIII. of 1859).

IV. It shall be lawful for Mámlatdárs' Courts within the ter-

Mámlatdárs' Courts may give immediate possession of lands, &c., and maintain existing possession.

ritories in their revenue charge to give immediate possession of all lands, premises, trees, crops, fisheries, as well as of the use of water from wells, tanks, canals, or water-courses, or of the profits thereof to any party dispossessed of the same, otherwise than by due course of law, and also in cases in which a disturbance of the possession of any lands, premises, trees, crops, or fisheries, or of the use of water from any well, tank, canal, or water-course, or of the use of roads to fields is attempted by any party, to issue an injunction to such party to refrain from such disturbance:

Provided that application be made within six months after dis-

possession or attempted disturbance. Provided that application be made to them by the party aggrieved within six months from the date of such dispossession, or of such attempted disturbance.

Illustration I.

A lets B his field to cultivate for a specific period of one or more years. B refuses to resign possession after the expiration of that period. A can sue for possession in the Mámlatdár's Court at any time within six months from the date of the expiration of the said period.

Illustration II.

B is a yearly tenant of A, who gives him notice to vacate six months before the commencement of the next cultivating season (Bombay Act I. of 1865, Section 43, Clause 2). At the expiration of that period B refuses to vacate. A can sue B in the Mámlatdár's Court at any time within six months from the expiration of such notice.

Illustration III.

A lets B the use of water from his well, or from his water-course for a specific period, at the expiration of which B continues to take water from the well or water-course. A may sue B in the Mámlatdár's Court at any time within six months from the expiration of the said period to obtain an injunction to stop B from taking the water.

Illustration IV.

A and B hold lands adjacent to an artificial water-course which has hitherto been exclusively used by B. A draws water therefrom. B may sue in the Mámlatdár's Court at any time within six months from the date on which A commences to take the water, for an injunction to prevent A from so doing.

V. All suits under this Act shall be commenced by a Suits to be commenced by a plaintiff. Particulars to be given in plaintiff. Court by the plaintiff, and which shall contain the following particulars:—

1. The name, caste, profession, and place of abode of the plaintiff.
2. The name, caste, profession, and place of abode of the defendant.
3. The nature and situation of the property of which, or of the profits of which, possession or use is sought, or the nature of the injunction to be granted as the case may be.
4. The date on which the dispossession or unlawful possession or use commenced or was attempted.
5. The means by which the defendant obtained or attempted to disturb possession.

6. A list of the plaintiff's documents, if any, or of his witnesses, and what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be appointed according to Section XI. of this Act.

VI. When the plaintiff is presented, the Mámlatdár shall require the plaintiff to subscribe and verify the plaintiff in his presence, in open Court, in the manner following, or to the like effect:—

“I, A. B., the plaintiff, do declare that what is stated in this plaintiff is true, to the best of my information and belief.”

VII. The Mámlatdár shall endorse the plaintiff to the effect that it was duly subscribed and verified. In case the plaintiff cannot write, the verification may be written for him in open Court, and the Mámlatdár shall, in such case, state that the verification was made in his presence, at the request of the plaintiff, who affixed his mark to his name in token of the authenticity of the verification.

VIII. If the plaintiff do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those specified, whether relevant to the plaintiff or not, or if the statement of particulars be unnecessarily prolix, the Mámlatdár may order the plaintiff to be amended within 3 days from the date of such order.

IX. If the plaintiff decline to subscribe or verify the plaintiff as hereinbefore required, or to amend the same as directed by the Mámlatdár, or if it appear upon the face of the plaintiff, or after questioning the plaintiff, that the plaintiff was dispossessed or that the disturbance of possession or use was attempted more than six months before the plaintiff was presented, the Mámlatdár shall reject the plaintiff.

X. If it appear to the Mámlatdár that the subject of the plaintiff is not within his jurisdiction, he shall return the plaintiff in order to its being presented in the proper Court.

XI. If a plaintiff is admissible, the Mámlatdár shall receive and file it. He shall then appoint a convenient day and place for the trial of the case. The plaintiff shall be required to appear with his documents and witnesses on the day and at the place appointed, of which ten days' notice in the form of Schedule A shall be issued at the plaintiff's expense to the defendant.

The date to be fixed for the trial shall not be earlier than 10 days except by consent of both parties, nor except for unavoidable reasons later than 15 days from the day on which the plaintiff is filed.

XII. If either party require his witnesses to be summoned to appear on the day and at the place appointed, the Mámlatdár shall issue summonses for that purpose. The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be made by the High Court in regard to the payment of witnesses.

XIII. If the plaintiff fails to attend with his proofs, or omits to adopt measures to procure the attendance of his witnesses on the day and at the place appointed, the Mámlatdár shall reject the plaintiff with costs.

If the defendant fails to attend, and the Mámlatdár is not satisfied from the evidence before him that the notice has been duly served on the defendant, and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear the plaintiff *ex parte*.

Provided that if either party satisfy the Mámlatdár at any time within 15 days from the date of the plaintiff being thus rejected, or of such *ex parte* decision, that he was prevented by some unavoidable cir-

cumstance from being present, or from procuring the attendance of his witnesses, it shall be lawful for the Mámíatdár to re-hear the case, a notice in the form of Schedule B being issued, at the applicant's expense, to the opposite party.

XIV. If any witnesses who have been duly summoned fail to attend on the day and at the place appointed, the Mámíatdár may, if he considers there is sufficient reason after taking the evidence of those that are present, adjourn the hearing of the suit from time to time till the attendance of the witnesses can be enforced.

The provisions of Section 13 shall apply on any date to which the proceedings may be adjourned under this Section, as if such date were the day originally fixed for the hearing.

XV. On the day appointed the Mámíatdár shall proceed to hear all the evidence that is then and there before him, and to try the following issues, viz. :—

(a). If the plaintiff avers that he has been dispossessed :

- (1). Whether the plaintiff or any person on his behalf was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed.
- (2). Whether the defendant is in possession at the time of the suit, and if so whether he obtained possession otherwise than by due course of law.

(b). If the plaintiff avers that he is still in possession, but that the defendant has attempted to disturb him in his possession :

- (1). Whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed.
- (2). Whether the defendant has, at any time within six months before the suit was filed, attempted to dispossess or oust the plaintiff otherwise than by due course of law.

If the Mámíatdár's finding upon these issues be in favour of the plaintiff, he shall award him immediate possession or grant the injunction prayed for, as the case may be.

The Mámíatdár's award if in defendant's favour. If his finding be in favour of the defendant, he shall reject the plaintiff.

In either case the Mámíatdár shall direct by whom the costs of the suit, including the costs of execution, are to be paid.

XVI. Every order of the Mámíatdár whether for rejecting or returning a plaintiff, or whether for allowing or disallowing the claim, shall be endorsed by the Mámíatdár on the plaintiff, who shall also place on record his reasons for the same.

XVII. If the Mámíatdár's decision be for awarding possession or restoring a use, he shall issue an order to the Village Officers to give effect thereto.

If it be for granting an injunction, he shall cause the same to be prepared in the form of Schedule C, and shall deliver or tender the same then and there to the defendant, if he be present, and if he be not present, shall send it to the Village Officers to be served upon him.

If the Mámíatdár awards costs, he shall require the party by whom they are declared payable to pay the same then and there ; if he fail to do so or to give security for the payment within days, or if he is not present, he shall cause the amount thereof, together with costs of execution, to be recovered as if it were a revenue demand : Provided that in the recovery of any such amount the Mámíatdár shall not be entitled to claim any special precedence which he might be entitled to claim on account of a Government demand.

XVIII. The party to whom the Mámíatdár shall give immediate possession, or in whose favor an injunction has been granted, shall continue in possession until ejected in execution of a decree of a Civil Court :

Provided that nothing in this Section shall prevent the party against whom the Mámíatdár's decision is passed from recovering by a suit in the Civil Court mesne profits for the time he may be kept out of possession :

Provided further that the Mámíatdár's decision shall not be accepted in any Civil Court as conclusive proof on any of the points decided by him, anything in any law for the time being in force to the contrary notwithstanding.

The Mámíatdár's award, if in favour of the plaintiff.

6. A list of the plaintiff's documents, if any, or of his witnesses, and what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be appointed according to Section XI. of this Act.

VI. When the plaint is presented, the Mámlatdár shall require the plaintiff to subscribe and verify

Plaint to be subscribed and verified.

the plaint in his presence, in open Court, in the manner following, or to the like effect :—

“I, A. B., the plaintiff, do declare that what is stated in this plaint is true, to the best of my information and belief.”

VII. The Mámlatdár shall endorse the plaint to the effect

Mámlatdár to endorse the verification. Procedure in case plaintiff cannot write.

that it was duly subscribed and verified. In case the plaintiff cannot write, the

verification may be written for him in open Court, and the Mámlatdár shall, in such case, state that the verification was made in his presence, at the request of the plaintiff, who affixed his mark to his name in token of the authenticity of the verification.

VIII. If the plaint do not contain the several particulars

Mámlatdár may allow plaint to be amended, if it do not contain the required particulars, &c.

hereinbefore required to be specified therein, or if it contain particulars other than

those specified, whether relevant to the plaint or not, or if the statement of particulars be unnecessarily prolix, the Mámlatdár may order the plaint to be amended within 3 days from the date of such order.

IX. If the plaintiff decline to subscribe

The Mámlatdár may reject plaint, if plaintiff refuse to verify or subscribe the plaint, or if the claim appear to be barred.

or verify the plaint as hereinbefore required, or to amend the same as directed by the Mámlatdár, or if it appear upon the face

of the plaint, or after questioning the plaintiff, that the plaintiff was dispossessed or that the disturbance of possession or use was attempted more than six months before the plaint was presented, the Mámlatdár shall reject the plaint.

X. If it appear to the Mámlatdár that

Plaint to be returned, if it appear to the Mámlatdár that he has no jurisdiction.

the subject of the plaint is not within his jurisdiction, he shall return the plaint in

order to its being presented in the proper Court.

XI. If a plaint is admissible, the Mám-

Procedure when plaint is admissible.

latdár shall receive and file it. He shall

then appoint a convenient day and place for the trial of the case. The plaintiff shall be required to appear with his documents and witnesses on the day and at the place appointed, of which ten days' notice in the form of Schedule A shall be issued at the plaintiff's expense to the defendant.

The date to be fixed for the trial shall not be earlier than 10 days except by consent of both parties, nor except for unavoidable reasons later than 15 days from the day on which the plaint is filed.

XII. If either party require his wit-

Attendance of witnesses.

nesses to be summoned to appear on the

day and at the place appointed, the Mámlatdár shall issue summonses for that purpose. The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be made by the High Court in regard to the payment of witnesses.

XIII. If the plaintiff fails to attend

If the plaintiff makes default, his plaint to be rejected with costs.

with his proofs, or omits to adopt measures to procure the attendance of his wit-

nesses on the day and at the place appointed, the Mámlatdár shall reject the plaint with costs.

If the defendant fails to attend, and

If the defendant does not appear, the case to be heard *ex parte*.

the Mámlatdár is satisfied from the evidence before him

that the notice has been duly served on the defendant, and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear the plaint *ex parte*.

Provided that if either party satisfy the

But a case may be re-heard on sufficient cause being shown.

Mámlatdár at any time within 15 days from the date of the plaint being thus re-

jected, or of such *ex-parte* decision, that he was prevented by some unavoidable cir-

cumstance from being present, or from procuring the attendance of his witnesses, it shall be lawful for the Mámíatdár to re-hear the case, a notice in the form of Schedule B being issued, at the applicant's expense, to the opposite party.

XIV. If any witnesses who have been duly summoned fail to attend on the day and at the place appointed, the Mámíatdár may, if he consider there is sufficient reason after taking the evidence of those that are present, adjourn the hearing of the suit from time to time till the attendance of the witnesses can be enforced.

The provisions of Section 13 shall apply on any date to which the proceedings may be adjourned under this Section, as if such date were the day originally fixed for the hearing.

XV. On the day appointed the Mámíatdár shall proceed to hear all the evidence that is then and there before him, and to try the following issues, viz. :—

(a). If the plaintiff avers that he has been dispossessed :

- (1). Whether the plaintiff or any person on his behalf was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed.
- (2). Whether the defendant is in possession at the time of the suit, and if so whether he obtained possession otherwise than by due course of law.

(b). If the plaintiff avers that he is still in possession, but that the defendant has attempted to disturb him in his possession :

- (1). Whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed.
- (2). Whether the defendant has, at any time within six months before the suit was filed, attempted to dispossess or oust the plaintiff otherwise than by due course of law.

If the Mámíatdár's finding upon these issues be in favour of the plaintiff, he shall award him immediate possession or grant the injunction prayed for, as the case may be.

The Mámíatdár's award, if in favour of the plaintiff.

The Mámíatdár's award if in defendant's favour.

If his finding be in favour of the defendant, he shall reject the plaint.

In either case the Mámíatdár shall direct by whom the costs of the suit, including the costs of execution, are to be paid.

XVI. Every order of the Mámíatdár whether for rejecting or returning a plaint, or whether for allowing or disallowing the claim, shall be endorsed by the Mámíatdár on the plaint, who shall also place on record his reasons for the same.

XVII. If the Mámíatdár's decision be for awarding possession or restoring a use, he shall issue an order to the Village Officers to give effect thereto.

If it be for granting an injunction, he shall cause the same to be prepared in the form of Schedule C, and shall deliver or tender the same then and there to the defendant, if he be present, and if he be not present, shall send it to the Village Officers to be served upon him.

If the Mámíatdár awards costs, he shall require the party by whom they are declared payable to pay the same then and there ; if he fail to do so or to give security for the payment within days, or if he is not present, he shall cause the amount thereof, together with costs of execution, to be recovered as if it were a revenue demand : Provided that in the recovery of any such amount the Mámíatdár shall not be entitled to claim any special precedence which he might be entitled to claim on account of a Government demand.

XVIII. The party to whom the Mámíatdár shall give immediate possession, or in whose favor an injunction has been granted, shall continue in possession until ejected in execution of a decree of a Civil Court :

Provided that nothing in this Section shall prevent the party against whom the Mámíatdár's decision is passed from recovering by a suit in the Civil Court mesne profits for the time he may be kept out of possession :

Provided further that the Mámíatdár's decision shall not be accepted in any Civil Court as conclusive proof on any of the points decided by him, anything in any law for the time being in force to the contrary notwithstanding.

XIX. There shall be no appeal from any order passed by a Mámlatdár under this Act.

XX. If any plaintiff verified under this Act shall contain any statement which the plaintiff shall know or believe to be false, or shall not know or believe to be true, such plaintiff shall be subject to punishment according to the provision of any law for the time being in force for the punishment of persons intentionally giving or fabricating false evidence.

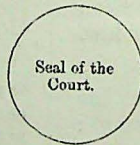
XXI. A charge of an offence under the foregoing section shall not be entertained in the Criminal Courts, except with the sanction of the Mámlatdár's Court to which the plaintiff containing a false statement was presented, or of some other Revenue Officer to whom such Mámlatdár is ordinarily subordinate. Such sanction shall not be given after the expiration of one month from the date of the inquiry required to be made under Section XV. of this Act.

XXII. When a Mámlatdár's Court is of opinion that there is sufficient ground for investigating a charge under Section XX. of this Act, it shall, after making such preliminary inquiry as may be necessary, send the case to the Magistrate of the District, who shall either try or commit for trial the accused for the offence charged, or shall send the case for investigation to any Magistrate having power to try or commit for trial the accused for the offence charged, and such Magistrate shall thereupon proceed according to law.

XXIII. The Mámlatdár's Court when determining to send the case to the District Magistrate shall take sufficient bail for the appearance of the accused person before such Magistrate as shall thereafter be appointed by the District Magistrate to investigate the case, or in default may detain him in custody, and shall report the fact to the District Magistrate, and may bind over any person to appear and give evidence on the investigation of the case.

SCHEDULE A.

(Form of Notice to be issued to the Defendant under Section XI.)



No. of SUIT.

In the Court of the Mámlatdár of

Plaintiff.

Defendant.

To the Defendant—(name, caste, profession, and address).

Whereas (here enter the name, caste, profession and address of the Plaintiff) has instituted a suit in this Court against you (here state the particulars of the plaintiff), you are hereby summoned to appear in this Court at the village of _____ in person or by duly authorized agent on the _____ day of _____ at _____ o'clock, to answer the abovenamed Plaintiff; and as the plaint will be finally disposed of on that day, you must

adopt measures to produce your documents and procure the attendance of your witnesses at the hour and place above appointed ; and you are hereby required to take notice that, in default of such appearance at the before mentioned time and place, the suit will be heard and determined in the absence of yourself or your agent.

(Signed)

Mámlatdár.

Note.—If you require your witnesses to be summoned by the Court, you should make an application to that effect to the Court without delay, so as to allow of the service of the summonses a reasonable time before the within mentioned date.

SCHEDULE B.

(Form of Notice to be issued under Section XIII.)



No. OF SUIT.

In the Court of the Mámlatdár of

Plaintiff

Defendant.

To Plaintiff (or Defendant, *as the case may be*) inhabitant of

Whereas, in the suit above specified, instituted in this Court by the said Plaintiff the Court ordered on the _____ day of _____ last that and the said Plaintiff (or Defendant, *as the case may be*) has, under date the _____ day of _____, applied to this Court to re-hear the case, and the Court has granted his said application.

This is to give you notice that the said suit will be re-heard and determined on the _____ day of _____ at _____ o'clock at the village of _____, at which time and place you must take measures to produce your documents and procure the attendance of your witnesses, and you are hereby required to take notice that in default of your appearance personally or by agent at the abovementioned time and place, the suit will be re-heard and determined in your absence.

Dated this _____ day of _____

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(Signed)

Mámlatdár.

Note.—If you require your witnesses to be summoned by the Court, you should make an application to that effect to the Court without delay, so as to allow of the service of the summonses a reasonable time before the within mentioned date.

