

# Bombay Government Gazette.

Published by Authority.

THURSDAY, 10<sup>TH</sup> AUGUST 1876.

*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 amend (Bombay) Act II. of 1868, is, 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 Bill No. 6 of 1875, being a Bill to amend (Bombay) Act II. of 1868.*

The Committee are of opinion that the difficulties, practical and otherwise, of extending the meaning of the word "ferry," as used in Act II. of 1868, in the way set forth in Section II. of the Bill, are so great, that they are clearly of opinion the change should not be made.

The enactment of this definition of the word "ferry" is the principal object of the Bill. And though, as explained in the Statement of Objects and Reasons, the opportunity was taken of improving the Act in one or two minor points, the Committee do not consider it advisable to disturb the existing state of the Law for the sake of those minor improvements alone.

The Committee, therefore, recommend the withdrawal of the Bill.

|          |                |
|----------|----------------|
| (Signed) | J. GIBBS.      |
| "        | A. ROGERS.     |
| "        | M. K. KENNEDY. |
| "        | V. N. MANDLIK. |
| "        | M. A. ROGAY.   |

9<sup>th</sup> August 1876.

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

G. C. WHITWORTH,

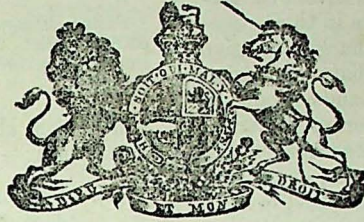
Acting Under-Secretary to Government.

Poona, 9<sup>th</sup> August 1876.

v.—57



THE



# Bombay Government Gazette.

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## 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. 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:—

- Preamble.** and amend the law relating to the powers and procedure of Mámlatdárs' Courts; It is hereby enacted as follows:—
- Short Title.** 1. This Act may be called "The Mámlatdárs' Courts Act, 1876."
- Repeal of Acts.** 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 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,—

**Interpretation Clause.** (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 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. It shall be lawful for Mámlatdár's

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

Courts within their territories 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 entitled to such possession by reason of the determination of any tenancy or who shall have been 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 or customary ways 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 dispossession or attempted disturbance.

Provided that application be made to them by the party aggrieved within six months from the date of the determination of such tenancy or 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 a well, or similar 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

## 5. All suits under this Act shall be

Suits to be commenced by a plaintiff. Particulars to be given in plaintiff.

commenced by a plaintiff which shall be presented to the Mámlatdár 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 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 11 of this Act.

## 6. When the plaint is presented, the

Mámlatdár 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 Mámlatdár 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 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.



8. If the plaint do not contain the

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

several particulars  
hereinbefore required  
to be specified there-  
in, 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 three days from the date of  
such order.

9. If the plaintiff decline to subscribe

The Mámlatdár may  
reject plaint, if plain-  
tiff 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 plain-  
tiff, 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.

10. If it appear to the Mámlatdár that

Plaint to be returned,  
if it appear to the Mám-  
latdár 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-

Procedure when  
plaint is admissible.

latdár shall receive  
and file it. He shall  
then appoint a con-  
venient 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 un-  
avoidable reasons, later than 15 days, from  
the day on which the notice is issued.

12. If either party require his wit-

Attendance of wit-  
nesses.

nesses to be summon-  
ed to appear on the  
day and at the place

appointed, the Mámlatdár shall issue sum-  
mons 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 mea-  
sures to procure the  
attendance of his wit-  
nesses on the day and at the place appoint-  
ed, the Mámlatdár shall reject the plaint  
with costs.

If the defendant fails to attend, and  
If the defendant does the Mámlatdár is  
not appear, the case to satisfied from the  
be heard *ex-parte*. 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 pro-  
ceed 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  
cause being shown.

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 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  
When proceedings to attend on the day  
may be adjourned.

and at the place ap-  
pointed, the Mámlatdár may, if he con-  
sider there is sufficient reason after taking  
the evidence of those that are present, ad-  
journ 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 latdár shall proceed  
by the Mámlatdár at the to hear all the evi-  
hearing. dence that is then

and there before him, and to try the fol-  
lowing 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 Mámlatdár'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 Mámlatdár's award, if in favour of the plaintiff.  
 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 Mámlatdár whether for rejecting or returning a plaint, or whether for allowing or disallowing the claim, shall be endorsed by the Mámlatdár, on the plaint, who shall also place on record his reasons for the same.

17. If the Mámlatdár'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 Mámlatdár 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 Mámlatdár shall give immediate possession, 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 Mámlatdár'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 in any subsequent suit or other proceeding in the ordinary Civil Courts between the same parties, or other persons claiming under them, the Mámlatdár's decision respecting the possession of any property shall not be held to be final.

19. There shall be no appeal from any order passed by a Mámlatdár 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 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 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)

*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 13.)*

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 atten-  
 dance 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 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 SUIT.

In the Court of the Mámlatdár of

*Plaintiff.*

To Defendant,

*Defendant.*

Whereas in the suit above specified the Court has this day found that you did attempt  
 on or about the to disturb 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 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.*



## STATEMENT OF OBJECTS AND REASONS.

His Excellency the Viceroy and Governor General having withheld his assent to Bill No. 5 of 1875, which was read a third time and passed by the Governor in Council on the 23rd March 1876, the same Bill is now re-introduced with the modification necessary to remove the objections entertained to it by His Excellency the Viceroy.

The latter part of Section 2 has been altered so as to confine its operation to Acts of the Governor in Council of Bombay and to Acts of the Governor General in Council which were passed prior to the Indian Councils Act coming into operation, and a new section (Section 21) has been added at the end of the Bill to make the same Rule of limitation applicable in the case of orders passed under this Bill as is now applicable, according to Article No. 46, Schedule 2, Act IX. of 1871, when orders have been passed under the enactments which Section 2 repeals.

The last three sections of the Bill, as passed on the 23rd March 1876, have been entirely omitted. They were found to be at variance with the Rules prescribed in Chapter XXXV. of the Criminal Procedure Code for Civil Courts generally, and were objected to by His Excellency the Viceroy for this reason.

The opportunity has been taken of making a slight addition to the definition of the word "Māmlatdār" in Section 3, Clause 1, in order that the powers of persons already authorized to hold inquiries under Bombay Act V. of 1864 may be continued under the proposed new Act without further orders. And Clause 3 of Section 18, which was struck out of the Bill in Committee on the 7th January 1876, has been re-inserted in a modified form in order that the question, whether decisions under the Act should be accepted by the ordinary Civil Courts as final, may be *more* fully considered before the Act becomes law.

(Signed) A. ROGERS.

18th August 1876.

By order of His Excellency the Governor in Council,

G. C. WHITWORTH,

Acting Under-Secretary to Government.

Poona, 21st August 1876.