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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 Bill, together with the Statement of Objects and Reasons accompanying it, is published in accordance with Rule 15 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. 5 of 1876.

*A Bill to prohibit the practice of Inoculation, and to make the Vaccination of Children in the City of Bombay compulsory.*

WHEREAS it is expedient to prohibit the practice of inoculation and to make the vaccination of children in the City of Bombay compulsory ; It is enacted as follows :—

#### *Preliminary.*

1. This Act may be cited as "The Bombay Vaccination Act, 1877."
- Short title.
- Local extent. It extends only to the City of Bombay.
- Commencement. It shall come into force on such day as the Governor in Council directs by notification in the *Bombay Government Gazette*, and its operation may at any time be suspended by the Governor in Council by notification in the said *Gazette*.

2. In this Act, unless there be something repugnant in the subject or context :
  - (1.) "Parent" includes the father and mother of a legitimate child and the mother of an illegitimate child ;
  - "Parent."
  - (2.) "Guardian" means any person to whom the care, nurture, or custody of any child falls by law, or by natural right or recognized usage, or who has accepted or assumed the care, nurture, or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf ;
  - "Guardian."
  - (3.) "Public Vaccinator" means any "Public Vaccinator." vaccinator appointed

under this Act, or any deputy duly authorized to act for such Public Vaccinator ;

(4.) "Medical Practitioner" means any person duly qualified by a diploma, degree, or licence to practise in medicine or surgery, or specially licensed by the Governor in Council to practise vaccination and grant certificates under the provisions of this Act ;

(5.) "Unprotected Child" means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible to vaccination.

#### *Establishment.*

3. For the purposes of this Act the Sanitary Commissioner for the Presidency of Bombay, or such other officer as Government directs, shall divide the City of Bombay into as many districts for the performance of vaccination as he shall from time to time deem fit. Each such district shall be called "a Vaccination District."

The Sanitary Commissioner or other officer aforesaid, shall appoint a Public Vaccinator for every Vaccination District, and shall appoint such places as he shall from time to time deem fit in each district to be stations for the performance of vaccination. Such stations shall be called "Public Vaccine Stations."

The limits of the Vaccination Districts made, and the positions of the Public Vaccine Stations fixed under the provisions of this section, and the days and hours of the Public Vaccinator's attendance at each station, shall be published from time to time in such manner as shall be directed in rules to be framed under section thirty of this Act.

4. Every Public Vaccinator shall reside within the district for which he is appointed, and shall cause his name, with the addition of the words "Public Vaccinator for the District of \_\_\_\_\_", to be posted up in some conspicuous place on or near the outer door of his dwelling-house and of every public vaccine station in his district.

5. No person shall be appointed a Public Vaccinator, or act as a deputy for a Public Vaccinator, who shall not possess a certificate of qualification signed by the Sanitary Commissioner ; but it shall be lawful for any medical practitioner to practise vaccination.

6. A Superintendent of Vaccination shall be appointed by the Superintendent of Government, who, subject to the orders of Government, shall have a general control over all the proceedings of Public Vaccinators, and shall perform such duties, in addition to those prescribed by this Act, as shall be required by Government.

The Superintendent shall have one or more Assistants as Government may from time to time direct.

#### *Vaccination.*

7. The parent or guardian of every child born in the City of Bombay shall, within six months after the birth of such child, and

the parent or guardian of every unprotected child under the age of fourteen years brought to reside in Bombay, whether temporarily or permanently, in the City of Bombay, shall, within three months after such child's arrival in the city, or if the child be at the time of its arrival less than three months old, within six months after its birth, and

the parent or guardian of every unprotected child living in the City of Bombay at the date of this Act coming into force, and whose age at such date exceeds six months, but does not exceed fourteen years, shall, within six months from the said date,

take it, or cause it to be taken, to a Public Vaccinator to be vaccinated, or must procure their vaccination. shall, within such period as aforesaid, cause it to be vaccinated by some medical practitioner ;

and the Public Vaccinator to whom such child, or to whom any child under the age of fourteen years is brought for vaccination, shall be bound to vaccinate all children brought to him.

tion, is hereby required, with all reasonable despatch, subject to the conditions hereinafter mentioned, to vaccinate such child.

8. At an appointed hour upon the same day in the following week after vaccination shall have been performed by a Public Vaccinator or a medical practitioner, or on an earlier day, if the Public Vaccinator or medical practitioner so desires, the parent or guardian shall again take the child, or cause it to be taken, to the Public Vaccinator or to the medical practitioner by whom the operation was performed, that he may inspect it and ascertain the result of the operation, and, if he see fit, take from such child lymph for the performance of other vaccinations;

In the event of the vaccination being unsuccessful, such parent or guardian shall, if the Public Vaccinator or medical practitioner so direct, cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

9. If any Public Vaccinator or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate under his hand according to the form of Schedule A, hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

The said certificate shall remain in force for two months only, but shall be renewable for successive periods of two months until a Public Vaccinator or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule C, hereto annexed, according to the provisions of section eleven of this Act, if warranted by the result.

At or before the end of each successive period, the parent or guardian shall take, or cause the child to be taken, to some Public Vaccinator or medical practitioner, who shall then examine the child and give a fresh certificate according to the said form A, so long as he deems requisite under the circumstances of the case.

10. If any Public Vaccinator or medical practitioner shall find that a child whom he has three times unsuccessfully vaccinated is insusceptible of successful vaccination, or that a child brought to him for vaccination has already had the small-pox, he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule B, hereto annexed, or to the like effect, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

11. Every Public Vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child, and shall have ascertained that the same has been successful, shall deliver to the parent or guardian of such child a certificate according to the form of Schedule C, hereto annexed, or to the like effect, certifying that the said child has been successfully vaccinated.

12. No fee or remuneration shall be charged by any Public Vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine station.

But it shall be lawful for a Public Vaccinator to accept a fee for vaccinating a child, by request of the parent or guardian, elsewhere than at a public vaccine station.

#### Registration.

13. On the registration of the birth of any child under the provisions of Section 256 of the Bombay Municipal Act, 1872, or of any other law for the time being in force, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule D, hereto annexed, or to the like effect, and such notice shall have attached thereto the several forms of certificates prescribed by this Act.

14. Every Public Vaccinator or me-

medical practitioner who gives to any parent

Duplicates of all certificates to be transmitted to the Registrar.

or guardian a certificate in any of the forms of Schedules A, B, and C, hereto annexed, shall, within twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births of the district where the birth of the child on whose account such certificate was given has been registered, or if that be not known to him, or if the child was born out of the City of Bombay, or his birth has not been registered in the said city, to the Registrar of the district within which the child was vaccinated, or presented for vaccination.

15. The Registrar of Births shall keep a book, in such form as may from time to time be prescribed by the Sanitary Commissioner or other officer under section twenty-eight of this Act, in which he shall enter minutes of the notices of vaccination given by him as herein required, and shall also register the duplicates of certificates transmitted to him as herein provided.

Registrar to keep a vaccination-notice and certificate book;

16. He shall also prepare and keep a duplicate of the Register of Births required to be kept by him under the provisions of the Bombay Municipal Act, 1872, or of any other law for the time being in force, with such additional columns as shall from time to time be prescribed by the Sanitary Commissioner or other officer under section twenty-eight of this Act, in which he shall record the date of every duplicate certificate in the form of Schedule B or Schedule C, hereto annexed, received by him concerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated, or is insusceptible of vaccination, as the case may be.

17. He shall also keep a Register of Postponed Vaccinations in the form of Schedule E, hereto annexed, in which he shall record the name of every child, concerning whom he receives a duplicate certificate in the form of Schedule A, hereto annexed, together with the date of such duplicate certificate and of each such successive duplicate certificate, if he receives more than one, and shall show the number and year of the entry, if any, in the Register of Births in which such child's birth has been registered.

18. Every Registrar shall transmit on the first of every month to the Superintendent of Vaccination a return, in such form as may from time to time be prescribed by the Sanitary Commissioner or other officer under section twenty-eight of this Act, of all cases in which duplicate certificates have not been duly received by him in pursuance of the provisions of this Act during the last preceding month.

*Prosecutions and Offences.*

19. Whoever produces, or attempts to produce, in any person by inoculation with variolous matter,

or by wilful exposure to variolous matter, or to anything impregnated therewith, or who wilfully by any other means produces the disease of small-pox in any person;

and whoever having been inoculated with small-pox in a place to which this Act does not extend shall afterwards enter the City of Bombay before the expiration of forty days from the date of such inoculation, or without a certificate from a medical practitioner that such person is no longer likely to cause contagion;

shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to three months, or to fine which may extend to two hundred rupees, or with both.

20. If the Superintendent of Vaccination shall give information in writing to a Magistrate of Police that he has reason to believe that any child within the city of Bombay, under the age of fourteen years, is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him, and if the Magistrate shall find, after such examination as he shall deem necessary, that the child is an unprotected child, he may make an order directing such child to be vaccinated within a certain time.

Magistrate may make an order for the vaccination of any unprotected child under 14 years.

If at the expiration of such time the child shall not have been vaccinated, or shall not be shown to

Penalty for disobedience of such order,

be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be punished with fine, which may extend to ten rupees.

Provided that if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may order the informant to pay to such person such sum of money as he shall consider a fair compensation for his expenses and loss of time in attending before the Magistrate.

21. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be punished with simple imprisonment, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

22. Whoever, in contravention of this Act:

(a) neglects, without reasonable excuse, to take, or cause a child to be taken to be vaccinated, or after vaccination to be inspected, or

(b) prevents any Public Vaccinator from taking lymph from any child whom he has vaccinated, or

(c) neglects to fill up and sign and give to the parent or guardian of any child any certificate which such parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births,

shall be punished for each such offence with fine which may extend to ten rupees.

23. Whoever wilfully signs, or makes, or procures the signing or making of, a false certificate, or duplicate certificate, under this Act, shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

24. If any Public Vaccinator accepts, or obtains, or agrees to accept, or attempts to obtain from any person any fee, or remuneration, contrary to the provisions of section twelve of this Act, he shall be deemed to have committed an offence punishable under Section 161 of the Indian Penal Code.

25. All offences under this Act shall be cognizable by a Magistrate of Police, subject to the provisions of any law for the time being in force for the trial of offences, but no complaint of any such offence shall be entertained unless the prosecution be instituted by order of, or under authority from, Government, or the Superintendent of Vaccination.

26. In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar, or any other officer, of the requirements of the law in this respect; but if the defendant produce any such certificate as hereinbefore described, or the duplicate of the Register of Births or the Register of Postponed Vaccinations kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except, in regard to the certificate according to the form of Schedule A, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

27. The provisions of Sections sixty-four to seventy, both inclusive, of the Indian Penal Code, shall apply to all fines imposed under this Act; and all such fines shall be recoverable in the manner prescribed by Act XIII. of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay), and Act XLVIII. of 1860 (to amend Act XIII. of 1856), or any other Act for the time being in force regulating the Police of the City of Bombay.

#### Miscellaneous.

28. The Sanitary Commissioner for the Presidency of Bombay, or such other officer as Government directs, shall frame and provide appropriate

books and forms for the use of the Public Vaccinators, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act, and he shall also transmit to the Registrars such books and forms as are required by them under the provisions of this Act.

29. It shall be the duty of the Executive Officer of Health for the City of Bombay, appointed under the provisions of the Bombay Municipal Act, 1872, or of the officer for the time being officiating in his appointment, to show in any annual General Abstract of Births and Deaths prepared by him the number of children successfully vaccinated, the number whose vaccination has been postponed, and the number certified to be insusceptible to successful vaccination during the year.

Annual Return to be made of the number of children vaccinated, &c.

30. The Sanitary Commissioner for the Presidency of Bombay, or such other officer as Government directs, may, with the sanction of the Governor in Council, from time to time make rules or issue orders consistent with this Act:

(a) providing for the appointment of deputies of Public Vaccinators, when necessary;

(b) determining the qualifications to be required of Public Vaccinators, or their deputies, and regulating the grant of certificates of qualifications under section five;

(c) for the guidance of Public Vaccinators and others in all other matters connected with the working of this Act.

All such rules or orders shall be published in the *Bombay Government Gazette*.

#### SCHEDULE A.

(See Section 9.)

I, the undersigned, hereby certify that, in my opinion, \_\_\_\_\_, the child of \_\_\_\_\_, resident at \_\_\_\_\_ in Bombay, is not now in a fit and proper state to be vaccinated, and I do hereby postpone the vaccination for the period of two months from this date.—Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(Signature of Medical Practitioner or Public Vaccinator.)

#### SCHEDULE B.

(See Section 10.)

I, the undersigned, hereby certify that I have three times unsuccessfully vaccinated \_\_\_\_\_, the child of \_\_\_\_\_, residing at \_\_\_\_\_ in Bombay, (or that the child has already had small-pox, as the case may be,) and I am of opinion that the said child is insusceptible of successful vaccination.—Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(Signature of Medical Practitioner or Public Vaccinator.)

#### SCHEDULE C.

(See Section 11.)

I, the undersigned, hereby certify that \_\_\_\_\_, the child of \_\_\_\_\_, age \_\_\_\_\_, resident at \_\_\_\_\_ in Bombay, has been successfully vaccinated by me.—Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(Signature of Medical Practitioner or Public Vaccinator.)

## SCHEDULE D.

(See Section 13.)

To

*(Here insert the name of the parent, guardian, or other person who gives information of the child's birth.)*

Take notice that the child of *(here enter the mother's name)* whose birth has this day been registered, must be vaccinated under the provisions of the Bombay Vaccination Act, 1877, within six months from the date of its birth, under a penalty of ten rupees.

The public vaccine station nearest to the house in which the child was born is at No. . . . The days and hours for vaccination at that station are as follows:—

*(Here insert the days and the hours when the Public Vaccinator is in attendance.)*

On your taking, or causing the child to be taken, to the Public Vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the city on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

You should be careful to have one of the annexed forms of certificates filled in by the Public Vaccinator, or if you employ a private medical practitioner to vaccinate the child, by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a Public Vaccinator free of charge.

Dated            the            of 18 .

Registrar of Births.

## SCHEDULE E.

(See Section 17.)

Register of Postponed Vaccinations for the District of            in Bombay.

Consecutive Number.	Name of Child.	Birth.		Date of Certificate of Postponement.	Signature of Registrar.
		Year.	No. of Entry in Register.		
1	Venayek Pandurang...	1868	12	1868 May    10	H. O.

## STATEMENT OF OBJECTS AND REASONS.

Very soon after the discovery of Vaccination, most of the Governments of Europe made provision for affording its benefits to their respective populations. As early as 1803 an ordinance on the subject was promulgated in Sweden; and when Jenner died, in 1823, there were few European States, except Great Britain, in which there were not in force Laws and Regulations relative to Vaccination. By the Laws of many of these States, the practice was, directly or indirectly, rendered compulsory.

The first Law regarding Vaccination in England was enacted in 1840; and seldom has the Legislature passed a measure of more obvious public benefit. Although Vaccination was not made compulsory by that Act, large numbers of persons availed themselves every year of the opportunities put within their reach of protecting their children against Small-pox; and the impression consequently produced on the mortality from that disease was so great, that the average deaths were soon reduced from 770 to 300 per million of population per annum.

In 1853 Compulsory Vaccination was made the law of England, and the result of the working of that Act during the subsequent fourteen years showed a further annual saving of 100 lives out of every million of the population.

In 1867 an Act was passed "to consolidate and amend the Statutes relating to Vaccination in England"; and that Act, the fruit of large experience and mature consideration, forms the basis of the present Bill.

Vaccination was introduced in the Island of Bombay in 1802, and has been attended with very satisfactory results. But the victims of Small-pox are still numerous. In the year 1870, 556 persons died of this disease, of whom 491 were children under nine years of age. In 1871 the deaths from Small-pox numbered 919, and 813 of the victims were under nine years of age.

In the year 1872 the deaths from Small-pox at all ages numbered 1,854, and in the first four months of 1876 they reached 2,717.

There can be no doubt that a great deal of this mortality is preventible by Vaccination, and the Bombay Association some time ago communicated to Government their opinion that it is desirable to make Vaccination compulsory in the Town and Island of Bombay; but they recommended that, "in framing a Bill for carrying out this object, due care should be taken to protect the people against annoyance or extortion, and against the infliction of hardship or oppression."

In 1872, a Bill was therefore introduced into the Legislative Council to provide for compulsory vaccination in the City of Bombay, but it was not proceeded with in the hope that the voluntary acceptance by the people of the benefits of vaccination would in time render legislation unnecessary. The very serious extent to which the contagion spread in the first part of this year, and the number of deaths which occurred as above shown, have induced Government, with the approval of the Government of India, to bring forward this present measure, which is in most respects similar to the previous Bill, but is more complete.

It may be added that out of twenty-seven of the principal Native Gentlemen of Bombay who have in the meantime been asked for their opinions of the subject, twenty-four are in favour of legislation.

(Signed) J. GIBBS.

22nd November 1876.

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

G. C. WHITWORTH,

Acting Under Secretary to Government.

Bombay Castle, 22nd November 1876.



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 Mámlatdárs' 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 :—

*Second Report of the Select Committee appointed to consider Bill No. 2 of 1876, being a Bill to consolidate and amend the Law relating to the Powers and Procedure of Mámlatdárs' Courts.*

The reason for sending this Bill back to the Select Committee was that it was discovered, that if the Bill were passed in the form in which the Select Committee sent it up to the Council, the consequence would be that the special rate of Court Fees payable on plaints presented under Act V. of 1864 would not be applicable to the new Act, and suitors, instead of being liable only to pay a fee of eight annas on every plaint, would have to pay fees calculated according to the general provisions of the Court's Fees' Act for suits in the ordinary courts.

2. But the Governor General in Council has power, under Section 35 of the Court Fees' Act, to reduce Court Fees, and upon reference made to the Government of India, that Government has declared itself prepared, if desired by the Government of Bombay, to make the necessary reduction of fees when this Bill has become law.

3. The Select Committee are therefore of opinion that so far as this question is concerned, the Bill may be passed as it at present stands.

4. But upon a re-examination of all the clauses of the Bill, the Select Committee are of opinion that amendments, as specified below, will make the law more complete and satisfactory.

5. The repeal by Act XV. of 1874 of Section 5 of Bombay Act X. of 1866, which declared that all Acts should be deemed, unless otherwise expressly provided, to apply only to the Regulation Districts, renders it necessary, in every Act since passed, to introduce a clause declaring its extent. The Select Committee have, therefore, added to Section 1 of the Bill a clause, declaring that the Act shall extend to the whole of the Presidency of Bombay, except the City of Bombay and the Scheduled Districts as defined by Act XIV. of 1874.

6. The powers of Mámlatdárs' Courts should, the Committee think, be more accurately defined than was done in Section 4 of the Bill, and it seems advisable to specify distinctly on what dates causes of action of the several kinds contemplated should be deemed to have arisen. Section 4 has for these objects been altered. The second and third illustrations to this section have also been slightly altered.

7. The amendment of Section 4 has necessitated some merely verbal alterations in Sections 5 (Clauses 4 and 5) and 9.

8. Again, the greater accuracy and more methodical arrangement of Section 4 as now framed has shown the necessity of further ramification of Section 15, which declares what are the issues to be determined in the different classes of cases. For there are not two but three different classes of causes upon which suits may be brought under the proposed law—namely, (1) when the plaintiff has been actually dispossessed, (2) when he seeks restoration on the determination of a tenancy, &c., and (3) when he is himself in possession, but that possession is obstructed or disturbed. And for the rigid provision that the Mámlatdár, if he find for the plaintiff, "shall award him immediate possession or grant the injunction prayed for," the Committee have substituted language that will permit the Mámlatdár to pass such orders as may appear necessary within his powers as defined in Section 4.

9. Section 18 has been slightly amended so as to make it allude expressly to the restoration of uses as well as to the giving of possession, &c.; and also by making it declare that the Mámlatdár's decision shall not be held to be "conclusive" instead of "final," which was the word used before.

10. Finally, the form of injunction under Section 17 (Schedule C) has been slightly amplified so as to meet all possible cases.

(Signed) A. ROGERS.  
 " J. GIBBS.  
 " J. MARRIOTT.  
 " V. N. MANDLIK.

22nd November 1876.

### Bill No. 2 of 1876.

*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:—

1. This Act may be called "The Mámlatdárs' Courts Act, 1876."

It extends to the whole of the Presidency of Bombay, except the City of Bombay and the Scheduled Districts as defined by Act XIV. of 1874.

2. Clause 2, Section I. of Act XVI. of 1838 and (Bombay) Act V. of 1864 are repealed. All references made in any Act passed by the Governor of Bombay in Council or in any Act of the Governor General in Council passed prior to the coming into operation of the Indian Councils Act, 1861, to the said portion of Act XVI. of 1838, or to (Bombay) Act V. of 1864, shall be read as if made to the corresponding portion of this Act.

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

(1.) The word "Mámlatdár" shall include any Revenue Officer ordinarily exercising the powers of a Mámlatdár and any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mámlatdár under this

Act, or who at the time of the passing of this Act is duly authorized to exercise the powers of a Mámlatdár under Bombay Act V. of 1864.

(2.) The words "Plaintiff" and "Defendant" shall include "Plaintiff," "Defendant," a pleader duly appointed to act on their behalf, and the recognized Agents of a plaintiff or defendant as defined in Section 17 of the Code of Civil Procedure (Act VIII. of 1859).

4. Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdárs' Court, and which shall have power within such territorial limits as may from time to time be fixed by the Governor in Council to give immediate possession of lands, premises, trees, crops, or fisheries, or of any profits of the same, or to restore the use of water from wells, tanks, canals or water-courses to any person who shall have been dispossessed or deprived thereof otherwise than by due course of law, or who shall have become entitled to the possession or restoration thereof by reason of the determination of any tenancy, or other right of any other person in respect thereof.

The said Court shall also have power within the said limits when any person is disturbed or obstructed, or when an attempt has been made to disturb or obstruct any person, in the possession of any lands, premises, crops, trees, or fisheries, or in

the use of water from any well, tank, canal or water-course, or of the use of roads or customary ways to fields, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any such further disturbance or obstruction.

But no suit shall be entertained by a Mámílatdár's Court unless it be made within six months from the date on which the cause of action arose.

The cause of action shall be deemed to have arisen on the date on which the dispossession, deprivation, determination of tenancy or other right occurred; or on which the disturbance or obstruction or the attempted disturbance or obstruction first commenced.

*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 Mámílatdár'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, as he is bound to do under Bombay Act I. of 1865, Section 43, Clause 2, at least six months before the commencement of the next cultivating season. At the commencement of the next cultivating season B refuses to vacate. A can sue B in the Mámílatdár's Court at any time within six months from the commencement of the next cultivating season.

*Illustration III.*

A allows 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 without A's consent. A may sue B in the Mámílatdár'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 a ११, or ३११, or similar artificial water-course which has hitherto been exclusively used by B. A draws water therefrom. B may sue in the Mámílatdár'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.

5. All suits under this Act shall be commenced by a Suits to be commenced by a plaintiff. Particulars to be given in plaintiff. plaintiff, which shall be presented to the Mámílatdár in open 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 cause of action arose.
- (5). The circumstances out of which the cause of action arose.
- (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 11 of this Act.

6. When the plaint is presented, the Mámílatdár shall require the plaintiff to subscribe and verify 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."

7. The Mámílatdár shall endorse the plaint 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 Mámílatdár 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.

8. If the plaint 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 plaint or not, or if the statement of particulars be unnecessarily prolix, the Mámílatdár may order the plaint to be amended within three days from the date of such order.

9. If the plaintiff decline to subscribe

The Mámlatdár may reject plaintiff, 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 cause of action arose more than six months before the plaint was presented, the Mámlatdár shall reject the plaint.

10. 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.

11. If a plaint is admissible, the Mám-

Proceduré when plaint is admissible.

ltdár 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, except by consent of both parties, than 10 days, nor, except for unavoidable reasons, later than 15 days, from the day on which the notice is issued.

12. 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.

13. 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 witnesses 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

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

14. If any witnesses who have been

duly summoned fail to attend on the day

may be adjourned. and at the place appointed, the Mámlatdár 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.

15. On the day appointed the Mám-

Points to be decided to the Mámlatdár at the hearing.

ltdár 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 unlawfully dispossessed of any property or deprived of any use :—

(1). Whether the plaintiff or any person on his behalf or through whom he claims 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 entitled to possession of any property or restoration of any use by reason of the determination of any tenure or other right of the defendant in respect thereof :—

(1). Whether the defendant is in possession of the property, or in the

enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims.

(2). Whether such right has determined at any time within six months before the suit was filed.

(c). If the plaintiff avers that he is still in possession of the property, or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has attempted to disturb or obstruct, him in his possession or use :

(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 is disturbing or obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment.

(3). Whether such disturbance or obstruction, or such attempted disturbance or obstruction first commenced within six months before the suit was filed.

If the Mámíatdár's finding upon these issues be in favour of the plaintiff, he shall make such order as the circumstances of the case shall appear to him to require, provided that the same be not in excess of the powers vested in him by Section 4 of this Act.

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 costs of the suit, including the costs of execution, shall follow the decree.

16. 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.

17. 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.

When the Mámíatdár awards costs, such costs, together with the costs of execution, shall be recovered from the party in person, and in the event of non-payment, by the attachment and sale of his property.

18. The party to whom the Mámíatdár shall give immediate possession, or restore an use, or in whose favour an injunction has been granted, shall continue in possession or use until ousted by a decree or order 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 of any property, or out of enjoyment of any use :

Provided further that in any subsequent suit or other proceeding in the ordinary Civil Courts between the same parties, or other persons claiming under them, the Mámíatdár's decision respecting the possession of any property, or the enjoyment of any use, shall not be held to be conclusive.

19. There shall be no appeal from any order passed by a Mámíatdár under this Act.

20. If any plaint 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.

21. Any suit instituted by any person bound by an order respecting the possession of property made under this Act, or by any one claiming under such person to recover the property comprised in such order, shall be dismissed, although limitation has not been set up as a defence, unless it has been instituted within three years from the date of the final order in the case.

## SCHEDULE A.

(Form of Notice to be issued to the Defendant under Section 11).



No. of SUIT.

In the Court of the Mámíatdár 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 plaint), 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 above-named 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)

Mámíatdár.

*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 13.)



No. of SUIT.

In the Court of the Mámíatdár 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 above-mentioned time and place,  
 the suit will be re-heard and determined in your absence.

Dated this                      day of                      187 .

(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 C.

*(Form of Injunction to be issued under Section 17).*



No. of Sutt.

In the Court of the Mámlatdár of

*Plaintiff.*

*Defendant.*

To Defendant.

Whereas in the suit above specified the Court has this day found that you are disturbing or obstructing (or that you did attempt on or about the                      to disturb or obstruct) the said plaintiff                      in his possession (or use, as the case may be,) of the undermentioned property, viz. :—

You are hereby prohibited from making any further attempt to disturb or obstruct the said plaintiff in his possession (or use) of the said property otherwise than in execution of the decree of a Civil Court.

Dated this                      day of                      187 .

(Signed)

*Mámlatdár.*

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

G. C. WHITWORTH,

Acting Under-Secretary to Government.

*Bombay Castle, 22nd November 1876.*