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THE BOMBAY
LAND REVENUE MANUAL

CONTAINING

The Bombay Land Revenue Code
(Bombay Act No. V of 1879)

WITH

ALL AMENDMENTS, EXPLANATORY NOTES, EXHAUSTIVE ANNOTATIONS AND GOVERNMENT RESOLUTIONS UPTO DATE AND FULL INDEX

AND

The Revised Rules thereunder

WITH

Explanatory notes and corrected upto 1st June 1934.

TOGETHER WITH

Other Acts relating to Revenue matters and A List of Applications requiring Court fee stamps.

BY

D. G. KHANDEKAR,

LAW PUBLISHER, POONA

THIRD EDITION

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Printed and published by D. G. KHANDEKAR at his LAW PRINTING PRESS, 1317, Kasba Peth, Poona City

POONA.

1934.

Price Rs. 5

CONTENTS

1. The Bombay Land Revenue Code (Bom. Act V of 1879) and the Rules thereunder.
2. The Revenue Jurisdiction Act (X of 1876).
3. The Survey Settlement Act (I of 1865)
4. The Revenue Recovery Act (I of 1890)
5. The Irrigation Act (Bom. Act VII of 1879)
6. The Suits for Lands Act (XVI of 1838)
7. The Bhagdari and Narwadari Act (Bom. Act V of 1862)
8. The Gujarat Talukdars Act (Bom. Act VI of 1888)
9. The Broach and Kaira Incumbered Estates Act (XIV of 1877)
10. The Broach and Kaira Incumbered Estates Act (XXI of 1881)
11. The Ahmedabad Talukdars Act (Bom. Act VI of 1862)
12. The Khoti Settlement Act (Bom. Act I of 1880)

CONTENTS

—:o:—

SECTION

CHAPTER I.
PRELIMINARY.

1. Short Title, Local extent.
2. *(Repealed)*.
3. Interpretation Section—
Revenue officer, Survey officer, Land, Estate, Survey Number, Sub-division of a survey number, Chavdi, Building-site, Boundary-mark, To hold land, land holder, holder, Holding, Superior holder, Inferior holder, Tenant, Landlord, Occupant, Occupancy, To occupy land, Occupation, Alienated, Village, Revenue year, year, Joint holders, joint-occupants, Land records, Certified copy, Certified extract.

CHAPTER II.
CONSTITUTION AND POWERS OF REVENUE OFFICERS.

4. Chief controlling authority in revenue-matters.
Extent of territories under the Commissioners.
The territories under a Commissioner to be a division.
5. Appointments and duties of Commissioners.
6. Assistants to Commissioners
7. Division to be divided into districts.
A district to consist of talukas comprising such mahals and villages as Government may direct.
8. Collector of the district.
9. Assistant and Deputy Collectors;
to be subordinate to the Collector.
10. Their duties and powers.
11. Collector of the district in case of temporary vacancy.
12. The Mamalatdar; his appointment.
His duties and powers.

SECTION

13. The Mahalkari;
his duties and powers.
14. Mamlatdar or Mahalkari may depute subordinates to perform certain of his duties.
15. Mamlatdar or Mahalkari in case of temporary vacancy.
16. Stipendiary Patel and Village Accountant to be appointed where no hereditary Patel or Village-Accountant exists.
Saving the rights of holders of alienated villages.
17. Village-Accountant to keep such records as he may be required to keep by Collector: and to prepare public writings
18. Survey Officers;
their duties and powers.
19. Combination of offices.
20. Certain officers' appointments to be notified.
Acting appointments.
21. Establishments.
22. Seals.

CHAPTER III.
OF THE SECURITY TO BE FURNISHED BY CERTAIN REVENUE OFFICERS AND THE LIABILITY OF PRINCIPALS AND SURETIES.

23. Governor in Council to direct what officers shall furnish security, and to what amount.
24. Fresh or additional security.
25. Demands for money, papers, etc., to be made known in writing to the person concerned
Who may be arrested and confined in jail if he fail to produce them.
Provided that no person shall be kept in confinement for more than a month.
26. Public moneys may also be recovered as arrears of revenue; and search warrant may be issued for recovery of papers or property.

SECTION

Persons in possession ofpublic moneys, etc., bound to give them up.

27. Surety to be liable in the same manner as principal.
Extent of liability.
Sureties not liable to imprisonment, if penalty be paid.

28. An officer or surety in jail may, by furnishing certain security, obtain his release.

29. Liability of surety not affected by death of principal or by his taking a different appointment.
Liability of heirs of deceased officer.

30. How surety may withdraw from further liability.

CHAPTER IV.

OF CERTAIN ACTS PROHIBITED TO REVENUE OFFICERS AND OF THEIR PUNISHMENT FOR MISCONDUCT.

31. Prohibited acts–
Not to trade.
Not to purchase at public sale.
Not to be concerned in the revenue.
Not to make private use of public money or property.
Not to make or receive undue exactions or presents.

32. Power of fining, reducing, suspending, and dismissing in whom to vest.
A revenue officer whose monthly salary exceeds Rs. 250 to be fined, etc., only by order of the Governor in Council.

33. All such orders to be made in writing.

34. Fine not to exceed two months' pay; how recovered.

35. Appeals.

36. An officer's liability to criminal prosecution not affected by this Act.
Officer may be suspended during trial, and subsequently suspended, reduced, or dismissed.

SECTION

CHAPTER V.

OF LAND AND LAND REVENUE.

37. All public roads, etc. and all lands which are not the property of others, belong to Government.

38. Lands may be assigned for special purposes, and when assigned, shall not be otherwise used without sanction of the Collector.

39. Regulation of use of pasturage.

40. Concession of Government rights to trees in case of settlements completed before the passing of this Act.
Ditto. in case of settlements completed after the passing of this Act.
Ditto in case of land taken up after completion of settlement.

41. Government trees and forests.

42. Road-side trees.

43. Recovery of value of trees, etc., unauthorizedly appropriated.

44. Regulation of supply of firewood and timber for domestic or other purposes.

45. All land liable to pay revenue unless specially exempted.
And special exemption may in case of necessity be overruled for a time.

46. Liability of all alluvial lands to land revenue.

47. Assessment of land revenue in cases of diluvion.

48. Manner of assessment and alteration of assessment.
Prohibition of use of land for certain purposes.

49. Commuted assessment of land indirectly taxed to the State; and of land liable to occasional assessment.

50. Superior holder may recover commuted assessment from inferior holder.

51. Excess of assessment may be

SECTION

laid on land inadequately assessed held with it.
52. Assessment by whom to be fixed.
Proviso.
53. Register of alienated lands.
54. Settlement of assessment to be made with the holder directly from Government.
55. Rates for the use of water.
56. Land revenue to be a paramount charge on the land.
57. Forefeited holdings may be taken possession of and otherwise disposed.
58. Receipts.
59. Penalty for failure to grant receipts.

CHAPTER VI.

OF THE GRANT, USE AND RELINQUISHMENT OF UNALIENATD LAND
60. Written permission of Mamlatdar or Mahalkari required previous to taking up unoccupied land.
61. Penalties for unauthorized occupation of land.
62. Unoccupied land may be granted on conditions.
63. Grant of alluvial land vesting in Government.
64. Temporary right to alluvial lands of small extent.
65. Uses to which occupant of land for purposes of agriculture may put his land.
Procedure if occupant wishes to apply his land to any other purpose.
Fine to be levied for such use in addition to special assessment.
66. Penalty for so using land without permission.
Tenant responsible to occupant in damages.
67. Permission may be granted on terms.
68. Occupant's rights are conditional.
Proviso.
69. Reservation of right of Government to mines and mineral products.
Proviso.
70. Occupancy when not liable to process of Civil Court; the Court to give effect to Collector's certificate.
71. (*Repealed*).
72. Intestate occupancy or holding to be sold.
73. Occupancy to be transferable and heritable.
73A. Power to restrict right of transfer.
74. Relinquishment.
75. (*Repealed*)
76. Relinquishment of land described in paragraph 1 of section 49.
Relinquishment of land described in section 51.
77. Right of way to relinquished land.
78. Saving of operation of section 74 in certain cases.
79. (*Repealed*)
79A. Summary eviction of person unauthorizedly occupying land.
80. To prevent forfeiture of occupancy, certain persons other than the occupant may pay the land revenue.
Collector may assist such persons in recovering the revenue from other parties liable therefor.
Proviso.
81. (*Repealed*)
82. Governor in Council empowered to suspend operation of section 60 or 74.

CHAPTER VII.

OF SUPERIOR AND INFERIOR HOLDERS.
83. Amount of rent payable by tenant.
Duration of tenancy.
Presumption as to tenure.
Saving clause.
84. Annual tenancy terminates on the 31st March.

SECTION

Three months' notice of termination of tenancy to be given by landlord to tenant, or *vice versâ*.

84A. Order granting suspensions or remissions to inferior holders.
Such order not to be questioned in any Court.
Consequences following on such order.
Crop-share fixed by custom or agreement.
Meaning of assessment.
Sind excluded.

85. Recovery of superior holders' dues.

86. Superior holders entitled to assistance in recovery of dues from inferior holders, etc.
But application must be made within the revenue year or within the year of tenancy.

87. The Collector how to proceed on such application being made.
Assistance may be refused or granted to a limited extent only.
Civil suit not to be barred.

88. Commissioner may, by commissions, confer certain powers on holders of alienated lands.

89. Form of such commission.

90. Reference must be made by holder of commission to the Collector in certain cases.

91. When compulsory process shall cease.
Penalty for continuing compulsory process.

92. Power under commission to extend to current and previous year's arrears.

93. Holder of commission not to enforce any unusual or excessive demand.
Penalty for so doing.

94. But holder of commission may establish his right to enhanced rent in Civil Court.

94A. Recovery as revenue demand of dues of certain superior holders for specified period.

CHAPTER VIII.

OF SURVEYS, ASSESSMENTS AND SETTLEMENTS OF LAND REVENUE.

95. Revenue survey may be introduced by Governor in Council into any part of Presidency.
Control of revenue survey.

96. Survey officer may require, by general notice or by summons, suitable service from holders of land, etc.

97. Assistance to be given by holders and others in the measurement or classification of lands.

98. Survey numbers not to be of less than a certain extent.
Exception.

99. (*Repealed.*)

100. Officer in charge of a survey to fix assessments.
Regard to be had to proviso to section 52.
Proviso.

101. The assessment so made may be on land, or on means of irrigation, etc.

102. Assessments so made not leviable without the sanction of Government.
But may be fixed, with or without modification, by the Governor in Council for a term of years.

103. Introduction of settlements.

104. Excess assessment not to be levied in the year in which a survey settlement is introduced;
nor in the following year if the number is resigned that year.

105. The fixing of assessment under section 102 limited to ordinary land revenue.

106. Government may direct a fresh survey and revision of assessment.

107. Conditions applicable to revisions of assessment.

CONTENTS

SECTION

108. Preparation of statistical and fiscal records.
109, 110. (*Repealed.*)
111. Revenue management of villages or estates not belonging to Government that may be temporarily under Government management.
112. Maintenance of existing settlements of land revenue.
113. Partition.
114. Partition of certain estates by the Collector on application by co-sharers.
115. (*Repealed.*)
116. Division of survey numbers into new survey numbers.
117. Bombay Act V of 1862 not affected.
117A. Division of survey numbers into sub-divisions.
117B. Provisions applicable on relinquishment or forfeiture of a sub-division

CHAPTER IX.

THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY MARKS.

118. Determination of village-boundaries
Village boundaries may be settled by agreement
Procedure in case of disagreement or dispute
119. Determination of field boundaries
120. Settlement of boundary disputs by arbition
When award may be remitted for re-consideration
If arbitration fail, survey officer to settle dispute
121. Effect of the settlement of a boundary
122. Construction and repair of boundary-marks of survey numbers and vilages
Requisition on landholders to erect or repair boundary marks
A general notification to be good and sufficient notice of requisition

SECTION

Description of boundary marks
123. Responsibility for the maintenance of boundary-marks
124. Collector to have charge of boundary-marks after introduction of the survey settlement
125. Penalty for injuring boundary-marks

CHAPTER X.

OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS AND CITIES.

126. Limits of sites of villages, towns and cities how to be fixed.
127. Act XI of 1852 and Bombay Acts II and VII of 1863 how far applicable to lands in such sites.
128. Existing exemption when to be continued in case of certain lands in towns and cities in which Bombay Act IV of 1868 has been in operation.
129. Right to exemption to be determined by the Collector.
130. Occupancy price payable, in addition to assessment in certain cases.
131. Survey of lands in such sites how to be conducted.
Proviso.
132. In certain cases a survey-fee to be charged.
133. Sanad to be granted without extra charge.
Proviso.
134. Assessment of lands hitherto used for purpose of agriculture only used for other purposes
135. (*Repealed*).

CHAPTER X-A.

OF THE RECORD OF RIGHTS

135A. Exemption from provisions of this chapter.
135B. The record of rights.
135C. Acquisition of rights to be reported.
135D. Register of mutations and register of disputed cases.

SECTION

Entries in register of Mutations how to be certified.
Tenancies.
135E. Obligation to furnish information.
135F. Penalty for neglect to afford information
135G. Requisition of assistance in preparation of maps.
135H. Certified copy of record to be annexed to plaint or application.
135I. Refusal of assistance under section 87.
135J. Presumption of correctness of entries in record of rights and register of mutations.
135K. Certified copies.
135L. Bar of suits and exclusion of Chapter XIII.
Appeal

CHAPTER XI

OF THE REALIZATION OF THE LAND REVENUE AND OTHER REVENUE DEMANDS

136. Liability for land revenue
137. Claims of Government to have precedence over all others.
138. The liability of the crop for the revenue of the land
139. Land revenue may be levied at any time during the revenue year
140. Removal of crop which has been sold, etc., may be prevented until revenue paid
141. In order to secure the land revenue the Collector may prevent the reaping of the crop, or
the removal thereof, or
place watchmen over it
142. Collector's orders under last section how to be made known
Penalty for disobedience of order
143. Reaping, etc., not to be unduly deferred
Crop when to be released.
144. Temporary attachment and

SECTION

managemens of a village or share of a village
Powers of manager, and disposal of surplus profits
145. Precautionary measures to be relinquished on security being furnished
146. Government to determine the dates, etc., on which land revenue shall be pay-payable
147. Arrear.
Defaulters.
148. Liabilities incurred by default
149. Certified account to be evidence as to arrears
Collectors may realize each other's demands
150. Process for recovery of arrrears
151. Revenue demands of former years how recoverable
Proviso
152. When notice of demand may issue
153. The occupancy or alienated holding for which arrear is due may be forfeited
Proviso
154. Distraint and sale of defaulter's moveable property
By whom to be made
155. Sale of defaulter's immoveable property
156. Exemption from distraint and sale
157. Arrest and detention of defaulter
Imprisonment in Civil Jail
Defaulters not to be detained in custody longer than debtors may be detained by the Civil Court
158. Power of arrest by whom to be exersised
159. Power to attach defaulter's village, and take it under management
160. Lands of such village to revert free of incumbrances
Powers of manager

SECTION

161. Application of surplus profits
162. Restoration of village so attached
Disposal of surplus receipts
163. Village, etc., to vest in Government, if not redeemed within twelve years
164. But all processes to be stayed on security being given
Or on amount demanded being paid under protest
165. Procedure in affecting sales
Proclamation of sales.
166. Notification of sales
167. Sale by whom to be made
Time when sale may be made
Postponement of sale
168. Sale of perishable articles
169. When sale may be stayed
170. Sales of moveable property when liable to confirmation
171. Mode of payment for moveable property when sale is concluded at once
172. Ditto when sale is subject to confirmation
173. Deposit by purchaser in case of sale of immoveable property
174. Purchase-money when to be paid
175. Effect of default
176. Liability of purchaser for loss by re-sale
177. Notification before re-sale
178. Application to set aside sale
179. Order confirming or setting aside sale
180. Refund of deposit or purchase-money when sale set aside
181. On confirmation of sale purchaser to be put in possession
Certificate of purchase
182. Bar of suit against certified purchasers.

SECTION

183. Application of proceeds of sale.
Expenses of sale how calculated
184. Surplus not to be paid to creditors, except under order of Court
185. Certified purchaser liable only for land revenue subsequently due
186 Claims to attached moveable property how to be disposed of
187. What moneys leviable under the provisions of this Chapter
Sureties liable as revenue-defaulters
On resumption of a farm no payments made to contractor in advance to be admitted
The recovery of free grants as arrears of revenue in case of misuse

CHAPTER XII

PROCEDURE OF REVENUE OFFICERS

188. Subordination of revenue officers
189. Power to summon persons to give evidence and produce documents.
190. Summons to be in writing, signed and sealed ; how to be served.
Service in district other than that of issuer.
191. Mode of serving notices.
Notice not void for error
192. Procedure for procuring attendence of witnesses.
193 Mode of taking evidence in informal inquiries.
Taking evidence given in English.
Translation to be on record
194. Writing and explanation of decisions.
195. Summary inquiries how to be conducted.
196. Formal and summary inquiries to be deemed judicial proceedings.

SECTION

Hearing and decisions. Notice to parties
197. Ordinary inquiries how to be conducted
198. Copies and translations, etc., how to be obtained
199. Arrest of a defaulter to be made upon a warrant.
200. Power of revenue officer to enter upon any lands or premises for purposes of measurement, etc.
Proviso.
201. The Governor in Council to determine the language of a district.
202. Collector how to proceed in order to evict any person wrongfully in possession of land

CHAPTER XIII.

APPEALS AND REVISION

203. Appeal to lie from any order passed by revenue officer to his superior
204. Appeal when to lie to the Governor in Council
205. Periods within which appeals must be brought.
206. Admission of appeal after period of limitation

SECTION

207. Provision where last day for appeal falls on a Sunday or a holiday.
208. Copy of order to accompany petition of appeal.
209. Powers of appellate authority.
210. Power to suspend execution of order of subordinate officers
211. Power of the Governor in Council and of certain revenue officers to call for and examine records and proceedings of subordinate officers
And to pass orders thereupon
212. Rules as to decisions or orders expressly made final

CHAPTER XIV.

MISCELLANEOUS.

213. Maps and land records open to inspection
Extracts and copies shall be given
214. Rules
215. Penalty for breach of rules
216. Chapters VIII to X how far applicable to alienated villages
217. Holders of land in alienated villages
218. Construction of this Act

SCHEDULES

LAND REVENUE CODE, 1879

HISTORICAL RECORD

Year.	No. of Regs. and Acts	Name of Regulations and Acts.	How affected.
		Bombay Regulations.	
1827	IV	Civil Courts (Law to be observed)	Rep. in part (locally), Bom. Act V of 1879
1827	XVI	Collectors of Land Revenue.	Residue rep. (locally), do.
1827	XVII	Land Revenue.	do. do.
1830	V	Revenue Commissioner ...	do. do.
1831	XV	Falsification of Records ...	do. do.
1832	II	Farmers of Land Revenue...	do. do.
1833	V	Hereditary Officers ...	do. do.
		Imperial Acts	
1838	XVIII	Sureties, Bombay ...	Rep. (locally), Bom. Act V of 1879.
1842	XIII	Revenue, Bombay ...	Residue rep. (locally) do.
1842	XVII	Revenue Commissioners, Bombay.	do. do.
1846	III	Boundary marks, Bombay...	do. do.
1850	XII	Public Accountants' Defaults	Rep. in part (locally in Bombay), Bom. Act V of 1879.
1852	XI	Titles to Rent-free Estates, Bombay	Application declared, Bom. Act V of 1879, S. 127.
1852	XXI	Deputy Collectors, Bombay.	Residue rep. (locally), Bom. Act V of 1879
		Bombay Acts.	
1863	II	Exemptions from Land Revenue in territories subject to Act XI of 1852.	Application declared, Bom. Act V of 1879, S. 127.

HISTORICAL RECORD—(*Concluded*)

Year.	No. of Regs. and Acts.	Name of Regulations and Acts	How affected.
1863	VII	Exemptions from Land Revenue in territories not subject to Act XI of 1852.	Appplication declared, Bom. Act V of 1879 S. 127.
1865	I	Bombay Survey and Settlement Act.	Rep. locally (except Ss. 37, 38), Bom. Act V. 1879.
1868	I	Deputy and Assistant Collectors.	Residue rep. (locally) Bom. Act V of 1879.
1868	IV	The Act for City Surveys and amendment of Bombay Survey and Settlement Act.	do. do.
1875	I	Survey and Settlement (amending Bom. Act I of 1865).	Rep (locally), Bom. Act V of 1879.
1879	V	*Bombay Land Revenue Code.*	Rep. in part, Bom. Act III of 1886. " " and Am., Act XVI of 1895. " " Bom. Act VI of 1901. " " (locally), Bom. Act I of 1880, S. 39. " " Bom. Act VI of 1888 Ss. 3, and 33 as Am, Bom. Act II of 1905. Am., Bom. Act VII of 1879 S. 2. " " IV of 1886. " " I of 1910. " " IV of 1913. Ss. 3 (1), 38, 43, 52, 80, 187, 214. heading above S. 40 Sch. B, Am., S. 144 rep. in part, Bom. Act IV of 1905. Rep. (in Coorg), Reg. I of 1899. S. 85 and part of S. 58 declared not to be in force in the Panch Mahals, Act VII of 1885. Am., Bom. Act XI of 1912. " " VII of 1914. " " II of 1919. " " I of 1920. " " III of 1921. " " V of 1930. " " III of 1932.

THE
Bombay Land Revenue Code, 1879

:o:

Bom. Act No. V of 1879 [*a*].

[*17th July 1879*

(As Amended and modified upto 1st June 1933)

An Act to consolidate and amend the law relating to Revenue officers, and the Land Revenue in the Presidency of Bombay.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Revenue officers, and to the assessment and recovery of Land Revenue, and to other matters connected with the Land Revenue Administration ; it is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

Short title.

1. [*b*] (1) This Act may be cited as "The Bombay Land Revenue Code, 1879."

Ss. 68, 72, 73, 74, 99 cl. (*b*), 104, para. 2, 109, 110, 112. 150, cl. (*b*), and 153 of Bom. Act V of 1879 do not apply to any village in the district of Ratnagiri or the district of Kolaba to which the Khoti Settlement Act, 1880, extends ; and ss. 103, 118, 119, 123, 136, 150 cl. (*f*), and 162 of the Act are subject to modification when applied to any such village (see Bom. Act I of 1880, ss. 1 and 39).

The rules and orders under sections 213 and 214 do not apply to Khoti and Talukdari villages. Rules 7 to 10 inclusive, 21 cl. (2), 23, 25 to 27 inclusive, 38 and 70 shall not apply to Sind.

Ss. 38 to 40, 44, 60 to 67, 76, 82, 85, 109, 110, 116, 127 to 136, 163, 216 and 217 (all inclusive) of Bom. Act V of 1879 do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujerat Talukdars' Act, 1888, extends ; and ss. 3 cl. (1), 46,54, 79A cl. (*a*), 88, 89,94, 111, 113, 147, 150 cl. (*f*), 160, 162, 214 of the Act, and the words "occupant," "registered occupant" and "occupancy" throughout the Act, are subject to modification when applied to any such estate (see Bom. Act VI of 1888, ss. 1 and 33).

NOTE.—All sub-titles, printed over sections or groups of sections in the Act, were repealed by Bom. Act IV of 1913, s. 84.

[*a*] Sec. 85 and the last 15 words of s. 58 are not in force in the Panch Mahals (see Act VII of 1885, s. 2).

[*b*] Sub-section (1) of s. 1 was originally the first paragraph of s. 1. It was numbered as sub-section (1) of s. 1 by Bom. Act IV of 1913, s. 4 (1).

[*a*] (2) Save as otherwise provided by Chapter XA, this Act extends to the whole of the Presidency of Bombay, except the City of Bombay, Aden and the Scheduled District of the Mehwassi Chiefs' villages as defined in the Scheduled Districts Act, 1874.

Extent.

[*b*] (3) Provided that Chapter III also extends to the City of Bombay, subject to the modification that the expression 'Revenue-officer" means every officer of any rank whatsoever appointed under section 5 or 6 of the Bombay City Land Revenue Act, 1876, and employed in or about the business of the land revenue in the City of Bombay, or of the surveys, assessment, accounts or records connected therewith, instead of as defined in clause (1) of section 3 of this Act.

Extension—The provisions of this Code have been made applicable to the **Akalkot** and **Jath** States (B. G. G., 1879, Pt. I. p. 966) and to the **Districts in Sind** (G. R. R. D. No. 4956—B, dated 30th June 1904).

Construction of Statute.—This Code is a taxing enactment, and must be construed strictly in favour of the subject (*Secretary of State v. Laldas*, 12 Bom. L. R. 16, s c. 34 Bom. 239).

"**Scheduled Districts.**"—The following are the Scheduled Districts in the Bombay Presidency :—

1. The Province of Sind.
2. Aden.
3. The villages belonging to the following Mehwasi Chiefs:—
   1. The Parvi of Kathi
   2. The Parvi of Nal
   3. The Parvi of Singpur
   4. Walvi of Gaohalli.
   5. Wassawa of Ohikhli.
   6. The Parvi of Nawalpur.

Notes.—There is nothing in this Code which entitles a person, who gets a sanad at the city survey on his *ex parte* application, to turn out a person in possession of the land, unless he shows that he has a better title (*Trimbak v. Damu*, 27 Bom. L. R. 656).

The proceeds of all fees levied under this Act for permission to remove sand or to quarry are to be credited to the Local Fund constituted by the Bombay Local Boards Act, 1923 (Bom. Act VI of 1923) s. 75.

2. *Repealed by Bom. Act IV of 1913, s. 5.*

Interpretation clause.

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

[*a*] This sub-section was substituted for paragraph 2 of section 1 by Bom. Act IV of 1913, s. 4 (2).

[*b*] This sub-section was substituted by Bom. Act IV of 1913. s. 4 (3), for the paragraph 3, added by Bom. Act I of 1910, First Schedule, Part II, Serial No. 2.

*NOTE—The clauses in section 3 of the Act were renumbered consecutively by Bom. Act IV of 1913, s. 6 (*k*).

(1) "revenue officer" means every officer of any rank whatsoever appointed under any of the provisions of this Act, and employed in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith [*a*] and for the purposes of sections 25 and 26 includes a village-officer appointed or officiating under any of the provisions of the Bombay Hereditary Offices Act or the Matadars Act, 1887 [*a*];

"revenue officer;"

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujerat Talukdars' Act extends (*Vide* Bom Act VI of 1888, ss. 1 and 33).

Revenue Officers.—Watandar village officers are not Revenue officers under sub-section (1) of this section. If a watan *lapses*, then Government succeed to the watan and the officer appointed by them would be a watandar for the purpose of ss. 85 and 94A. But when a watan is commutted, it has not yet been decided that the analogy holds. Talatis are executive and not ministerial officers for the purpose of C. S. R. 459 (*a*) (G. R No. 7268 of 1918).

A Forest officer is not a revenue officer and does not become one merely by being placed under a revenue officer for purposes of control (*Narayan v. Secretary of State*, 20 Bom 803).

The District Inspector of Land Records is a revenue officer and can issue summonses for evidence or documents, but the Superintendent is a survey officer : supervising tapedars in Sind are survey officers, but Circle Inspectors are not. The District Inspector of Land Records has power to order measurement on the application of parties and to levy fees for it. Both Superintendent of Land Records and District Inspector of Land Records can levy fees under s. 135-F (*Anderson's L. R. Rules*, ed. of 1930, p. 8).

(2) "survey officer" means an officer appointed under, or in the manner provided by, section 18 [*b*] ;

"survey officer;"

(3) [*Definition of "Collector"*]—*Repealed by Bom. Act IV of 1913, s. 6 (a).*

(4) "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory;

"land;"

(5) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same;

"estate;"

[*a—a*] These words were added by Bom. Act IV of 1905, 1st Sch.

[*b*] Words repealed by Bom. Act III of 1886 are omitted.

(6) "survey number" means a portion of land of which the area and assessment [*a*] are separately entered, under an indicative number in the [*b*] land records [*b*] [*c*];

"survey number;"

(7) [*d*] "sub-division of a survey number" means a portion of a survey number of which the area and assessment are separately entered in the land records under an indicative number subordinate to that of the survey number of which it is a portion [*d*];

"sub-division of a survey number;"

(8) [*e*] "chavdi" means, in any village in which there is no chavdi, such place as the Collector may direct shall be deemed to be the chavdi for the purposes of this Act;

"chavdi;"

Chavdi.—In Sind 'Chavdi' includes a Tapedar's Dera.

(9) "building site" means a portion of land held for building purposes, whether any building be actually erected thereupon or not, and includes the open ground or court-yard enclosed by, or adjacent to, any building erected thereupon;

"building site;"

(10) "boundary-mark" means any erection, whether of earth, stone or other material, and also any hedge, [*f*] unploughed ridge, or [*f*] strip of ground, or other object whether natural or artificial, set up, employed or specified by a survey officer, or other revenue officer having authority in that behalf, in order to designate the boundary of any division of land;

"boundary-mark;"

(11) [*g*] "to hold land," or to be a "land-holder" or "holder" of land means to be lawfully in possession of land, whether such possession is actual or not;

"to hold land" "land-holder" "holder;"

"**Holder.**"—The term "holder" as defined in this clause, is wide enough to include even a tenant who has entered into possession under an occupant. Mere user by rice lands tenants of adjoining waste land with the leave and permission of Inamdar does not make them holders of warkas lands (*Nanabhai v. Collector of Kaira*, 34 Bom. 686).

[*a*] This word was substituted by Bom. Act IV of 1913, s. 6 (*b*), for the words "other particulars."

[*b*—*b*] These words were substituted by Bom. Act IV of 1913, s. 6 (*b*), for the words "survey records."

[*c*] Words repealed by Bom. Act IV of 1913, s 6 (*b*), are omitted.

[*d*] This definition was substituted for the definition of "recognised share of a survey number" by Bom. Act IV of 1913, s. 6 (*c*).

[*e*] This definition was added by Bom. Act IV of 1913 s. 6 (*d*).

[*f*-*f*] These words were substituted for the original word by Bom. Act VI of 1901, s. 2.

[*g*] This definition was substituted for the original definitions of "holder" or "landholder" and "holding" by Bom. Act IV of 1913, s. 6 (*e*).

The rights of tenants of rice lands over adjoining waste land of their superior holder are, by custom in the Thana District, confined to the use of portions of the waste for obtaining the manure without which the rice lands could not be cultivated or the assessment on the rice land earned and paid (*Vasudeo v. Govind*, 36 Bom. 315).

Before a person can claim the benefit of s. 217 *post*, he must be shown to be a "holder" within the meaning of this sub-clause (*Ibid*).

"holding;" [*a*] (12) "holding" means a portion of land held by a holder;

"superior holder;" [*b*] (13) "superior holder" means a landholder entitled to receive rent or land revenue from other landholders (hereinafter called inferior holders"), whether he is accountable or not for such rent or land-revenue, or any part thereof, to Government: provided that where land has been granted free of rent or land revenue, subject to the right of resumption in certain specified contingencies, by a Jagirdar, Inamdar or other such holder of alienated land whose name is authorizedly entered as such in the land records, such Jagirdar, Inamdar or holder shall, with reference to the grantee, be deemed to be the superior holder of land so granted by him and the grantee shall, with reference to the grantor, be deemed to be the inferior holder of such land and for the purposes of section 8 of the Bombay Local Funds Act, 1869, shall, notwithstanding anything hereinafter contained in the definition of the word "tenant," be deemed to be the tenant of such grantor.

Note—*Cf.* section 98 of the Bom. Local Boards Act (Bom. Act VI of 1923).

"**Superior holder.**—"We have had under consideration the case of Inamdars, Jagirdars and other holders from Government of alienated lands who have themselves made grants of portions of their lands for the maintenance of cadets and other similar purposes. These grants are made subject to resumption in certain contingencies, such as failure of lineal male heirs, and if they are made free of liability to pay rent or land revenue, the grantors have been held not to be the superior holders of such lands (*vide Gordhanlal v. Darbar Shri Surajmalji*, 6 Bom. 504). As the grantors have a reversionary interest in the land, it is desirable that the grantors should be included within the definition of superior holders (*Report of the Select Committee*).

An inamdar receiving rent or land revenue from cultivators in his inam village is a superior holder not accountable to Government for the same. A khot receiving assessment from a *dharekari* is a superior holder accountable to Government for the same. A village accountant receiving assessment from a cultivator is accountable to Government for the same but cannot be said to be a *superior*

[*a*] This definition was substituted for the original definitions of "holder" or "landholder" and "holding" by Bom Act IV of 1913, s. 6 (*e*).

[*b*] This definition was substituted for the original definitions of "superior holder" and "inferior holder" by Bom. Act IV of 1913, s. 6 (*f*).

holder, because he is not a holder and has no interest in the land of which he collects the assessment (*Dandekar's Law of Land Tenures*, Vol I, pp. 42—43).

Where it appeared that defendants were liable to pay the assessment and local fund to the plaintiff, who held a sanad under the Summary Settlement Act, 1863, the lower Court came to the conclusion that the relationship of landlord and tenant was not created between the parties, it was *held* that the plaintiff was a superior holder within the meaning of this sub-clause and that the defendants were in law the tenants of the plaintiff, whatever the nature of their holding might have been (*Surshangi Naran*, 2 Bom. L. R. 855).

The Talukadari Settlement Officer may, with reference to a person holding lands under a lease from him, be deemed to be a "superior holder" within the meaning of this clause (*Secretary of State for India v. Gordhandas Mohanlal*, 33 Bom. L. R. 815).

"Superior holder" and "inferior holder."—The expression "*superior holder*" is wider including the expression *landlord*. The terms *superior holder* and *inferior holder* have reference only to payment of rent or land revenue, whereas the terms *landlord* and *tenant* have reference only to the origin of the right to hold. A tenant has to pay to his landlord and is thus an inferior holder. In addition to this fact he derives his right to hold from the man whom he pays or from his predecessor. Every tenant is an inferior holder, but every inferior holder is not necessarily a tenant [*Dandekar's Law of Land Tenures*, Vol. I p. 43).

"tenant;"

[*a*] (14) "tenant" means a lessee, whether holding under an instrument or under an oral agreement, and includes a mortgagee of a tenant's rights with possession; but does not include a lessee holding directly under Government;

"landlord;"

[*a*] [15] "landlord" means a lessor;

"occupant;"

[*b*] (16) "occupant" means a holder in actual possession of unalienated land, other than a tenant: provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

Difference between "holder" and "occupant".—'Holder' signifies a person holding any land alienated or unalienated, whereas 'occupant' means a holder of unalienated land.

"occupancy;"

[*b*] (17) "occupancy" means a portion of land held by an occupant;

Occupancy.—The term "occupancy" is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach and Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

[*a*] These definitions were substituted for the original definitions by Bom. Act IV of 1913, s. 6 (*f*) and (*g*).

[*b*] These definitions were substituted for clauses (16), (17) and (18) by Bom Act IV of 1913, s 6 (*h*).

"to occupy land;" [a] (18) "to occupy land" means to possess or take possession of land ;

" occupation;" (19) "occupation" means possession ;

"alienated;" (20) "alienated" means transferred in so far as the rights of Government to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any person ;

"Alienated".—Though the grant of a land to an inamdar was of the entire property in the soil, still the lands were 'alienated' within the meaning of this sub-clause, and the defendants were entered in the settlement register as khatadars and who cultivated the lands and paid to the plaintiff only a sum equivalent to the annual assessment, were entitled to the rights of occupants in unalienated villages by virtue of s. 217 *post* (*Dadoo v. Dinkar*, 43 Bom. 77).

"village;" (21) "village" includes a town or city and all the land belonging to a village, town or city ;

"revenue year," "year:" (22) the words "revenue year" or "year" mean the period from, and exclusive of, the thirty-first July of one calendar year until, and inclusive of, the thirty-first July in the next calendar year ;

(23) [*Definition of "section."*]—*Repealed by Bom. Act III of 1886, Sch. B.*

(24) [*Definition of "this chapter"*]—*Repealed by Bom. Act III of 1886, Sch. B.*

"Joint holders," "Joint occupants;" [b] (25) the term "joint holders" or "joint occupants" means holders or occupants who hold land as co-sharers, whether as co-sharers in a family undivided according to Hindu law or otherwise, and whose shares are not divided by metes and bounds ; and where land is held by joint holders or joint occupants, "holder" or "occupant," as the case may be, means all of the joint holders or joint occupants ;

Occupants.—*Vide* note under s. 3 (17) *supra.*

" land records;" [b] (26) "land records" means records maintained under the provisions of, or for the purposes of, this Act ;

"Certified copy." [b] (27) "certified copy" or "certified extract" means a copy or extract, as the case may be, certified in the manner prescribed by section 76 of the Indian Evidence Act, 1872 ;

[a—a] These definitions were substituted for clauses (16,) (17) and (18) by Bom. Act IV of 1913, s. 6 (*h*).

[b] These definitions were added by Bom. Act. IV of 1913 s. 6 (*j*).

Section 76 of the Indian Evidence Act.—*Certified copy*—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorised by law to make use of a seal; a nd such copies so certified shall be called certified copies (*vide* sec. 76 of the Evidence Act).

[*a*] (23) In Sind the word "Mukhtyarkar" shall be deemed to be substituted for the word "Mamlatdar" wherever it occurs in this Act.

[*a*] This definition was added by Bom. Act IV of 1913, s. 6 (j).

CHAPTER II.

CONSTITUTION AND POWERS OF REVENUE-OFFICERS.

Chief controlling authority in revenue matters.

4. The chief controlling authority in all matters connected with the land-revenue is vested in the Commissioner, subject to the Governor in Council.

Extent of territories under the Commissioners.

There shall be one or more Commissioners as the Governor in Council, subject to the orders of the Government of India, may direct ; and the Governor in Council shall prescribe what territories are to be under the control of each, whether generally or for any specific purpose, and may from time to time alter the limits of such territories, all orders made on this behalf being duly notified.

The territories under a Commissioner to be a division.

The territories under each Commissioner shall form, and be called, a division [*a*],

[*b*] and for the purposes of this Act the territories comprised in the Province of Sind shall be deemed to form a division and the Commissioner in Sind shall be deemed to be the Commissioner of that division [*b*].

"Whether generally or for any specific purpose."—These words were inserted with the object of enabling one Revenue Commissioner to undertake certain special duties within the territorial limits of another (*Report of the Select Committee*).

Commissioners.—There are three Divisional Commissioners, at present besides the Commissioner in Sind, each in charge of a division, there being three divisions in the Presidency proper. These divisions are—(1) the Northern Divi-

[*a*] Words repealed by Act XVI of 1895 are omitted.

[*b*—*b*] These words were added by Bom. Act IV of 1913, s. 7.

sion, (2) The Central Division, and (3) The Southern Division. These divisions comprise the districts as under :—

N. D.	C. D.	S. D.
Ahmedabad	Ahmednagar	Belgaon.
Broach	East Khandesh	Bijapur.
Kaira	West Khandesh	Dharwar
Panch Mahals	Nasik	Kanara
Surat	Poona	Kolaba
Thana	Satara	Ratnagiri.
	Sholapur.	

The Districts in Sind are :—(1) Karachi, (2) Dadu, (3) Hyderabad, (4) Sukkur, (5) Larkana, (6) Nawabshah, (7) Thar Parkar and (8) Upper Sind Frontier.

Appointments and duties of Commissioners.

5. The Commissioners shall be appointed by the Governor in Council, and shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force, and so far as is consistent therewith all such other powers or duties of appeal, superintendence and control within their respective divisions, and over the officers subordinate to them as may from time to time be prescribed by Government.

Assistants to Commissioners.

6. Each Commissioner shall have such number of assistants as the Governor in Council may from time to time sanction, their appointment being made by the Governor in Council. Assistants so appointed shall perform such duties as the Commissioners, to whom they are respectively subordinate, may from time to time direct.

Assistants to Commissioners.—There are two Assistants to each Divisional Commissioner—one in charge of the English branch and the other in charge of the Vernacular branch of the office.

Division to be divided into districts.

7. Each division, under the control of the Commissioner, shall be divided into such [*a*] districts with such limits as may from time to time be prescribed by a duly published order of the Governor in Council.

A district to consist of talukas comprising such mahals and villages as Government may direct.

And each such district shall consist of such (*a*) talukas, and each taluka shall consist of such [*a*] mahals and villages, as may from time to time be prescribed in a duly published order of the Governor in Council. (*b*)

[*a*] Words repealed by Bom. Act IV of 1913, s. 8, are omitted.

[*b*] Words repealed by Bom. Act XVI of 1895, are omitted.

The number of Mahals.—The Mahals in each Division are as follows :—

N. D.		C. D.		S. D.	
Modasa, Gogha, Halol, Jhalod	Ahmedabad Panch Mahals	Bhadgaon, Edlabad, Parola	East Khandesh	Chandgaon, Murgod	Belgaum
Hansot, Valod	Broach Surat	Navapur	West Khandesh	Bilgi	Bijapur
Mokhada, Umbargaon	Thana	Mulsi, Ambegaon, Dhond	Poona	Mundargi, Nargund	Dharwar
		Khadala, Malcompeth, Shirala	Satara	Bhatkal, Supa, Mundgod	Kanara
				Uran, Khalapur, Nagothana	Kolaba
				Guhagar, Mandangad	Ratnagiri

[*Vide Sathe's L. R. Code, 4th ed., p. 13.*]

Collector of the District.

8. The Governor in Council shall appoint in each district an officer who shall be the Collector [*a*] and who shall be subordinate to the Commissioner of his division and may exercise, throughout his district, all the powers and discharge all the duties, conferred and imposed on a Collector or an Assistant or Deputy Collector by this Act, or any other law for the time being in force, and in all matters not specially provided for by law shall act according to the instructions of Government.

Assistant and Deputy Collectors.

9. The Governor in Council may appoint to each district so many Assistant Collectors and so many Deputy Collectors as may be deem expedient; the Assistants shall be called "First, "Second," "Supernumerary, &c., as may be expressed in the order of their appointment.

To be subordinate to Collector.

All such Assistant and Deputy Collectors and all osher officers employed in the land revenue administration of the district shall be subordinate to the Collector.

Personal Assistants.—The Collectors of Poona, Satara and Thana are each given a personal Assistant (G. R No. 7018, dated 3rd October 1903, R. D. quoted in Sathe's Land Revenue Code, 4th ed., p. 14).

Superintendent, Mahableshwar, to be Deputy Collector:—The Superintendent of Mahableshwar, in the Satara Collectorate, is appointed a Deputy Collector under the provisions of Act XX of 1852 and invested with the powers exercised by a Mamlatdar under Bombay Act V of 1864 (now Act II of 1906) *B. G. G., 1871 Pt. I, p. 424).*

Their duties and powers.

10. Subject to the general orders of Government, a Collector may place any of his assistants or deputies in charge of the revenue administration of one or more of the talukas in his district, or may himself retain charge thereof.

[*a*] Words repealed by Act XVI of 1895 are omitted.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII [*a*], perform all the duties and exercise all the powers conferred upon a Collector [*b*] by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge.

Provided that the Collector may, whenever he may deem fit, direct any such Assistant or Deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other Assistant or Deputy Subordinate to him.

To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of talukas the Collector shall, under the general orders of Government, assign such pacticular duties and powers as he may from time to time see fit.

"Any other law at the time being in force."—These words are not limited to laws relating to land revenue, but include all acts of the Government of Bombay in which a contrary intention does not appear (Entry No. 15 of G. R. No. 5941, dated 26th August 1902, quoted in Sathe's Land Revenue Code 4th ed. p. 14). The language of a section in an enactment, if plain and unambiguous, must be construed in its natural sense. The words "or any other law at the time being in force" in this section should not be restricted to laws or acts *ejusdem generis* to the Code but include in the Mamlatdars Courts Act (*Keshav v. Jayram*, 36 Bom. 123).

Powers of Collector.—While the Land Revenue Code gives all executive powers in the first place to the Collector (who signs sanads for most alienations, it reserves a few to the Commissioner. The Collector fixes irrigation rates under s. 55 within the maximum sanctioned by Government. The Collector hears appeals from Survey Officers below grade of Superintendent of Survey under s 37 (2), and read with section 203, this also gives him appellate power in respect of section 50A of the District Municipal Act. The Collector can make reductions for diluvion, and may postpone instalments but only with the Commissioner's sanction. He may transfer Government land to other Departments and make all assignments under s. 38 of Act IV of 1905.

While the Collector cannot sanction the employment of permanent establishment (section 21) he can make all appointments to sanctioned posts on the district staff, except Mamlatdars and Head Accountants : and he may in certain cases create and fill temporary appointments. The most important of these cases is in respect of the staff of Circle Inspectors, peons and labourers for partition and sub-division measurement work, and for repairing boundary marks when the cost is irrecoverable from the parties.

The Collector can write off amounts of irrecoverable revenue of all kinds not exceeding Rs. 100 in each case without reference to higher authority, and the Commissioner provided no defect of system or procedure requiring Government orders is disclosed and there has been no serious negligence which might require disciplinary action can write off without limit irrecoverable dues for boundary mark repairs (sections 122–23) and all kinds of revenue and tagai without limit

[*a*] Words repealed by Bom. Act III of 1886 are omitted.
[*b*] Words repealed by Act XVI of 1895 are omitted.

and irrecoverable value of stores or public money up to a limit of Rs. 500 and, unserviceable dead-stock to any amount, sending an annual statement to the Accountant General. The last power was extended to the Collector by G. R. No. 5941 of 1902.

Generally speaking all powers of the Collector under the Land Revenue Code or any other law are also exercised under s. 10 by the Assistant or Deputy Collector in respect of the talukas in his charge. But the Collector may always reserve any power he thinks fit. In particular, Government have directed that powers under Rules 81 and 82 should not ordinarily be delegated. There should be no "unnecessary" reservation. The power of arrest is to be exercised only when specially delegated. The Assistant or Deputy has certain powers of executing contracts and leases under Home Department Resolution 7119-II of 27-9-29 and sanads for tree planting in open sites in villages. He may fine watani village revenue officers and (in Ahmedabad) appoints, punishes, and dismisses mukhis and police patels (subject to the control of the District Magistrate) in talukdari villages.

The Collector will delegate by name the power to write off irrecoverable revenue upto Rs. 25 (G. R. No. 6042 of 3-4-1923).

To a Supernumerary or Personal Assistant, powers must be specifically delegated (G. R. No. 5941 of 1902 (*Anderson's L. R. Rules, ed. of 1930, pp.4-5*).

The powers conferred upon the Collector under the Bom. Irrigation Act are to be exercised by an Assistant Collector according to this section (*Nawazali Shah Pir Ali Gohar Shah v. Rustomali Shah*, 14 S. L. R. 53).

Collector of the district in case of temporary vacancy.

11. If the Collector is disabled from performing his duties, or for any reason vacates his office or leaves his district, or dies, his Assistant of highest rank present in the district shall, unless other provision has been made by Government, succeed temporarily to his office, and shall be held to be Collector [*a*] under this Act until the Collector resumes charge of his district, or until the Governor in Council appoints a successor to the former Collector and such successor takes charge of his appointment.

An officer whose principal office is different from that of an Assistant Collector, and who is an Assistant Collector for special purposes only, shall not be deemed to be an Assistant for the purposes of this section.

Notes.—In Sind the Collector temporarily succeeded is called a Mukhtyarkar.

The powers and duties of a Collector may not be conferred by a Collector on any Assistant or Deputy Collector who has not passed the Departmental Examination according to the higher standard. This order does not refer to Deputy Collectors appointed before the issue of the Government order of the 10th April 1866, directing Deputy Collectors to undergo Departmental Examinations (B. G. G. 1868, Pt. I, p. 1196).

The Mamlatdar ; his appointment.

12. The chief officer entrusted with the local revenue administration of a taluka shall be called a Mamlatdar. He shall be appointed by the Commissioner of the division in which his taluka is situated.

[*a*] Words repealed by Act XVI of 1895 are omitted.

His duties and powers. His duties and powers shall be such as may be expressly imposed or conferred upon him by this Act, or by any other law for the time being in force, or as may be imposed upon, or delegated to, him by the Collector under the general or special orders of Government [*a*].

Delegation of powers to Mamlatdar.—The code provides that the Mamlatdar should exercise such powers as the Collector may delegate to him. But these delegations must be made "under the general or special orders of Government" and also they must be made in all cases by name and not merely in virtue of the office held. Therefore, it is desirable that a printed form should be used by every Collector as follows :—

" To Mr. A. B.

"Whereas you have been appointed to be (or to do duty temporarily as) Mamlatdar (Mahalkari) of—you are hereby authorized during the tenure of that office to exercise the following powers :—

(Here print the powers below detailed.) The Collector should strike out whatever powers reelect to reserve).

Collector of.....The powers which may be delegated are these —

Section	Extent of power	Authority
25, 26 ...	All ...	R. 5295 (9)-11.
32 and Watan Act...	To fine hereditary or stipendiary village revenue officers.	R. 2116 and 4100-83, 1953-93, 5891-03, 5595-08.
42, 43, 70 ...	All	R. 4347, (17)-02.
48 (4), 61 (6), 79A. and 202 ...	To sign eviction notices approved by the Assistant or Deputy.	R. 5295 (85)-11.
80, 86 ...	All. [Mukhtyarkars in Sind included. R. 8048 (1)-08.]	R. 2598 and 6024-83, 9901-06.
90 ...	To sanction sale of moveables in alienated villages.	R. 5295 (47)-11.
91 ...	To accept security from defaulting inferior holders.	*Under this order.*
117B ...	All	*Under this order.*
135F ...	Up to a limit of Rs. 15 ...	R. 7623—9-4-24 & 13-4-24.
135H (3) ...	All ...	*Under this order.*
141-143, 145 ...	All ...	R. 8046-08, 7773-13.
148 ...	All ...	R. 7176-12.
149 ...	To issue certificates direct to other Mamlatdars (apparently in the same or other districts of the Presidency).	R. 5295 (71)-11.
152 ...	To issue notices and remit notice fees levied *by mistake.*	R. 5295 (73)-11.

[*a*] Words repealed by Act XVI of 1895 are omitted.

Section	Extent of power.	Authority.
153, proviso (*a*) ..	To issue notices threatening forfeiture	R. 5295 (74)-11.
154 ...	To distrain and sell moveables in unalienated villages.	R. 5954-91.
156 ...	To determine what property is exempt	R. 4347 (17)-02.
185, 166 (3) ...	All, in respect of such sales as he has himself power to make.	R. 5295 (78-9)-11.
181 ...	To put in possession and give certificate.	R. 5295 (80)-11.
186 ...	All ...	R. 8785-89.
190 (3) ...	All ...	R. 5295 (83-84)-11.
L. R. Rules—		
Rule 41 (and sec. 68)	All (eksali sales) ...	R. 5295 (36)-11.
Rule 58 ...	Permit tree cutting in watan land ...	R. 5295 (22)-11.
80 (and sec. 65) ...	To specially selected Mamlatdars ...	R. 3459-08, 5295-(32)-11.
37, 42, 64, 65, 66 (and sec. 170).	To confirm sale at any auction when the Collector has previously fixed (Rule 128) an upset price which is realized (For powers as to auctions, see Chapter XVIII.)	R. 3520-12.
Revised Rule 81 (and Sec. 65)	To All Mamlatdars and Mahalkaris. To grant permission to use land for N. A. purposes in Class II villages subject to the conditions laid down by the Collector.	R. No. 6406/28 of 11-11-31.
18, 19, 133, 61 and 202	To Huzur Mamlatdar of Surat and and Broach ...	G. R., R. D., No. 8587/28 dated 14-4-32
	Ahmedabad	G. R., R. D. No. 8587/28 dated 5-7-32.
	Dhulia, Jalgaon, Nasik and Bijapur	G. R. R. D., No. 8587/28 dated 30-8-32.
L. R. Rule 51 (2) ...	To Huzur Mamlatdar of Ahmedabad	G. R. R. D., No. 8587/28 dated 5-7-32.
	Bijapur	G. R., R. D., No. 8587/28 dated 30-8-32.
18, 19, 133, 61 and 202	To Huzur Mamlatdar of Thana ...	G. R. R. D., No. 8587/28 dated 1-10-32.

Under other laws and rules powers have been given to Mamlatdars :—

(1) to enter the heirs of Summary Settlement (Class II unstarred) Inams ;

(2) to appoint, give leave and determine heirs of inferior village servants (F. 595-07) ;

(3) to permit cutting of trees in uncommuted service lands [R. 5295 (22)—11.

IX. In issuing his delegation order to the Mamlatdar the Collector can reserve any power he thinks fit, which will then be exercised only by the Prant Officer.

[*Vide Anderson's Bombay Land Revenue Rules (1921), 1st ed. of 1930, pp. 6-8.*]

Chitnises to Collectors and Head clerks to Collectors are graded with Mamlatdars (G. R. No. 8881, dated 23rd December 1891, R. D., and G. R. No. 249, F. D., dated 26th March 1929). See also *Joglekar's Supplement to his Land Revenue Code*, pp. 10-11.

The Mahalkari; his duties and powers.

13. Whenever it may appear necessary to the Governor in Council, the Collector may [*a*] appoint to a taluka one or more Mahalkaris [*a*] ; and, subject to the orders of Government and of the Commissioner, the Collector may [*b*] assign to a Mahalkari [*b*] within his local limits such of the duties and powers of a Mamlatdar as he may from time to time see fit, and may also from time to time direct whether the Mahalkari's immediate superior shall, for the purposes of section 203 [*c*], be deemed to be the Mamlatdar or the Assistant or Deputy Collector, or the Collector in charge of the taluka ; [*d*] when a defined portion of a taluka is placed in charge of a Mahalkari, such portion shall be called a mahal. [*d*]

Delegation of power to Mahalkari.—In delegating to a Mahalkari, the Collector will probably reserve more powers, and he will also specify whether the Mahalkari is to be considered the immediate subordinate of the Mamlatdar or of the Assistant Collector for the purposes of section 203 (appeals, etc.). The Collector can also appoint a Mahalkari and assign certain powers to him without specifying the local limits of his mahal (R. 6824-14), but the necessity of such appointment shall be reported to Government (sec 13). In such a case he will be practically a Deputy Mamlatdar within the taluka, exercising such power as may be given to him; and he will not be "below the rank of an Aval Karkun" for the purposes of the Record of Rights. (6).

Survey Mamlatdars are appointed by the Commissioner of Survey (R. 113-16) ; but their powers are those of revenue officers under Chapter XA (Record of Rights), not of survey officers under sec. 18.

[*a—a*] These words were substituted by Bom. Act IV of 1913, s. 9 (1), for the words "appoint a Mahalkari to be in charge of a defined portion of a taluka."

[*b—b*] These words were substituted by Bom. Act IV of 1913, s. 9 (1), for the words "assign to him."

[*c*] Words repealed by Bom. Act III of 1886 are omitted.

[*d—d*] These words were added by Bom. Act IV of 1923, s. 9 (1).

A Mahalkari may perform the clerical work of preparing the Irrigation Record of Rights, but cannot be appointed a Canal Officer under s. 76 (1) of the Irrigation Act, Bom. Act VI of 1879 (*Vide* G. R. No. 7418 of 1918).

An Extra Aval Karkun is frequently treated as such a Mahalkari. He has power to try Assistance (sec. 86) (R. 8616-91) and Possessory suits (under section 3 of the Mamlatdars' Courts Act) (R. 72-00, 8269-06).

The powers of a Mamlatdar's First or Aval Karkun are regulated by sec. 14. He has been specially given power to sign notices of demand under sec. 152 and may remit the fees if wrongly charged [R. 5295 (72) and (73-11] and to receive rajinamas under sec. 74 (R. 1743-89, 7428-05). He can also levy fees up to a maximum of Rs. 15 in each case under sec 135 (F) (R. 7623-9-4-24 and 13-4-24). An Aval Karkun can exercise *in the absence of the Mamlatdar* any powers specifically given by the rules (7) to Mamlatdars [see Rules 54, 67-69, 74 (2), 96, 108 and 138]. A substitute appointed under sec. 15 can now exercise powers under the Mamlatdars' Courts Act by sec. 3 as amended by Act II of 1906 (I. L. R. 25 Bom 318, 36 Bom. 277), R. 8507-07 gave the Aval Karkun power to try rent suits up to a limit of Rs. 50 : which is now raised to Rs. 100 by Rs 208-21. [N] The Collector may also delegate the power to selected *Treasury* Head Karkuns. R. (L C.) 541—22-9-23.

"Powers of Collector under section 154, Land Revenue Code, can be delegated to an Extra Aval Karkun either by name or by designation An Extra Aval Karkun is not a Mamlatdar or a Mahalkari within the meaning of section 12 or section 13 of the Land Revenue Code. The powers of a Collector under section 156 cannot be delegated to him." (R. 6315-28 of 17th November 1930). (Anderson's L. R. Rules, ed. of 1930, p. 8).

Superior of Mahalkari.—Assistant or Deputy Collector in charge of the talukas was declared to be the immediate superior of the Mahalkari (G.R.R.D. No. 4258, dated 1st May 1906).

Mamlatdar or Mahalkari may depute subordinates to perform certain of his duties.

14. It shall be competent to a Mamlatdar or Mahalkari, subject to such general orders as may from time to time be passed by the Commissioner or by the Collector, to employ any of his subordinates to perform and portion of his ministerial duties : provided that all acts and orders of his subordinates when so employed shall be liable to revision and confirmation by such Mamlatdar or Mahalkari [*a*].

Mamlatdar or Mahalkari in case of temporary vacancy.

15. If a Mamlatdar or Mahalkari is disabled from performing his duties, or for any reason vacates his office, or leaves his taluka or mahal, or dies, such subordinate as may be designated by orders to be issued from time to time on this behalf by the Collector shall succeed temporarily to the said Mamlatdar's or Mahalkari's office and shall be held to be the Mamlatdar or Mahalkari under this Act until the Mamlatdar or Mahalkari resumes charge of his taluka or mahal, or until such time as a successor is duly appointed and takes charge of his appointment.

[*a*] Words repealed by Act XVI of 1895 and Bom. Act IV of 1913, s. 9 (2) are omitted.

Head Karkun taking temporary charge of office of Mamlatdar.—A Karkun taking temporary charge of the office during the absence of the Mamlatdar on casual leave is not a revenue officer ordinarily exercising the powers of a Mamlatdar. He is an officer exercising on an extraordinary occasion some such powers under this section (*Ningapa v. Dodapa*, 21 Bom. 558).

Substitute designated under this section not competent to exercise powers of Mamlatdar.—A substitute designated under this section can now exercise the powers conferred by the Mamlatdars Act, 1876, as amended by Bom. Act II of 1906, on a Mamlatdar to whose office he has temporarily succeeded (*Deorao v. Narayandas*, 25 Bom. 318, F. B). See also 36 Bom. 277.

Stipendiary Patel and Village Accountant to be appointed where no hereditary Patel or Village-Accountant exists.

16. In villages where no hereditary Patel or Village Accountant exists, it shall be lawful for the Collector, under the general orders of Government and of the Commissioner, to appoint a stipendiary Patel or a Village Accountant who shall perform respectively all the duties of hereditary Patels or Village Accountants as hereinafter prescribed in this Act or in any other law for the time being in force, and shall hold their situations under the rules in force with regard to subordinate revenue-officers.

Saving the rights of holders of alienated villages.

Nothing in this section shall be held to affect any subsisting rights of holders of alienated villages or others in respect of the appointment of Patels and Village Accountants in any alienated or other villages.

Village Accountant to keep records as he may be required to keep by the Collector;

17. Subject to the general orders of Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts and other records shall be kept by the Village Accountant [*a*].

and to prepare public writings.

It shall be the duty of the Village Accountant to prepare, whenever called upon by the Patel of his village, or by any superior Revenue or Police officer of the taluka or district to do so, all writings connected with the concerns of the village which are required either for the use of Government or the public, such as notices, reports of inquests, and depositions and examinations in criminal matters.

Survey Officers:

18. For the purposes of Chapters VIII, IX and X [*b*] the Governor in Council may appoint such officers as may from time to time appear necessary. Such officers shall be designated "Commis-

[*a*] Words repealed by Act XVI of 1895 are omitted.
[*b*] Words repealed by Bom. Act III of 1886 are omitted.

sioner of Survey," "Superintendent of Survey," "Survey Settlement Officers" and "Assistant" or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Governor in Council may direct.

their duties and powers.

Subject to the orders of the Governor in Council, the officers so appointed are vested with the cognizance of all matters connected with survey and settlement, and shall exercise all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.

Combination of offices.

19. It shall be lawful for the Governor in Council to appoint one and the same person, being otherwise competent according to law, to any two or more of the offices provided for in this chapter, or to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits or otherwise as may seem expedient.

Note.—The Mamlatdar of Poona City is authorised to exercise the powers of a Mamlatdar in the Haveli Taluka of the Poona District for the purposes of ss. 86 and 87 of the Code (B. G. G. 1898, Pt. I, p. 1058).

Certain officers' appointments to be notified.

20. The appointment of all officers mentioned in sections 4 to 13 and 18 and 19 shall be duly notified.

Acting appointments.

Any officer appointed to act temporarily for any such officer shall exercise the same powers and perform the same duties as might be performed or exercised by the officer for whom he is so appointed to act.

Establishments.

21. Subject to rules [*a*] made under section 214, the appointment of all members of the establishments of the undermentioned officers shall, unless otherwise directed by Government, be made by those officers respectively, *viz*:—

the Commissioners,
the Collectors,
the Commissioner of Survey,
the Superintendent of Survey,
the Survey Settlement Officer.

The appointment of all members of the establishments of all other officers mentioned in the foregoing sections of this chapter shall be made in their respective departments by the Collector and the Superintendent of Survey : provided that it shall be lawful for them to delegate such portion of this power as they may deem fit to any subordinate officer, but subject to the retention of a right of revision at any time of the appointments that may be made by such subordinate officers.

[*a*] Words repealed by Bom. Act IV of 1913, s. 10, are omitted.

Note.—From 1907 the functions of the Survey Department have been entrusted to the Settlement Commissioner who is also the Director of Land Records. The Land Records Staff of the Director consists of three Superintendents, one for each Division, a District Inspector or Survey Mamlatdar for each District and a staff of Circle Inspectors (*vide* para. 12 of Government Selection No. OO XXVII, new series (*Sathe's Land Revenue Code*, 4th ed., p. 20).

Seals.

22. The Governor in Council shall from time to time by notification prescribe what revenue officers shall use a seal, and what size and description of seal shall be used by each of such officers. [*a*].

SEALS TO BE USED BY REVENUE OFFICERS

(1) The officers mentioned below shall have and use seals, *viz.*:—

(1) Commissioners of Divisions, and the Commissioner in Sind :
(2) Deputy Commissioners in Sind ;
(3) Collectors ;
(4) Assistant Collectors ;
(5) Deputy Collectors (including Treasury Officers of the Deputy Collectors Grade), and Superintendents of Land Records and Agriculture ;
(6) Mamlatdars ;
(7) Mahalkaris ;
(8) Mukhtyarkars (Sind) ;
(9) Huzur Treasurers (Central Division), (S. D.) and (N. D.);
(10) City Survey Officers (N. D.) ;
(11) Magistrate of Bandra invested with powers under Act III of 1876 (now Act II of 1906) ;
(12) District Inspectors of Land Records and Agriculture in the Northern, Central and Southern Divisions ;
(13) Assistants in charge, Head Quarters Offices, Agricultural Department, Dharwar and Poona, and in the Northern Division when appointed ; and

(2) that the seals shall be circular and of the following dimensions and material :—

(*a*) Silver seals of which the diameter should be 1¼ inches for the officers named at serial numbers (1) to (3) hereinbefore mentioned ;
(*b*) Seals of brass, copper or gunmetal (whichever may be the most durable material) of which the diameter should be 1½ inches for the officers named at serial numbers (4) and (5) hereinbefore mentioned ;
(*c*) Seals of brass, copper or gunmetal (whichever may be the most durable material) of which the diameter should be one inch only for the officers named at serial numbers (6) to (13) hereinbefore mentioned ; and

(3) that pending the preparation of the abovementioned seals, the seals hitherto used shall continue to be used by such of the officers hereinbefore mentioned as have used them. (B. G. G. 1896, pt. I, pp. 1161, 1340 ; *Ibid.*, 1897, p. 820).

[*a*] Words repealed by Bom. Act III of 1886 are omitted.

Metal seals.— A suggestion was made that for the purposes of s. 22, metal seals may be used for merely sealing purposes, *i. e.*, when wax is to be impressed, and for all other purposes rubber seals may be used. The present practice of using metal seals for all purposes should continue (G. R. No. 4764–24, dated 23–12–1925 quoted in *Joglekar's Supplement No. 2 to his Land Revenue Code*, p. 2).

CHAPTER III

OF THE SECURITY TO BE FURNISHED BY CERTAIN REVENUE OFFICERS AND THE LIABILITY OF PRINCIPALS AND SURETIES

Government to direct what officer shall furnish security, and to what amount.

23. It shall be lawful for government to direct that such revenue officers as it deems fit shall, previously to entering upon their office, furnish security to such amount as Government may in each case deem expedient, either by deposit of Government-paper duly endorsed, accompanied by a power to sell, or in the form contained in Schedule B. [*a*].

The amount for which such security shall be furnished may be varied, from time to time, by order of Government, which shall also determine the number of sureties to be required when security is taken in the form of Schedule B.

Security.—The revenue officers hereinbelow mentioned shall previously to entering upon their office furnish security, according to this section, to the following amounts :—

		Rs
1.	Head Accountants	5,000
2.	Mamlatdars	5,000
3.	First Karkuns to Mamlatdars	3,000
4.	Special Head Karkuns for payment of Military pensions...	1,000
5.	Treasury Nagdi Karkuns (to Mamlatdars and Mahalkaris).	500
6.	Mahalkari with Treasury	3,000
7.	First Karkun to Mahalkari with treasury	1,000
8.	Shroff Karkuns to Mahalkari of Kohistan and Keti Bandar	1,000
9.	Mahalkari without treasury	500
10.	Treasurer at Poona	80,000
11.	Treasurer at Kanara, Kolaba and Ratnagiri ...	20,000
12.	All other Treasurers	40,000
13.	First Karkuns to Treasurers of Kanara, Kolaba and Ratnagiri	1,000
14.	All other First Karkuns to Treasurers	2,000
15.	Second Karkun to Poona Treasurer	2,000
16.	Karkuns other than any of the foregoing employed in Huzur Mamlatdars' or Mahalkari's offices on shroffs work...	1,000
17.	Karkuns for payment of Military pensions... ...	500
18.	Supervising Tapedars in Sind	1,000

[*a*] Words repealed by Bom. Act III of 1886 are omitted.

		Rs.
19	Tapedars in Sind	1,000
20.	Stipendiary Patels or Village Accountants appointed under sec. 16, and Japtidars appointed by the Collector to manage attached Khoti villages	200
21.	Karkuns or Clerks who write the registers of copying, comparing, search and inspection fees and of bhatta and permanent advances and take charge of moneys deposited for those purposes in Revenue Courts	200
22.	Head-quarter Assistants in Survey Offices	200
23.	Accountant in the office of the Commissioner in Sind ...	1,000
24.	City Maintenance Surveyors	200

Provided that in the case of the officers specified in Nos. 3 and 16 the amount of security to be furnished may be raised by the Commissioner to such amount not exceeding five thousand rupees as he thinks fit : and in No. 20, he may exempt in special cases, *e. g.*, Khoti villages.

"One Government servant should not be allowed to stand as surety for another for the purposes of section 23, Land Revenue Code." (R. 6064-28 of 1st November 1930).

After the issue of Resolution No. 4418 of 1916 all powers of Government under sec. 23 are delegated to the Commissioner in Sind under Act V of 1868.

"In Sind a Government servant serving in one department should be permitted to stand surety for a Government servant serving in another department, provided, in the case of Hindus, that they are not members of the same joint family.

2. Retired Government servants and servants of local bodies should not be debarred from standing sureties for Government servants."

(G. R., R. D. No. 6084-28 of 2-12-31).

Security to be furnished before entering on appointment.—When any person is appointed to any office specified in the Order, whatever may be the probable duration of his tenure thereof, he shall, before entering thereon, furnish security to the amount specified or to such smaller amount as the collector may, in the particular case, deem reasonable and sufficient.

Number of sureties.—Where he executes a bond, the number of sureties shall be one or more, at his option, if the amount of security does not exceed one thousand rupees; and otherwise shall be not less than two.

Duties of heads of offices in respect of securities.—(1) Heads of offices in which any officer required to furnish security is serving will be held responsible for seeing that the necessary security is duly furnished, and that it is good and sufficient both at the time it is first furnished and thereafter, until it is no longer required.

(2) For this purpose heads of offices shall carefully scrutinize the security and satisfy themselves as to its sufficiency both when it is first offered and also once a year after it has been accepted, and if they deem it insufficient, shall require the officer concerned to furnish additional or fresh security.

(3) Care must be taken that no one person is accepted as surety on behalf of a disproportionately large number of officers, whether such officers belong to the same office or department or not.

(4) No Karkun should ordinarily have in his custody more than the amount for which he has given security; surplus should be placed in the treasury.

A register of securities to be kept by Collector.—(1) The Collector shall keep a register of all securities furnished by each officer in his district in accordance with

Order 13 for scrutiny by the Commissioner during his tour, and shall submit annually to the Commissioner, on 1st October, a certificate that all such securities are good and sufficient.

(2) This register shall contain such particulars as the Commissioner may from time to time direct. A column must be added in all cases in which to record immediately on receipt of notices of withdrawal (sec. 39) of a surety.

(3) For the purposes of sec. 31 (2) an annual declaration of all landed property is required from all officers —*Anderson's L. R. Code Rules, 1921* (1st ed. of 1930, pp. 8–12).

Fresh or additional security.

24. The Collector or the Superintendent of Survey may, at any time after security has been given by a revenue officer subordinate to him, if it appear to him that the security taken is unsatisfactory, or if the officer is transferred to an office for which larger security is required, or for other sufficient reason, demand fresh or additional security and in case of the officer failing to give such security within one month after its being required of him may suspend or dismiss him: provided always that no greater security shall be demanded than is required by the orders of Government under the last preceding section.

Demands for money, papers, &c., to be made known in writing to the person concerned.

25. The Collector or the Superintendent of Survey or any other officer deputed by the Collector or Superintendent of Survey for this purpose shall in all cases in which he may have a claim on any revenue officer or on any person formerly employed as such in his department or district for public money or papers or other Government property, by writing under his official seal, if he use one, and signature, require the money, or the particular papers or property detained, to be delivered either immediately to the person bearing the said writing, or to such person on such date and at such place as the writing may specify.

Who may be arrested and confined in jail if he fail to produce them.

If the officer or other person aforesaid shall not discharge the money, or deliver up the papers or property as directed, he may cause him to be apprehended and may send him with a warrant, in the form of Schedule C, to be confined in the civil jail till he discharges the sums or delivers up the papers or property demanded from him:

Limit to confinement.

Provided that no person shall be detained in confinement by virtue of any such warrant for a longer period than one calendar month.

Revenue officers.—For the purposes of ss. 25 and 26 only village officers are revenue officers.—*Vide* sec. 3 (1).

Officers issuing warrants under ss. 25 and 26.—For form of warrant, see Schedule O. Mamlatdars and Mahalkaris are entitled to issue warrants under ss. 25 and 26.

26. The Collector of his own motion, if the officer or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land revenue from defaulters, and, for the purpose of recovering public papers or other property appertaining to Government may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1872.*

Public moneys may also be recovered as arrears of revenue;

and search warrant may be issued for recovery of papers or property.

It shall be the duty of all persons in possession of such public moneys, papers or other property appertaining to Government to make over the same forthwith to the Collector, and every person knowing where any such property is concealed shall be bound to give information of the same to the Collector.

Persons in possession of public moneys, &c., bound to give them up.

27. The surety or sureties of such officer or other person as is aforesaid, who may enter into a bond, in the form of Schedule B, shall be liable to be proceeded against jointly and severally in the same manner as his or their principal is liable to be proceeded against, in case of default, and notwithstanding such principal may be so proceeded against:

Surety to be liable in the same manner as principal.

provided always that in any case of failure to discharge ro make good any sum of money due to Government or to produce any property of Government of ascertained value no greater sum than is sufficient to cover any loss or damage which the Government may actually sustain by the default of the principal, shall be recovered from the surety or sureties as the amount which may be due from such surety or sureties under the terms of the security-bond executed by him or them:

Extent of liability.

And provided also that the said surety or sureties shall in no case be liable to imprisonment in default of producing public papers or property, if he or they pay into the Government treasury the whole or such part of the penalty named in the bond as may be demanded.

Sureties not liable to imprisonment, if penalty be paid.

* See now Act V of 1898.

28. If an officer or other person as aforesaid, or his surety or sureties against whom a demand is made, shall give sufficient security in the form of Schedule D, the Collector shall cause such officer or surety if in custody to be liberated, and countermand the sale of any property that may have been attached, and restore it to the owner.

An officer or surety in jail may, by furnishing certain security, obtain his release.

29. The liability of the surety or sureties shall not be affected by the death of a principal, or by his appointment to a situation different from that which he held when the bond was executed, but shall continue so long as the principal occupies any situation in which security is required under section 23, and until his bond is cancelled.

Liability of surety not affected by death of principal or by his taking a different appointment.

The heirs of a deceased officer shall be liable by suit in the Civil Court for any claims which Government may have against the deceased, in the same way as they would be for similar claims made by an individual.

Liability of heirs of deceased officer.

30. Any surety, whether under a separate or joint bond, may withdraw from his suretyship at any time on his stating, in writing, to the officer to whom the bond has been given, that he desires so to withdraw ; and his responsibility under the bond shall cease after sixty days from the date on which he gives such writing as to all demands upon his principal concerning moneys, papers or other property for which his principal may become chargeable after the expiration of such period of sixty days, but shall not cease as to any demands for wnich his principal may have become liable before the expiration of such period, even though the facts establishing such liability may not be discovered till afterwards.

How surety may withdraw from further liability.

CHAPTER IV

OF CERTAIN ACTS PROHIBITED TO REVENUE-OFFICERS, AND OF THEIR PUNISHMENT FOR MISCONDUCT

31. No revenue officer shall, except with the express permission of Government, or of the Collector, or Superintendent of Survery to whom he is subordinate,—

Prohibited acts.

(1) engage in trade, or be in any way concerned, directly or indirectly, either as principal or agent, in any commercial transaction whatever;

not to trade;

(2) purchase or bid, either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property which may, under the provisions of this Act or of any other law for the time being in force, be sold by order of any revenue or judicial authority in the district in which such officer is at the time employed;

not to purchase at public sale;

(3) hold directly or indirectly any farm or be in any way concerned on his private account in the collection of payment of revenue of any kind in the district in which he is at the time employed;

not to be concerned in the revenue;

and no revenue officer shall—

(4) derive either for himself or for any other individual any profit or advantage beyond his lawful salary or emolument from any public money or property with the collection or charge of which he is entrusted or connected; or

not to make private use of public money or property;

(5) demand or receive under the colour or by the exercise of his authority as such revenue officer, or by way of gratification or otherwise, or knowingly permit any other person to demand or receive on his behalf, any sum or any consideration whatever over and above what he is legally entitled to demand or receive under the provisions of this Act or of any other law for the time being in force.

not to make or receive undue exactions or presents.

Talatis not to act as money lenders.—Talatis detected to be engaged as money-lenders in their villages should at once be dismissed (G. R. No. 4120, dated 15th August 1878).

Stipendiary village accountants not to hold land other than hereditary.—Clauses (1) and (2) of this section should be construed strictly in the case of stipendiary village accountants and permission should not be given to them to engage in money-lending or to purchase lands at public sales. Clause (3), if strictly enforced, would prohibit them from holding any lands paying revenue to Government. But there is no objection to the holding of hereditary lands by stipendiary village accountants or absolutely to their holding of lands purchased otherwise than at a public sale. This section requires that every revenue officer who holds land paying revenue to Government in the district in which he is employed should obtain permission to continue to hold it, and the Collector can give or withhold permission according to the merits of each case, taking care that his orders are not unduly harsh. If the Collector considers that the position of a talati as a holder of land in his own village taluka or district conflicts, in any case with the proper performance of his duty as a village accountant, he can have him transferred (G. R. No. 5635, dated 31st July 1883).

32. Subject to rules [a] made under section 214, all revenue-officers may be fined, reduced, suspended or dismissed for any such offence as is described in the last preceding section, or for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct, by the authority by whom such officer is appointed; or by any authority superior to such authority; and this power may be delegated by such first-mentioned authority, in whole or in part, to any subordinate officer on the same condition that the power of appointment may be delegated under section 21:

Power of fining, reducing, suspending and dismissing in whom to vest.

Provided that, excepting Mamlatdars, no revenue officer, whose monthly salary exceeds Rs. 250, shall be fined, suspended, reduced, or dismissed except by order of the Governor in Council.

A revenue officer, whose monthly salary exceeds Rs. 250, to be fined, &c., only by order of the Governor in Council.

Mamlatdars empowered to fine village officers.—The Collector may, under this section, delegate to a Mamlatdar the power of fining village officers (stipendiary as well as hereditary) subject to a right of revision and subject to any limitation, laid down by law or rule which the Collector may think fit to impose. There is no objection to the power being so delegated in any district in which the Collector thinks it expedient to adopt this course (G. R. No. 2116, dated 13th March 1883, and G. R. No. 4100, dated 30th May 1883). This last G. R. was obviously intended to apply to revenue officers only, and not to override in any way the provisions of the Village Police Act VIII of 1867, section 9 of which expressly limits the power of fining Police Patils to First Class Magistrgtes. If the resolution in question has been construed anywhere as empowering Mamlatdars to fine Patils for neglect of their Police duties, the practice is incorrect and should be discontinued (G. R. No. 1953, dated 15th March 1893).

Mahalkaris empowered to fine village officers.—Collectors are authorized to delegate to any Mahalkari in his district the power to fine hereditary village officers in sums not exceeding Rs. 2 subject to the conditions in the order (G. R. No. 5891, dated 23rd August, quoted in Sathe's Land Revenue Code, 4th Ed., p. 31).

Maximum period of suspension from office for misconduct.—The maximum period for which suspension from office should be awardable as a specific punishment under this section should be fixed at six months (G. R. No. 9881, dated 19th December 1884).

33. When any revenue officer passes an order for fining, reducing, suspending, or dismissing any subordinate officer, he shall record such order or cause the same to be recorded, together with the reasons therefor, in writing under his signature in the language of the district or in English.

All such orders to be made in writing.

[a] Words repealed by Bom. Act IV of 1913, s. 10, are omitted.

34. No fine inflicted under the foregoing provisions shall in any case exceed the amount of two months' pay of the office held by the offender at the time of the commission of the offence.

Fine not to exceed two months' pay;

All fines inflicted under this chapter may be recovered from the officer's pay or, if necessary, may be realized in the same way as arrears of land-revenue are recoverable under this Act.

how recovered.

35. If the Collector or Superintendent of Survey, whether of his own motion or on appeal from a subordinate officer's order, pass an order for fining, reducing, suspending or dismissing any revenue-officer subordinate to him whose monthly salary does not exceed thirty-five rupees, or

Appeals.

it any authority superior to the Collector or Superintendent of Survey psss any such order against a revenue officer whose monthly salary does not exceed ninety-nine rupees, no appeal shall lie against such order, except and provided always that at least one appeal shall lie against every order made, of his own motion, by any authority other than Government, for dismissing an officer whose monthly salary exceeds thirty-five rupees.

And no appeal shall lie against any order for inflicting a fine not exceeding one rupee.

Modification of order.—No order passed by the Collector of the nature referred to in cl. (1) of this section should be reversed, modified or interfered with by the Commissioner. The object is to preclude all appeals to the Commissioner when the subordinate involved gets Rs. 35 or less. It is subject to revision by Government (*Modak's Land System and Viallye Administration*).

An officer's liability to criminal prosecution not affected by this Act.

36. Nothing in this chapter shall affect any officer's liability to a criminal prosecution for any offence with which he may be charged.

Any officer subjected to such prosecution may be suspended pending the trial, and at its close may, upon a consideration of the circumstances brought to light during its course, be suspended, reduced, or dismissed by any competent authority, whether he have been found guilty or not.

Officer may be suspended during trial, and subsequently suspended, reduced or dismissed.

CHAPTER V.

OF LAND AND LAND-REVENUE

All public roads, &c., and all lands which are not the property of others, belong to Government.

37. [*a*] (1) All public roads, lanes and paths, the bridges, ditches, dikes and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below high-water mark, and of rivers, streams, nalas, lakes and tanks, and all canals, and water-courses, and all standing and flowing water, and all lands, wherever situated, which are not the property of individuals or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of Government; and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

Explanation.—In this secrion "high-water mark" means the highest point reached by ordinary spring-tides at any season of the year.

[*b*] (2) Where any property or any right in or over any property is claimed by or on behalf of Government or by any person as against Government, it shall be lawful for the Collector or a survey officer, after formal enquiry of which due notice has been given, to pass an order deciding the claim.

[*b*] (3) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed [*c*] under sub-section (1) or sub-section (2), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

[*b*] (4) Any person shall be deemed to have had due notice of an enquiry or order under this sectition if notice thereof has been given in accordance with rules made in this behalf by the Governor in Council.

[*a*] This was originally s. 37. It was numbered sub-section (1) of section 37 by Bom. Act. XI of 1912 s. 1.

[*b*] These sub-sections were added by Bom. Act XI of 1912 s. 1.

[*c*] Words repealed by Bom. Act II of 1919, second Schedule are omitted.

Public highway.—This section does not authorize the Government to obstruct or divert a public highway (*Ardeshir v. Aimai*, 53 Bom. 187).

Streets.—Under s. 50 (2) of the Bombay District Municipal Act, 1901, streets vest in municipalities, *i. e.*, the ownership of the soil does not so vest, but the surface and so much of the sub-soil as may be necessary for the purpose of the street does vest, the municipality being in the position of a trustee (G. R. No. 2640, dated 7th March 1924).

Beds of rivers.—The sovereign's rights are as great under the Hindu and Mahomedan laws as under the English. The property in the beds of navigable rivers as in the seashore and the bottom of the sea is reckoned amongst the *jura regalia* of the crown (G. R. No. 1004, dated 10-3-1877 quoted in Joglekar's Land Revenue Code, p. 57).

Village sites (Gavthan).—According to the custom of the country the proprietary right in all village sites vests in Government unless it has been unmistakably published (G. Rs. Nos. 4239, dated 24th July 1873 and 5292, dated 22nd September 1873 quoted in Joglekar's Land Revenue Code, p. 57).

Waste lands.—Waste lands belong to the state and a permanent private right cannot be implied from the levy of a rate on a casual and desultory use of the soil (G. R. No. 2493, dated 4-5-1881, quoted in Joglekar's Land Revenue Code, p. 58).

Suit to recover possession of land—Limitation.—Lands forming part of a river-bed were leased by the Collector for cultivation to defendant No. 2 The plaintiff who owned lands on the bank of the river laid claim to the lands in dispute, but his claim was negatived by the Collector under this section on July 16, 1912. The plaintiff appealed against the Collector's order, the last appeal having been decided on July 16, 1913. The plaintiff sued, on April 6, 1914, to recover possession of the lands. *Held*, that the suit was barred under Art. 14 of the Limitation Act, 1908, inasmuch as the Collector's order having been passed before this section was amended by Act XI of 1912, time began to run from the date of the order and not from the final order in appeal (*Chhotubhai v. Secretary of State*, 22 Bom. L. R. 146).

Khots have right to cultivate land left dry in a river adjoining their land.—Where the Khots of a village claimed a right to occupy and cultivate land left dry in the river bed, as far as the middle of the bed opposite their Khoti village, it was *held* that they were entitled to this right, and this section was not a bar to such a right (*Secretary of State v. Wasudeo*, 31 Bom. 456).

Collector's action.—Where the Collector, acting under the povisions of this section, purports to deal with land which is *prima facie* the property of an individual who has been in peaceable occupation thereof and not of Government, and passes an order with reference thereto, he is not dealing with that land in his official capacity, but is acting *ultra vires* (*Malkajeppa v. Secretary of State*, 36 Bom. 325).

Collector's power.—The Collector acts *ultra vires* if he interferes with private land; his powers extend only to ownerless land (*Secretary of State v. Mushtak Singh*, 7 S. L. R. 109).

Title of Government.—This section does not confer title on Government and there is no presumption of title in favour of Government even as to village sites (*Sultan Muhammad v. Secretary of State*, (8 S. L. R. 331).

Government ownership of road ways.—Government is the owner of the land forming roadways through the village site of a bhagdari village. All the land of the village site of a bhagdari is not the property of the bhagdars. The bhagdari tenure is a particular system of collecting the Government revenue. A bhagdar can have only those village fields and the portion or the village site as are assigned to him by the Government. He cannot claim the proprietorship of such lands as he is liable to pay rent or assessment to the Government for these lands (*Umar Annaji Miyaji v. Sec etary of State for India*, 37 Bom. 87).

Sub-sections (2) and (3).—In its original form section 37 only provided for the disposal by the Collector of Government property, and did not provide for any enquiry where there was a dispute as to whether property belonged to Government or not. This is now provided for in the new sub-sec. (2). In the new sub-section (3) the provisions of s. 135 (which is now repealed) are included in an amplified form so as to cover all descriptions of property on which orders may be passed under sub-section (1) or (2). This extension is necessitated by the uncertainty whether the period of limitation prescribed in Art. 14 of the first Schedule of the Limitation Act applies to cases not covered by the original section 135 (*Statement of Objects and Reasons*).

Appeal.—An appeal against an order passed by a Collector under sub-section (2) of this section cannot necessarily be instituted before a suit is filed in a Civil Court.

Lands may be assigned for special purposes, and

when assigned shall not be otherwise used without sanction of the Collector.

38. Subject to the general orders of Governmeut, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII [*a*], and at any other time for the [*b*] Collector, to set apart lands the property of Government and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be otherwise [*c*] used without the sanction of the [*b*] Collector; and in the disposal of land under section 37 due regard shall be had to all such special assignments.

Notes.—This section gives the Collector the power of setting apart lands for public purposes; but the arrangements by which that power is to be exercised by Survey Officers, while survey operations are proceeding, is not thereby disturbed (*Select Committee's Report*).

Secs. 38 to 40 (both inclusive) do not apply to any estate in the districts of Ahmedabad, Kaira, Broach, or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*See* Bom. Act VI of 1888, ss. 1 and 33).

[*a*] Words repealed by Act III of 1883 are omitted.

[*b*] "Collector" was substituted for "Commissioner" by Bom. Act IV of 1905, First Schedule.

[*c*] This word was substituted by Bom. Act IV of 1913, s. 11, for the original words "appropriated or assigned".

"Land set apart for any purpose" is not confined to land set apart under this section. Land which has from time immemorial been used as a public road, is none the less set apart for that purpose, though this may have taken place years before survey operations took place under Chapter VII of the Code (*Pranlal v. Secretary of State*, P. J. 1897, p. 366).

Municipalities can permit lands assigned as air spaces to be used for temporary purposes with the approval of the Collector or the local revenue officer in charge of the city survey. Half the proceeds derived from such use should be paid to Government (G. R. No. 125–24, dated 7–2–1925, quoted in *Joglekar's Supplement No. 2 to his Land Revenue Code, p. 6*).

Regulation of use of pasturage.

39. The right of grazing on free pasturage lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time time, either generally or in any particular instance, prescribed by the Collector with the sanction of the Commissioner. The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

"Village cattle."—The phrase "village cattle" does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village (*Collector of Thana v, Bal Patel*, 2 Bom. 110).

Concession of Government rights to trees in case of settlements completed before the passing of this Act.

40. In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of Government to all trees in unalienated land, except trees reserved by Government, or by any survey officer, whether by express order made at, or about, the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after, such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlements completed before the passing of Bombay Act I of 1865 [*a*] this provision shall not apply to teak, black-wood or sandal-wood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

Ditto. in case of settlements completed after the passing of this Act.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land, except in so far as any such rights may be reserved by Government, or by any survey officer on behalf of

[*a*] Bom. Act I. of 1865 (except sections 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 2.

Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

Ditto, in case of land taken up after completion of settlement.

When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of Government to all trees growing on that land, which may not have been, or which shall not hereafter be, expressly reserved at the time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey settlement of the said village or portion of a village.

Trees.—Trees belong always to the landlord, not to the tenant. But a *permanent* tenant, the origin of whose tenancy is lost into antiquity, is entitled to the trees. For tenant's rights to the produce of trees, see 30 All. 134 and 38 Bom. 716).

"Trees reserved."—

The accused were occupants of a Survey Number in a village in which the first survey settlement was introduced in 1865, and the revised settlement in 1889. Considerable time after the settlements, sandal-wood trees grew on the land. Those trees having been cut and removed by the accused, without the permission of Government, the accused were convicted of a breach of Rule 2 framed by Bombay Government under s. 75 cl. (c) of the Forest Act and punished under s. 76 of the Act. *Held*, reversing the convictions and sentences, that under this section the right of Government was confined to reserved trees existing at the date of the settlement and that all subsequent growth belongs to the occupant (*Emperor v. Yellappa*, 45 Bom. 110).

Forest rights.—In Bombay forest rights are discussed in G. R. No. 2493, dated 4th June 1881. Dunlop's (Kolaba and Ratnagiri) and Harri's (Kanara) proclamations are discussed in 8 Bom. H. C. 2 and 3 Bom. 728.

Government trees and forests.

41. The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brushwood, jungle or other natural product growing on land set apart for forest reserves under section 32 of Bombay Act I of 1865 [*a*] or section 38 of this Act, and to all trees, brushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government; and such trees, brushwood, jungle or other natural product shall be preserved or disposed of in such manner as Government may from time to time direct.

[*a*] Bom. 1 of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

"Or other natural product."—These words were added with the view of protecting existing rights of Government to such products as lac, honey, gum, resin, catacha, etc. (*Proceedings of the Legislative Council*).

Trees in Patil Inam land—No Civil Court can try suits against Government for trees in Patil Inam land (P. J., 1893, p. 186).

Note.—The provisions in ss. 40 and 41 relating to trees on occupancies are based upon the principle that trees standing or growing on occupancies do not belong to occupants, but belong to Government. The provisions refer to two classes of trees—reserved, and not reserved, and declare that occupants have no manner of right to the trees reserved by Government.

Road-side trees.

[*a*] 42. All road-side trees which have been planted and reared by, or under the orders of, or at the expense of, Government, and all trees which have been planted and reared at the expense of Local Funds by the side of any road, which vests in Government, vest in Government [*a*]. But in the event of such trees dying, or being blown down, or being cut down by order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the said holder : provided that the trees shall not be lopped except under the orders of the Collector.

[*b*]

Recovery of value of trees, &c., unauthorizedly appropriated.

43. Any person who shall unauthorizedly fell and appropriate any tree or any portion thereof or remove [*c*] from his holdings [*c*] any other natural product [*c*] whether of the like description or not [*c*] which is the property of Government, shall be liable to Government for the value thereof, which shall be recoverable from him as an arrear of land revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land or otherwise ; and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Government property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive.

"Any other natural product."—This expression does not include excavated stones (*Madhavdas v. Secretary of State*, 6 Bom. L. R. 1117).

[*a*—*a*] This was substituted by Bom. Act IV of 1913, s. 12 (*a*), for the original paragraph.

[*b*] The last two paragraphs repealed by Bom. Act IV of 1913, s. 12 (*b*), are omitted.

[*c*—*c*] These words were inserted by Bom. Act IV of 1905, First Schedule.

Regulation of supply of fire-wood and timber for domestic or other purposes.

44. In villages or lands in which the rights of Government to the trees have been reserved under sec. 40 subject to certain privileges of the villagers or of certain classes or persons to cut fire-wood or timber for domestic or other purposes, and in lands which have been set apart under section 38 for forest reserves subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector or by such other officer as Government may direct. In any case of dispute as to the mode or time of exercising any such privileges the decision of the Collector or of such other officer shall be conclusive.

Note.—As to the local repeal of this section, see note 3 on p. 1, *supra*.

The offence of unauthorized cutting of trees in Government waste land, and of reserved trees in occupied lands, can be tried under section 76 of the Forest Act. The ruling of *Koya Mavji* (Or. Rg. 49, dated 6th October 1896) is no bar to such a prosecution (G. R. No 3394, dated 25th May 1903, quoted in Sathe's Land Revenue Code, 4th Ed., p. 47).

All land liable to pay revenue unless specially exempted.

45. All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to Government according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with Government or any law for the time being in force.

And special exemption may in case of necessity be overruled for a time.

But nothing in this Act shall be deemed to affect the power of the Legislature to direct the levy of revenue on all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary.

Assessment of revenue.—Strict proof must be given of any right set up in derogation of the inherent right of the sovereign to assess the land at his discretion ; and the facts that the lands in question were waste lands reclaimed from the sea which the inhabitants were invited to cultivate, or that a very small rent has been paid for many years, do not show that the Government has forfeited its right to enhance the assessment in respect of such lands (*Shapurji v. The Collector of Bombay*, 9 Bom. 483).

Non-agricultural land.—Non-agricultural land whether the Sarkari or occupied Kharabo, which has not been assessed and which is excluded from settlement guarantee, is liable to be assessed from the first year, in which the occupation was officially discovered (G. R. No. 7058, dated 26th September 1923, quoted in Joglekar's Supplement No. 2, p. 7).

Liability of alluvial lands to land revenue.

46. All alluvial lands, newly-formed islands, or abandoned river-beds which vest, under any law for the time being in force in any holder of alienated land, shall be subject in respect of liability to the payment of land-revenue to the same privileges, conditions or restrictions as are applicable to the original holding in virtue of which such lands, islands or river-beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands, or river-beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

Notes.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

This section and the following section treat of alluvion and diluvion formed on alienated lands, while those formed on Government land are treated in ss. 63 and 64.

Alluvion and Diluvion.—The subject of alluvion is one of the most difficult in the law of land. The references in ss. 37, 46 and 53 to 'any law for the time being in force' are vague ; since so far as is known, there is no such law in force behind the Land Revenue Code except in the case-law or judge-made law based upon the common law and natural equity, and some special Municipal and Port Trust enactments outside Bombay Island. Alluvion must, according to these rulings, be interpreted to mean strictly gradual, slow, and imperceptible (imperceptible day by day as it occurs but of course perceptible enough in the long run (Halsbury's Laws of England, Vol. 28, p. 362) accretion by deposit of fresh soil by water upon existing riparian land (Justinian and 3 Beng. L. R. p. 525, 1870). Sand blown by the wind or a mass of shingle suddenly flung up after a storm, or new land left bare by a receding sea or a diverted river is not alluvion but derelict land. Nor would the deposits in a river-bed which raise their surfaces above the hot-weather water-level be treated as alluvion in respect of a holding terminating on the upper edge of the steep bank of a river high above the deposit ; there is no physical connection between them, to which the term 'accretion' would be applicable (*Narendra v. Achhaibar*, 28 All. 647 ; see also 27 All. 655).

(This condition of *gradual* change does not attach to diluvion). The fact that a riparian holder (or even, semble, a third person) by artifice assisted the alluvion to form does not affect the law. The persons to whom an alluvial strip of frontage had been granted were evicted in favour of the riparian hissedars (G.R. No. 12383 of 1919). Nor does the fact that it forms *in situ* of previous diluvion (for which assessment was reduced) affect the title of present riparian holders (G. R. No. 744 of 1919). The existence of a public foot-path along the old estate boundary or anything else which puts a limit to the riparian owner's property would prevent the deposit of fresh soil from being an *accretion*, and so from being alluvial at all (*Anderson's Land Revenue Rules*, 1921, 1st ed. of 1930, pp. 69–70).

The riparian holder is not obliged to accept possession and pay assessment or judi for any accretion, alluvial or not, unless he wishes. If it is unprofitable, he can decline ; though he would then run the risk of the land being allotted to some other person. In the case of alluvion there is a limit (in the case of unalienated

land) of one acre to his right of *free* enjoyment ; and no limit of his right of occupation of alluvion *subject to the payment of revenue*. Conversely this seems to imply *no* title to exemption from revenue when the extension is not alluvial. In the case of an alienated riparian holding, it has first to be decided whether the alluvion or abandoned shore or river bed, or new island, does vest legally in the Inamdar. It has been *held* (7 Bom. L. R. 872) not so to vest unless his original grant had covered the area now reformed or reappeared (since such grants are construed strictly against the grantee). Again G. R. No. 744 of 1919 rejects the view that the alluvion formed in place of old diluvion, on the site of an inam grant, becomes Inam : but no reasons are given and the order has not been confirmed by any legal decision. This section does not confer any proprietary right on the Inamdar, but simply refers us to the general law. New islands not "formed on any bank or shore" and other alluvion not proved to vest in an Inamdar would fall under s. 63. ... ... The Code gives no power to frame rules for alluvion, but only for diluvion, and does not deal with the proprietary right but only with the liability to pay land revenue (or quit rent and salami, if alienated). This section cannot apply to Khoti or Talukdari villages, because land held by Khots and Talukdars is not alienated. It might apply to Kadim or Phut Inam lands in such villages (*Ibid.*).

Assessment of land revenue in cases of diluvion.

47. Every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may be from time to time made in this behalf by the Governor in Council, to a decrease of assessment if any portion thereof, not being less than half an acre in extent, [*a*] is lost by diluvion.

[*b*] * * * *

Manner of assessment and alteration of assessment.

Prohibition of use of land for certain purposes.

[*c*] 48. (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land—

(*a*) for the purpose of agriculture,

(*b*) for the purpose of building, and

(*c*) for a purpose other than agriculture or building.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Governor in Council may prescribe in this behalf.

(3) Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

[*a*] Words repealed by Bom. Act IV of 1913, s. 13, are omitted.

[*b*] The para., repealed by Bom. Act IV of 1913, s. 13, is omitted.

[*c*] This section was substituted by Bom. Act IV of 1913, s. 14, for the original section.

(4) The Collector or a survey officer may, subject to any rules made in this behalf under section 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.

Construction and scope.—This section provides only for an altered assessment and not an additional assessment. Where, therefore, the raiyat's agricultural assessment in virtue of the grant of a village is given to the grantee, the altered assement in respect of the lands converted from agricultural to building site (*i. e.*, the building assessment) also goes to the grantee (*Bomanji v. Secretary of State*, 53 Bom. 230, P. C.).

"**Used.**"—The substitution of the word "used" for the word "appropriated" was in accordance with the ruling reported in 34 Bom. 239 (*Secretary of State v. Laldas*).

"**Used for any purpose.**"—Under cl (3) of this section where *mahars* held land rent-free of assessment for maharki service and used it for non-agricultural purposes, it was *held* that they could not be assessed (G. Rs. Nos. 31012 and 5115 of 1891). Evidently "used for any purpose" is not the same as "assessed for a use." They could still apply the profits to remunerate their service as mahars. But this would not debar action if pot kharab of class (*b*) in alienated land were diverted from the use for which it was held free (G. R. No. 3909 of 1916).

Non-application of L. R. Rules in khoti, or talukdari villages nor to Thana wood lands.—The Land Revenue Rules do not apply in Khoti or Talukdari villages, nor to Thana wood lands which are not held under settlement, but are forest lands.

Agricultural and non-agricultural use.—Farm buildings (meaning the residence of a cultivator or his tenants, and his barns and cattle sheds etc. (44 Bom. 609) or even of a landlord for the purpose of cultivating or supervising the cultivation of his land, water-lifts and granaries and all that is inseparable from cultivation) are agricultural uses. 'Agriculture' means the ploughing, sowing, tilling and reaping of some crop or produce *for profit*. Letting a few trees or flowers grow for pleasure is not agriculture. There are some (market) gardens in which roses, etc., can be seen cultivated for the market, which is certainly agriculture. A dairy farm was held to be agricultural in G. R. No. 7307 of 1917. Storing manure is an agricultural purpose (G. R. No. 7702 of 1899). But a Co-operative dairy is non-agricultural. Cane crushing and Gul boiling are essantial to cane cultivation and are not non-agricultural uses (Anderson's L. R. Rules, pp. 78-79).

Land owned by or transferred or assigned to a Municipality for one purpose but then leased to non-agricultural uses (such as houses or Cinema Halls) is liable to assessment (*Ibid*).

Extra assessment.—Plaintiff converted his land from agricultural to non-agricultural uses by establishing a brick kiln in 1872. He was called upon by the Collector to pay this time the assessment as fine for the conversion under s. 35 of Bombay Act I of 1865. Plaintiff, thereupon, erected some huts on the land. At the revision of survey which took place in 1889 the land was assessed as agricultural. Sometime between 1897 and 1901, plaintiff erected

a substantial building on the land. In 1912 the Collector levied building fine from the plaintiff. *Held*, that though the levy of additional assessment under s. 35 of Bombay Act I of 1865 might have protected the plaintiff against its enhancement before the Revision Survey of 1889, still this section rendered him liable to pay extra assessment for the conversion in use which took place after the date of the Revision Survey of 1889 (*Muhammad Bhai v. The Secretary of State for India*, 42 Bom. 126).

Altered assessment when leviable.—An occupant is not liable to pay altered assessment for his land so long as it is used for the performance of an operation necessary to put the crop of that land into *any ordinry* marketable form ; for anything beyond it, altered assessment is leviable (G. R No. 5321, dated 14-12-1922, quoted in *Joglekar's Supplement No. 2, p.* 7).

Co-operative Housing Societies.—In the case of Co-operative Housing Societies, "general utility" roads, *i. e.*, all thoroughfares in the strict meaning of the term should be exempted from non-agricultural assessment, while roads within private compounds are liable to assessment (*Ibid.* p 8.)

Commuted assessment of land indirectly taxed to the State ;

49. When it has been customary to levy any special or extra cess, fine, or tax, however designated, from any holder of land, which, though nominally wholly or partially exempt from the payment of land revenue, has by the exaction of such cess, fine or tax been indirectly taxed to the State,

and of land liable to occasional assessment.

or when any land ordinarily, or under certain circumstances, wholly or partially exempt from assessment, is subject occasionally, or under particular circumstances, to the payment of assessment, or of any cess or tax however designated,

the said assessment, cess, fine, or tax may be commuted into an annual assessment on the land to be paid under all circumstances, but such commuted assessment shall not exceed such amount as the Commissioner shall deem to be a fair equivalent of the assessment, cess, fine or tax for which it is substituted, and shall not be in excess of the assessment to which the land would be ordinarily subject, if no right to exemption existed in respect thereof.

Superibr holder may recover commuted assessment from inferior holder.

50. Whenever any such cess, fine or tax hitherto payable by an inferior holder shall be made leviable from the superior holder, it shall be lawful for such superior holder to recover from such inferior holder the amount of the commuted assessment fixed in lieu of such cess, fine or tax.

Excess of assessment may be laid on land inadequately assessed held with it.

51. When it has been customary to levy a larger revenue under the name of "*veta*" or any other designation, upon any portion of land than such portion would ordinarily be liable to in consideration of other land being held with it which is wholly or partially exempt from

payment of revenue, the excess of revenue payable on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

Veta and chali tenures.—The tenures in Gujarat are called *veta*; while those in the Karnatic Districts are called *chali*.

Assessment by whom to be fixed.

[*a*] 52. On all lands which are not wholly exempt from the payment of land revenue, and [*b*] on which the assessment has not been fixed under the provisions of section 102 or 106, the assessment of the amount to be paid as land revenue shall, subject to rules [c] made in this behalf under section 214, be fixed at the discretion of the Collector, for such period as he may [c] be authorized to prescribe, and the amounts due according to such assessment shall be levied on all such lands:

Provided that in the case of lands partially exempt from land-revenue, or the liability of which to payment of land-revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights [*d*].

Note.—This section gives authority to the Collector to assess unoccupied and unalienated lands which were within the operation of an order under s. 95, but which were left unassessed at the settlement (*Statement of Objects and Reasons*).

The effect of this section is to give the Collector the discretion to fix the assessment; and the effect of s. 217 of the Code is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But neither section takes away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay the land-revenue according to survey rates (*Laxman v. Govind*, 28 Bom. 74, at p. 80).

Register of alienated lands.

53. A Register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force; and, when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated land has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Governor in Council under section 213, grant to any person whom

[*a*] This section was substituted by Bom. Act VI of 1901, s. 4, for the original section.

[*b*] "And" was substituted for "or" by Bom. Act IV of 1905, 1st Sch.

[*c*] Words repealed by Bom. Act IV of 1913, s. 15, are omitted.

[*d*] The validity of past assessments purporting to have been fixed under s. 52 is saved by Bom. Act VI of 1901, s. 5.

he may deem entitled to the same a certified extract from the said Register, which shall be endorsed by the Collector, to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

Settlement of assessment to be made with the holder directly from Government.

54. The settlement of the assessment of each portion of land, or survey number, to the land revenue, shall be made with the person who, under section 136, is primarily responsible to Government for the same. [*a*]

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

Rates for the use of water.

55. The Governor in Council may authorize the Collector or the officer in charge of a survey, or such other officer as he deems fit, to fix such rates as he may from time to time deem fit to sanction, for the use, by landholders and other persons, of water, the right to which vests in Government, [*b*] and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879 [*b*]. Such rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land-revenue.

Notes.—This is a new law authorizing the imposition, and the recovering as land-revenue, of rates for the use of water the right to which vests in Government or which has been made available by Government works (*Report of the Select Committee*).

This section does not permit the Collector to levy a penalty, but he can levy the minimum rate sanctioned by Government.

"Such other officer as he deems fit."—These words were introduced to enable Government to entrust the duty of assessing water to a canal officer or to any other special officer (*Proceedings of the Bombay Legislative Council for 1877*).

Maximum water rates for Thana, Kolaba, Dharwar and Belgaum.—Maximum water rates have been sanctioned for the following districts :—

District	Rate per acre. Rs.
Thana	5
Kolaba	5
Dharwar	8
Belgaum	12 perennial crops. 8 other crops.

Notifications—Sind.—In exercise of the powers given by this section, the Governor in Council authorizes the Commissioner in Sind to fix rates for the

[*a*] The paragraph repealed by Bom. Act IV of 1913, section 16, is omitted.

[*b*—*b*] These words and figures were substituted for the original words by Bom. Act VII of 1879, s. 2.

use, by landholders and others, of water the right to which vests in Government, for the cultivation of rice on any land not assessed and entered in the Survey Registers as rice land.

2. The amount of such rate shall be subject to the approval of Government and shall, after sanction, be notified in the office of the Mukhtyarkar of the taluka in which the land, on account of which the rate is levied, is situated.

3. Any person desiring to grow rice in land not assessed as rice lands shall make an application in writing to the Mukhtyarkar or other officer duly authorized to receive such application, for permission to make use of the supply of water needful for growing rice, stating if he requires it for one year only or permanently; and if any person cultivates rice in such land without such permission, he shall be charged with double the rate he would otherwise have been required to pay had he applied for and obtained permission.

4. All persons who now hold or may hereafter apply to take up lands assessed and recorded in the Survey Registers as rice lands shall, as soon as possible after the publication of these Rules or on application to take up such lands, be tendered a list of such rice lands then being or about to be in their occupation, and rice shall not be grown on any number not included in such lists except on payment of the extra rate (B. G. G., 1881, Pt I, p. 396).

All Collectors in the Presidency, other than Collectors in the Province of Sind, are authorized to fix such rates as he may from time to time deem fit to sanction for the use, by landholders and other persons, of water within the limits of their respective districts, in all cases in which the right to such water vests in Government, and no rate in respect thereof is leviable under the Bombay Irrigation Act, 1879 (B. G. G., 1896, Pt. I, p. 583).

Land revenue to be a paramount charge on the land.

56. Arrears of land revenue due on account of land by any land-holder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, [*a*] or may otherwise dispose of such occupancy or alienated holding under rules [*b*] made in this behalf under section 214, [*c*] and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding. [*c*]

[*a*] Words repealed by Bom Act VI of 1901, section 6, are omitted.

[*b*] Words repealed by Bom. Act. IV of 1913, ss. 17 and 18 are omitted.

[*c*—*c*] These words were added by Bom. Act VI of 1901, s. 6.

Notes.—This section is amended as to make it clear that an occupant to whom forfeited land has been restored or transferred otherwise than by sale, will have the same rights as if he had purchased it (*Report of the Select Committee*).

"Occupant"—"Occupancy."—The terms 'occupant' and 'occupancy' are subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Retrospective effect.—This section as amended by Bom. Act VI of 1901, has restrospective effect and empowers the Collector to transfer a forfeited occupancy freed from all liens, whether such occupancy was validly forfeited under the code prior to the Amending Act or was forfeited in compliance with the provisions of s. 153 as amended by Bom. Act VI of 1901 (*Gagandas v. Yusif*, 8. S. L. R. 233).

Applicability of this section.—This section does not apply where there has been no forfeiture under s. 153 (*Chitta Bhulla v. Bai Janmai*, 40 Bom. 486).

Co-owners Grant of fallow forfeited land.—A grant of fallow forfeited land to one of several co-owners is a grant so him personally, especially where it is granted to him on restricted tenure, unless it is proved that he availed himself of his position as co-owner gand gained an advantage in derogation of the rights of others (*Abdul Rahiman v. Haji Mahomed*, A. I. R. 1929, Sind, 212).

Mortgagor's right to redeem.—The plaintiff's grandfather mortgaged his lands in 1872 and placed the mortgagee in possession. There was default in payment of assessment, as the result of which the property was forfeited by Government under this section as it stood before its amendment in 1901. Government re-sold the property to the mortgagee in 1884, and transferred its khata from the name of the mortgagor to that of the mortgagee. In 1921, the plaintiff sued to redeem the mortgage. *Held*, that the right to redeem was lost owing to the forfeiture of the land under the original section ; and that before the plaintiff could succeed he must show that the forfeiture and the revenue sale were due to the default of the mortgagee in not paying the assessment and that the income of the land was sufficient to pay the assessment or that in some way the mortgagor had put the mortgagee in funds wherewith to pay the assessment (*Abdul Rehman v. Vinayak*, 29 Bom L. R 1056).

Forfeiture of Occupancy.—Where an occupancy forfeited under this section has been disposed of by the Collector under ss. 32 and 62 of the Rules under s 214 (old rules), to a person signing a kabulyat in form B, the Collector cannot subsequently order the occupancy to be taken from that person and restore it to the occupant before forfeiture (*Dharma v. Bolamiya*, 36 Bom. 91).

Re-grant if free from incumbrances.—Where a land vests in the original tenure-holder under a new tenure created by this section as amended by Act VI of 1901, the land vested free from all incumbrances and from all previous equities The fact that default in the payment of revenue was made is immaterial (*Vedu Shivlal v. Kalu*, 37 Bom. 692).

Arrears of assessment.—Forfeiture ordinarily implies the loss of a legal right by reason of some breach of obligation. When arrears of assessment

are levied by sale, then this section, in pursuance of an obvious policy, empowers the Collector to sell "freed from all tenures, incumbrances and rights created by the occupant.....or any of the predecessors in-title or in any wise subsisting as against such occupant." Should the Collector otherwise dispose of the occupancy, this section affords no such protection ; and the legal relations must be determined by reference to the ordinary law. So judged, the effects of a forfeiture and subsequent acquisition of the forfeited property are subject to the control of equities arising out of the conduct of the parties (*Amolak Banechand v. Dhondi Khandu Bhosale*, 30 Bom. 466). See also *Balkrishna v. Madhavrao*, 5 Bom. 73).

Grant to one co-owner.—Where after amendment of this section, property is granted personally to one of several co owners in the absence of circumstances contrary, it must be deemed to have been granted to him individually. If another co-owner wishes to take advantage of s. 90 of the Trusts Act, he must allege and prove that the former by availing himself of the position of a co-owner, had gained an advantage in derogation of the rights of other co-owners (*Uttamchand Manghirmal v. Salamatrai Khubchand*, A. I. R. 1931 Sind 27).

Forfeited holdings may be taken possession of and otherwise disposed of.

57. It shall be lawful for the Collector, in the event of the forfeiture of a holding through any default in payment or other failure occasioning such forfeiture under the last section or any law for the time being in force, to take immediate possession of [*a*] such holding and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it according to the provisions of this Act or any other law for the time being in force.

Receipts.

[*b*] 58. (1) Every Revenue officer and every hereditary patel and every hereditary village accountant receiving payment of land-revenue shall give a written receipt for the same.

(2) Every superior holder of an alienated village or of an alienated share of a village who is entitled to recover direct from an inferior holder any sum due on account of rent or land revenue shall give to such inferior holder a written receipt for the same.

(3) Every hereditary patel and hereditary accountant who receives, in behalf of a superior holder of an alienated village or of an alienated share of a village, any rent or land-revenue from an inferior holder shall give to such inferior holder a written receipt for the same. Such receipt shall be a full discharge to such inferior holder for such rent or land-revenue as against such superior holder. A copy of receipt shall in every case be sent to the superior holder by such patel or accountant.

[*a*] The words repealed by Bom. Act IV of 1913, s. 17 are omitted.

[*b*] This was substituted by Bom. Act I of of 1910, 1st Sch., Part II, serial No. 3, for the original section.

Hereditary officers to grant receipts.—The provisions of sections 58 and 59 should be made applicable to Hereditary officers (G. R. No. 5430, dated 14th October 1880, quoted in *Sathe's Land Revenue Code*, 4th ed., p 70).

The revenue should be paid to the Patil in the presence of the Kulkarni, and when the former is absent, the Kulkarni might receive it (G. R. No. 3845, dated 19th May 1883, quoted in *Sathe's Land Revenue Code*, 4th ed, p. 70).

Receipts exempt from stamp duty.—

Every receipt given under this section is exempt from stamp duty; but receipts given not only by Dumaldars but also by any Inamdar to the village officers for sums paid by such officers to the Damaldar or Inamdar on account of land-revenue collections must be stamped, when the sum, in respect of which the receipt is given, exceeds Rs. 20 (G. R R D. No 2641, dated 27th March 1884, quoted in *Sathe's Land Revenue Code*, 4th ed, p. 70).

Village accountant bound to give receipt.—

The village accountant receiving a payment of land-revenue is bound to tender a receipt for the same in some form, and if a receipt book is not produced by a rayat, the accountant has no choice but to prepare and tender it to the rayat on a separate paper (G. R. No. 3661, dated 7th May 1884).

Penalty for failure to grant receipts.

59. Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

CHAPTER VI

OF THE GRANT, USE AND RELINQUISHMENT OF UNALIENATED LAND [*a*]

Written permission of Mamlatdar or Mahalkari required previous to taking up unoccupied land.

60. Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtained the permission in writing of the Mamlatdar or Mahalkari.

Of the occupation of alienated land and the rights of occupants.

Note.—Sections 60 to 67 (both inclusive) do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

The sale of unoccupied lands held by Mamlatdars under s. 62 and permission to occupy such lands given under this section are within the scope of s. 211 as proceedings which the Commissioner has justification to call for and revise and to pass such orders therein as he deems fit and no suit would lie against Government on account of that officer exercising his legal powers under that section (*Parapa v. The Secretary of State*, P J. 1891, p. 230)

[*a*] This heading was substituted by Bom. Act IV of 1913, s. 19 for the original heading which was as follows :—

Penalties for unauthorized occupation of land.

[a] 61. Any person who shall unauthorizedly enter upon occupation of any land set apart for any special purpose, or any unoccupied land which has not been alienated, and any person who uses or occupies any such land to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled shall, [a]

if the land which he unauthorizedly occupies forms part of an assessed survey number, pay the assessment of the entire number for the whole period of his [b] unauthorized occupation, and

if the land so occupied by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land [c] used for [c] the same purpose ;

and shall also be liable, at the discretion of the Collector, to a fine not exceeding five rupees, or a sum equal to ten times the amount of assessment payable by him for one year, if such sum be in excess of five rupees, if he have taken up the land for purposes of cultivation, and not exceeding such limit as may be fixed in rules made in this behalf under section 214, if he have [d] used it for [d] any non-agricultural purpose.

The Collector's decision as to the amount of assessment payable for the land unauthorizedly occupied shall be conclusive, and in determining its amount occupation for [e] a portion [e] of a year shall be counted as for a whole year.

The person unauthorizedly occupying any such land may be summarily evicted by the Collector, and any crop [f] raised on the land shall be liable to forfeiture, and any building or other construction [f] erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to ferfeiture, [g] or to summary removal. [g]

Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct [g] and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue. [g]

[a—a] This paragraph was substituted for the original paragraph by Bom. Act III of 1921, s. 2 (a).

[b] The word "unauthorized" was inserted by Bom. Act III of 1921, s. 2 (b).

[c—c] These words were substituted by Bom. Act IV of 1913, s. 20, for the original words "appropriated to".

[d—d] These words were substituted by Bom. Act IV of 1913, s. 20, for the original words "appropriated to".

[e—e] These words were substituted for the original words by Bom. Act XVI of 1895, Second Schedule.

[f—f] Words repealed by Bom. Act IV of 1901, s. 7, are omitted.

[g—g] These words were added by Bom. Act II of 1919, First Schedule.

Note.—This section corresponds to sections 33 and 39 of Bombay Act I of 1865. It has been constructed so as to make penal the previsions and remedies common to the two cases of occupation without permission and occupation of lands set apart for a special purpose. This section provides distinctly for (1) the levy of assessment, (2) fine of five rupees or ten times the assessment, (3) eviction, and (4) forfeiture of crop The introduction of the panalty of fine up to a fixed amount as an alternative from fine by a multiplied assessment is made to meet cases in which the extent of the unauthorized occupation is trifling, but the occupation itself mischievous, as for instance, when a landholder ploughs up and incorporates in his field the strip of land dividing him from his neighbours (*Report of the Select Committee*).

Object of amending para (1).—The object of amending paragraph 1 is to make it clear that this section applies to a case where a person having been lawfully in occupation of land authorizedly continues to hold over.

Application of this section.—This section applies only to roads which are the property of Government in unalienated villages or unalienated portions of villages and not to roads of alienated villages unless the right of Government, to the ownership of such roads has been reserved (G R. No. 3130, dated 12-11-1920).

Effect of this section.—This section has no rastrospective effect, *i. e*, its provisions cannot be enforced in respect of anything done before the Code became law on the 17th July 1879 (G. R. No. 6202, dated 1st September 1890).

Application of this section to cases of unauthorized occupation which commenced subsequent to this Act.—The use of the word "shall" in the first clause of this section does not restrict the application of this section to cases of unauthorized occupation which began subsequent to this Act coming into force. Although the assessment may not be leviable for a period anterior to the date of the enactment, an occupation is a continuous act (*Pranlal v. Secretary of State*, P. J. 1897, p. 366).

This section applies only to unauthorized occupation of any land (*a*) set apart for any special purpose. and (*b*) any unoccupied land which has not been alienated (G. R. No. 3837, dated 3rd June 1890).

Encroachment on Inam Gurcharan land.—This section is not applicable to alienated villages or lands. The inamdar's proper remedy in such a case as that of encroachment on gurcharan in a surveyed alienated village is a suit in the Civil Court (G. R. No. 5205, dated 25th July 1885).

This section applies only to lands the property of Government in alienated villages.—The plaintiffs, who were the inamdars of certain land, sued for a declaration of their ownership in and of their right to cultivate two plots of land which (they alleged) formed part of their inam. It was contended for the defendants as to these two plots of land that the plaintiffs had no right to cultivate them, as they had been made a part of a village site, and on that understanding they had not been numbered at the survey in 1863, and had been exempted from assessment for twenty years. It was held by the lower Appellate Court that this section applied. *Held*, that this section did not apply. This section relates back to s. 38 and both refer only to lands the property of Government in unalienated villages or unalienated portions of villages. They do not empower the Government to confiscate any land belonging to an inamdar and to consider it on the persons living in his villages (*Vinayakrao v. Secretary of State*, 23 Bom. 39).

Encroachment on public road.—Under s. 37 *ante* all public roads being the property of Government, it must be taken that the public road encroached upon by the accused is in the possession of the Local Government officers on behalf of the Government. Hence a person who encroaches on such a road is guilty of criminal trespass, if the encroachment is made with such intent as is contemplated in s. 441 of the Penal Code (*Fakirgavda*, Cr. Rg. 49 of 1888).

Quarrying without permission.—The fine levied under this section for unauthorized occupation of land by quarrying it need not, on the one hand, be confined to the bare area of the pits nor, on the other, can it be extended to the entire area of the survey number. Occupation in the sense of the amount of area which has deteriorated for purposes of cultivation or for quarrying is the area contemplated by the Code as being occupied (*Sulleman v. Secretary of State*, 30 Bom. L. R. 431).

Unoccupied land may be granted on conditions.

[*a*] 62.* It shall be lawful for the Collector subject to such rules as may from time to time be made by the Governor in Council in this behalf, to require the payment of a price for unalienated land or to sell the same by auction, and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under section 60. The price (if any) paid for such land shall include the price of the Government right to all trees not specifically reserved under the provisions of section 40, and shall be recoverable as an arrear of land revenue.

Note.—Even the Collector cannot in the first instance require the grantee to pay a certain amount of occupancy price against the will of the grantee and without giving him the option to vacate the land and much less can the Commissioner pass such an order when the land had been granted to the plaintiff free from the occupancy price and assessment (*Anant Krishnaji v. Secretary of State*, 55 Bom. 165).

Co-operative Societies.—Land may be granted free of occupancy price to co-operative societies when a public purpose is to be fulfilled (G. R. No. 2249-24, dated 2 1st April 1925, quoted in Joglekar's Supplement No. 2, p. 13).

Grant of alluvial land vesting in Government.

[*a*] 63.* When it appears to the Collector that any alluvial land, which vests under any law for the time being in force in Government, may with due regard to the interests of the public revenue be disposed of, he shall offer the same to the occupant (if any) of the bank or shore on which such alluvial land has formed.

The price of the land so offered shall not exceed three times the annual assessment thereof.

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[*] As to the local repeal of sections 62 and 63, see paragraph 3 of notes on p. 1, *supra*.

[*a*—*a*] Sections 62 and 63 were substituted by Bom. Act IV of 1913, ss. 21 and 22 respectively, for the original sections.

If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictions as to the price to be asked.

For the purposes of this section, notwithstanding anything contained in section 3, if the bank or shore has been mortgaged with possession, the mortgagor shall be deemed to be the occupant thereof.

Notes.—This section provides for the disposal of the occupancy of such alluvial or water-forsaken lands as under the provisions of the Code (s. 37) vests in Government. The object of this section is to secure to the neighbouring landholder, in consideration of the river frontage he would otherwise lose, right to purchase the occupancy of the new land at a price not exceeding three times its annual assessment (*Report of the Select Committee*).

A suit by the plaintiffs for a declaration that the order by the Collector disposing of the occupancy to the second defendant was null and void and for possession of the land, on the ground that the plaintiffs being the owners of the adjacent land and the grant being of alluvial land the grant should have been made to the plaintiffs under this section is governed by Art. 120 of the Limitation Act and not art. 144. Because assuming the land to be alluvial, the plaintiffs cannot get an order for recovery of possession. All that they can get is a declaration that the case fell within this section and an injunction to restrain the Collector from dealing with the land in derogation of the plaintiff's rights (*Damodar Narayan v. Secretary of State*, 55 Bom. 447).

Temporary right to alluvial lands of small extent.

64.* When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use [*a*] thereof, unless or until the area of the same exceeds [*b*] one [*b*] acre. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceeding section.

[*c*] * * * *

Non-riparian owner—Right to water.—The plaintiff who owned non-riparian lands, used from times immemorial to irrigate his lands by river-water which he took through the paddy fields belonging to defendants. The water did not flow in a definite channel but spread over the whole of the defendant's lands till it overflowed into the plantiff's lands. The defendants having obstructed the passage of water through their lands, the plaintiff sued to establish his right to the enjoyment of the river water. *Held*, that the plaintiff having acquired the right and enjoyed it from time immemorial was not prevented from enforcing it by any provision of the Easements Act by virtue of s. 2 (*c*) of the Act (*Janardhan v. Ruoji*, 20 Bom. L. R. 398, s. c. 42 Bom. 288).

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* As to the local repeal of s. 64 see para. 3 of notes on page 1 *supra*.

[*a*—*a*] Words and paragraph repealed by Bom. Act IV of 1913, s. 23, are omitted.

[*b*—*b*] This word was substituted by Bom. Act IV of 1913, s. 23, for the original words "half an."

[*c*] The second paragraph was repealed by *Ibid*.

A suit to recover possession of lands forming a river bed leased by the Collector is barred, if brought after a year of the date of the order of the Collector under s. 37 *ante* by which the Collector refused to entertain the plaint. Prior to the Bom. Act XII of 1912 the starting point of limitation is the date of the order (*Chhotubhai v. Secretary of State*, 22 Bom L. R. 146).

Uses to which occupant of land for purposes of agriculture may put his land.

65. An occupant of land [*a*] assessed or held for the purpose of agriculture [*a*] is entitled by himself, his servants, tenants, agents or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient [*b*] use for the purpose aforesaid. [*b*]

Procedure if occupant wishes to apply his land to any other purpose.

But, if any occupant [*c*] wishes to use his holding or any part thereof for any other purpose [*c*] the Collector's permission shall in the first place be applied for by the [*d*] occupant.

[*e*] The Collector, on receipt of such application,

(*a*) shall send to the applicant a written acknowledgment of its receipt, and

(*b*) may, after due enquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application. [*e*]

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the [*d*] occupant.

[*a*–*a*] These words were substituted by Bom. Act IV of 1913, s. 24 (*a*), for the original words "appropriated for the purposes of agriculture."

[*b*–*b*] These words were substituted by Bom. Act IV of 1913, s. 24 (*a*), for the original words "occupation for the purposes aforesaid."

[*c*–*c*] These words were substituted by Bom. Act IV of 1913, s. 24 (*a*), for the original words "wishes to appropriate his holding or any part thereof to any other purpose."

[*d*] The word "registered" was repealed by Bom. Act IV of 1913, s. 24 (*b*).

[*e*–*e*] This was substituted by Bom. Act I of 1910, Schedule I, Part II Serial No. 4 for the original para.

When any such land is thus [*a*] permitted to be used for any purpose unconnected with agriculture [*a*], it shall be lawful for the Collector, subject to the general orders of Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

Fine to be levied for such use in addition to special assessment.

Occupant.—The term "occupant" is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Collector's permission must be express.—This section confers on registered occupants who have applied to the Collector for permission to appropriate land for certain purposes, the privilege of acting as if the application had been granted within three months after acknowledgment of its receipt, if no answer to that application has been received by the applicant.

This section does not require the Collector to grant the application within any stated period, but only limits his power to refuse in case he has given no answer within three months, he shall be deemed to have granted the application (G. R. No. 5893, dated 20th July 1892).

Petitions under this section should be received and disposed of by Collectors only, and this duty should not be delegated to Assistant or Deputy Collectors or Mamlatdars (G. R. No. 5893, dated 20th July 1892).

"**Farm buildings.**"—Buildings erected for the storage of agricultural implements or for sheltering cattle used in the cultivation of the land as well as houses occupied by occupants who themselves cultivate the survey number on which they stand, or by tenants who do the same or by servants of such occupants or tenants who are actually employed in the cultivation of the same land are held to be farm buildings (B. G. G. 1911, Pt. VII, p. 195).

Long possession and user without assessment.—In 1907 the District Collector ordered the Mamlatdar to cause the building and the wood to be removed forthwith from a graveyard of which plaintiffs had been in possession for 50 years without assessment and the order was confirmed on appeal by the Commissioner in April 1909. On the 22nd February 1910 the plaintiffs sued the Secretary of State for a declaration that they were the owners of the land, for a cancellation of the order and for a permanent injunction. *Held*, that as the land in dispute was not ussd for the purpose of agriculture, neither this section nor s. 66 *infra* applied to the case and that in view of the long and undisturbed possession of the plaintiffs, the order of eviction was *ultra vires* (*Rasulkhan v. Secretary of State*, 39 Bom. 494).

Application to the Collector for permission to use land for any other purpose other than agriculture is required to be made by the occupant. The Collector's permission cannot be "presumed" in any such case on the strength of an arrangement made by the applicant with that officer in a similar case in respect of another land (G. R. No. 2310, dated 19-4-1923).

[*a*–*a*] These words were substituted by Bom Act IV of 1913, s. 24 (a) for the original words "appropriated to any purpose unconnected with agriculture."

Payment of fine and assessment.—It does not follow, from this section, that the payment of fine and assessment is a preliminary condition without which no agricultural land can be appropriated for the building purposes. It is clear that this Code contemplates appropriation both with and without permission, the fines in the one case being larger than in the other (*Bhujabalappa v. Collector of Dharwar*, 1 Bom. L. R. 454).

Procedure—Under this section the Collector, on receiving an application, must first send a written acknowledgment of its receipt, and, secondly, may, after due inquiry, either grant or refuse the permission applied for, provided that where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledment within seven days from the date of the receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application (*Shivpadsing v. Secretary of State*, 26 Bom. L. R. 371).

Penalty for so using land without permission.

66. If any such land be so [*a*] used without the permission of the Collector being first obtained, or before the expiry of [*b*] the period prescribed by section 65 [*b*], the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so [*a*] used and from the entire field or survey number of which it may form a part, and the [*c*] occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so [*a*] used, such fine as the Collector may, subject to the general orders of Government, direct.

Tenant responsible to occupant in damages.

Any [*d*] tenant of any occupant or any other person holding under or through an occupant, who shall without the [*c*] occupant's consent [*e*] use any such land for [*e*] any such purpose, and thereby render the said [*c*] occupant liable to the penalties aforesaid, shall be responsible to the said [*c*] occupant in damages.

Note.—This section supplies an instance of resumption on account of appropriating agricultural land to other purposes without the permission of the Collector.

[*a*] This word was substituted by Bom. Act IV of 1913, s. 25 (*a*) for the original word "appropriated."

[*b*—*b*] These words were substituted by Bom. Act I of 1910, Schedule I Part II, Serial No. 5, for the original words.

[*c*] The word "registered" was repealed by Bom. Act IV of 1913, s. 25 (*b*).

[*d*] The words "co-occupant or any" were repealed by Bom. Act IV of 1913, s. 23 (*b*).

[*e*] These words were substituted by Bom. Act IV of 1913, s. 25 (*a*) for the original words "appropriate any such land to."

Occupant.—*Vide* note with regard to the term "occupant" under the preceding section.

Building of residential house on portion of land.—Where a portion of land held for purposes of agriculture is used, without the permission of the Collector, for any purpose other than that of agriculture, *e. g.*, for building a residential house on it, the fine leviable for such user, under this section is to be calculated with reference to the actual area built upon and not to the area of the entire holding. Section 148 *post* has no application to such a case (*Secretary of State v. Abdul Husen*, 29 Bom. L. R. 1350).

Period runs from the date of acknowledgment.—In order that a person can appropriate a land to a non-agricultural purpose without incurring the penalty of the fine provided by this section, it is necessary that he must wait for three months from the date of the acknowledgment of the application required to be given by the Collector by s. 65. It is no defence to plead that the Collector, though he received the application, omitted to send an acknowledgment (*Nawak Purushotam v Secretary of State*, 1 Bom. L. R. 669).

Maximum fine levied under this section.—Any fine imposed by the Collector under this section shall be fixed by him at his discretion, but (subject to rule 101) shall not exceed the following rates, namely :—

(1) In a village placed for the purpose of altered assessment under rule 81 in—

Class	I	...	Rs. 1,250	per acre of the land actually used for any purpose unconnected with agriculture and at the same rate in proportion for any fraction of an acre.
„	II	...	„ 750	
„	III	...	„ 500	
„	IV	...	„ 250	
„	V	...	„ 100	

(2) In villages falling under rule 82 the same rates shall be charged as for class 1 (*Vide* rule 100).

But now that fine is only levied as a penalty for not getting permission—and thereby evading the Collector's control over industrial and building uses—the severity of the fine should apparently depend on the degree of harm done and the bad example set and not upon the fiscal considerations adduced in Resolution 5206 of 1897 (*Anderson's L. R. Rules*, 1921, 1st ed. of 1930, p. 94).

Permission may be granted on terms.

[*a*] 67. Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid [*b*] on such terms [*c*] or conditions [*c*] as may be [*d*] prescribed by the Collector, subject to any rules made in this behalf by the Governor in Council. [*d*]

[*a*] As to the local repeal of section 67, see para. 3 of notes on p. 1 *supra*.

[*b*] The words "in special cases" were repealed by Bom. Act IV of 1913, s. 26.

[*c—c*] These words were inserted in section 67 by Bom. Act VI of 1901 s. 8 (1).

[*d—d*] These words were substituted by Bom. Act IV of 1913, s. 26, for the original words "agreed on between Government and the registered occupant."

Occupant's rights are conditional.

68. An occupant is entitled to the use and occupation of his land for the period, if any, to which his [*a*] tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms [*b*] or conditions [*b*] lawfully annexed to his [*a*] tenure.

Proviso.

[*c*] Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to [*d*] rules made by the Governor in Council in this behalf [*d*], prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.

Notes —**The proviso** enables the Collector to allow lands to be taken up on short leases and special terms which may include a restriction of transferability, whether by private contract or by attachment and sale under the orders of a Civil Court, notwithstanding that a survey settlement may have been extended to those lands, while s. 73A provides for the lands into which a Survey Settlement has not been introduced (*Statement of Objects and Reasons of Bill No. IV of 1901*).

This section does not apply to any village in the district of Ratnagiri or the district of Kolaba to which the Khoti Settlement Act, 1880, extends (Bom. Act I of 1880, ss. 1 and 39).

Occupant.—*Vide* note under the heading "occupant" under s. 65 *supra*.

Occupancy, grant of, subject to prohibition of alienation. —Where a grant of occupancy was made to the plaintiff subject to restrictions prohibiting alienation and a few years afterwards, he made an application for transfer of the occupancy to the 2nd defendant, *held*, that the application amounted at most to an attempt to transfer which was never carried into effect, that there was no alienation and no breach of the conditions of the grant, that the order of the District Deputy Collector for summarily evicting the plaintiff was a nullity and that the Officer cannot be said to have acted in his official capacity (*Dhanji Jairam v. Secretary of State for India*, 45 Bom. 920).

[*a*] This word was substituted for the original word "occupancy" by Bom. Act IV of 1913, s. 27.

[*b*—*b*] These words were inserted in section 68 by Bom. Act VI of 1901, s. 8 (1).

[*c*] This proviso to section 68 was added by Bom. Act VI of 1901, s. 8 (2).

[*d*—*d*] These words were substituted by Bom. Act IV of 1913, s. 27, for the original words "the orders of Government."

Reservation of right of Government to mines and mineral products.

69. The right of Government to mines and mineral products in all unalienated land is and is hereby declared to be expressly reserved:

Proviso.

Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant [*a*] of such land in respect of such mines or mineral products.

Occupant.—*Vide* note under the heading "occupant" under s. 65 *supra*.

Object of this section.—The object of this section is to reserve the rights of Government to all mines, mineral products and buried treasures with full liberty to work, and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector (*Report of the Select Committee*).

Mines and mineral products.—In construing the words "mines" and "mineral products" regard must be had to the fact that they occur in a statute as things reserved. Similarly regard must be to the purpose for which the occupancy is granted. The word 'mine' is derived from a Latin word of the lower ages, *minare*, signifying *ducere*, to lead. It is a subterranean cavity or passage, especially a pit or excavation in the earth, from which metallic ores or other mineral substances are taken by digging. It is distinguished from the pits from which stones only are taken, and which are called quarries. The term minerals includes everything except the vegetable surface, or everything except the mere surface, which is used for agricultural purposes.

Sanctioned rates per 100 cubic feet (not applicable to G. I. P., B. B. and C. I, or N. W. R. –R. 844–87)—

(All as measured on delivery, unless otherwise stated.)

	Rs.	As.	Ps.
(i) Building stone by cubic measure in the actual building	1	0	0
(ii) Surplus stone removed from quarry but not consumed (125 C. ft. reckoned as 100.) ...	1	0	0
(iii) Ballast, or concrete	0	8	0
(iv) Special stone used for pitching; measured as arranged by the Collector	0	4	0
(v) Kankar from cultivated land	0	8	0
(vi) Sand	0	2	0
(vii) Surface boulder stones	0	2	0
(viii) Kankar in unassessed waste	0	4	0
(ix) Muram or white earth	0	2	0

(G. R. R. D. No. 196–B, dated 14th February 1931, cited in Modak's Bombay Land System and Village Administration.)

[*a*] Words repealed by Bom. Akt IV of 1903, s. 28 (*a*) are omitted.

70 [*a*] In any case where [*b*] an occupancy [*b*] is not transferable without the previous sanction of the Collector, and such sanction has not been granted to [*c*] a transfer [*c*] which has been made or [*d*] ordered by a Civil Court [*d*] or on which the Court's decree or order is founded,

Occupancy when not liable to process of Civil Court; the Court to give effect to Collector's Certificate.

(*a*) such occupancy [*e*] shall not be liable to the process of any Court, and such transfer shall be null and void, and

(*b*) the Court, on receipt of a certificate under the hand and seal of the Collector, to the effect that any such occupancy [*e*] is not transferable without his previous sanction and that such sanction has not been granted, shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such occupancy. [*e*]

Occupancy.—The term occupancy is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

71. *Repealed by Bom. Act IV of 1913, s. 29.*

72. If an occupant who is either a Hindu, a Mahomedan or a Buddhist dies intestate and without known heirs, the Collector shall dispose of his occupancy by sale, subject to the provisions of this Act, or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue, and the law at the time in force concerning property left by Hindus, Mahomedans or Buddhists dying intestate and without known heirs, shall not be deemed to apply to the said occupancy but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to Government and all expenses of the said sale.

Intestate occupancy or holding to be sold.

Note.—This section does not apply to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act, 1880, extends (Bom. Act I of 1880, ss. 1 and 39).

Occupant.—*Vide* note under the heading "occupant" under s. 65 *supra*.

Non-applicability of this section to alienated holdings.—The word 'occupant' cannot be held to include a holder of alienated land, and the Collector should not, therefore, attempt to take action under this section in the case of alienated holdings (G. R. No 3812, dated 13th May 1885).

[*a*] Words repealed by Bom. Act IV of 1913, s. 28 (*a*) are omitted.

[*b*–*b*] These words were substituted for the original words "the occupancy or interest of the occupant in the land" by Bom. Act IV of 1913, s. 28 (*b*).

[*c*–*c*] These words were substituted for the original words "the transfer" by Bom. Act IV of 1913, s. 28 (*b*).

[*d*—*d*] These words were substituted for the original words "ordered by the Court" by Bom. Act IV of 1913, s. 28 (*b*).

[*e*] Words repealed by Bom. Act IV of 1913, s. 28 (*c*), are omitted.

Entry of name in Collector's books—Proof of title.—

The Collector's book is kept for purposes of revenue, not for purposes of title, and the fact of a person's name being entered in the Collector's book as occupant of land does not necessarily of itself establish that person's title, or defeat the title of any other person (*Fatma v. Darayasaheb*, 10 Bom. 187). See also *Collector of Poona v. Bhavanrao*, 10 Bom. 192; *Sangapa v. Bhimanjowda*, 10 Bom. 194 and *Bhagoji v. Bapuji*, 13 Bom. 75.

Occupancy to be transferable and heritable.

[*a*] 73. [*b*] An occupancy [*b*] shall, subject to the provisions contained in section 56, and to any conditions lawfully annexed to the [*c*] tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property.

Note.—*Vide* the first note under the preceding section.

Occupancy.—The term "occupancy" is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Power to restrict right of transfer.

[*d*] 73-A (1) Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, [*e*] occupancies shall not after the date of such Notification be transferable without the previous sanction of the Collector.

(2) Government may, by Notification in the *Bombay Government Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

Occupancies.—*Vide* note under the heading "occupancy" under the preceding section.

Amendment Act VI of 1901.—The Amending Act VI of 1901 by adding this section makes it competent to Government to publish a declaration that the occupancy or interest of the occupant shall not, after the declaration, be transferable without the previous sanction of the Collector. But this can only be in a tract or village in which the original survey settlement might be introduced after the passing of Bom. Act VI of 1901 and by a notification published before the introduction of the original survey settlement. The Amending Act of

[*a*] This section was substituted for the original section 73 by Bom. Act VI of 1901, s. 10.

[*b*—*b*] These words were substituted for the original words "the right of occupancy" by Bom. Act IV of 1913, s. 30.

[*c*] This word was substituted for the original word "occupancy" by Bom. Act IV of 1913, s. 30.

[*d*] Section 73A was inserted by Bom Act VI of 1901, s. 11.

[*e*] This word was substituted for the original words "the occupancy or interest of the occupant in the land" by Bom. Act IV of 1913, s. 31.

1901 does not effect the right of transfer existing in occupants before the Act came into force.

Scope.—The prohibition contained in this section is not confined to an absolute and out and out transfer of an occupancy, but that it includes the transfer of an interest in the occupancy without the sanction of the Collector. A mortgage, therefore, of a share in land, held on restricted tenure, without the sanction of the Collector, is void and conveys no right to the mortgagee (*Dharamdas Thawerdas v. Sorabji*, A. I. R. 1930, Sind 75).

Note.—Collectors should generally permit members of agricultural Co-operative Societies holding lands on restricted tenure to alienate them to those societies. When such land passes into the possession of a society by default of its debtor member, it should be sold by auction on restricted tenure only with the sanction of the Collector, and that such lands should pass into the possession of a person who can hold land on restricted tenure in the district (G. R. No. A-501, dated 23-11-1921, quoted in Joglekar's Supplement No. 2 to his Land Revenue Code, p. 18).

Effect of granting sanction under this section.—The effect of the sanction of Collector under this section is only to authorize a particular transfer of the land and not to remove the character of restricted tenure impressed upon the land so as to render it transferable at will (*Ismail Khan Mir Azam Khan v. Official Receiver*, A. I. R. 1928, Sind 63).

Occupant's powers of transfer.—According to the terms of this section as it stood before the amendment of 1913 the occupant is not prohibited from transferring the trees apart from the land without the previous sanction of the Collector. But a transfer of the houses with the land thereunder (and stones and earth) includes the whole interest of the occupant in the land upon which the houses stand, and such a transfer without sanction is prohibited by this section (*Bapu Vithal Rajput v. Secretary of State*, 56 Bom. 278, s.c. 34 Bom. L. R. 780).

Notification declaring this section applicable to certain villages.

Clause (1) of this section has been declared applicable to the following villages in the District of West Khandesh.—

(*a*) 79 villages in Nandurbar Taluka, and
66 villages in Navapur Peta of Khandesh district (Notification No. 1116A).

(*b*) 17 villages in Shirpur in do. do. (Notification No. 1116B.

(*c*) 42 villages in Taloda in do. do. (Notification No. 1116C).

(*d*) 11 villages in Shahada in do. do. (Notification No. 1116D)· (B. G. G. 1902, Pt. I, p. 298.)

All Brahmins and Banias (Wanis) holding lands in the villages of the Shirpur Taluka of the West Khandesh District (to which the provisions of this section, sub-section 1, were declared to be applicable by Government Notification R. D No· 1116B, dated 18th February 1902 (B. G G. 1902, Pt. I, p. 290) are exempted from the operation of this section (B. G. G, 1908, Pt. I, p 1897).

Marwadis, Kshatrias, Parbhus, Kayasthas, Bohris and Parsis are exempted from the operation of cl. (1) of this section in the 17 villages of the Shirpur taluka mentioned in G. N. No. 1116B quoted above (G. R. R. D. No. 3875, dated 22nd April 1909).

Relinquishment.

[*a*] 74. The occupant may relinquish his land, that is, resign it in favour of Government, but subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any person (other than Government or the occupant), by giving notice in writing to the Mamlatdar or Mahalkari before the 31st March in any year or before such other date as may from time to time be prescribed in this behalf by the Governor in Council, and such relinquishment shall have effect from the close of the current year:

Provided that no portion of land which is less in extent than a whole survey number or sub-division of a survey number may be relinquished. [*a*]

Occupant.—*Vide* note under the heading "occupant" under s. 65 *supra*.

Notices exempted from registration.—Notices, given under this section or section 76 of this Code, of relinquishment of occupancy by occupants or of alienated land by holders of such land, are exempted from registration (*Vide* s. 90 (1) (*e*) of the Indian Registration Act (XVI of 1908).

Tenant remaining in occupation after passing rajinama.—The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of D. In 1883 the third defendant executed a Rajinama in the following terms, which he gave to the receiver who had been appointed by the Court to manage the village :—"Up to the present time my father and I have been cultivating the land, but the land belongs to the Inamdar. I have no title over it, and the Inamdar can give it for cultivation to any one he pleases." Shortly after the date of this Rajinama the Inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants who had remained in possession. *Held*, that the plaintiff was entitled to the land. The Rajinama operated as a relinquishment of the tenancy by defendant No. 3 under this section. *Held*, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land (*Bhutia a. Ambo*, 13 Bom. 294).

Rajinama.—Among alienated villages, this section applied only to those brought under a Survey Settlement. The Rajinama can be presented only to the Mamlatdar, unless the inamdar has a commission under s. 88 (*e*) (G. Rs. Nos. 3439, 5730 and 7045 of 1881 and 959 of 1882). Rajinamas may also be executed before a Forest Settlement Officer (G. R. No. 1708 of 1886) and then transmitted to the Mamlatdar and before Aval Karkuns when the Mamlatdar is absent (G. R. Nos. 1743 of 1889 and 7428 of 1905).

Rajinama and Kabulyat.—Rajinama is the notice of relinquishment given by the registered occupant. It is to be given to the Mamlatdar and Mahalkari and when the Mamlatdar is absent from his head-quarters, it should be given to the Aval karkun. The person in whose favour a holding is relinquished should signify his acceptance by a written agreement with the revenue officers The written acceptance is called 'Kabulayat.'

[*a*—*a*] This section was substituted by Bom. Act IV of 1913, s. 32, for the original section.

Execution of rajinama and Kabuliyat.—No legal presumption arises from the passing of a rajinama and kabulyat that a transfer of ownership is intended to be effected and that, accordingly, it operates, just as if it was a sale. It does not necessarily by itself amount to a transfer of the property (*Rachappa Chanbasappa v. Ningappa*, 49 Bom. 847).

Rajinamas and kabuliyats—Registration if necessary.—A mortgagor agreed to abandon his equity of redemption and also executed a rajinama in favour of the Mamlatdar under this section and the mortgagee executed a kabaliyat *Held* that the rajinama combined with the kabuliyat did not transfer the title of the mortgagor to the mortgagee as a transfer of the equity of a redemption must be registered under s. 54 of the Transfer of Property Act (*Sakharam v. Ramchandra*, 18 Bom L. R. 980 (note). But it was *held* in the case of *Narso v. Nagava* (42 Bom. 359) that rajinamas and kabuliyats, though in themselves documents of transfer, are fairly conclusive evidence that a transfer has in fact been made and as between the mortgagor and mortgagee extinguish the equity of redemption without the necessity of registration. An inamdar can receive notices of relinquishments under this section only where the survey settlement has been introduced or when the powers under s. 85 *post* have been given to him. These notices are exempt from registration under s. 90 of the Registration Act (*Shidraj Bhojraj Desai v. Dary Santram Mali*, 45 Bom 898).

A Rajinama by a Khatedar of unalienated lands, subject to this section, abandoning his rights to another, subject to the payment of revenue, need not be registered under s 90 of the Registration Act (*Motibhai v. Desaibhai*, 41 Bom. 170).

The execution of a rajinama and a kabuliyat does not by itself amount to a transfer of property. The transfer can be rebutted by evidence regarding the manner in which the parties concerned dealt with the property. Each case, however, must necessarily depend upon its own facts (*Chandanmal v. Bhaskar*, 22 Bom. L. R. 140).

Relinquishments.—Relinquishments by a Government department may be accepted even when third parties assert rights over such land The rights should be settled under ss. 37 (2) and 79A, cases in which eviction is proposed being reported for the orders of Government (G. R. R. D. No. 2104 of 1909). See also *Anderson's L. R. Rules*, 1st ed. of 1930, p. 73.

Note.—The plaintiffs held plots in a talukdari estate free of rent and free also of assessment and local fund It appeared, however, that the talukdars of the estate paid assessment and local fund for the whole estate to Government in the form of *jama*. The talukdar having relinquished the said plots in favour of the Government, it was *held* that the Government could recover the local fund and the cess from the plaintiffs (*Vathuram v. Secretary of State* 32 Bom. L. R. 907.)

Notice-Exemption.—The notice, given under this section, of relinquishment of occupancy by an occupant does not require Court fee (Government of India's Notification No. 4650 at p. 807; B. G. G. of 19th September 1889), nor stamp duty (B. G. G., p. 1384 of 28th July 1909) and is exempt from registration (sec. 90 (*e*), Act XVI of 1908). It must also be written by a village Accountant without fee.

All notices under this section shall be kept in the records of the village accountant until the expiry of one year after the end of the year in which they were given and afterwards in the records of the Mamlatdar for at least 12 years. Entry will at once be made in the diary of mutations and certified in due course. This will ensure sufficient record (Anderson's L. R. Mannual, p. 73).

75. *Repealed by Bom. Act IV of 1913, section 33 (1).*

Relinquishment of land described in paragraph 1 of section 49.

76. The provisions of [*a*] the last section [*a*] shall apply, as far as may be, to the holders of alienated land : provided that,

(*a*) it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances described in the first paragraph of section 49 until the commuted assessment payable in respect of such portion of land has been determined under the provisions of the said section ; and that

Relinquishment of land described in section 51.

(*b*) if any person relinquish land on which, under the circumstances described in section 51, a larger revenue is levied than would ordinarily be leviable on such land, he shall be deemed to have relinquished also the land held with it which is wholly or partially exempt from payment of revenue.

Note.—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

Right of way to relinquished land.

77. If any person relinquishes land, the way to which lies through other land which he retains, the right of way through the land so retained shall continue to the future holder of the land relinquished.

Saving of operation of section 74 in certain cases.

78. Nothing in [*b*] section 74 [*b*] shall affect—

[*c*] the validity of the terms or conditions of any lease or other express instrument under which land is, or may hereafter be, held from Government.

79. *Repealed by Bom. Act IV of 1913, s. 35.*

Summary eviction of person unauthorizedly occupying land.

[*d*] 79A. Any person unauthorizedly occupying or wrongfully in possession of, any land

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[*a*—*a*] These words were substituted for the original words "the two last sections" by Bom. Act IV of 1913, s. 33 (2).

[*b*—*b*] These words were substituted for the original words "sections 75 and 76" by Bom. Act. IV of 1913, s. 34.

[*c*] Clause (*a*) and the letter "*b*" repealed by Bom. Act IV of 1913, s. 34, are omitted.

[*d*] Section 79A was inserted by Bom. Act VI of 1901, s. 12.

[a] (a) to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled or

(b) [b] which is not transferable without previous sanction under section 73A or by virtue of any condition lawfully [c] annexed to the tenure [c] under the provisions of section 62, 67 or 68, may be summarily evicted by the Collector.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

Clause (a).—Object of amendment.—The object of amending cl. (a) by Bom. Act III of 1921 is to provide for the eviction not only of a person whose right to occupancy has ceased under the provisions of this Act, but also of a person whose right to occupancy has ceased under the rules or any condition of an agreement.

Scope of this section.—This section refers to unauthorized occupation or wrongful possession of land. The question is whether the person was in wrongful occupation of land at the date of notice (*Bhaiji Ishawardas Shah v. Talukdari Settlement Officer*, 22 Bom. L. R. 906).

Possession under decree of Civil Court.—The powers given to the Collector by this section can be exercised only in cases of wrongful possession. It does not extend to cases where possession is obtained under the decree of a Civil Court. The Collector has, for the exercise of the power, to form his own opinion and decide whether in any particular case the possession is wrongful; but there is no provision in the Code which gives finality to the Collector's order of eviction so as to exclude the jurisdiction of a Civil Court to decide that the person evicted by that order was in rightful occupation (*The Talukdari Settlement Officer v. Umiashankar*, 35 Bom. 72).

Notice of suit.—The Collector, holding the powers of the Talukdari Settlement Officer and acting under this section served upon the plaintiff a notice asking him to vacate certain land which he was declared to have held illegally without any right. The plaintiff was also warned that, if he did not comply with the notice, steps would be taken to evict him. The plaintiff sued for an injunction to restrain the Collector from taking possession summarily of the land. No notice of suit required by s 80 of C. P. Code, 1908, was given. *Held*, that the declaration and the notice were distinct acts on the part of the Collector done by him in his official capacity; and, therefore, a notice to the Collector by the plaintiff was necessary under s. 80 of the C. P. Code as a condition precedent to the maintenance of the suit (*Talukdari Settlement Officer v. Bhaijibhai*, 14 Bom. L. R 577).

(a) This clause was substituted for the original clause by Bom. Act III of 1921, s. 3.

[b] This word was substituted for the original words "of which the occupancy right" by Bom. Act IV of 1913, s. 36.

[c—c] These words were substituted for the original words "annexed to the occupancy" by Bom. Act IV of 1913, s. 36.

Summary eviction under this section can only be from Talukdari lands.—

The powers of the Talukdari Settlement Officer under this section, read with s. 33 (2), cl. (*cc*) of the Gujarat Talukdars' Act, 1888, to evict a person summarily, extends only to estate held on Talukdari tenure and not to all property of any kind of the individual Talukdar (*Shankarbhai v. Raisingji*, 19 Bom. L.R. 855).

Interference of Collector.—Under this section supplemented by s. 33 (2), cl. (*cc*) of the Gujarat Talukdars' Act, the Collector can interfere only where the occupation is wrongful or in contravention of the provisions of the Act (*Talukdari Settlement Officer v Rikhavdas*, 15 Bom. L. R. 378).

To prevent forfeiture of occupancy certain persons other than the occupant may pay the land revenue.

Collector may assist such persons in recovering the revenue from other parties liable therefor.

85. In order to prevent the forfeiture of an occupancy under the provisions of section 56 or of any other law for the time being in force through non-payment by the [*a*] occupant of the land revenue due on account thereof, it shall be lawful for any [*b*] person interested [*b*] to pay on behalf of such [*a*] occupant all sums due on account of land revenue, and [*c*] the Collector shall on due tender thereof [*c*] receive the same. And in any such case the Collector may [*d*] under section 86 [*d*] give to the person who has paid the land revenue as aforesaid [*e*] aid for the recovery of any portion of such land revenue [*e*] which he may consider to be properly payable by other persons [*a*] :

Proviso.

Provided that nothing authorized or done under the provisions of this section shall affect the rights of the parties interested as the same may be established in any suit between such parties in a Court of competent jurisdiction.

Occupancy.—*Vide* note under the heading "occupancy" under s. 73.

Payment of land revenue by Khatedar creates no charge.

An unsolicited expenditure in respect of the property of another, even if made for the purpose of its preservation, gives no lien over the property, outside maratime law. Hence, a payment of land revenue by a person of property belonging to

[*a–a*] Words repealed by Bom. Act IV of 1913, s. 37, are omitted.

[*b–b*] These words were substituted for the original words "co-occupant, tenant, mortgagee or other person interested in the continuance of the occupancy," by Bom. Act IV of 1913, s. 37 (*a*).

[*c–c*] These words were substituted for the original words by Bom. Act IV of 1905, First Schedule.

[*d–d*] These words were inserted by Bom. Act IV of 1913, s. 37 (*b*)

[*e–e*] These words were substituted for the original words "such aid for the recovery of the proportional amounts" by Bom. Act IV of 1913, s. 37 (*c*).

another but included in his *khata*, does not create any charge over the property (*Shivrao v. Pundalik*, 26 Bom. 437).

81. *Repealed by Bom. Act IV of 1913, s. 38.*

Governor in Council empowered to suspend operation of section 60 or 74.

82. It shall be lawful for the Governor in Council by Notification in the *Bombay Government Gazette* from time to time :—

(*a*) to suspend the operation of section 60 or 74, or of both within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and

(*b*) to cancel any such notification.

During the period for which any notification under the above clause (*a*) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

CHAPTER VII

OF SUPERIOR AND INFERIOR HOLDERS.

Amount of rent payable by tenant.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them ; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be presumed to hold at such rent as, having regard to all of the circumstances of the case, shall be just and resonable.

Duration of tenancy.

And where, by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

Presumption as to tenure.

And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, receives, holds or retains possession of the same, it shall be presumed that he is in possession as tenant.

Saving clause.

Nothing contained in this section shall affect the right of the landlord (if he have the same either by virtue of agreement, usage or otherwise), to enhance the rent payable, or services renderable by the tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid.

"Shall as against the immediate landlord.....of such landlord."—The words "shall as against the immediate landlord of the tenant be presumed to be co-extensive with the duration of the tenure of such landlord" have a prospective and not a retrospective effect. They mean that it shall be presumed that the tenancy is to last as long as the landlord's tenure may endure, but not necessarily that it was in existence when such tenure commenced. The mere fact, therefore, that the tenancy has come into existence since the beginning of the landlord's tenure does not prevent the application of this section in cases in which owing to the antiquity of a tenancy no satisfactory evidence of its commencement is forthcoming (*Hari v. Tukaram*, P. J. 1893, p. 313).

This section determines nature of tenancy.—Where Survey Settlement under Act I of 1865 is introduced, this section, and not section 68, applies in determining the nature of tenancy (*Khanderao v. Baslinga*, P. J. 1889, p. 19).

This section creates no new right; it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed (*Nahanchand v Modi Kekhushru*, 31 Bom. 183).

Tenancy from year to year.—Where the plaintiff sued in ejectment, and the defendant sets up a right as a permanent tenant, it was *held*, that the setting up of this right was a repudiation of the landlord's title, and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year (*Baba v. Vishwanath Joshi*, 8 Bom. 228).

Burden of proof of annual tenancy.—The presumption is that a tenant is an annual tenant and the onus is on him to prove that he is something more if he sets up permanent tenancy; in the absence of any document, he must prove antiquity of his tenure. If he succeeds, the burden is shifted to the landlord to prove the intended duration by agreement or usage In the absence of any proof, it is presumed that the tenancy is co-extensive with the tenure of the landlord (*Maneklal v. Bai Amba*, 45 Bom. 350).

Tenancy forty years old.—This section does not apply to a tenancy which commenced about forty years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of the tenancy (*Lakshman v. Vithu*, 18 Bom. 22).

Tenancy not more than forty years old.—This section is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming, will be the case (*Kalidas v. Bhaiji* 16 Bom. 646).

Tenancy hundred years old.—Where the origin of the tenancy was not known, but it appeared that the tenants had been in possession for nearly a hundred years prior to the suit and throughout this long period there was no demand for enhancement or attempt to eject the tenant, it was *held*, that under those circumstances the tenant was entitled to the presumption under sub-section (2) of this section and that they were not liable to be ejected (*Mansukh v. Trikambhai*, 31 Bom. L. R. 1279).

Prepetual tenancy.—The plaintiff's predecessor-in-title acquired the lands in dispute in A. D 17[illegible]0. The defendants were in possession as tenants. They proved their possession so far back as 1812. But it did not appear that they were put in possession first in that year. There was no evidence either of the commencement or of the duration of their tenancy. *Held*, that under this section, the defendant's tenancy should be presumed to be perpetual and that it lay on the plaintiff to prove the contrary (*Daulata v. Sakharam*, 14 Bom. 392).

Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the Court ought to infer that the intention of the parties was to create such a tenancy, it was *held*, that the lease was not a prepetual lease (*Ramabaisaheb Patwardhan v. Balaji*, 15 Bom. 701). See also *Gangabai v. Kalapa*, 9 Bom. 419, and *Gangadhar v. Mhadu*, P. J. 1889, p. 321.

Ancient tenancy.—Where a particular year is indicated as that in which the tenancy began, the case is excluded from those in which a presumption can be drawn under this section (*Ramchandra v. Dattu*, 27 Bom. L. R 1258).

Antiquity of tenancy.—It is the tenant, who alleges that he is a permanent tenant, who in the first instance has to prove that, and if he has got no document which gives him a right on the land as a permanent tenant, the presumption is that he is an annual tenant. But if he can show that he has been on the land so long that the commencement of his tenancy cannot be ascertained, then the presumption under para. 2 of this section arises. Even although it is proved that the origin of the tenancy was of a later date than the lessor's tenure, still the presumption would arise provided that the actual date of the origin was not known. Para. 2 of this section has only to do with the point of time at which the tenancy commences. There is not a word in this section with regard to the actual terms of the tenancy. The paragraph has only to do with duration. When the presumption arises, then the Court must hold that the tenancy is co-extensive with the duration of the lessor's tenure. That means that the tenant cannot be turned out as long as the landlord's tenure continues. But there is no presumption as to what the terms of the tenancy are, that is to say, with regard to rent and other matters (*Sidhanath v. Chiko*, 23 Bom. L. R. 533).

In order to create the presumption, contemplated in this section, it is not necessary that the tenancy should have existed for a stated number of years, and as it is not possible to lay down any one rule, and each case is to be decided according to the facts found to exist, the presumption can arise "whenever by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming" (*Narayan v. Raghavendracharya*, 2 Bom. L. R. 281).

Under this section a tenancy cannot be presumed to be co-extensive with the duration of the tenure of the landlord, even though its commencement cannot be

traced to a particular year, provided it can be traced back to a definite period, *e. g.*, from 1830 to 1850 (*Narayan v. Pandurang*, 24 Bom. L. R. 831).

To claim the benefit of the presumption created by this section it is not sufficient that there should be no satisfactory evidence of the commencement of the tenancy, but the absence of that satisfactory evidence must be by reason of the antiquity to the tenancy (*Vishwanath v. Tatya*, 6 Bom. L. R. 615).

The saving clause of this section seems to contemplate that though the commencement and duration of the tenancy may be lost in the obscurity of antiquity, still there may be vested in the landlord a right by agreement to enhance rent and evict for its non-payment. Permanency of tenure is not inconsistent with the absence of fixity in rent. The permanency of the tenancy and the fixty of the rent are distinct, and the latter may be the subject of agreement without touching the former (*Raghunath v. Lakshman*, 2 Bom. L. R. 93).

There is no need for a person who sets up a permanent tenancy to rely upon a grant ; for the second para. of this section expressly provides that when by reason of the antiquity of a tenancy there is no evidence of its commencement or its duration, it shall be treated as co-extensive with the duration of the landlord's interest in the property. It lies on the parties, who wish to rebut the presumption arising from the antiquity of a tenancy, to establish first, that there is no evidence of the period of its intended duration and secondly, that there is no usage of the locality as to the duration of such tenancy Where a tenant and his ancestors had cultivated the land as far as memory could go and paid the same amount of rent to his landlord and were in possession all along, the mere fact that he executed a rent note for one year in 1882 does not rebut the presumption of the permanency of the tenancy which arose from its antiquity (*Rama Ranchhod v. Sayad Abdul Rahim*, 22 Bom. L. R. 1214).

Some time between 1700 and 1850 the defendants became tenants under the plaintiffs. Regulation XVI of 1827 made the watan lands inalienable for the first time. In 1888 the defendants executed a rent note to the plaintiff, by which he agreed to vacate the land whenever called upon by the plaintiff to do so. Some of the tenants had been in occupation all along, but some others had been out of possession for some time and regained possession only on the execution of the rent notes. *Held*, that in the case of the tenants who were in unbroken possession, the execution of the rent note did not rebut the possession of permanency of the tenancy which arose from its tenancy ; in the case of the other tenants, their possession had been broken and the origin of their present tenancies being traceable to the rent notes of a known date, the presumption under this section did not arise (*Ramchandra v. Adveppa*, 34 Bom. L. R. 1131). 2 Bom. L. R. 93 and 22 Bom. L. R. 1214 were followed in this case.

Permanent tenancy.—This section does not apply to a tenancy which, though very old, can be shown to have originated in a specified year (*Chikko v. Shidnath*, 24 Bom. L. R. 226).

Permanent tenant.—The position of a permanent tenant under this section is not affected in any way by the prohibition contained in the Bhagdari Act against alienation (*Ibid*).

A permanent tenant who has planted trees on his land has the right of cutting down and making use of them. This principle has found legislative sanction in s. 108, cl. (*h*), of the Transfer of Property Act, 1882 (*Sitabai v. Shambhu*, 38 Bom. 716).

Where there is no satisfactory evidence of the commencement of a tenancy it is presumed to be permanent under this section, but the tenant is not a Mirasi tenant. The landlord has the right by usage, agreement or otherwise to enhance the rent in the case of a permanent tenant (*Vyasacharya v. Vishnu*, 44 Bom 566).

The mere fact that tenancy has commenced subsequently to the commencement of the landlord's tenure does not prevent the application of cl. (1) of this section, in cases where, by reason of the antiquity of the tenancy, no satisfactory evidence of its commencement is forthcoming (*Ramchandra v. Anant*, 18 Bom 433).

Where it is proved that a tenant has been in occupation of certain land for so long that one cannot ascertain the commencement of the tenancy, the mere fact that during the currency of his holding he has signed a kabulyat which purports to be in terms of an agreement for an annual tenancy, may not be sufficient to displace the advantage he has obtained from his long holding, if he continues in possession for many years after he had signed the kabulyat, on the same rent. Each case, however, must stand entirely on its own facts. First of all, a tenant claiming to hold as a permanent tenant must establish the facts which would entitle him to the presumption of this section. But it can be rebutted by the landlord by the production of a kabulyat. The effect of the kabulyat can, however, be destroyed by further evidence on the part of a tenant. The fact of the signing of the kabulyat as merely an isolated instance in the midst of a long holding at the same rent, will not necessarily prevent the tenant from succeeding (*Vijbhukhandas v. Ishvardas*, 25 Bom L. R. 431).

The fact that the commencement of a tenancy cannot be determined coupled with the presumption of continuation of the tenancy and coupled also with the fact that a permanent building has been erected on the land as far back as memory can go, raises a strong presumption that the tenancy is permanent (*Rukmini v. Rayaji*, 48 Bom. 541).

Under the last paragraph of this section if a tenant proves that he has fixity of tenure he is entitled to fixity of rent, unless the landlord can prove either by agreement, usage or otherwise that he has a right to enhance the rent. When it has been proved that he has such a right, then the question of the extent of the enhancement must be left to the Court as the final arbiter (*Giriappa v. Govindrao*, 27 Bom. L. R. 1331).

In the case of permanent tenants, under this section, the court allowed the ordinary landlord to enhance rent to the extent of three times the assessment. Where a permanent tenant improves the demised land by growing fruit trees, and the assessment on the land is consequently increased, the landlord is entitled to get rent based on the assessment but he cannot claim in addition rent for the fruit trees (*Ganagaram v. Ganesh*, 21 Bom. L R. 1340).

There is nothing in the Bhagdari Act to prevent a permanent tenant of a Bhagdar from alienating the fruit of the trees on the land of which he is a tenant, in the same way as he could alienate the crops or grass upon such land. The position of a tenant of a Bhagdari land who is presumed to be a permanent tenant under this section is not affected in any way by the prohibition contained in the Bhagdari Act against alienation (*Nahanchand v. Kekhushru*, 9 Bom. L. R. 50; s. c. 31 Bom. 183).

A person who is in possession of watan lands as a tenant of the watandar cannot acquire a right by adverse possession to fixity of rent. Even if a per-

manent tenant can acquire a right of fixity of rent as against the immediate holder of the watan by adverse possession, it will not prevail against next holder (*Vishnu v. Tukaram*, 49 Bom. 526).

The plaintiff was in possession of certain vanta land, for which he paid a fixed quit-rent or salami of Rs. 5 per year. He relied on title deeds the earliest of which was dated 1835 A. D., and described the land as pasaita. His father purchased the land in 1876. In 1885, the defendant landlord tried unsuccessfully in the Mamlatdar's Court to raise the rent. He gave in 1892 a notice to quit which was disregarded by the plaintiff. However, in the years 1895, 1893 and 1898, the plaintiff passed rent-notes for the land in suit as well as for an adjoining plot of land, agreeing to pay Rs. 5 as rent and to give up possession at the end of the cultivating season. These rent-notes were held to have been passed under a misapprehension that they related only to the adjoining land The plaintiff having sued for a declaration of his right to hold the land permanently at a fixed salami of Rs. 5 a year, it was *held* (1) that the plaintiff was a permanent tenant at a fixed quit rent or salami of Rs. 5 a year ; (2) that the defendant was not at liberty to enhance the rent in absence of proof that he was entitled to do so by agreement, usage or otherwise. The onus of proving such a right to enhance the rent lies on the landlord unless there are special circumstances to the contrary. The rulings of the Bombay High Court recognizing the usage under which a landlord can enhance the rent of a mirasi tenant have no application to wanta land in Gujarat (*Juvansingji v. Dola Chhala*, 27 Bom. L. R. 890).

The plaintiffs, who were landlords, gave notice to defendants, who were tenants of agricultural lands, on February 5, 1916, calling upon them to pay enhanced rent or else to quit possession within ten days The defendants raised the plea that they were permanent tenants and claimed that they were in possession ever since the foundation of the village in 1655 A. D. Their names as tenants appeared in plaintiff's books from 1876, and in the earlier books though their names were not mentioned specifically, yet coupled with other evidence they showed that as far back as 1848 the defendant's ancestors were cultivating the lands. The plaintiffs having sued in ejectment, it was *held* (1) that under the circumstances the defendants were to be treated as permanent tenants by virtue of the presumption arising under this section; (2) that the notice to quit was bad as contravening the provisions of s. 84 *post*; and (3) that the plaintiffs had failed to make out a case for enhancement of rent (*Amarsangji v. Ranchhod*, 27 Bom. L. R. 267).

Where a tenancy is shown to have originated at some time between 1758 and 1857, a presumption can arise, under this section, that the tenancy is permanent. The period of a century is too long and indefinite a period to constitute satisfactory evidence of the commencement of a tenancy within the meaning of this section (*Shripadbhat v. Rama*, 29 Bom L. R. 274).

In a suit for ejectment the defendants pleaded they were permanent tenants. It was found that another person was the tenant in 1758, but there was no evidence as to who was in possession between 1758 and 1860. The defendants proved their tenancy from 1860. *Held*, that the plaintiffs failed to prove the commencement of the tenancy. There was neither any evidence of the period of the intended duration of the tenancy, if any, agreed upon between the landlord and the tenant nor any evidence of any usage of the locality as to the duration of such tenancy. So the presumption of permanent tenancy arose in favour of the defendants under this section (*Janardan Narayan v. Lakshman Mahadeo*, 33 Bom. L. R. 551)

The period of 150 years is too long and indefinite to constitute satisfactory evidence of the commencement of the tenancy within the meaning of this section (*Ramchandra v. Adiveppa*, 34 Bom. L. R. 1131).

In this case 29 Bom. L. R. 274 and 33 Bom. L. R 551 were followed.

When the finding of both the lower Courts is that defendant's ancestors were in possession of the land many years before 1863 when the Bombay Regulation XVI of 1827 was applied to Satara District and when watan lands were not made inalienable in Satara District, the statutory presumption of a permanent tenancy under this section can be raised (*Govind Vithu v. Vithal Laxman*, 33 Bom L. R. 210).

The possession of the tenant was traced back up to 1864. The tenant mortgaged the holding and the mortgagees who subsequently brought the holding to sale and purchased it were never entered as permanent tenants. *Held*, that under the law as then it stood, there was no prohibition of transfer of ordinary tenancy, so the mere fact that the landlord permitted the mortgage and the sale does not lead to an inference of permanent tenancy and with regard to this section it was difficult to say that in the case of cultivation in 1863 the antiquity was so great as to make the commencement of the tenancy difficult and obscure (*Vyankatesh Shivram v. Krishna Bal Chavan*, 33 Bom. L R. 613).

Permanent tenants and tenants-at-will.—Tenants-at-will do not deprive the Inamdar of his possession, but "permanent" or occupancy tenants do. The distiction between "permanent tenants" and "tenants-at will" is often hard to draw when not written by written leases (18 Bom. 433 and 17 Bom. 475), but the sutidars of Kurla are admitted to be permanent.

Grantee of Royal share of revenue or of soil.—

A grant to an inamdar may be either of the Royal share of revenue, or of the soil; but ordinarily it is of the former description. The burden rests on the Inamdar to show that he is an alienee of the soil (*Rajya v. Balkrishna*, 29 Bom. 415).

Right of inamdar to enhance rent.—Mirasdars in a villlage cannot always claim to hold at a fixed rent. An inamdar can enhance their rents within the limit of custom (*Vishwanath Bhikaji v. Dhondappa*, 17 Bom. 475).

Right of landlord to evict on tenant's denying his title.—A tenant repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord (*Vishnu v. Balaji*, 12 Bom. 352).

Suit by tenant to recover possession claiming as full owner.—A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were merely yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given. *Held*, the plaintiff could not recover; for his plaint and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claims to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit, which was not given (*Lalu Gagal v. Bai Motan Bibi*, 17 Bom. 631).

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

Annual tenancy terminates on the 31st March.

An annual tenancy shall [*a*] in the absence of any special agreement in writing to the contrary [*a*] require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E, or to the like effect.

Three months' notice of termination of tenancy to be given by landlord to tenant, or *vice versa*.

The object of this secaion is to define the nature of contract of tenancy ; but the landlord's right of forfeiture arising from denial of his title is no part of the contract of tenancy, but is a right which the law implies in all cases from the relationship of landlord and tenant. If the Legislature had intended to exclude the right of forfeitnre in cases of annual tenancies, there would have been express provision to that effect (*Venkaji v. Lakshman*, 20 Bom. 354).

Annual tenancy, determination of.—An annual tenancy to which this Code applies, cannot be determined without a notice in writing by the landlord (or by the tenant) (*Ochhavlal v. Gopal*, 32 Bom. 78).

The notice under this section ought to be of 3 months. One of 17th March 1887 to enhance the assessment for the year 1887-1888 is insufficient (*Bahiru v. Vinayak*, P. J. 1892, p. 298).

Necessity of notice to quit.—Where, in the case of agricultural land, the tenant entered into an agreement with the landlord that he would pay the amount of the annual rent every year as long as the landlord would keep the wadi (oart) with him, and would give back the same when the landlord would demand it, *Held*, that the contract between the parties took the case out of this section, and that, as the rent would not be payable until the end of the year, the landlord might put an end to the tenancy and demand the land at the end of any year without giving any previous notice of any particular period, but he could not demand immediate possession in the middle of a year (*Balkrishna v. Jasha*, 19 Bom. 150). An adverse possession of a khoti land of an occupancy tenant extinguishes the right of the occupancy tenant to actual possession but not right to relinquish his occupancy right to the khoti who, after due notice under this section, is entitled to eject the person in possession (*Vishnu v. Babla*, 45 Bom. 1001).

When notice to quit is not necessary—Where the tenants agreed by their Kabuliat to give up the land in Kartik and where no subsequent tenancy was created either by agreement or by acceptance of rent, *held*, that no notice to quit was requisite, that this section did not apply and that the plaintiff was entitled to recover the land immediately after Kartik (*Dattatraya v. Lakshman*, P J. 1894, p. 218). An annual tenancy, under this section, is determined by the tenant's disclaimer of the landlord's title even where the Transfer of Property Act does not apply; and no notice to quit is necessary to determine the tenancy (*Vidyavardhak Sangh Co. v. Ayyappa*, 49 Bom. 842).

[*a*—*a*] These words were inserted by Bom. Act VII of 1914, s. 2.

Notice—Year of cultivation.—Where a notice determining a tenancy was given in June and recited that the year of cultivation would terminate in October, but the only document that was filed indicated that the year ended in May, it was held that the notice did not terminate the tenancy (*Ichhalal v. Anjibai*, 30 Bom. L. R. 1602).

Ten days' notice is invalid.—The words of the particular notice given by the plaintiffs were:—"You are hereby given notice that within ten days from the date of receipt hereof you should pay over to us rent of the last year and you should give in writing a Kabulayat to pay rent for the lands you cultivate, failing which you should hand over to us the lands which you cultivate, and in default steps will be taken against you to take over possession from you or obtain any other remedy according to law." *Held*, that it cannot be implied that the notice to quit was to quit at the termination of the cultivating season and that it did not comply with this section. *Held*, further, that though the form of notice referred to in this section was not imperative, it still indicates the class of notice which the Indian Legislature had in mind, and that notice would be very much what would be required under English law and the notice in the present case was not a valid notice to quit (*Amarsangji Indrasangji v. Ranchhod Jethabhai*, 27 Bom. L.R. 267).

Order granting suspensions or remissions to inferior holders.

* 81A. (1) Whenever from any cause the payment of the whole or any part of the land revenue payable to Government by a superior holder in respect of any land is suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of such land by the inferior holder or holders to an amount which—

(*a*) in the case of land in respect of which full assessment is payable to Government, shall not exceed double the amount of the land revenue of which the payment by such superior holder has been suspended or remitted by Government, and

(*b*) in the case of land in respect of which land revenue less than the full assessmnt is payable to Government, shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

(2) In the case of land in respect of which no land revenue is payable to Government by a superior holder, whenever from any cause the payment of the whole or any part of the land revenue payable to Government in respect of any other land in the same neighbourhood has been suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of the first-mentioned land by the inferior holder or holders to an amount which shall not exceed double the amount

* This section was inserted by Bom. Act VII of 1914, s. 3.

which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

Such order not to be questioned in any Court

(3) An order passed under sub-section (1) or under sub-section (2) shall not be questioned in any court.

Consequences following on such order.

(4) If the superior holder collects any rent or land revenue of which the payment has been remitted, or before the expiration of the period of suspension collects any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders, the whole of the land revenue remitted or suspended in favour of such superior holder shall, without prejudice to the rights of the inferior holder or holders to recover the rent or land revenue so collected, become immediately payable by the superior holder.

(5) No application for assistance under sections 86 and 87 shall be entertained, no suit shall lie, and no decree of a Civil Court shall be executed, for the recovery by a superior holder of any rent or land revenue of which the payment has been remitted, or during the period of suspension of any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders; but, where the payment of rent or land revenue by an inferior holder or holders has been suspended, the period during which the suspension has continued shall be excluded from the period of limitation prescribed for a suit for the recovery of such rent or land revenue.

Crop-share fixed by custom or agreement.

(6) Nothing in this section shall make it unlawful for the superior holder to take the crop-share fixed by custom or agreement in respect of any land on which rent is payable in whole or in part in the form of a share of the crop.

(7) Explanation—

Meaning of assessment.

In respect of land which has not been assessed under the provisions of Chapter VIII or under any survey settlement confirmed by section 112, the term assessment, for the purposes of this section, includes the rent or land-revenue payable by custom or by the usage of the locality.

Sind excluded.

(8) Nothing in this section shall apply to any land situated in the Province of Sind.

Object of this section.—The object of this section is to secure for tenants and other inferior holders a share in the concessions granted by Government under the rules for the suspension and remission of Land Revenue. The chief difficulty experienced in carrying out the policy of liberal suspensions and

remissions is that, though Government may grant a remission or suspension to the superior holder, the latter can recover the whole of the rent or land-revenue, at once from the inferior holders. This section will now remedy this defect in the Act (*Statement of Objects and Reasons*).

Recovery of superior holder's dues.

[*a*] 85. (1) Every superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, shall receive his dues on account of rent or land-revenue from the inferior holders through such patel and accountant.

(2) Where such patel and accountant fail to recover in behalf of such superior holder any sum due and payable to him on account of rent or land-revenue, such superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

(3) Where any such patel or accountant has recovered any sum in behalf of such superior holder and fails to account to him for the same, the Collector shall, on written application from the superior holder, recover such sum from such patel or accountant as an arrear of land revenue.

(4) Where any such superior holder demands or receives any rent or land revenue from any inferior holder otherwise than through such patel or accountant, he shall, on conviction in a summary enquiry before the Collector, be liable to a fine not exceeding three times the amount of the sum so demanded or received.

Note.—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss 1 and 33).

Applicability to Sheri lands in alienated Villages.—This section does not apply to the lands held as Sheri by an Inamdar (G. R. No. 1425, dated 5-2-1913, cited in Modak's Bombay Land System and Village Administration.)

Suit by superior holders to recover dues from inferior holders.—This section does not bar the jurisdiction of Civil Courts to try suits by superior holders to recover the arrears of their dues from inferior holders (*Vishvanath v. Kondaji*, 42 Bom. 49).

Enhancement of rent.—A grant to an inamdar may be either of the Royal share of Revenue, or of the soil; but ordinarily it is of the former description. The burden rests on the inamdar to show that he is an alienee of the soil. Where an inamdar is an alienee only of the land revenue, then his relations towards those who hold land within the area of the Inam grant, vary according to certain well-recognized conditions. If the holding was created prior to the grant of the Inam, then the inamdar as such can only claim land-revenue or assessment

[*a*] This section was substituted by Bom. Act I of 1910, 1st Sch., Part II, serial No. 6 for the original section.

for he has no interest in the soil, in respect of which rent would be paid. If the holding is later in its origin than the inam grant, the inamdar even if only a grantee of revenue, would be entitled to place tenants in possession of the sheri lands, not by virtue of any interest in the soil, but as being entitled to make the most he can out of them by way of revenue. The difference between the two classes of holdings is obvious; in the last, direct contr actual relations would be established between the inamdar and the holder. It these contractual relations are defined by an express contract of which there is evidence, then the rights of the parties must be determined by that contract. If no such contract can be proved then the Court must have recourse to the criteria prescribed by law for determining their rights (*Rajya v. Balkrishna*, 29 Bom. 415).

Usage of locality-Tests.—In cases where enhancement of rent by an Inamdar is sought to be sanctioned by usage, the test is, whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure (*Ibid*).

Talati appointed to be Kulkarni not a hereditary village accountant.—A talati appointed to be a Kulkarni of a commuted inam village is not a hereditary village accountant for the purposes of this section (G. R. No. 6550, dated 10-1-1923, quoted in Joglekar's Supplement No. 2, p 19).

Superior holders entitled to assistance in recovery of dues from inferior holders, &c.

86. Superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land-revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in section 137, snd in the same manner as prescribed in Chapter XI [*a*] for the realization of land-revenue by Government:

But application must be made within the revenue year or within the year of tenancy.

Pr vided that such application be made within the revenue year or within the year of tenancy in which the said rent or land-revenue became payable

Applications may be sent by post.—An application by a superior holder for assistance for the recovery of rent under this section is not liable to rejection if sent by post (G R. No. 5027) dated 12th November 1890, quoted in Sathe's Land Revenue Code, 4th ed., p. 162).

Suit to recover enhanced rent.—Secs. 86 and 87 do not make it compulsory on the inamdar, or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the inamdar, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by s. 85, and they had refused, he would have at once become entitled to his ordinary civil remedy (*Govindrao v. Balu*, 16 Bom. 586).

Inamdar's remedy for arrears of rent.—Inamdars can only obtain a money decree for arrears of assessment in the Civil Court. Relief by for-

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[*a*] Words repealed by Bom. Act III of 1886 are omitted.

feiture and sale of the tenants' lands must be had, if at all, through the Collector under this section (*Ratanji v. Sakharam*, P J 1884, p. 68).

Suit by Inamdar for arrears of assessment.—In a suit by an Inamdar for arrears of assessment from khatelars, there is no necessity to produce a certificate under s. 4 of the Pensions Act (XXIII of 1891). He is not entitled to charge on the lands of, but only to a money decree against, the occupants; hence, no personal decree can be passed against an occupant in respect of assessment for the years previous to his coming on the holding (*Vinayak v. Lakshman*, 28 Bom. 92).

Suit for declaration of rights—Injunction—Where the Revenue authorities proceed under this section to assist a superior holder to recover his dues from an inferior holder and the latter, having exhausted his rights of appeal under this Code files a suit for for declaration of his right, the Court in which the suit is pending shall not grant an injunction to restrain the procedure under this section (*Karimdino v. Ali Akbar*, 2 S. D. 572).

Municipality deemed to be a superior holder.—A Municipality is deemed to be a superior holder within the meaning of this and the following section (*Vide* s. 166 of the Bom District Municipal Act (III of 1901).

The Collector how to proceed on such application being made.

[*a*] 87. (1) On application being made under section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer fixing a day for inquiry into the case.

[*a*] (2) On the day so fixed he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land revenue as appears to him upon the evidence before him to be lawfully due.

Assistance may be refused or granted to a limited extent only

[*a*] (3) But, if it appears to the Collector that the question at issue between the parties is of a complicated or difficult nature, he may in his discretion either refuse the assistance asked for, or, if the land to which the dispute relates has been assessed under the provisions of Chapter VIII...[*b*] or any survey settlement confirmed by section 112 grant assistance to the extent only for the assessment so fixed upon the said land.

Civil suit not to be barred.

[*a*] (4) Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due, as the case may be.

[c] (5) One appeal only shall lie from any order passed under this section.

[*a*] These sub-sections were originally paragraphs of section 87. They were numbered as sub-sections by Bom. Act IV of 1913, s. 39.

[*b*] Words repealed by Bom. Act III of 1886 are omitted.

[*c*] This sub-section was added by Bom. Act IV of 1913, s. 39.

Mamlatdar's order does not bar Civil suit.—A mamlatdar's order under this section does not preclude the parties from having recourse to the Civil Court, if dissatisfied with it (*Ganesh v. Mehta*, 8 Bom. 188).

Collector's power to refuse assistance.—Paragraph 1 of this section leaves the Collector no discretion as to withholding assistance for the recovery of rent or land revenue which after a summary enquiry he finds to be lawfully due. The truth is that in these enquiries under this section the Collector exercises in a summary way the jurisdiction of a Civil Court, and like those Courts he has no authority to go behind the liability and listen to appeals *ad misericordium*. Even should he do so, the 4th paragraph of this section enables the landlord to go to the Civil Court to recover from his tenant such amount as the Collector disallows, and the object of the Collector would thus be frustrated Even when the question at issue is of a complicated or difficult nature, cl. 2 of this section assumes that there can be no such question about the survey assessment (G. Rs. Nos. 8402, dated 25th October 1884, and 1339, dated 14th February 1885)

The power given to the Collector, in the 3rd paragraph of this section, of refusing assistance to a superior holder for the recovery of dues from his inferior holders when the question at issue between the parties appears to him to be of a complicated or difficult nature, is a discretional power; and the ordinary rule in appeals is not to interfere with the exercise ,by subordinate authorities, of their lawful discretion. But thie rule is subject to the qualification that it is the duty of the appellate authority to see that the subordinate exercises a sound discretion (G. R. No. 168, dated 8th January 1884).

Rates of bhatta to witnesses—The rates of *bhatta* to witnesses as fixed by the High Court from time to time are applicable in the case of enquiries made under the provisions of this Code, and the orders regarding *bhatta* issued in G. R No. 880, dated 20th March 1888, are not binding (G. O. No. 3610, dated 28-2-1920 quoted in Joglekar's Supplement No. 2, p. 20).

Appointment of temporary clerks for assistance suits. Collectors can appoint temporary clerks for assistance suits when required, with the approval of Government, subject to the condition that the expenditure thereof is recovered from the process fees (G R No. 2515-84, dated 29-1-1925, quoted in Joglekar's Supplement No. 2).

Lawyers—Government officers may allow representation by Lawyers, whenever such a course is likely to be helpful, in appeals under the

(1) Land Revenue Code.

(2) The Income Tax Act,

(3) The Watan Act and other similar matters (*B. G. G., 1920, Pt. V, p. 23*).

Commissioner may, by commission, confer certain powers on holders of alienated lands.

82. It shall be lawful for the Commissioner at any time to issue a commission to any holder of alienated lands, conferring upon him all or any of the following powers in respect of the lands, specified in such commission (namely):

(*a*) to demand security for the payment of the land-revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorised to take under sections 141 to 143 ;

(*b*) to attach the property of persons making default in the payment of such land revenue or rent, as aforesaid ;

(*c*) to fix from time to time the times at which, and the instalments in which, the land-revenue or rent due to him shall be payable ;

(*d*) to exercise the powers of a Collector under sections 65 and 66 ;

(*e*) to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided ;

(*f*) to take measures for the maintenance and repair of boundary-marks in the manner provided for survey officers in section 122 :

Provided that the powers contemplated in clauses (*c*) to (*f*) shall be conferred only on holders of lands to which a survey settlement has been extended under the provisions of section 216.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdar's Act, 1888, extends (Bom. Act VI of 1888, ss. 1 and 33).

Conferring of powers on Inamdar.—There is no objection to the powers contemplated in cls. (*a*) and (*b*) of this section being conferred upon an Inamdar at once, but, none of the powers mentioned in cls. (*c*) to (*f*) can be conferred until a survey settlement has been extended to his village under s. 216 of the Code (*Vide* the proviso to this section).

The grant of commission under this section to a sharakatdar is not necessary, when he is a mere rent-charge holder (G. O. No. 76, dated 10-1-21 quoted in Joglekar's Supplement No. 2).

Form of such commission.

89. Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of [*a*] the Commissioner [*a*] ; and a commission may, if the [*b*] Commissioner see fit be issued to one or more agents of a holder of alienated lands as well as to the holder in person.

Note —*Vide* the first note under the preceding section.

[*a–a*] These words were substituted for the original word "Government" by Bom. Act IV of 1913, s. 40 (2).

[*b*] This word was substituted for the original words "Governor in Council" by Bom. Act IV of 1913, s. 40 (2).

90. If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been made, appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of sections 165 to 186.

Reference must be made by holder of commission to the Collector in certain cases.

But if the holder of the commission is invested, under Regulation XIII of 1830, with civil jurisdiction and with power to execute his own or his agent's decrees, the sale shall be conducted by him and not by the Collector and his subordinates.

When compulsory process shall cease

91. All compulsory process shall cease :

on the defaulter's paying or tendering the amount demanded of him under protest, or

on his furnishing either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

And any holder of any such commission as aforesaid, by himself or his agents, proceeding with any compulsory process after payment made, or tendered as aforesaid, or after the furnishing of such security as aforesaid or after tender thereof, shall be liable on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process.

Penalty for continuing compulsory process.

Power under commission to extend to current and previous year's arrears.

92. The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or rent of the current year and of the year next immediately preceding, but not to that of former years.

Holder of commission not to enforce any unusual or excessive demand.

93. The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid, previously to the date of such demand, or of what he may have contracted in writing to pay. In the event of a dispute the Collector shall hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decided to be just.

Penalty for so doing.

The person against whom any demand shall have been enforced in excess of the amount of which payment is lawfully enforeable shall be entitled to recover, on conviction of the holder of the com-

mission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land revenue.

But holder of commission may establish his right to enhanced rent in Civil Court.

94. Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or re-settle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Recovery as revenue demand of dues of certain superior holders for specified period.

(*a*) 94A (1) The superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, and to which a survey settlement has been extended under section 216, may by application in writing to the Assistant or Deputy Collector in charge of the taluka request that the rent or land revenue due to such superior holder may during a period named in the application be recovered as a revenue demand.

(2) The Collector may in his discretion sanction the application for a period not exceeding that named by the applicant, and in such case the following provisions shall apply :—

(*a*) Any rent or land-revenue that accrues or has accrued due to the superior holder during the sanctioned period or a period of six years previous thereto shall, to an extent not exceeding the assessment fixed on the land, be recoverable under the orders of the revenue authorities as a revenue demand during the sanctioned period.

(*b*) Where any proportion of the land-revenue that accrues or has accrued due to Government in respect of unalienated land in the same neighbourhood during the said sanctioned or previous period has been suspended or remitted by proper authority, the Collector may suspend or remit an equal or lesser proportion of the rent or land-revenue that accrues or has accrued due to the superior holder, during the corresponding period. Any such suspension or remission shall, notwithstanding anything in the Bombay Revenue Jurisdiction Act, 1876, be binding upon the superior holder in any subsequent proceedings in any Civil Court between the superior

(*a*) This section was inserted by Bom. Act IV of 1913, s. 41.

and inferior holders or their legal representatives, and any proceedings pending at the date of such suspension or remission shall abate to the extent of any claim that may be inconsistent therewith; and no Civil Court shall entertain any suit against the Secretary of State or Government in respect of any such suspension or remission.

(*c*) Where any such suspension or remission has been granted to an inferior holder, the land-revenue (if any) payable by the superior holder shall be suspended or remitted, as the case may be, to a proportionate extent.

(*d*) The balance of any sum recovered under clause (*a*) shall be paid to the superior holder after deduction of the costs, if any, of recovery and of any sum lawfully chargeable upon the sum recovered.

CHAPTER VIII.

OF SURVEYS, ASSESSMENTS AND SETTLEMENTS OF LAND REVENUE [*a*].

[*a*] This title was substituted for the original title by Bom. Act IV of 1913 s. 42.

Note.—The provisions of this Chapter do not apply to the maintenance of the Record of Right (*Raghavendra v. Secretary of State*, 28 Bom. L R. 559).

Revenue survey may be introduced by Governor in Council into any part of Presidency.

95. It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land-revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose and such survey shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Governor in Council may direct; and subject to the orders of the Governor in Council it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

Control of revenue survey.

The control of every such revenue survey shall vest in and be exercised by the Governor in Council.

Survey Officer may require by general notice or by summons, suitable service from holders of land, etc.

96. It shall be lawful for the survey officer deputed to conduct or take part in any such survey, to require by general notice or by summons, the attendance of holders of lands and of all persons interested therein, in person, or by legally constituted agent duly instructed and able to answer all material questions, and the presence of taluka and village officers, who in their several stations and capacities are legally, or by usage, bound to perform service in

virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith, as may not be inconsistent with the position of the individual so called on.

Assistance to be given by holders and others in the measurement or classification of lands.

97. It shall be lawful for the survey officer to call upon all holders of land and other persons interested therein to assist in the measurement or classification of the lands to which the survey extends by furnishing flag-holders ; and in the event of a necessity for employing hired labour for this or other similar object, incidental to survey operations, it shall be lawful to assess the cost thereof, with all contingent expenses on the lands surveyed, for collection as a revenue demand.

Survey numbers not to be of less than a certain extent

98. Except as hereinafter provided, no survey number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the sanction of Government. A record of the minima so fixed shall be kept in the Mamlatdar's office in each taluka, and shall be open to the inspection of the public at reasonable times.

Exception.

These provisions shall not apply to survey numbers which have already been made of less extent than the minima so fixed, or which may be so made under the authority of the Commissioner of Survey given either generally or in any particular instance in this behalf ; and any survey number separately recognized in the [*a*] land records [*a*] shall be deemed to have been authorizedly made whatever be its extent.

99. *Repealed by Bom. Act IV of 1913, s. 44.*

Officer in charge of a survey to fix assessments

100. Subject to rules [*b*] made in this behalf under section 214, the officer in charge of a survey shall have authority to fix the assessment for land-revenue at his discretion on all lands within the local operation of an order made under section 95 not wholly exempt from land revenue, and the amounts due according to such assessment shall, subject to the provisions of section 102, be levied on all such lands.

Regard to be had to proviso to section 52.

In fixing such assessment, regard shall be had to the requirements of the proviso to section 52.

[*a*—*a*] These words were substituted for the original words "survey records" by Bom. Act IV of 1913, s. 43.

[*b*] Words repealed by Bom. Act IV of 1913, s. 45, are omitted.

But nothing in this section shall be deemed to prevent the survey officer aforesaid from determining and registering the proper full assessment on lands wholly exempt from payment of land-revenue or on lands especially excepted under section 95 from the survey settlement, or from dividing all such lands to which the survey extends into survey numbers.

Proviso.

101. The power to assess under the preceding section shall, in the case of lands used for purposes of agriculture alone, include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in respect of which no rate is levied [*a*] under section 55 [*b*] or under the Bombay Irrigation Act, 1879 [*b*], or in any other manner whatsoever that may be sanctioned by Government.

The assessment so made may be on land or on means of irrigation, &c.

102. The assessment fixed by the officer in charge of a survey shall not be levied without the sanction of Government. It shall be lawful for the Governor in Council to declare such assessments, with any modifications which he may deem necessary, fixed for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding ninety-nine in the case of all other lands.

Assessment so made not leviable without the sanction of Government But may be fixed, with or without modification, by the Governor in Council for a term of years.

Note—This section empowers the Governor-in-Council to fix the assessment for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding thirty-nine in the case of all other lands. When the amount of the assessment is thus fixed under a settlement for a number of years, the occupant can hold the land at the fixed assessment till the expiry of the period.

[*c*] 103. When the levy of the assessment fixed under sections 100 and 101 upon any land has been sanctioned under section 102, and notice of the same has been given in accordance with rules made by the Governor in Council in this behalf, the settlement shall be deemed to have been introduced with respect to the lands of which the assessments have been sanctioned.

Introduction of settlements.

Note—This section is subject to modification when applied to any village in the districts of of Ratnagiri and Kolaba to which the Khoti Settlement Act, 1880, extends (*Vide* Bom. Act I of 1880, ss, 1 and 39).

[*a*] "levied" was substituted for "leviable" by Bom. Act VII of 1879, s. 2.

[*b–b*] These words were inserted by Bom. Act VII of 1879, s. 2.

[*c*] This section was substituted by *Bom.* Act IV of 1913, s. 46, for the original section.

Conditions for starting resettlement.—Two conditions are laid down under this section to validate the introduction of a survey settlement, first the sanction under s. 102 and second, the notice in accordance with the rules made by the Governor in Council. The departmental orders such as the one requiring fresh notice when the Government raises the rates proposed by the Settlement Officer have not the force of legislative settlement and their non-observance does not invalidate the survey settlement. Government by its departmental rules may make changes as to the collection of the revenue but the Government resolutions which are not consistent with the Code have not the force of law (*Emperor v. Moreshwar Janardhan*, 30 Bom L. R. 1255).

Excess assessment not to be levided in the year in which a Survey Settlement is introduced;

104. In the year in the course of which a survey settlement, whether original or revised, may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

nor in the following year if the number is resigned that year.

In the year next following that in which any [*a*] original or[*a*] revised survey settlement has been introduced, any occupant who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey numbers [*b*] or sub-divisions of survey numbers [*b*] held by him shall, on resigning such number [*b*] or sub-division [*b*] in the manner prescribed by [*c*] section 74 [*c*] on or before the 31st March, receive a remission of the increase so imposed.

Note—The second para. of this section does not apply to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (Bom. Act I of 1880, ss. 1 and 39).

Occupant.—The term 'occupant' is subject to modification when applied to any estate in the district of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

The fixing of assessment under section 102 limited to ordinary land-revenue.

105. The fixing of the assessment under the provisions of section 102 shall be strictly limited to the assessment of the ordinary land-revenue, and shall not operate as a bar to the levy of any cess which it shall be lawful for the Governor in Council to impose under the provisions of

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[*a*–*a*] These words were inserted by Act XVI of 1895.

[*b*–*b*] These words were inserted by Bom IV of 1913, s. 47.

[*c*–*c*] These words and figures were substituted for the original words and figures "sections 74 and 76" by Bom. Act IV of 1913, s. 47.

any law for the time being in force for purposes of local improvement, such as schools, village, and district roads, bridges, tanks, wells, accommodation for travellers, and the like, or of any rate for the use of water which may be imposed under the provisions of section 55 [*a*] or of the Bombay Irrigation Act, 1879. [*a*]

Government may direct a fresh survey and revision of assessment.

106. It shall be lawful for the Governor in Council to direct, at any time, a fresh revenue survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102.

[*b*] Provided that when a general classification of the soil of any area has been made a second time, or when any original classification of any area has been approved by the Governor in Council as final, no such classification shall be again made with a view to the revision of the asaessment of such area.

Principles of revision.—The revision of the settlement will depend entirely on changes in prices, including such local changes as result from improvement of communications and shifting of markets, although all indications of an increase or decrease in material wealth and general prosperity will be a guide as to suitability of the old assessment (G. R. No. 7494, dated 12th October 1897, quoted in Sathe's Land-Revenue Code, 4th Ed , p. 198).

Conditions applicable to revisions of assessment.

[*c*]107. In revising assessments of land-revenue regard shall be had to the value of land and, in the case of land used for the purposes of agriculture, to the profits of agriculture :

Provided that if any improvement has been effected in any land during the currency of any previous settlement made under this Act, or under Bombay Act 1 of 1865, [*d*] by or at the cost of the holder thereof, the increase in the value of such land or in the profit of cultivating the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof.

"Value of land".—The term "value of land" does not refer to the intrinsic richness or quality of land. The vernacular equivalent of "value" is not "magdur" but "kimmat," *i. e.*, price (Joglekar's Supplement No. 2 to his Land Revenue Code, p. 24).

[*a–a*] These words were added by Bom. Act VII of 1879, s. 2.

[*b*] This proviso was substituted for the original clause by Bom. Act IV of 1886, s. 1.

[*c*] This section was substituted for the original section 107 by Bom. Act IV of 1886, s. 2.

[*d*] Bom. Act I of 1865 (except sections 37 and 38) is repealed by section 2 of this Act which has been repealed by Bom. Act IV of 1913, s. 5.

Preparation of statistical and fiscal records.

108. It shall be the duty of the survey officer, on the occasion of making or revising a settlement of land-revenue, to prepare a register, to be called "the settlement Register," showing the area and assessment of each survey number, [*a*] with any other particulars that may be prescribed [*a*] and other records, in accordance with such orders as may from time to time be made on this behalf by Government.

Records.—The records to be prepared by the Survey Officers for future administration are (1) the village map, (2) the settlement register, and (3) the detailed record of each holding (botkhat) (G. R. No 4084, dated 2nd November 1868, quoted in Sathe's Land-Revenue Code, 4th ed. p 204).

Entry in the survey Settlement Officer's record, finality of.—The Settlement Officer's record fixing the amount of rent payable to a Khot in respect of lands in the Khoti village, though prepared in the form of statement published at p. 584 of the "General Rules of the Revenue Department" (ed.of 1893) and labelled "botkhat," cannot be treated as a Survey Register under this section (*Vaidkhan v. Sakhya*, 20 Bom. 729).

The decision of a survey officer determining the tenure on which a survey number is held is not final under the Khoti Act (Bom. Act I of 1880 and it can be reversed or modified by a competent Court (*Antaji v. Antaji* 21 Bom. 480).

109, 110. *Repealed by Bom. Act IV of 1913, s. 49.*

Revenue management of villages or estates not belonging to Government that may be temporarily under Government management.

111. In the event of any alienated village or estate, coming under the temporary management of Government officers, it shall be lawful for the Collector to let out the lands thereof, at rates determined by means of a survey settlement or at such other fixed rates as he may deem to be reasonable, and [*b*] to grant unoccupied lands on lease [*b*] and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands, so far as such rules may be applicable, and for so long as the said village or estate shall be under the management of Government officers : provided, however, that any written agreements relating to the land, made by the superior holder of such village or estate, shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of Government on the land.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

[*a–a*] These words were substituted for the original words "together with the name of the registered occupant of such survey number" by Bom. Act IV of 1913, s. 48.

[*b—b*] These words were substituted for the original words "to sell the occupancy of unoccupied lands by auction" by Bom. IV of 1913, s. 50.

Powers of Talukdari Settlement Officer.—A Government Officer in the temporary management of a talukdar's estate has, under s. 33 of the Gujrat Talukdars' Act, the same powers which the Collector has in an alienated village, to recover arrears of revenue inclusive of rent (*Jinabhai v. The Collector*, 28 Bom. L. R. 417).

Maintenance of existing settlements of land revenue.

112. Existing survey settlements of land-revenue made, approved and confirmed under the authority of the Governor in Council shall be, and are hereby declared to be, in force subject to the provisions of this Act.

Partition.

[*a*] 113. Expenses properly incurred in making partition of estates paying revenue to Government shall be recoverable as a revenue demand in such proportions as the Collector may think fit from the sharers at whose request the partition is made, or from the persons interested in the partition.

Note.—*Vide* the first note under s. 111 *supra*.

Scale of Bhatta (Allowance).—The scale, according to which daily allowance is to be allowed to persons entrusted with the partition, actually on tour is as follows :—

		Rs.	A.	P.
(*a*)	A Government servant of the *first* grade ...	6	8	0
(*b*)	A Government servant of the *second* grade on pay—			
(*i*)	Up to Rs. 250	2	4	0
(*ii*)	Above Rs. 250 up to Rs. 300	2	12	0
(*iii*)	Above Rs. 300 up to Rs. 350	3	2	0
(*iv*)	Above Rs. 350 up to Rs. 400	3	8	0
(*v*)	Above Rs. 400 up to Rs. 450	4	0	0
(*vi*)	Above Rs. 450 up to Rs. 750	4	8	0
(*c*)	A Government servant of the *third* grade on pay			
(*i*)	Up to Rs. 50	0	8	0
(*ii*)	Above Rs. 50 up to Rs. 75	0	12	0
(*iii*)	Above Rs. 75 up to Rs. 100	1	0	0
(*iv*)	Above Rs. 100 up to Rs. 125	1	4	0
(*v*)	Above Rs. 125 up to Rs. 150	1	8	0
(*vi*)	Above Rs. 150 up to Rs. 175	1	12	0
(*vii*)	Above Rs. 175 up to Rs. 199	2	0	0
(*d*)	A Government servant of the *fourth* grade ...	0	3	0

(*Bombay Civil Services Rules Manual, 1932, p. 129*).

Decree for partition not properly executed.—If a portion of the decree is not properly executed by the Collector, the re-adjustment of the orders can be ordered (*Ramchandra v. Krishnaji*, 40 Bom. 118).

Civil Court cannot reopen partition.—When the Collector, acting under s. 54 of the Civil Procedure Code, 1908, once effects a partition, it is not competent to the Civil Court to entertain any application seeking to reopen the partition (*Bhimangavda v Hanmant*, 20 Bom. L. R. 411 s. c. 42 Bom. 689).

[*a*] This section was substituted by Bom. Act IV of 1913, s. 51, for the original section.

Partition of certain estates by the Collector on application by co-sharers.

114. Whenever any one or more co-shares in a khoti estate, into which a revenue survey has been introduced, [a] or in a talukdari estate [a], consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him in this behalf, [b] to divide the said estate into shares according to the respective rights of the co-sharers, and to allot such shares to the co-sharers:

Provided that no such partition shall be made, unless :

(a) all the co-sharers are agreed as to the extent of their respective rights in estate, and

(b) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one-half of the assessment of the entire estate.

In such cases the expenses of partition shall be recovered [c] as a revenue demand [c] from all the co-sharers in the estate divided.

115. *Repealed by Bom. Act IV of 1913, s. 53.*

Division of survey numbers into new survey numbers.

[d] 116. When any portion of cultivable land is permitted to be used under the provisions of section 65 or 67 for any non-agricultural purpose or when any portion of land is specially assigned under section 38, or when any assessment is altered or levied on any portion of land under sub-section (2) or sub-section (3) of section 48, such portion may, with the sanction of the Collector, be made into a separate number at any time notwithstanding the provisions of section 98.

Note.—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Bombay Act V of 1862 not affected.

117. Nothing in section [e] 116 shall affect the provisions of Bombay Act V of 1862.

Division of survey numbers into sub-divisions.

[f] 117A. (1) Survey numbers may from time to time and at any time be divided into so many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason.

[a—a] These words are repealed in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals by Bom. Act. VI of 1888, s. 3.

(b) Words repealed by Bom. Act IV of 1913, s. 52, are omitted.

[c—c] These words were substituted for the original words "under rule (3) of the last preceding section" by Bom. Act IV of 1913, s. 52.

[d] This section was substituted by Bom. Act IV of 1913, s. 54, for the original section.

[e] Words repealed by Bom. Act IV of 1913, s. 55, are omitted.

[f] This section was inserted by Bom. Act IV of 1913, s. 56.

(2) The division of survey numbers into sub-divisions and the fixing of the assessment of the sub-divisions shall be carried out and from time to time revised in accordance with rules made by the Governor in Council in this behalf :

Provided that the total amount of the asssessment of any survey number or sub-division shall not be enhanced during any term for which such assessment may have been fixed under section 102, unles such assessment is liable to alteration under section 48.

(3) The area and assessment of such sub-divisions shall be entered in such land records as the Governor in Council may prescribe in this behalf.

Provisions applicable on relinquishment or forfeiture of a sub-division.

[a] 117B. If any sub-division of a survey number is relinquished under section 74 or is forfeited for default in payment of land revenue, the Collector shall offer such sub-division at such price as he may consider it to be worth to the occupants of the other sub-divisions of the same survey number in such order as in his discretion he may think fit ; in the event of all such occupants refusing the same, it shall be disposed of as the Collector shall deem fit :

Provided that until the said sub-division shall be occupied or until the entire survey number shall be relinquished, whichever event may first occur, the assessment of the said sub-division shall be levied from the occupants of the other sub-divisions of the survey number in proportion to the amount of assessment due from such occupants on account of their sub-divisions.

For the purposes of this section notwithstanding anything contained in section 3, if any of the other sub-divisions have been mortgaged with possession, the mortgagors shall be deemed to be the occupants thereof.

Occupant.—The term 'occupant' is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach and Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

CHAPTER IX

THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY-MARKS

Determination of village boundaries.

118. The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined by survey officers, or by such other officers as may be nominated by Government for the purpose, who shall be guided by the following rules :—

[a] This section was inserted by Bom Act IV of 1913, s. 56.

Village boundaries may be settled by agreement.

Rule 1.—When the patels and other village officers of any two or more adjoining villages, and, in the case of an alienated village the holder thereof or his duly constituted agent, shall voluntarily agree to any given line of boundary as the boundary common to their respective villages, the officer determining the boundary shall require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon. And any village boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means.

Procedure in case of disagreement or dispute.

Rule 2.—If the patels and other village officers, and, in the case of an alienated village, the holder thereof or his duly constituted agent, do not agree to fix the boundaries of their respective villages, in the manner prescribed in the preceding rule, or if it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means, or if there be any pending dispute, the said officer shall make a survey and plan of the ground in dispute, exhibiting the land claimed by the contending parties, and all particulars relating thereto, and shall hold a formal inquiry into the claims of the said parties, and thereafter make an award in the case. If either of the villages concerned be alienated, an award made by a survey officer shall, unless the officer making it be the Superintendent of Survey, be subject to his confirmation, and an award made by any other officer shall be subject to confirmation by such other officer as Government may nominate for the purpose.

Note.—This section is subject to modification when applied to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom Act I of 1880, ss. 1 and 39).

The jurisdiction of a Civil Court is not ousted by s. 4 (g) of Act X of 1876, in case of a dispute as to the position of the boundary line between two survey numbers as laid down by the survey authorities, the defendant alleging that the boundary marks were changed, the plaintiffs alleging that they are in their right direction (*Bala v. Nana*, P. J. 1898, p. 41).

Court has no power to fix boundaries.—When the assistance of the Court is sought for the purpose of ascertaining the boundaries, which the plaintiff himself is unable to point out by reason of some confusion in them, and to recover possession, when those boundaries have been ascertained by the Court, it was *held*, that the Court has no power to fix the boundaries of legal estates, unless some equity is superinduced by the act of the parties as some particular circumstance of fraud or confusion (*Kavasji v. Hormusji*, 29 Bom. 73).

Determination of field boundaries.

119. If, at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation, and, if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the [*a*] land record [*a*] and according to occupation as ascertained from the village officers and the holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time [*b*] after the completion of a survey [*b*] a dispute arise concerning the boundary of any survey number, [*c*] or sub-division of a survey number, [*c*] it shall be determined by the Collector, who shall be guided [*d*] by the land records [*d*] if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

Notes.—*Vide* the first note under the preceding section.

Sections 119, 120 and 121 of the Code are primarily meant for the purposes of the Survey Settlement of the boundary marks as between the Government on the one hand and the occupancy tenants on the other (*Kanhailal v. Ismailbhai*, 28 Bom. L. R. 1498).

What is 'dispute.'—The word 'dispute' in the second part of this section means a dispute between two neighbouring owners and not a dispute between the Collector and the owner. Where a dispute arose between the plaintiff and the Collector as to whether the former had cut the trees from the Government land in front of his land and in the course of that dispute the Collector *suo motu* went into the question of boundary between the land of the plaintiff and that of his neighbour and later on ordered the correction of the revenue records on the basis of the enquiry, and the plaintiff subsequenly sued for the declaration of his title to certain strip of land which he had been ordered to give up by the Collector, it was *held* that there was no such dispute as is necessary for the application of this section and that the question of the plaintiff's title to the land could be gone into in the later suit (*Malkarjunappa v. Anandrao*, 53 Bom. 766).

Settlement of boundary disputes by arbitration.

120. If the several parties concerned in a boundary dispute agree to submit the settlement thereof to an arbitration committee, and make application to that effect in writing, the officer whose duty it would otherwise be to determine the

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[*a*–*a*] These words were substituted for the original words "Village records" by Bom. Act IV of 1913, s. 57.

[*b*–*b*] These words were substituted for the original words "after the survey records have been handed over to the Collector" by Bom. Act IV of 1913, s. 57.

[*c*–*c*] These words were inserted by Bom. Act IV of 1913, s. 57.

[*d*–*d*] These words were substituted for the original words "in the case of survey numbers by the survey records" by Bom Act IV of 1913, s. 57.

boundary shall require the said parties to nominate a committee of not leas than three persons, within a specified time, and if within a period to be fixed by the said officer the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the said officer, or if the said officer be a survey officer lower in rank than a Superintendent of Survey, by the Superintendent of Survey, shall be final :

When award may be remitted for reconsideration.

Provided that the said officer, or the Superintendent of Survey, shall have power to remit the award, or any of the matters referred to arbitration, to the reconsideration of the same committee, for any of the causes set forth in paragraph 14 of the Second Schedule to the Code of Civil Procedure, 1908.

If arbitration fail, survey officer to settle dispute.

If the committee appointed in the manner aforesaid fail to effect a settlement of the dispute within the time specified, it shall be the duty of the officer aforesaid, unless he or, if the said officer is a survey officer lower in rank than a Superintendent of Survey, the Superintendent of Survey, see fit to extend the time, to settle the same as otherwise provided in this Act.

Para. 14 of the 2nd Schedule to the Code of Civil Procedure.—The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit:—

(*a*) when the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred ;

(*b*) where the award is so indefinite as to be incapable of execution ;

(*c*) where an objection to the legality of the award is apparent upon the face of it.

Effect of the settlement of a boundary.

[*a*] 121. (1) The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative :

(*a*) of the proper position of the boundary line or boundary marks, and

(*b*) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

[*b*] (2) Where a boundary has been so fixed, the Collector may at any time summarily evict any landholder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

[*a*] This section was numbered sub-section (1) of this section by Bom. Act IV of 1913, s. 59.

[*b*] This sub-section was added by Bom. Act IV of 1913, s. 59.

"**Determinative.**"—When there is a settlement of boundaries under s.119, the word 'determinative' in this section means conclusive as to the legal rights of the adjoining holders (*Lakshman v. Narayan*, P. J. 1890, p. 11).

Settlement of boundary dispute by Collector.—This section must be read along with sections 119 and 120 of this Code. It is only when a boundary dispute arise between the owners of adjoining lands, and the Collector is called upon to determine the dispute, that his determination becomes final under this section so as to oust the jurisdiction of the Civil Court (*Lakshman v. Antaji*, 25 Bom. 312).

Decisions of revenue officers as to boundaries are final.—In 1887 a dispute arose between plaintiffs and defendant as to boundaries of certain land, being survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector and the piece of land in dispute was found to belong to the plaintiffs as occupants of Survey No. 88. Subsequently the defendant having encroached upon it and dispossessed the plaintiffs the present suit was filed. The Court of first instance awarded plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant applied, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court. *held*, that under the provisions of this section the decision of the Collector as to boundaries was conclusive and that the plaintiffs were entitled to possession (*Bai v. Valji*, 10 Bom 456).

Jurisdiction of Civil Court.—This section presents no bar to the cognizance of a suit by a Civil Court, to reconsider an order passed by a Survey Officer as to the site of some of the lands which does not involve any question of boundary line between two villages (*Narsangji v. Bai Achrat*, 26 Bom. L.R. 1264). The Civil Court has jurisdiction to entertain a suit for settlement of boundaries of fields, where subsequent to the filing of the suit the boundaries have been determined by revenue officers (*Kanhailal v. Ismailbhai*, 28 Bom L.R. 1498).

The settlement of a boundary by the Collector under this section does no more than establish where the boundary line lies, and the owners of the respective survey numbers are *prima facie* entitled to their property according to the boundary lines. But the Collector's decision does not prevent one of the disputing parties from filing a suit in the Civil Court on the ground that he has acquired a portion of his neighbour's survey number by adverse possession (*Bhaga Motiji v. Dorabji Sorabji*, 43 Bom. 67).

Boundaries fixed by the Collector.—The fixing of boundaries, by the Collector, of survey numbers under this section, has the same effect merely of showing what lands belong to the persons in whose names the survey numbers are registered. It does not affect the right of any one of those persons to show in a Civil Court that he has acquired a title by adverse possession against a registered occupant (*Manak v. Narayan*, 22 Bom. L R. 114, foot-note).

Settlement of boundary.—It is the duty of the enquiry officer, under this section, to settle the boundary between the lands of adjoining house owners, which can ordinarily be by means of a line drawn on a plan, and that line, according to the provisions of this section, is determinative of the rights of the land-holders on either side of the boundary so fixed. But it is not determinative of any rights which the holder of one number can claim to exercise over the land be-

longing to the holder of the adjoining number. This section does not give jurisdiction to the enquiry officer to decide, *e g.*, that a broad strip of land lying between two numbers is common to both the adjoining owners. This section applies to agricultural lands as also to the survey of land in a town (*Ganesh v. Ramchandra*, 23 Bom. L. R. 1209)

Construction and repair of boundary marks of survey numbers and villages.

122. It shall be lawful for any survey officer, authorized by a Superintendent of Survey, or Settlement officer to [*a*] specify or cause to be constructed, laid out, maintained or repaired [*a*], boundary-marks of villages or survey numbers [*b*] or sub-divisions of survey numbers [*b*] whether cultivated or uncultivated, and to assess all charges incurred thereby on the holders or others having an interest therein.

Requisition on land holders to erect or repair boundary-marks

Such officer may require landholders to construct, [*c*] lay out, maintain [*c*] or repair their boundary-marks, by a notification which shall be posted in the chavdi or other public place in the village, to which the lands under survey belong, directing the holders of survey numbers [*b*] or sub-divisions [*b*], to construct, [*c*] lay out, maintain [*c*] or repair, within a specified time, the boundary-marks of their respective survey numbers [*a*] or sub-divisions [*a*] and on their failure to comply with the requisition so made, the survey officer shall then construct [*c*], lay out [*c*] or repair them and assess all charges incurred thereby as hereinbefore provided.

A general notification to be good and sufficient notice of requisition

A general notification, issued in the manner aforesaid, shall be held to be good and sufficient notice to each and every person having any interest in any survey numbers [*a*] or sub-divisions [*a*] within the limits of the lands to which the survey extends.

Description of boundary marks.

[*d*] The boundary-marks shall be of such description, and shall be constructed, laid out, maintained or repaired in such manner and shall be of such dimensions and materials as may, subject to rules [*e*] made in this behalf under section 214, be determined by the Superintendent of survey, according to the requirements of soil and climate.

Note.—Unless unploughed boundary strips are declared as boundary marks by the Survey Officer or the Collector, the landholders will not be responsible to

[*a*—*a*] These words were substituted for the original words by Bom. Act VI of 1901 s. 14 (1).

[*b*—*b*] There words were inserted by Bom. Act IV of 1913, s. 60 (*a*).

[*c*–*c*] These words were inserted by Bom. Act VI of 1901, s. 14 (2).

[*d*] This paragraph was substituted for the original paragraph by Bom. Act VI of 1901, s. 14 (3).

[*e*] Words repealed by Bom. Act IV of 1913, s. 60, (*b*) are omitted.

maintain or keep such marks in good repair (G. R. No. L. C. 1831, dated 11-9-1925 quoted in Joglekar's Supplement No. 2 to his Land Revenue Code, p. 26).

Responsibility for the maintenance of boundary-marks.

123. Every landholder shall be responsible for the maintenance and good repair of the boundary-marks of his holding, and for any charges reasonably incurred on account of the same by the revenue officers in cases of alteration, removal or disrepair. It shall be the duty of the village officers and servants to prevent the destruction or unauthorized alteration of the village boundary-marks.

Notes.—This section is subject to modification when applied to any village in the Districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom Act. I of 1880, ss. 1 and 89).

The charges shall be levied under the provisions of this Code relating to realization of land-revenue (See s. 187 *post*)

Collector to have charge of boundary-marks after introduction of the Survey Settlement.

124. When the survey settlement shall have been introduced into a district, the charge of the boundary-marks shall devolve on the Collector, and it shall be his duty to take measures for their [*a*] construction, laying out [*a*], maintenance and repair, and for this purpose the powers conferred on survey officers by section 122 shall vest in him.

Note—Sections 122-124 relating to boundary marks apply to all talukdari villages in which the duty of keeping boundary marks in order devolves on landlords (talukdars.) If they fail they are liable to make good reasonable expenses incurred by Revenue Officers in repairing or replacing these marks. But a Collector as such is not a Revenue Officer for the purpose of section 124 in a talukdari village as a survey settlement is not introduced in a talukdari village. The Collectors of Ahmedabad, Kaira, Panch Mahals and Broach have accordingly been appointed Superintendents of Survey for all talukdari villages in their districts for the purpose of enabling them to act under ss 122 and 123 (G.R. No. 7642-24, dated 24-4-1928).

Penalty for injuring boundary marks.

125. Any person convicted after a summary inquiry before the Collector, or before a survey officer, Mamlatdar or Mahalkari, of wilfully erasing, removing or injuring a boundary-mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed or injured.

One-half of every fine imposed under this section may be awarded by the officer imposing it to the informer, if any, and the other half shall be chargeable with the cost of restoring the mark.

Boundaries and boundary-marks—Jurisdiction.—Boundaries and boundary marks are dealt with in Chap. IX, and penalties for injuring boundary-marks, are specially provided by this section, which gives no jurisdiction to Magistrates (*Irappa*, 13 Bom. 291).

[*a*] These words were inserted by Bom. Act VI of 1901, s. 15.

CHAPTER X

OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS AND CITIES.

Limits of sites of villages, towns and cities how to be fixed.

126. It shall be lawful for the Collector, or for a survey officer, acting under the general or special orders of Government, to determine what lands are included within the site of any village, town, or city, and to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of landholders.

"Site."—The expression "site" occurring in this section means *"gaothan"* and not the total periphery of all the village land (G. O. No. 1684, dated 27th June 1921, quoted in Joglekar's Supplement No. 2, to his Land Revenue Code, p. 26).

Act XI of 1852 and VII of 1863 how far applicable to lands in such sites.

127. Act XI of 1852 and Bombay Acts II and VII of 1863, shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 [*a*] which have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said Acts shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

Notes.—Secs. 127 to 136 (both inclusive) do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act extends (See Bom. Act VI of 1888, ss. 1 and 33).

Act XI of 1852 goes by the name of Titles to Rent-Free Lands Act, Bombay Act No. II of 1863, by the name of Exemptions from land-revenue in territories subject to Act XI of 1852 and Bom. Act VII of 1863, Exemptions from land-revenue in teritories not subject to Act XI of 1852.

Existing exemption when to be continued in case of certain lands in towns and cities in which Bom. Act IV of 1868 has been in operation.

[*b*] 128. The existing exemption from payment of land-revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868, [*b*] shall be continued;

1st.—If such lands are situated in any town or city where there has been in former years a survey which Government recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land-revenue;

[*a*] Bom. Act IV of 1868 is repealed by section 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

[*b-b*] As to the local repeal of section 128, see para. 3 of foot-note [*a*] on p. 1, *supra*.

2nd.—if such lands have been held wholly or partially exempt from the payment of land revenue for a period of not less than five years before the application of Bombay Act I of 1865, [*a*] or IV of 1868 [*b*] to such town or city;

3rd—if such lands, for whatever period held, have been held wholly or partially exempt from payment of land revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed.

Right to exemption to be determined by the Collector.

[*c*] 129. (1) Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

[*d*] (2) Any suit instituted in a Civil Court to set aside any order passed by the Collector under sub-section (1), in respect of any land situate within the site of a village, town or city, shall be dismissed (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the order. [*d*].

Occupancy price payable in addition to assessment in certain cases.

[*c*] 130. In towns and cities to which section 128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been unauthorizedly occupied for a period commencing less than two years before Bombay Act I of 1865 [*a*] or IV of 1868 [*b*] was applied to the town or city in which the said lands are situate, shall be liable to pay [*e*] a price for the said lands [*e*] in addition to the land revenue assessed thereupon.

The said [*f*]price shall be determined according to the provisions of section 62.

[*a*] Bom. Act I of 1865 (except sections 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. Act IV 1913, s. 5.

[*b*] Bom. Act IV of 1868 is repealed by section 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

[*c*] As to the local repeal of sections 129 to 131, see para. 3 of foot-note [*a*] on p. 1, *supra*.

[*d-d*] This sub-section was added by Bom. Act XI of 1912, s. 2, which also enacted that the original section 129 should be numbered sub-section (1) of section 129.

[*e-e*] These words were substituted for the original words "the price of the occupancy of the said lands" by Bom. Act IV of 1913, s. 61.

[*f*] This word was substituted for the original words "occupancy price" by Bom. Act IV of 1913, s. 61.

Survey of lands in such sites how to be conducted.

131. If the Governor in Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town, or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII and IX of this Act : Provided that nothing contained in sections 96, 97, 101, [*a*] 104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

Proviso.

In certain cases a survey-fee to be charged.

[*b*) 132. When a survey is extended under the provisions of the last preceding section to the site of any town or city containing more than two thousand inhabitants, each holder of a building-site shall be liable to the payment of a survey fee to be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by Government, provided that the said fee shall in no case exceed [*c*] ten rupees for each building site or any portion thereof held separately [*c*]. The said survey-fee shall be payable within six months from the date of a public notice to be given in this behalf by the Collector after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.

[*d*]

Sanad to be granted without extra charge.

[*e*) 133. Every holder of a building-site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H, [*f*] or to the like effect [*f*] specifying by plan and description the extent and conditions of his holding :

Proviso.

Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the

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[*a*] Figures repealed by Bom. Act IV of 1913, s. 62, are omitted.

[*b*] As to the local repeal of section 132, see para. 3 of foot-note [*a*] on p. 1, *supra*.

[*c*—*c*] These words were substituted for the original words "rupees five for each survey number" by Bom. IV of 1913, s. 63 [*a*]

[*d*] The third paragraph of section 132 repealed by Bom. Act IV of 1913, s. 63 (*b*), is omitted.

[*e*] As to the local repeal of section 133, see para. 3 of foot-note [*a*] on p. 1, *supra*.

[*f*-*f*] These words were inserted by Bom. Act IV of 1913, s. 64.

date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

Sanad, a document of title.—An entry in the Collector's books that a certain person is the occupant and liable to pay revenue does not afford much evidence of title. A sanad given under this section, after due enquiry, in the form in Schedule H, is itself a document of title (*Ulawappa v. Gadigewa*, 27 Bom. L. R. 948).

Inferior and superior holders entitled to get sanads.—Both inferior as well as superior holders are entitled to get sanads in respect of building sites in city surveyed areas provided the requisite survey fees are paid. Sanads in the form appended to G. R. No. 2307-24, dated 8th June 1925, should therefore be granted, on application (and not otherwise), to the tenants of all municipalities. The same form should be used with suitable modifications in the case of other tenants (G. Rs. Nos. 2307-24, dated 8-5-1925, 10-8-1926 and 6-5-1929).

Assessment of lands hitherto used for purpose of agriculture only used for other purposes.

[*a*] 134. If any land within the site of any village, town, or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provisions of any law for the time being in force, be [*b*] used for [*b*] any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

Application of the Section.—In the absence of a specific condition precluding the levy of non-agricultural assessment, the summary settlement sanads, which must be read with section 45, do not debar Government from using this section. The section applies to all lands which have been summarily settled and are within the site of any village, town or city at the time when such lands are converted to non-agricultural use. The section is not applicable to a summary settled piece of land which is used for non-agricultural purposes while it is outside the gaothan and is subsequently included in the gaothan area under section 126 (G. R No L. C. 3686, dated 7-1-1931 and G. M. No. L. C. 3686-B, dated 3-8-1931, quoted in Correction Slips to Joglekar's Land Revenue Code).

Judi or quit rent.—Under this section judi or quit rent cannot be increased in respect of those inam lands settled under the Summary Settlement Act, which are not affected by the provisions of section 127 (G. R. No. 4690, dated 3-5-1922).

135. *Repealed by Bom. Act XI of 1912, s. 3.*

[*a*] As to the local repeal of section 134, see para. 3 of foot-note [*a*] on p. I, *supra*.

[*b-b*] These words were substituted for the original words "appropriated to" by Bom. Act IV of 1913, s. 65.

[a] CHAPTER X-A.

OF THE RECORD OF RIGHTS

Note.—Chapter X-A applies also to alienated villages. Government is, therefore, entitled to maintain the Record of Rights in alienated villages without the consent of the Inamdar (*Raghavendra v. Secretary of State*, 28 Bom. L. R 559).

Exemption from provisions of this chapter.

135A. The Governor in Council may, by notification in the *Bombay Government Gazette*, direct that this chapter, or any specified provisions thereof, shall not be in force in any specified local area, or with reference to any lands or any class of villages or lands, or generally.

The record of rights.

135B. (1) A record of rights shall be maintained in every village and such record shall include the following particulars :—

(*a*) the names of all persons (other than tenants) who are holders, occupants, owners or mortgagees of the land or assignees of the rent or revenue thereof ;

(*b*) the nature and extent of the respective interests of such persons and the conditions or liabilities (if any) attaching thereto;

(*c*) the rent or revenue (if any) payable by or to any of such persons ;

(*d*) such other particulars as the Governor in Council may prescribe by rules made in this behalf.

(2) Provided that the said particulars shall be entered in the record of rights with respect to perpetual tenancies, and also with respect to tenancies of any other classes to which the Governor in Council may, by notification in the *Bombay Government Gazette*, direct that the provisions of this section shall apply in any local area or generally.

The Record of Rights—Its Origin.—The subject of the Record of Rights was first mooted by the Government of India in their letter 2770-369, dated 6-12-97 and it was intended purely for Settlement purposes. In April 1898 orders to make experiments were received. The first draft was prepared by Sir J. W. P. Muir Mackenzie, and the experiments were carried out in 1899 by Messrs. A. B. Forde, F. B. Young, H. B. Sathe. The first Act was passed in 1903 (IV of 1903), but this was repealed and incorporated in the Land Revenue Code of 1913. The Record has now also become the basis of the accounts of liability to pay land revenue : and also of the audit of alienations of land revenue. The first Act extended to all lands except those excluded by G. Rs. Nos. 263 and 3653 of 1904. It was extended to all Sharakati villages in G.R. No. 2568 of 1909, and to surveyed inam villages, even if the period of settlement has expired, except those in Ratnagiri by G. R No. 288 of 1913. All revenue survey numbers or parts thereof used for non-agricultural purposes within municipal limits are brought under the Act by G.R. No. 11581 of 1913 and agricultural lands in vari-

[a] This chapter was inserted by Bom. Act IV of 1913, s. 66.

ous Municipalities by several notifications. All whole vanta villagees, and vanta blocks in Government villages, were excluded by G. R. No. 5668 of 1911. But in Broach and Kaira those summarily settled are now decided not to be "Talukdari Estates" and, therefore, come under the Record of Rights Act (G. R. No. 3180 of 1920). There is a special form for Kolaba khoti villages and some modifications for bhagdari and narvadari villages. It has not been applied to talukdari villages where the Settlement Register, which is s sort of Record of Rights, is prepared; and not applied to Ratnagiri khoti villages (G R. 399 of 1919). It was extended to the surveyed cities of Ahmednagar, Barsi, Gadag and Godhra (G.R. No. 684 of 1916) without any obligation upon the Municipality and to all other city-surveyed areas by G. R. 6108 of 1917, except those cities surveyed long ago, which were in need of revision survey before the Act can be applied (Ahmedabad City proper, Surat, Broach, Rander, Bulsar, Hubli, Dharwar, Bijapur and cities in Sind). These cities have now been resurveyed. In pursuance of that policy cl. 5 of G. R. 263 of 1904 is amended : whenever a village, town or city site is surveyed under sec. 131, Chapter X-A is applied and sec. 135B is applied to all tenancies for 21 years and upwards : no register of tenancies is separately maintained (G. R. 13565 of 1918) (*Anderson's L. R. Rules, ed. of 1930, p. 96*).

Introduction of Record of Rights in Inam villages.—The Record of Rights can be introduced in any inam village whether it is surveyed or not, without the consent of the Inamdar (H. C. R.—Dharwar Suit No. 54 of 1922 and First Appeal No. 350 of 1924, quoted in Joglekar's Supplement No. 2, p. 29).

Application of the section.—Section 135 B (2) refers to tenancies existing at the time of introduction of the Record of Rights.

Acquisition of rights to be reported.

135C. Any person acquiring, by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land, or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the village accountant within three months from the date of such acquisition, and the said village accountant shall at once give a written acknowledment of the receipt of such report to the person making it :

Provided that where the person acquiring the right is a minor or otherwise is disqualified, his guardian or other person having charge of his property shall make the report to the village accountant :

provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the village accountant.

Explanation I.—The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Propery Act, 1882.

Explanation II.—A person in whose favour a mortgage is discharged or extinguished. or lease determines, acquires a right within the meaning of this section.

Sections 135-C and 135-D apply to new tenancies which come into being after the introduction of the Record of Rights. In both cases the tenencies to be entered in the Record of Rights must either be perpetual or notified under s. 135-B (2). Tenancies which are not perpetual or not so notified should be entered in the Register of tenancies as prescribed in No. 113 of the Land Revenue Rules (G. R. No. L. C. 2865, dated 18-7-1931, quoted in Correction Slips to Joglekar's Land Revenue Code).

Report-Court fee stamp.—A report under this section regarding the acquisition of a right is not liable to court fee stamp under the Court Fees Act (G. R. No. 5366-28, dated 30-8-1930, quoted in Correction Slips to Joglekar's Land Revenue Code).

Register of mutations and register of disputed cases.

135D. (1) The village accountant shall enter in a register of mutations every report made to him under section 135-C and shall also make an entry therein respecting the acquisition of any right of the kind mentioned in [*a*] the first paragraph [*a*] of section 135-C which he has reason to believe to have taken place and of which a report has not been made to him under the said section.

(2) Whenever a village accountant makes an entry in the register of mutations he shall at the same time post up a complete copy of the entry in a conspicuous place in the chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

(3) Should any objection to an entry made under sub-section (1) in the register of mutations be made either orally or in writing to the village accountant, it shall be the duty of the village accountant to enter the particulars of the objection in a register of disputed cases.

(4) Orders disposing of objections entered in the register of disputed cases shall be recorded in the register of mutations by such officers and in such manner as may be prescribed by rules made by the Governor in Council in this behalf.

(5) The transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the Governor in Council in this behalf : provided that an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

Entries in register of mutations how to be certified.

(6) Entries in the register of mutations shall be tested and if found correct, or after correction as the case may be, shall be certified by a revenue officer of rank not lower than that of a Mamlatdar's first karkun.

[*a-a*] These words were substituted for the original word and figure "sub-section (1)" by Bom. Act of II 1919, First Schedule.

(7) The provisions of this section shall apply in respect of perpetual tenancies and also in respect of any tenancies mentioned in a notification under sub-section (2) of section 135B, but the provisions of this section shall not apply in respect of other tenancies, which shall be entered in a register of tenancies in such manner and under such procedure as the Governor in Council may prescribe by rules made in this behalf.

Tenancies.

A Mamlatdar holding an enquiry relating to record of rights under Chapter XII of this Code is a revenue Court under s. 195 (1) (*c*) of the Cr. P. C. (*Emperor v. Narayan*, 39 Bom. 310).

Chavdi.—Where there is no Chavdi in a village, the Collector should for purposes of section 135-D (2), direct under s. 3 (8) what place should be deemed to be a chavdi (G. N. No. 5055-B-28, dated 24-7-1930, quoted in Correction Slips to Joglekar's Land Revenue Code).

135E. (1) Any person whose rights, interests or liabilities are required to be, or have been entered in any record or register under this chapter shall be bound, on the requisition of any revenue officer or village accountant engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof as may be within his knowledge or in his possession or power.

Obligation to furnish information.

(2) A revenue officer or village accountant to whom any information is furnished or before whom any document is produced in accordance with a requisition under sub-section (1) shall at once give a written acknowledgment thereof to the person furnishing or producing the same and shall endorse on any such document a note under his signature, stating the fact of its production and the date thereof.

135F. Any person neglecting to make the report required by section 135C, or furnish the information or produce the documents required by section 135E within the prescribed period shall be liable, at the discretion of the Collector, to be charged a fee not exceeding twenty-five rupees, which shall be leviable as an arrear of land-revenue.

Penalty for neglect to afford information.

Note.—Mamlatdar's Head Karkuns and Extra Head Karkuns and District Inspectors of Land records are authorized to levy fees upto a miximum of Rs. 15 in each case (G. R. No. 7628, dated 9th April 1924, and 13th April 1924, quoted in Joglekar's Supplement No. 2, p. 30).

135G. Subject to rules made in this behalf by the Governor in Council

Requisition of assistance in preparation of maps.

(*a*) any revenue officer or village accountant may for the purpose of preparing or revising any map or plan required for or in connection with any record or register under this chapter exercise any of the powers of a survey officer under sections 96 and 97, except the power of assessing the cost of hired labour under section 97, and

(*b*) any revenue officer of a rank not lower than that of an Assistant or Deputy Collector or of a survey officer may assess the cost of the preparation or revision of such map or plan and all contingent expenses, including the cost of clerical labour and supervision, on the lands to which such maps or plans relate, and such costs shall be recoverable as a revenue demand.

Certified copy of record to be annexed to plaint or application.

135H. (1) The plaintiff or applicant in every suit or application as hereinafter defined relating to land situated in any area to which this chapter applies shall annex to the plaint or application a certified copy of any entry in the record of rights, register of mutations or register of tenancies relavant to such land.

(2) If the plaintiff or applicant fails so to do for any cause which the Court or conciliator deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the Court or conciliator, and if such certified copy is not so annexed or produced the plaint or application shall be rejected, but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject-matter, with a certified copy annexed.

(3) After the disposal of any case in which a certified copy of any such entry has been recorded, the Court shall communicate to the Collector any error appearing in such entry and any alteration therein that may be required by reason of the decree or order, and a copy of such communication shall be kept with the record. The Collector shall in such case cause the entry to be corrected in accordance with the decree or decision of the Court, so far as it adjudicates upon any right required to be entered in the record of rights, register of mutations or register of tenancies. The provisions of this sub-section shall apply also to an appellate or revisional Court: provided that, in the case of an appellate or revisional decree or order passed by the High Court or the Court of the Judicial Commissioner of Sind, the communication shall be made by the Court from which the appeal lay or the record was called for.

(4) In this section—

(*a*) "suit" means a suit to which the provisions of the Code of Civil Procedure, 1908, or of the Mamlatdars' Courts ; Act, 1906, apply ;

(*b*) "application" means an application—

(*i*) for the execution of a decree or order in a suit;

(*ii*) for the filing of an agreement stating a case for the opinion of the Court under the Code of Civil Procedure, 1908;

(*iii*) for the filing of an agreement to refer to arbitration under paragraph 17 of the Second Schedule to the said Code;

(*iv*) for the filing of an award under paragraph 20 of the said Schedule;

(*v*) to a conciliator under section 39 of the Dekkhan Agriculturists' Relief Act, 1879;

(*vi*) of any other kind to which the Governor in Council may, by notification in the *Bombay Government Gazette*, direct that this section shall apply;

(*c*) an application shall be deemed to relate to land if the decree or other matter, with respect to which the application is made, relates to land;

(*d*) a suit, decree or other matter relating to land shall, without prejudice to the generality of the expression, be deemed to include a suit, decree or other matter relating to the rent or tenancy of land.

Copy not attached to plaint.—Where, in a suit relating to land, the plaintiff omits to annex to his plaint a certified copy of the entry in the Record of Rights, as provided in this section, but the Court passes a decree, it is not open to the Appellate Court to reject the plaint in appeal merely on the ground of the omission; but it should give an opportunity to the plaintiff to produce the entry within a fixed time (*Girijabai v. Hemraj*, 45 Bom. 1339).

Where in a suit relating to land, the extract from the Record of Rights required by this section is not produced in the trial Court, and in the Court of appeal the point about absence of the extract is not presssed in arguments, it is not proper to reject the suit only on that ground, but the Court can well exercise its discretion in allowing the extract to be put in in appeal. Where the extract from the Record of Rights is once so put in, no application for review of judgment based on the ground of the absence of the extract can be entertained (*Ganesh v. Vithal*, 23 Bom L. R. 745; s. c. 46 Bom. 345).

Certified copies of entries and their extracts exempt from Court fee stamps.—Certified copies of entries in Record of Rights and applications for such copies when required in filing in Court under this section are exempt from Court fee stamps. Certified copies of extracts from entries in Record of Rights when attached to applications for the execution of Civil Court decrees are also exempt from Court Fee Stamps (G. N. No. 590, dated 16-9-1921 quoted in Correction Slips to Joglekar's Land Revenue Code).

Refusal of assistance under section 87.

135I. Notwithstanding anything in section 87, the Collector shall refuse assistance to any superior holder under the said section, if his claim to such assistance is not supported by an entry or entries duly made in the record of rights, register of mutations or register of tenancies.

135J. An entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Presumption of correctness of entries in record-of rights and register of mutations.

Retrospective effect.—This section is not retrospective with respect to the entries for the purpose of determining the rights of the parties which were till after 1913 innocuous (*Hathising v Kuber Jetha*, 44 Bom. 214).

Entries in record of rights.—Under this section entries in the record of rights shall be presumed to be correct, and, in the absence of any other evidence, a Civil Court is obliged to be guided by any facts so entered in the record of rights (*Anandibai v Narain*, 17 Bom L R. 49).

135K. Application for certified copies of entries in the record of rights, the register of mutations and the register of tenancies may be made to, and such copies may be given by, the village accountant, Mahalkari or Mamlatdar.

Certified copies.

Application for copy of entry exempt from Court fee stamp.—Applications made to village officers for copies of entries in the Record of Rights are exempt from Court fee Stamps (G. N. No. 590, dated 16-9-1921, quoted in Correction Slips to Joglekar's Land Revenue Code).

135L. (1) No suit shall lie against the Secretary of State or Government or any officer of Government in respect of a claim to have an entry made in any record of register that is maintained under this chapter, or to have any such entry omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this chapter.

Bar of suits and exclusion of Chapter XIII.

(2) The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof revised, by such Revenue officers and in such manner and to such extent and subject to such appeal as the Governor in Council may from time to time by rules prescribe in this behalf.

Appeal.

CHAPTER XI

OF THE REALIZATION OF THE LAND REVENUE AND OTHER REVENUE DEMANDS

[*a*] 136. (1) In the case of unalienated land the occupant, and in the case of alienated land the superior holder, shall be primarily liable to Government for the payment of the land-revenue, including all arrears of land-revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.

Liability for land revenue.

[*a*] This section was substituted for the original section by Bom. Act IV of 1913, s. 67.

(2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears as aforesaid, shall be recoverable from any person in posssession of the land :

provided that where such person is a tenant, the amount recoverable from him shall not exceed the demands of the year in which the recovery is made :

provided further that, when land-revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.

Note.—This section is subject to modification when applied to any village in the Districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom. Act I of 1880, ss. 1 and 39).

Occupant.—The term 'occupant' is subject to modification when applied to any estate in the Districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talokdars' Act extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Claims of Government to have precedence over all others.

137. The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment decree, execution, or attachment, or otherwise howsoever, against any land or the holder thereof.

Sale for recovery of abkari revenue —This section in no way extends the right of forfeiture and sale to those lands of the defaulter in respect of which no land revenue is due. Although arrears of abkari licence fees are recoverable as land revenue under s. 34 of the Abkari Act, arrears of abkari revenue are not due upon any specific land owned by the abkari renter. Hence a sale by Government of the land of the renter for recovery of abkari revenue is a sale subject to any prior mortgage on the land (*Ahmed Haji Esmail v. Parmanand Menghraj*, 267 S. L. R. 390). In this case 7 Mad. 434, 28 Mad 420, 25 Mad 572 and 26 Mad. 230 were followed.

The liability of the crop for the revenue of the land.

138. In all cases the land-revenue for the current year of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject to the same.

Recovery of land revenue how to be credited. —Land revenue recovered before the date of the first instalment should be credited against the arrears of past years, if any. Revenue recovered on or after the date of the first instalment, should be credited against the demand of the current year and the balance, if any, against the arrears of previous years (G. R. No. 5387-28, dated 16-3-1932, quoted in Correction Slips to Joglekar's Land Revenue Code).

139. The land-revenue shall be leviable on or at any time after the first day of the revenue year for which it is due; but, except when precautionary measures are deemed necessary under the provisions of sections 140 to 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

Land-revenue may be levied at any time during the revenue year.

[a] 140. When the crop of any land or any portion of the same is sold, mortgaged or otherwise disposed of, whether, by order of a Civil Court or other public authority or by private agreement, the Collector may prevent its being removed from the land until the demands for the current year in respect of the said land have been paid, whether the date fixed for the payment of the same under the provisions hereinafter contained, has yet arrived or not.

Removal of crop which has been sold, &c., may be prevented until revenue paid.

But in no case shall a crop or any portion of the same, which has been sold, mortgaged or otherwise disposed of, be detained on account of more than the demands of the year in which the detention is made.

The powers contained in this section and the following do not authorise the detention of anything but the crops of the land or the seizure of the crop or any other goods after removal from the lands (*Gangaram v. Dinkar* 37 Bom. 542).

141. It shall be lawful for the Collector, in order to secure the payment of the land-revenue by enforcement of the lien of Government on the crop—

In order to secure the land-revenue the Collector may prevent the reaping of the crop, or

(*a*) to require that the crop growing on any land liable to the payment of land-revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him, in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt ;

(*b*) to direct that no such crop shall be removed from the land on which it has been reaped, or from any place in which it may have been deposited, without the written permission of himself or of some other officer as aforesaid ;

the removal thereof, or

(*c*) to cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of land revenue due in respect of the land to which such crop belongs.

place watchmen over it.

[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 68.

142. The Collector's orders under either clause (*a*) or clause (*b*) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village or to individual holders merely.

Collector's orders under last section how to be made known.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chavdi or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Any person who shall disobey any such order after the same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code, abet the disobedience of any such order, shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land revenue due on the land to which the crop belongs in respect of which the offence is committed.

Penalty for disobedience of order.

Removal of crops, though removal prohibited, does not become theft.—If a person removes his wheat, the removal of which is prohibited and over which watchmen have been placed under s. 141, he cannot be convicted of theft under s. 379 of the Penal Code, but can be dealt with under this section (*Daya Karson*, 1 Bom. L. R. 515).

Fine under this section is no arrear of land revenue of any occupancy.—A fine imposed on a person under this section for disobedience of an order passed under section 141 is not an arrear of land revenue in respect of any occupancy, and therefore forfeiture of the offender's land under s. 153 for recovery of the fine is not lawful. The ruling quoted in 15 Bom. 67 under s. 187 *post* does not apply to such a fine (G. R. No. 5008-28, dated 31-10-1930 quoted in Correction Slips to Joglekar's Land Revenue Code).

143. The Collector shall not defer the reaping of crop, nor prolong its deposit unduly, so as to damage the produce; and if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal cost, and release the rest.

Reaping, &c, not to be unduly deferred.

Crop when to be released.

144. If owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause

Temporary atttachment and management of a village or share of a village.

the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Powers of manager, and disposal of surplus profits.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of the land revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector [*a*] may direct.

Grant of village lands rent free by Talukdar.—Plaintiff held rent free land from the talukdar of the village, who paid the Government assessment for the village in a fixed lump sum. The village was attached by the Government for non-payment of the jama by the talukar under this section. *Held*, that the Government had the right to levy the assessment on the lands of the plaintiff to the village, for, the grant of lands rent free by the talukdar did not affect the right of the Government to assess the lands (*Tulla v. The Collector v. Kaira*, 43 Bom. 6.

Precautionary measures to be relinquished on security being furnished.

145. The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which it is payable under the provisions hereinafter contained.

Government to determine the dates, &c., on which land revenue shall be payable.

146. Land revenue, except when it is recovered under the provisions of the foregoing sections 140 to 144, shall be payable at such times in such instalments to such persons and at such places as may from time to time be determined by the orders of Government.

Arrear.

Defaulter.

147. Any sum not so paid becomes thereupon an arrear of land revenue, and the persons responsible for it, whether under the provisions of section 136 or of any other section, become defaulters.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdar's Act, 1888, extends (*Vide* Bom. Act VI of 1888. ss. 1 and 33).

[*a*] Words repealed by Bom. Act IV of 1906, Second Schedule, are omitted.

[a] 148. If any instalments of land revenue be not fully paid within the prescribed time, it shall be lawful for the Collector to impose as a penalty or as interest such charge on such instalments, and on the arrears, if any, of former years, as may be authorized according to a scale to be fixed from time to time under the orders of the Governor in Council, and further to proceed to levy at once the entire balance of land revenue due by the defaulter for the current year :

Liabilities incurred by default.

Provided that no such charge shall be imposed on any instalment, the payment of which has been suspended by order of Government, in respect of the period during which the payment remained suspended.

Applicability.—This section applies only in case of default of the payment of land revenue within the prescribed time and not for default of rent. The fact that the Talukdari Settlement Officer was during the period of his management vested with certain powers of the Collector under this Code did not *ipso facto* or necessarily make rent land revenue and the imposition of the penalty was invalid (*Secretary of State v. Gordhandas Mohanlal*, 32 Bom. L. R. 815).

Maximum penalty.—A maximum penalty not exceeding ¼ of the amount of land revenue over-due should be fixed and resort had to the provisions of this section in the case of the rayat who is known to be able to pay but wilfully delays to do so. The penalty imposed may be remitted if the officer imposing it afterwards finds that the rayat was not able to pay punctually (G. R. No. 6485, dated 27th March 1883, quoted in Sathe's Land Revenue Code, 4th ed., p. 243).

Interest or penalty under this section should be levied only in cases of proved contumacy (G. R. No. 194, dated 9th January 1884).

149. A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land revenue due, and of the person who is the defaulter.

Certified account to be evidence as to arrears.

On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this chapter as if the demand arose in his own district.

Collectors may realize each other's demands.

A similar statement of account certified by the Collector of Bombay may be proceeded upon as if certified by the Collector of a district under this Act.

150. An arrear of land revenue may be recovered by the following processes :—

Process for recovery of arrears.

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[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 69.

(*a*) by serving a written notice of demand on the defaulter under section 152;

(*b*) by forfeiture of the occcupancy or alienated holding in respect of which the arrear is due under section 153;

(*c*) by distraint and sale of the defaulter's moveable property under section 154;

(*d*) by sale of the defaulter's immoveable property under section 155;

(*e*) by arrest and imprisonment of the defaulter under sections 157 and 158;

(*f*) in the case of alienated holding consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

Notes.—Cl (*b*) of this section does not apply to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom. Act I of 1880, ss. 1 and 39).

This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Recovery of arrears of land-revenue.—An arrear of land-revenue may be recovered by the several processes mentioned in this section. With regard to the process of sale of the defaulter's immoveable property other than the land on which the arrear is due, it should be noted that the sale is subject to all incumbrances, or tenures or alienations effected by the occupant before the sale. The sale is just like the sale in execution of a money decree of a judgment-debtor's immoveable property and the purchaser acquires only what the occupant could have honestly disposed of on the date of the sale. In this case the rights of incumbrancers are not touched (See *Venkatesh v Mhal Pai*, 15 Bom. 67). The surplus after deducting the expenses of the sale and the arrears due shall be paid to the occupant whose property is thus sold, as required by s. 183 *post*.

Revenue demands of former years how recoverable.

151. The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year:

Proviso.

Provided that any process commenced in the current year shall be entitled to the said perferences, notwithstanding that it may not be fully executed within that year.

When notice of demand may issue.

152. A notice of demand may be issued on or after the day following that on which the arrear accrues.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an

arrear of revenue, and direct by what officer such notices shall be issued.

Notes—.Fees of notice under this section, the costs of arrest under sec. 158 and expenses of sale under s. 183 leviable under the existing rules are doubled (G R. No. 7828, dated, 25-6-1923, quoted in Joglekar's Supplement No 2, p. 31).

Fees are levied even when the notice is unserved (G. Rs. Nos. 954 of 1896, and 1194 of 1898).

Inamdars, even if commissioned, cannot charge notice fees (G. R. No. 2901 of 1886).

Notice of demand when compulsory.—The issue of a notice under this section is not compulsory before any other kind of coercive process is undertaken (G. N. No. 6557, dated 16-1-1931).

Notice of demand when to be served.—A notice of demand under this section may be served through the postal agency. But since practical difficulty is likely to arise if a notice sent by registered post is refused, the issue of a registered notice in such cases should be supplemented by the procedure prescribed in section 191 of the Code of affixing a copy of the notice to some conspicuous place on the land to which the notice refers (G. R. No. 5688-28, dated 15-9-1930, quoted in Correction Slips to Joglekar's Land Revenue Code).

Form of notice of demand.—For form of notice of demand to be issued under this section, see p. 153 of Anderson's L. R. Rules.

153. The Collector may declare the occcupancy or alienated holding in respect of which an arrear of land-revenue is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's account.

The occupancy or alienated holding for which arrear is due may be forfeited.

Proviso.

[*a*] Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited—

(*a*) unless previously thereto he shall have issued a proclamation and written notices of the intended declaration in the manner prescribed by sections 165 and 166 for sales of immoveable property, and

(*b*) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 166.

Note.—This section does not apply to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (Bom. Act I of 1880 ss. 1 and 39).

Proviso.—This proviso provides against the possibility of an occupancy or alienated holding being declared forfeited and disposed of without the fact coming to the knowledge of persons who might otherwise avail themselves of the remedies against forfeiture contained in ss. 80 and 81 (*Select Committee's Report*).

[*a*] This proviso was added by Bom. Act VI of 1901, s. 16.

Occupancy or alienated holding cannot be alienated for recovery of arrears of local fund cess.—Although local fund cess is recoverable as an arrear of land revenue, it is not land revenue which is due in respect of an occupancy or alienated holding. Therefore an occupancy or alienated holding cannot be forfeited for recovery of arrears of local fund cess (G. R. No. 5673-28, dated 28-8-1930 quoted in Correction Slips to Joglekar's Land Revenue Code).

Mere sale does not extinguish incumbrances.—It cannot be assumed that the Collector has declared under this section the holding to be forfeited from the mere fact that that would be the legal consequence of failure to pay assessment. If there has been no forefeiture, a mere sale does not extinguish existing incumbrances (*Govind v Bhiwa*, P. J. 1895, p 70).

When order of forfeiture is illegal.—When a talukdari village is attached under s. 159 of the Code for arrears of land-revenue, so long as the attachment subsists, an order of forfeiture, under this section, is illegal (*Samaldas v. Secretary of State*, 16 Bom. 455).

Forfeiture not followed by sale.—A declaration of forfeiture under this section of the interests of a lessee holding under a permanent lease not followed by a sale, but by an order transferring possession of the holding to the lessor under s. 57, has not the effect of defeating prior incumbrances created by the lessee in favour of third persons (*Narayan v. Purshottam*, 22 Bom. 309).

When a registered occupant's tenancy is forfeited under s. 56 *ante*, and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the land), the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture and the lessee is still under liability to his landlord (*Ganparshibai v. Timmaya*, 24 Bom. 34).

Declaration of forfeiture before sale.—A sale of a holding for default of payment of assessment is not invalid, although prior to the sale there has been no declaration of forfeiture by the Collector. The declaration is not so essentially a necessary preliminary of a sale that without it the sale is illegal and invalid. The fact that a sale has taken place is *prima facie* evidence that forfeiture had been declared (*Ganpati v. Gangaram*, 21 Bom. 381).

Distraint and sale of defaulter's moveable property.

154. The Collector may also cause the defaulter's moveable property to be destrained and sold.

Such distraints shall be made by such officers or class of officers as the Commissioner under the orders of Government may from time to time direct.

By whom to be made.

Distraints may be made by Taluka karkuns, Kulkarnis, Talatis and Patels, provided that they should be executed only by persons able to read and write. In special cases, however, the Collectors and their assistants may direct the warrant to any person whom they may consider competent to execute it (G. R. No. 7858, dated 23rd December 1881, quoted in Sathe's Land Revenue Code, 4th ed., p. 252).

Delegation to Mamlatdars and Mahalkaris of the power to distraint.—The Collectors may delegate the powers exercised by them under this section, to Mamlatdars and Mahalkaris (G. R. No. 5954, dated 31st August 1891, quoted in Sathe's Land Revenue Code, 4th ed., p. 254).

Defaulter's Property.—This section will apply only if the distrained property is the moveable property of the defaulter and the onus is on the officer who effects a seizure to prove it (*Gangaram v. Dinkar*, 37 Bom. 592).

Distraint of chattels how effected.—A seizure for distraint of chattels may be either actual or constructive. It is not necessary that the goods must be actually touched or handled (*Emperor v. Lallu Waghai*, 43 Bom. 550).

Seizure of account books.—An attachment of account books by an officer acting under this section is illegal, and the officer is liable to damages for doing so (*Daluchand v. Gulabai*, 18 Bom. L R. 323).

Cash and notes—Under this section cash and particularly currency notes (being moveable property and liable to sale) may be distrained and sold (*Emperor v. Gulabrai*, 83 I. C. 899). So also **ornaments** (18 Bom L. R 323).

Sale of defaulter's immoveable property.

155. The Collector may also cause the right, title and interest of the defaulter in any immoveable property other than the land on which the arrear is due to be sold.

Defaulter's immoveable property.—The immoveable property of a defaulter which is put up for sale under the Land Revenue Code is not attached in execution and cannot, therefore, be transferred to a Co-operative Society for the recovery of its dues under section 59 (2) of the Bombay Co-operative Societies Act, 1925. A Co-operative Society should in such cases offer an adequate bid and purchase the right, title and interest of the defaulter in the property. In special cases, however, in order to set an example, the Collector may in the absence of outside bidders transfer the right, title and interest of the defaulter in immoveable property to co-operative society on a purely nominal bid (G. Rs. Nos. 4373-28, dated 23-4-1930, 8-12-1930 and 13-2-1932 quoted in Correction Slips to Joglekar's Land Revenue Code).

Exemptions from distraint and sale.

156. All such property as is by the Civil Procedure Code exempted from attachment or sale in execution of a decree, shall also be exempt from distraint or sale, under either of the last two preceding sections.

The Collector's decision as to what property is so entitled to exemption, shall be conclusive.

Exemption—The proviso to Section 60 (1) of the Civil Procedure Code (Act V of 1908) exempts the following articles from attchment or sale :—

(*a*) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as,in accordance with religious usage, cannot be parted with by any woman ;

(*b*) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessory to enable him to earn his livelihood, as such, and such portion of agricultural produce or of any class of agricultural produce as may

have been declared to be free from liability under the provisions of the next following section (*re* special exemption by Government orders) ;

(*e*) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ;

(*d*) books of account ;

(*e*) a mere right to sue for damages ;

(*f*) any right of personal service ;

(*g*) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions ;

(*h*) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty ;

(*i*) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (*h*), while on duty, to the extent of—

(*i*) the whole of the salary, where the salary does not exceed forty rupees monthly ;

(*ii*) forty rupees monthly, where the salary exceeds forty rupees and does not exceed eighty rupees monthly ; and

(*iii*) one moiety of the salary in any other case ;

(*j*) the pay and allowances of persons to whom the Indian Articles of War (V of 1869) apply ;

(*k*) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act (IX of 1897), for the time being applies in so far as they are declared by the said Act not to be liable to attachment ;

(*l*) the wages of labourers and domestic servants whether payable in money or in kind ;

(*m*) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;

(*n*) a right to future maintenance ;

(*o*) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892, to be exempt from liability to attachment or sale in execution of a decree ; and

(*p*) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation.—The particulars mentioned in clauses, (*g*), (*h*), (*i*), (*j*), (*l*) and (*o*) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in section 60 shall be deemed—

to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building site or land.

Agricultural produce not exempted from attachment under C. P. Code—No kind of agricultural produce has been exempted from attachment under section 61 of the Civil Procedure Code.

Exemption from attachment and sale of houses and buildings occupied by agriculturists.—The expression "materials of houses

and other buildings belonging to, and occupied by, agriculturists" used in s. 266, cl. (*c*) (now s. 60 (*c*) of the new Code of 1908) of the Civil Procedure Code, is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such and the farm buildings appended to such dwelling (*Radhakrishna v. Balvant*, 7 Bom. 530).

Arrest and detention of defaulter.

157. At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a Mamlatdar or Mahalkari, unless the revenue due together with the penalty or interest and the costs of arrest and of notice of demand, if any, have issued and the cost of his subsistence during detention, is sooner paid.

Imprisonment in Civil Jail.

If, on the expiry of ten days the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C, for imprisonment in the civil jail of the district:

Defaulters not to be detained in custody longer than debtors may be detained by the Civil Court.

Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a Civil Court for a debt equal in amount to the arrear of revenue due by such defaulter.

Govt's priority over pledgee's rights.—S. was indebted to the Govt. on account of unpaid instalments of a foreign liquor licence, but the stock of wines was already pledged to P. Bank. *Held*, that Govt. had priority over P. Bank as pledgee. This section was applicable to this case although the priority of Govt. as stated in this section is over any claim against any land or holder thereof (*People's Bank of Northern India v. Shahani Brothers*, A. I. R. 1930 Sind 185).

Period of detention.—Every person detained in the civil prison in execution of a decree shall be so detained:—(*a*) Where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and (*b*) in any other case, for a period of six weeks (Civil Procedure Code (Act V of 1908), s. 58 (1)).

Agriculturist debtor when arrested and detained under this section.—An agriculturist debtor against whom action is being taken under s. 59 (1) (*b*) of the Co-operative Societies Act may be arrested and detained under this section. He cannot claim protection under s. 21 of the D. A. R. Act (G. R. No. 8281-28, dated 18-1-1931 quoted in Correction Slips to Joglekar's Land Revenue Code).

Power of arrest by whom to be exercised.

158. The Commissioner may, with the sanction of the Governor in Council, from time to time, declare by what officers, or class of officers, the powers of arrest conferred by section 157 may

be exercised, and also fix the costs of arrest and the amount of subsistence-money to be paid by Government to any defaulter under detention or imprisonment.

Power to attach defaulter's village, and take it under management.

159. If the holding, in respect of which an arrear is due, consists of an entire village, or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Lands of such village to revert free of incombrances.

160. The lands of any village or share of a village so attached shall revert to Government unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as are interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals;

Powers of manager.

and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

Collector not to demand more (Local Fund) in addition to stipulated rent.—

The plaintiffs were tenants of the Thakor of G. The Collector undertook the management of his estate and had, under s. 144 of this Code, attached the village G. *Held*, that the plaintiffs as tenants of the Thakor were liable to pay the Collector the stipulated rent only and that this section does not entitle him to demand more (*Collector of Ahmedabad v. Mosan*, P. J. 1892, p. 323).

Right of Khot to sue for possession of Khoti Nisbat lands.—A Watandar Khot is entitled to institute a suit for possession of his Khoti Nisbat lands which are alienated by the tenant without obtaining his consent, although the Khot's lands have been attached by Government under this Code (*Purushottam v. Ganpati*, 50 Bom. 306).

Application of surplus profits.

161. All surplus profits of the lands attached, beyond the cost of such attachment and management, including the payment of the current revenue, and the cost of the introduction of a revenue survey, if the same be introduced under the

provisions of section 111 [*a*] shall be applied in defraying the said arrear.

Restoration of village so attached.

162. The village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the first of August next after the attachment :

if at the time that such application is made it shall appear that the arrear has been liquidated ;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

Disposal of surplus receipts.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs ; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

Notes.—*Vide* note 1 under s. 160.

This section is subject to modification when applied to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom. Act I of 1880. ss. 1 and 39).

Khot's right to profits for one year when Khoti village under Government attachment.—The position of a Khot, in the villages to which the Bombay Khoti Act (I of 1880) has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of Khoti profits, on his resuming the management of the village, would be regulated by cl (1) of this section. Under this section the village, or share of a village so attached, shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from 1st August next after the attachment. The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village, or share of a village, is made, after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government. But this rule does not hold good where the village attached is one in the Kolaba district to which the Khoti Settlement Act (I of 1880) has not been extended, unless the Knots therein are Sanadi or Vatandar Khots (*Bhikaji v. Nizam*, 8 Bom. 525).

[*a*] Words repealed by Bom. Act III of 1886, are omitted.

163. If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors-in-title, or in any wise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the [*a*] persons in actual possession of the land [*a*].

Village &c., to vest in Government, if not redeemed within twelve years.

Note.—This section does not extend to the estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

164. Any defaulter detained in custody, or imprisoned, shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector, or to such other person or officer.

But all processes to be stayed on security being given ;

And any person against whom proceedings are taken under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

or on amount demanded being paid under protest.

165. When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Procedure in effecting sales.

Such proclamation shall be made by beat of drum at the head quarters of the taluka, and in the village in which the immoveable property is situate, if the sale be of immoveable property ; if the sale be of moveable property the proclamation shall be made in the

Proclamation of sales.

[*a*–*a*] These words were substituted for the original words "actual occupants of the soil" by Bom. Act IV of 1913, s. 70.

village in which such property was seized, and in such other places as the Collector may direct.

Notification of sales.

166. A written notice of the intended sale of immoveable property, and of the time and place thereof, shall be affixed in each of the following places, *viz.*, the office of the Collector of the district, the office of Mamlatdar or Mahalkari of the taluka or mahal in which the immoveable property is situate, the chavdi or some other public building in the village in which it is situate, and the defaulter's dwelling place.

In the case of moveable property, the written notice shall be affixed in the Mamlatdar's or Mahalkari's office, and in the chavdi or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale whether of moveable or immoveable property to be published in any other manner that he may deem fit.

Sale by whom to be made.

167. Sales shall be made by auction by such persons as the Collector may direct.

Time when sale may be made.

No such sale shall take place on a Sunday or other general holiday recognized by Government, nor until after the expiration of at least thirty days in the case of immoveable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

Postponement of sale.

The sale may from time to time be postponed for any sufficient reason.

Sale of perishable articles.

168. Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by auction with the least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

When sale may be stayed.

169. If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale to the person appointed under section 146 to receive payment of the land revenue due, or to the officer appointed to conduct the sale or if he furnish security under section 164, the sale shall be stayed.

Date up to which defaulters may pay arrears.—Under this section a defaulter is only at liberty to pay the arrears in respect of which the

land is to be sold at any time before the day fixed for the sale. The arrears paid after the day fixed for the sale should be refunded to the defaulter (G. R. No. 6130, dated 20th November 1880, quoted in Sathe's Land-Revenue Code, 4th ed., p. 212).

Sales of moveable property when liable to confirmation.

170. Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.

Mode of payment for moveable property when sale is concluded at once.

171. When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

Mode of payment for moveable property when sale is subject to confirmation.

172. When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and said. The full amount of puchase-money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money, the purchaser shall be granted a receipt for the same, and the sale shall become absolute as against all persons whomsover.

Moveable property.—This section applies to moveable property only (*Govind v. Bhiwa*, P. J. 1895, p. 70).

Deposit by purchaser in case of sale of immoveable property

173. In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Purchase money when to be paid.

174. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immoveable property took place, or, if the said

fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

How to calculate fifteen days—When is the deposit to be paid.—The period of 15 days for the payment of the balance of purchase-money should be counted from the date of the conclusion of the sale by the Mamlatdar. The payment of a deposit of twenty-five per cent. to the Karkun before the conclusion of the sale is an irregularity (G. R. No. 809, dated 4th February 1898, quoted in Sathe's Land Revenue Code, 4th ed., p. 264).

Effect of default.

175. In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall b e forefeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Liability of purchaser for loss by re-sale.

176. If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

Notification before re-sale.

177. Every re-sale of property in default of payment of the purchase-money, or after postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

Application to set aside sale.

178. At any time within thirty days from the date of the sale of immoveable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

but except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity, or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

Order confirming or setting aside sale.

179. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming

the sale : provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

Refund of deposit or purchase-money when sale set aside.

180. Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

On confirmation of sale purchaser to be put in possession.

Certificate of purchase.

181. After a sale of any occupancy or alienated holding has been confirmed, in manner aforesaid, the Collector shall put the person declared to be the purchaser into possession of the land [*a*] and shall cause his name to be entered in the [*b*] land records [*b*] as occupant or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the [*c*] land to which the certificate refers.

Occupancy:—The term 'occupancy' is subject to modification when applied to any estate in the Districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act extends (see Bom. Act VI of 1888, ss. 1 and 33).

Certificate of sale.—Certificate of sale granted by the Civil Courts as well as those granted by the Revenue Officers are liable to stamp duty under Art. 16, Sch. 1, of the Stamp Act (G. R. No. 3009, dated 15th June 1880, quoted in Sathe's L. R. Code, 4th ed., p. 267).

Every Revenue Officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1 (See sec. 89 (4) of the Registration Act, XVI of 1908).

Bar of suit against certified purchaser.

182. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

[*a*] Words repealed by Bom. Act IV of 1913, s. 71, are omitted.

[*b-b*] These words were substituted for the original words "revenue records" by Bom. Act IV of 1913, s. 71.

[*c*] This word was substituted for the words "occupancy or alienated holding" by Bom. Act IV of 1913, s. 71,

Bar of suit against certified purchaser.—The provisions of this section and s. 317 (now s. 66) of the Civil Procedure Code are to be construed strictly, and they do not bar a suit where the plaintiff, although originally a benamidar, came honestly into possession (*Ragho v. Vishnu*, 5 Bom. L. R. 329).

Application of proceeds of sale.

183. When any sale of moveable property under this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land revenue,

and the surplus (if any) shall be paid to the person whose property has been sold.

Expenses of sale how calculated.

The expenses of the sale shall be estimated at such rates and according to such rules as may from time to time be sanctioned by the Commissioner under the orders of Government.

Surplus not to be paid to creditors, except under order of Court.

184. The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

Claims of Creditors.—After the arrears have been recovered from the sale-proceeds under s. 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors (G. R. No. 5,730, dated 27th October 1879, quoted in Sathe's Land Revenue Code, 4th ed., p 269).

Certified purchaser liable only for land revenue subsequently due.

[*a*] 185. Notwithstanding anything in section 136, the person named in the certificate of title as purchaser shall not be liable for land revenue due in respect of the land for any period previous to the date of the sale.

Claims to attached moveable property how to be disposed of.

186. If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice. If the claim be admitted wholly or partly, the property shall be dealt with accordingly. Except, in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as hereinbefore directed.

Delegation of powers to Mamlatdars and Mahalkaris.—The Collectors are authorized to delegate the powers exercised by them under this section to Mamlatdars and Mahalkaries when the adoption of such a course may appear to them desirable (G. R. No. 8785, dated 19th November 1882, quoted in Sathe's Land Revenue Code, 4th ed., p. 270).

[*a*] This section was substituted for the original section by Bom. Act IV of 1913, s. 72.

187. All sums due on account of land revenue, all quit-rents, nazaranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines, and costs payable or leviable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue;

What moneys leviable under the provisions of this chapter.

and all moneys due by any contractor for the farm of customs-duties, or of any other duty, or tax, or of any other item of revenue whatsoever and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement;

and also all sums declared by this or by any other Act or Regulation at the time being in force [*a*] or by any contract with the Secretary of State for India in Council [*a*] to be leviable as an assessment, or as a revenue demand, or as an arrear of land revenue;

shall be levied under the foregoing provisions of this chapter [*b*] and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto [*b*].

[*c*]

And all persons who may have become sureties under any of the provisions of this Act or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid for any sum of money shall on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to be proceeded against under the provisions of this chapter as revenue-defaulters [*d*] and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such persons [*d*].

Sureties liable as revenue defaulters.

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

On resumption of a farm no payments made to contractor in advance to be admitted.

[*e*] And any person who has received from Government a free grant of money for any agricultural purpose, subject to the proviso that he shall refund the same on failure to observe any of the conditions of the grant, shall, on failure to observe any such condition and to repay

The recovery of free grants as arrears of revenue in case of misuse.

[*a-a*] These words were inserted by Bom. Act IV of 1905, First Schedule.

[*b-b*] These were added by Bom. Act IV of 1913, s. 73 (1).

[*c*] The words inserted by Bom Act I of 1920, s. 2, have been repealed by Bom. Act VII of 1925, Schedule.

[*d-d*] These words added by Bom. Act IV of 1913, s. 73 (2).

[*e*] This paragraph was added by Bom. Act IV of 1913, s. 73 (3).

the said sum to Government, be liable to be proceeded against under the provisions of this chapter as a revenue-defaulter ; and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such person.

The effect of this section is to make the provisions of ss. 153 and 66, and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks. Such charges may be recovered either by forfeiture or the occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In the former case the land is freed from all incumbrances created by the occupant. In the latter case the rights of incumbrances are not touched (*Venkatesh v. Mhal Pai*, 15 Bom. 67).

CHAPTER XII.

PROCEDUE OF REVENUE OFFICERS.

Subordination of revenue officers.

188. In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time, and manner of performing his duties to the direction and control of the officer to whom he is subordinate.

Power to summon persons to give evidence and produce documents.

189. Every revenue officer not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct : provided that exemptions under [*a*] sections 132 and 133 of the Code of Civil Procedure, 1908 [*a*] shall be applicable to requisitions for attendance under this section ;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

This section does not empower a Mamlatdar to summon any person to attend before a Deputy Collector who is making

[*a*–*a*] These words were substituted for the original words "sections 640 and 641 of the Code of Civil Procedure" by Bom. Act IV of 1913, s. 74.

enquiries about the appointment of a patel for an inam village. A failure to attend in obedience to such a summons is not an offence under s 174 of the Penal Code (*Queen-Empress v. Vidya Dhar*, Cr. Rg. 52 of 1889).

190. Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal :

Summons to be in writing signed, and sealed ;

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

how to be served.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

Service in district other than that of issuer.

191. Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any ;

Mode of serving notices.

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced substantial injustice.

Notice not void for error.

192. In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the [*a*] Code of Civil Procedure, 1908, for parties applying for summons for witnesses. [*a*]

Procedure for procuring attendance of witnesses.

Procedure for procuring attendance of witnesses.—The procedure for parties applying for summonses for witnesses is given in Order XVI of the Code of Civil Procedure (Act V of 1908), which runs thus :—

"1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required to give evidence.

2. The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

[*a-a*] These words were substituted for the original words "Code of Civil Procedure, section 160" by Bom Act IV of 1913, s. 75.

8. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

5. Every summons for the attendance of a person to give evidence shall specify the time and place at which he is required to attend.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required."

For other particulars, see Order XVI of the C. P. Code.

Officer holding summary enquiry to be deemed a Civil Court.—The officer or any authority holding a summary enquiry under the provisions of this Code is a Civil Court for the purposes of such enquiry, and such Court may direct by whom the costs of party are to be paid whether by himself o by any other party to the enquiry and whether in whole or in what part or proportions. Such costs can be levied under the provisions of Chapter XI of the Code (G. R. No. 4468, dated 10th July 1882, quoted in Sathe's Land-Revenue Code, 4th ed., p. 276).

Mode of taking evidence in formal inquires.

193. In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of, the officer making the investigation or inquiry, and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

Taking evidence given in English. Translation to be on record.

When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

Writing and explanation of decisions.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Summary inquiries how to be conducted.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in his language of the district, embracing the material averments made by the

parties interested, the material parts of the evidence, the decision and the reasons for the same :

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

Formal and summary inquiries to be deemed judicial proceedings.

196. A formal or summary inquiry under this Act shall be deemed to be a 'judicial proceeding" within the meaning of sections 193, 219 and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Hearing and decisions. Notice to parties.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Ordinary inquiries how to be conducted.

197. An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion, deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Absence of judicial proceeding.—Where the entry in the revenue registers was due to a misunderstanding of a certain order, it was *held* that the cause of the error being of the same nature with "oversight" falling within the description of errors in s. 109 of the Code, the rectification of the Register so as to bring it in accord with the order made after hearing both the parties was not contrary to natural justice It was a case in which the Revenue officer concerned was authorized under this section to dispense with any judicial or quasi-judicial inquiry (*Vasudeo v. Govind*, 36 Bom. 315).

Mamlatdar—Revenue Court.—A Mamlatdar holding an enquiry relating to Record of Rights, under Chap XII of this Code, is a revenue Court within the meaning of s. 195 (1) (*c*) of the Criminal Procedure Code (*Emperor v. Narayan*, 16 Bom. L. R. 678).

Copies and translations, etc., how to be obtained.

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them or to persons claiming under them on due application being made for the

same, subject to such charges for copying, etc., as may, from time to time, be authorized by Government.

Scale of copying fees.—The following is the statement showing the rules for copying fees :—

No. of village form.	Description of form.	Rate of copying fee.
I	Land and Assessment Register.	One anna per entry of a survey number or pot-number.
III	Register of alienated land.	One anna per entry.
VIIIA	Khatas of holding.	One anna per Khata having 5 survey numbers or less and one and half anna for Khata of more than 5 survey numbers.
VIIIB	Annual Khatas of dues and recoveries.	One anna for each Khata.
IX	Day and Receipt book.	One anna for each entry in the day book.
XI	Trial balance sheet.	One anna per entry.
XII	Register of crops and tenancies.	Do.
XIII	Birth and death register.	Do.
XIV	Cattle census.	Do.

(G. R. No. 10809, dated 6th September 1917, quoted in Joglekar's Land Revenue Code, p. 527).

Arrest of a defaulter to be made upon a warrant.

199. Whenever it is provided by this Act that a defaulter, or any other person may be arrested, such arrest shall be made upon a warrant issued, by any officer competent to direct such person's arrest.

Power of revenue officer to enter upon any lands or premises for purposes of measurement, etc.

200. It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing, or inspecting boundaries, classification of soil or assessment, or for any other purpose connected with the lawful exercise of his office under the provisions of this Act, or of any other law for the time being in force relating to land revenue, any lands or premises, whether belonging to Government or to private individuals, and whether fully assessed to the land revenue or partially or wholly exempt from the same : Provided always that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry ; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Proviso.

Governor in Council to determine the language of a district.

201. The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

Collector how to proceed in order to evict any person wrongfully in possession of land.

202. Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person, wrongfully in possession of land, such eviction shall be made in the following manner, *viz* :—

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period not exceeding thiry days, as may be necessary to prevent the continuance of such obstruction or resistance.

Pasaita land settled as Pateli.—The right to hold Pasaita land rent free was allowed so long as the services of patelship were rendered by the same person but the only effect of the creation of the office of patelship was to take away exemption to pay rent and not to put an end to the right of possession. So long as he paid the assessment to the Government, the Government have no right to evict him (*Bhavan Morar v. Secretary of State*, 45 Bom. 894).

Mortgagee's eviction by Talukdari Settlement officer.—A portion of the Talukdari estate was granted by the original Talukdar to a cadet of his family as *jivai*. The grantee mortgaged one of such lands with possession to the plaintiff's father on April 19, 1889. In 1891, the mortgagor died and in 1895 the mortgagee died ; but the land mortgaged remained all along in mortgagee's possession. In November 1907, the Talukdari Settlement Officer sent a notice to the plaintiff under this section calling upon him to vacate the land in question ; and evicted him under s 79-A *ante* as amended by s. 33 of the Gujarat Talukdars' Act. The plaintiff sued to recover possession of the land. *Held*, that the plaintiff was entitled to succeed ; for he had been in adverse possession claiming title as an incumbrancer for more than twelve years since the

death of the mortgagor (*Talukdari Settlement Officer v. Rikhavdas*, 15 Bom. L. R. 378).

CHAPTER XIII

APPEALS AND REVISION

Appeal to lie from any order passed by a revenue officer to his superior.

203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

Appeal.—This Chapter does not apply to appeals under the Record of Rights. Applications for compassionate allowances from discharged Revenue Officers are treated as "appeals" (G. R. No. 4997 of 1908).

In dealing with Civil Court Darkhasts, the Collector is not subject to appeals to, or revision by the Commissioner, but only by the Court. The Collector cannot set aside a darkhast sale, but can confirm or refuse to confirm it (G. R. No. 2172 of 1915).

Decision or order.—A notice of demand by a Mamlatdar to pay assessment is not a 'decision or order' within the meaning of this section or the following section (*Nathuram v. Secretary of State*, 46 Bom. 811).

Order of Collector.—An order made by the Collector under section 23 of the Bom. Irrigation Act falls within the purview of this section and an appeal against such order lies to the Commissioner in Sind (*Secretary of State v. Jeramdas*, 6 S. L. R. 241).

Orders passed by Collector in execution Proceedings transferred to him under s. 320, C. P. C.—Under this section the Revenue Commissioner or the Government are vested with the appellate power in respect of orders passed by Collector in execution proceedings transferred to him under s. 320 of the C. P. Code, 1882 (*Mancherji v. Thakurdas*, 7 Bom. L. R. 682).

Pleaders allowed to appear in proceedings under this section.—Government officers may allow representation by lawers, whenever such a course is likely to be helpful in appeal under this Code (B. G. G. 1920, Pt. V, p. 23).

Invalid order of forfeiture.—If the order of forfeiture is valid, dispossession is merely ancillary to the order and no suit for possession without appealing against that order is maintainable having regard to s. 11. Where, however, the order of forfeiture is invalid, the plaintiff is not bound to appeal therefrom and his suit for possession after he is dispossessed in pursuance of that order is maintainable (*Anant Krishnaji v. Secretary of State*, 53 Bom. 165).

Commissioner's powers.—Secs. 203 and 211 empower a Commissioner to take action in appeal or revision as regards any orders passed by a Collector, who under s. 8 performs all his duties in subordination to the Commis-

sioner of the Division (G. R. P. W. D. 83 W. I.—934, dated 20th June 1897, quoted in Sathe's L. R. Code, 4th ed., p. 282).

Appeal when to lie to the Governor in Council.

204. An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

Periods within which appeals must be brought

205. No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

Admission of appeal after period of limitation.

206. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals, that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order passed under this section admitting an appeal.

Provision where last day for appeal falls on a Sunday or a holiday.

207. Whenever the last day of any period provided in this chapter for the presentation of an appeal falls on a Sunday, or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

Copy of order to accompany petition of appeal

208. Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

Powers of appellate authority.

209. The appellate authority may [1] [for reasons to be recorded in writing [1] either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence.

[2] [Provided that it shall not be necessary for the appellate authority to record reasons in writing

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[1] These words were inserted by Bom. Act III of 1932, s. 2. (1)
[2] This proviso was added by Bom Act III of 1932, s. 2. (2)

(*a*) when an appeal is dismissed summarily, or

(*b*) when the decision or order appealed from is itself a decision or order recorded in appeal, or

(*c*) when an appeal is made to the Governor in Council under section 204.]

Note.—In the interest of justice it is quite essential that when an appeal under the Land Revenue Code is decided, reasons for the decision should be given by the appellate authority. Under the Code it is not obligatory upon the appellate authority to give reasons for any decision in the appeal (*Statement of Objects and Reasons*).

Power to suspend execution of order of subordinate officer.

210. In any case in which an appeal lies, the appellate authority may, pending decision of the appeal, direct the execution of the decision or order of the subordinate officer to be suspended.

Power of the Governor in Council and of certain revenue officers to call for and examine records and proceedings of subordinate officers;

211. The Governor in Council and any revenue officer, not inferior in rank to [*a*] an Assistant or Deputy Collector [*a*] or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely—[*b*] a Mamlatdar, a Mahalkari, an [*c*] Assistant Superintendent of Survey, and an Assistant Settlement Officer.

and to pass orders thereupon.

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit:

[*d*] Provided that an Assistant of Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

[*a*–*a*] These words were substituted for the original word "Collector" by Bom. Act IV of 1913, s. 76 (*a*).

[*b*] Words repealed by Bom. Act IV of 1913, s. 76 (*b*), are omitted.

[*c*] "An" was substituted for "and" by Act XVI of 1895.

Scope.—There is no time limit within which the Commissioner must modify, annul or reverse the order of the Collector. This section, however, entitles the Commissioner to pass an order which is a modification, annulment or reversal of the Collector's order and does not entitle him to make an entirely new order which the Collector himself could not have made. Where originally the Collector made an order granting certain lands to plaintiff free from occupancy price and assessment, a subsequent order by the Commissioner directing to pay the occupancy price and assessment without giving the plaintiff an option of vacating the land is no modification of the original order but a new order which he has no power to pass (*Anant Krishanji v Secretary of State*, 55 Bom. 165).

"Finality."—The reference to 'finality' in this section refers to 'finality' under this Code, for there are no words excluding the jurisdiction of the Civil Courts in the sections of the Act framed to that end (*Dattatraya v. Secretary of State*, 31 Bom. L. R. 1235).

Limitation.—No period of limitation is prescribed for the exercise of revisional powers (*Ibid*).

Revisional jurisdiction of Collector.—Where a lease of certain sheri lands had expired in 1913 and in pursuance of a Government Resolution the Deputy Collector held an enquiry and ordered that the tenants should get an occupancy tenure on paying a certain assessment, but the said order was reversed by the Collector on revision after three years, it was *held*, in a suit questioning the validity of the order, that the Collector had the power to interfere at any time and that his order was valid in law. *Held*, also, that rights held under the tenant were also extinguished by reason of the Collector's order (*Ibid*).

Revision by Commissioner under this section.—The sale of unoccupied lands held by Mamlatdars under s. 62, and permission to occupy such lands gived under s. 60 are within the scope of this section as proceedings which the Commissioner has jurisdiction to call for and revise and to pass such orders thereon as he deems fit, and no suit would lie against Government on account of that officer exercising his legal powers under the section (*Parapa v. The Secretary of State*, P. J. 1891, p. 230).

Rules as to decisions or orders expressly made final.

212. Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

The Governor in Council alone shall be competent to modify, annul, or reverse any such decision or order under the provisions of the last preceding section.

CHAPTER XIV

MISCELLANEOUS.

Maps and land records open to inspection. Extracts and copies shall be given.

213. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and [*a*] land records [*a*] shall be open to the inspection of the public at reasonable hours,

[*a–a*] These words were substituted for the original words "survey records and all village accounts and land registers" by Bom. Act IV of 1913, s. 77.

and certified extracts from [*a*] the same [*a*] or certified copies thereof shall be given to all persons applying for the same.

Land records.—The term 'Land records' is defined in s. 3 (26). Ordinary correspondence being an interchange of views between Government Officers, and specially such correspondence and opinions as are referred to in s. 139 (*b*), and the barnishis or registers of such correspondence are not land records as there defined, and copies thereof are very rarely given under rule 139. Survey records and vaccination records are included but not the Records of the Alienation Office. Petitions of parties would not be documents maintained under the provisions of or for the purposes of the Act (Sec. 3) (26), nor are they records of the proceedings of any public officer, and, therefore, fall entirely into the optional class (*Anderson*).

Survey records.—Survey records are open to inspection and copies are available under this section (*Aludomal v. Ali*, 5 S. L. R. 49).

[*b*] 214. (1) The Governor in Council may, by notification published in the *Bombay Government Gazette*, make rules not inconsistent with the provisions of this Act, to carry out the purposes and objects thereof and for the guidance of all persons in matters connected with the enforcement of this Act or in cases not expressly provided for therein.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made—

(*a*) regulating the appointment of revenue officers and the exercise by them of their powers and duties ;

(*b*) regulating the assessment of land to the land revenue and the alteration and revision of such assessment and the recovery of land revenue ;

(*c*) prescribing the notice to be given in the case of enquiries and orders under section 37 ;

(*d*) prescribing the purposes for which unalienated land liable to the payment of land-revenue may or may not be used, and regulating the grant of permission to use agricultural land for non-agricultural purposes ;

(*e*) regulating the disposal of land and other property vesting in Government ;

(*f*) regulating the disposal of forfeited land ;

(*g*) prescribing the terms and conditions on which, and the periods for which, unoccupied unalienated land may be granted ;

(*h*) fixing the maximum amount of fine leviable under section 61;

[*a-a*] These words were substituted for the original words "such maps, registers and accounts" by Bom. Act IV of 1913, s. 77.

[*b*] This section was substituted for the original section by Bom. Act IV of 1913, s. 78.

(*i*) regulating the conduct of surveys and settlements of land-revenue, and prescribing the notice to be given under section 103 before the introduction of a settlement;

(*j*) regulating the division of survey numbers into sub-divisions and the fixing of the assessment of sub-divisions under section 117A;

(*k*) regulating the construction, laying out, maintenance and repair of boundary-marks;

(*l*) regulating the compilation, maintenance and revision of the record of rights and the registers of mutations, disputed cases and tenancies and prescribing the forms in which they are to be compiled and the officers by whom the said records and registers are to be tested and revised;

(*m*) regulating the exercise by village accountants and revenue officers of the powers of a survey officer and the assessment of costs and expenses under section 135G;

(*n*) prescribing the mode, form and manner in which appeals under Chapter XIII shall be drawn up and presented;

(*o*) prescribing the records, registers, accounts, maps and plans to be maintained for the purposes of this Act and the manner and forms in which they shall be prepared and maintained.

(3) The power to make rules under this section shall be subject to the condition of previous publication.

Penalty for breach of rules.

[*a*] 215. It shall be lawful for the Governor in Council, in making any rule under section 214, to prescribe that any person committing a breach of the same shall on conviction by a Magistrate be punished with imprisonment for a term not exceeding one month or with fine not exceeding five hundred rupees, or with both, in addition to any other consequences that would ensue from such breach.

Chapters VIII to X how far applicable to alienated villages.

[*b*] 216 (1) The provisions of Chapters VIII to X shall be applicable to

(*a*) all unlienated lands situated within the limits of an alienated village;

(*b*) unalienated shares of villages of which a definite share defined by metes and bounds is alienated;

[*a*] This section was substituted for the original section by Bom. Act IV of 1913, s. 78.

[*b*] This section was substituted for the original section by Bom. Act XV of 1929, s. 2.

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess above such amount belongs to Government.

(2) Save as is otherwise provided in section 111 and in this section, no provision of the said Chapters shall be applied to any other alienated village except for the purposes of fixing its boundaries and of determining any disputes relating thereto, unless the extension of the provision is authorised by the Commissioner acting on the writtten application of the sole holder, or, if there be more than one holder, of the holder or holders representing in the aggregate not less than one-half of the total interests in the village in respect of its alienated revenue. If any share of the village is unalienated the prescribed proportion of one-half shall be reckoned as if the village were wholly alienated, Government being considered as the holder in respect of the unalienated share.

(3) In any case in which action under sub-section (2) is taken lawfully by the Commissioner on the application of some only of the holders of the village, any covenant or agreement relative to the extension of the said Chapters or incidental thereto, entered into by such holders shall also be binding on the remaining holders of the village in respect of their shares in the revenue of the village as if such covenant or agreement had been entered into by them.

(4) All survey settlements heretofore introduced in alienated villages shall be valid as if they had been introduced in accordance with the provisions of this section.

Note.—This section does not extend to the estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom Act VI of 1888, ss. 1 and 33).

Prior suit to recover the mamool rates.—Where the plaintiff inamdar got a decree for the mamool rates for the years 1888-1890 in the year 1892 against the defendant's khots and where Survey Settlement was introduced in the village in 1895-1896 and where he filed a suit in 1917 for those dues for the years 1915 and 1916, it was *held*, that though the proper construction to be placed on this section was not strictly speaking *res judicata*, still on the principle of *stare decisis* the previous construction should be adhered to (*Sitaram v. Laxman*, 45 Bom. 1260).

Nature of unalienated village lands.—Lands in an unalienated village, granted by Government for rent wholly or partially free, do not fall within this section (*Sitaram v. Tukaram*, 45 Bom. 994).

Revenue settlement, extension of.—An application under this section for the extension of revenue settlement to an alienated village can be made by a holder who is entrusted with the full powers of the managmement of the same, even though he does not *possess* the whole of the lands belonging to the village (*Gopikabai v. Laxman*, 2 Bom. L. R. 235).

Holders of land in alienated villages.

217. When a survey settlement has been introduced under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as [*a*] holders of land [*a*] in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to [*a*] holders of land in unalienated villages [*a*] [*b*] shall be applicable, so far as may be, to them.

Note.—*Vide* the first note under the preceding section.

Scope of this section.—This section embraces not only registered occupants of land in unalienated villages but also the holders of lands in alienated villages with the same rights and responsibilities in respect of those lands. The words in this section "so far as may be" do not limit the plain meaning of the first part (*Nanabhai v. Collector of Kaira*, 34 Bom. 686).

Retrospective effect.—As the amendment does not say that it should apply only to villages settled after 1913, it does not save any rights acquired prior to 1913. In other words, the amendment has retrospective effect.

Right of inamdar to enhance rent.—An inamdar, to whom the Government has granted all its rights in the soil in a village as well as its other pecuniary interests is entitled even after a Survey Settlement had been introduced to raise the rents of the permanent tenants even when such permanent tenancies commenced before the alienation (*Pandu Bala Jagtap v. Ramchandra*, 42 Bom. 112; s. c. 20 Bom. L. R. 16).

An inamdar though he is a grantee of the soil and not merely of the Royal share of the revenue, is not at liberty after the introduction of the Survey Settlement into his village to enhance the rent of his mirasdar tenant beyond the amount of the land-revenue dues. A kadim inamdar who is a grantee by a kadim grant of the soil of a small part of the village, and who has consented to or acquiesced in the introduction of the Survey Settlement into the village is equally precluded by this section, from enhancing the rent of the mirasdar tenant beyond the amount of the land-revenue dues (*Pandu v. Ramchandra*, 22 Bom. L. R. 665).

Contractual rights.—The provisions of this section do not affect contractual rights arising before the introduction of the survey. In alienated villages, it is competent to Government to enter into contractual relationship with tenants or occupants. They might acquire fixity of tenure and fixity of rent. In an ancient village, where the alienee has entered into a contract with his tenants granting not only fixity of tenure but also fixity of rent, the provisions of this section do not enable such alienee to avoid his contractual liability and enforce against his permanent tenants the payment of assessment levied on occupancy land (*Saryajirao Ganpatrao v. Sidhanath*, 27 Bom. L. R 645).

[*a*–*a*] These words were substituted for the original word "occupants" by Bom. Act IV of 1913, s. 80 (*a*).

[*b*] Words repealed by Bom. Act IV of 1913, s. 80 (*b*) are omitted.

Permanent tenant—Liability to pay enhanced rent.—A person holding lands in an alienated village as a permanent tenant under s. 83 *ante* becomes, on the introduction of the survey settlement into the village, entitled to the rights and affected with the responsibilities of a holder in an alienated village, by virtue of this section. He remains what he ever was, a tenant, and does not become an occupant. He is liable, therefore, to pay enhanced rent to his landlord (*Kondi Ramji v. Vithalrao*, 50 Bom. 155).

Survey Settlement.—Survey Settlement was extended to an alienated village on the application of the inamdar under Bombay Act (I of 1865). The period of the settlement expired in 1888 and the inamdar recovered from 1895 higher assessment than that allowed under the Survey Settlement. The Commissioner objected in 1910 and the inamdar sued to establish his right to charge higher assessment. *Held*, that the inamdar had no such right since this section applied, when a survey Settlement had been introduced into an alienated village with the consent of the alienee under Bombay Act (I of 1865) and when the period of the Settlement had expired after the Code came into force (*Dhondo Vasudev v. The Secretary of State*, 44 Bom. 110).

Holder.—Before a person can claim the benefit of this section, he must be shown to be a "holder" within the meaning of s. 3 (11) of this Code (*Vasudeo v. Govind*, 14 Bom. L. R. 124).

Kadim Haks.—'Kadim Haks' are grants made prior to the grant of a village in favour of an Inamdar and independently of him (*Secretary of State v. Indoorai*, 28 Bom. L. R. 1308).

Construction of this Act.

218. Nothing in this Act, which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land, or the rights of holders of alienated land or of Government in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

SCHEDULE A

Repealed by Bom. Act IV of 1913, section 81

SCHEDULE B

FORM OF BOND TO BE REQUIRED UNDER SECTION 23

WHEREAS I,
inhabitant of
have been appointed to the office of
and have been called upon to furnish security under the provisions of section 23 of the Land-Revenue Code for the due discharge of the trusts of the said office, or of any other office to which I may be hereafter appointed, and for the due account of all moneys, papers and other property which shall come into my possession or control by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council, the amount of any loss or defalcation in my accounts, and to deliver up any papers or other property within such time, and to such person as shall be demanded by the person at the head of the office to which I belong, such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein I bind myself to forfeit to the Secretary of State for India in Council the sum of Rupees.

[*a*] Provided always that nothing herein contained nor the security hereby given shall be deemed to limit my liability in respect of the matters aforesaid to the forfeiture of the said sum of rupees only, and that should that sum be insufficient to recoup the Secretary of State for India in Council in full for any loss or damage sustained by him in respect of the matters aforesaid I agree to pay to him on demand such further sum as shall be deemed by the person at the head of the said office necessary in addition to the said sum to cover such loss or damage as aforesaid.

Dated

(Signature).

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL

WE
hereby declare ourselves sureties for the abovesaid
that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council [*b*] the sum of rupees, in which the abovesaid has bound himself, or such smaller [*b*] sum as shall be deemed sufficient by the to cover any loss or damage which the Government may sustain by reason of such default.

Dated

(Signature).

[*a*] This proviso was added by Bom. Act 1V of 1905, First Schedule.

[*b-b*] These words were substituted for the original word "such" by Bom. Act IV of 19105, First Schedule.

SCHEDULE C

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 25 OR 157

Seal

To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

WHEREAS A. B. of was on the day of 187 . ordered by to (*here state the substance of the demand made*); and whereas the said A B. has neglected to comply with the said order, and it has, therefore, been directed, under the provisions of section of the Bombay Land Revenue Code, that he be imprisoned in the Civil Jail until he obey the said order or until he obtain his discharge under the provisions of section 25 or 28 (*or section* 157 or 164 *as the case may be*) of the said Code ; you are hereby required to receive the said A. B. into the Jail under your charge and to carry the aforesaid order into execution according to law.

Dated this day of 187

(Signature of Collector)).

SCHEDULE D

FORM OF BOND TO BE REQUIRED UNDER SECTION 28 OR 164

WHEREAS I,

have been ordered by to (*here state the nature of the demand*) and whereas I dispute the right of the said to make the said order, I hereby bind myself to file a suit within fifteen days from the date of this bond in the District Court of to contest the justice of the demand, and do agree that in the event of a decree being passed against me I will fulfil the same and will pay all amounts including costs and interests, that may be due by me, or that if I fail to institute a suit as aforesaid, I will, when required, pay the above-mentioned amount of Rupees (or will deliver up the above-mentioned papers or property, (*as the case may be*), and in the case of my making default therein, I hereby bind myself to forfeit to the Secretery of State for India in Council the sum of Rupees

Dated

(Signature)

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL

WE

hereby declare ourselves securities for the above said that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council the sum of Rupees.

Dated

(Signature)

SCHEDULE E

(See *section* 84)

I—FORM OF NOTICE TO BE GIVEN BY LANDLORD TO TENANT TO QUIT

To

A. B.

I do hereby give you notice that I do intend to enter upon, and take possession of the land (*here give the description*) which you now hold as tenant under me, and

you are, therefore, required to quit and deliver up possession of the same at the end of this current year, terminating on the of 187 .

(Signed) C. D.

Dated this day of 187

II.—FORM OF NOTICE TO BE GIVEN BY TENANT TO LANDLORD OF HIS INTENTION TO QUIT

To

C. D.

I do hereby give you notice that I shall quit and deliver up to you, at the end of this current year terminating on the of 187 , the land (*here give the description*) which I hold from you

(Signed) A. B.

Dated this day of 187

SCHEDULE F

FORM OF COMMISSION TO BE ISSUED TO A HOLDER OF ALIENATED LANDS OF VILLAGES OR HIS AGENT, UNDER SECTION 89

Seal

The [*a*] Commissioner, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you *Jagirdar, &c., or Agent, &c., as the case may be*), power to in (or in respect of) the villages and lands specified in this Commission, in the manner prescribed in (or in section of) the said Code.

The villages and lands over which the power thus conferred upon you extends are as follows :—

(*Here enter the description*)

The within delegated power is vested in you during the pleasure and subject to the recall of the [*a*] Commissioner.

(Signed).

SCHEDULE H [*b*]

(See *section 133*)

FORM OF SANAD FOR BUILDING SITES

(*Royal Arms*)

To

THE SECRETARY OF STATE IN COUNCIL.

WHEREAS His Excellency the Governor of Bombay in Council, with a view to the settlement of the land revenue, and the record and preservation of proprietary and other rights connected with the soil has under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the of and ordered the necessary inquiries connected therewith to be made, this sanad is issued under section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the division of the of register No. in

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[*a-a*] This word was substituted for the original words "Governor in Council of Bombay" by Bom. Act IV of 1913, s. 82.

[*b*] There is no Schedule G.

the map marked sheet No. and facing towards the the road leading from to , containing about square yards, and of the following shape and about the following dimensions :–

You are hereby confirmed in [a] the said occupancy]a] exempt from all land revenue (or subject to the payment of Rupees per annum to the land revenue).

The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by the British Government, without any objection or question as to title, to whatsoever shall from time to time be its lawful holder (subject only to the condition of the payment annually of the above land revenue according to the provisions of the Bombay Land Revenue Code or of any other law for the time being in force, and to the liability to have the said rate of assessment revised at the expiration of a term of years reckoned from the and thereafter at successive periods of years in perpetuity, and to the necessity for compliance with the provisions of the law from time to time in force as to the time and manner of payment of the said assessment, and to the liability of forfeiture of the said occupancy and of all rights and interests connected therewith in case of your failure to pay the said assessment as required by law).

This sanad is executed on behalf of the Secretary of State for India in Council by order of the Governor in Council of Bombay, by and under the hand and seal of this day of one thousand eight hundred and A. D.

(Signed).

SCHEDULE I

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 202

Seal

To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

WHEREAS A. B. of has resisted (or obstructed) C. D. in removing E. F. (or himself, that is, the said A B) from certain land in the village of in the taluka, and whereas it is necessary, in order to prevent the continuance of such obstruction (or resistance), to commit the said A. B. to close custody ; You are hereby required under the provisions of section 202 of the Bombay Land Revenue Code to receive the said A. B. into the Jail under your charge, and there to keep him in safe custody for days.

Dated this day of 187

(Signature of Collector).

[a-a] These words were substituted for the original words "the occupancy of the above described ground" by Bom. Act IV of 1913, s. 83.

The Land Revenue Rules, 1921

(*As corrected upto 1st July 1933*)

Secretariat, Fort, Bombay, 26th January 1921

No. B.-205.—In exercise of the powers conferred by sections 213 and 214 of the Bombay Land Revenue Code, 1879 (Bombay V of 1879), and of all other powers enabling him in this behalf, and in supersession of Government Notifications in the Revenue Department No. 7368 dated the 6th December 1881, No. 8356 dated the 27th November 1903, No. 5223 dated the 28th June 1905, and No. 5641 dated the 5th June 1907, and all notifications [1] amending the same, the Governor in Council is pleased to make the following rules :—

CHAPTER I.

INTRODUCTORY.

1. *Short title and extent of application.*—These rules may be called the Land Revenue Rules(1921). Rules 7 to 10 inclusive, 21 clause (2), 23, 25 to 27 inclusive, 38 and 70 shall not apply to Sind.

A.—Khoti

(*i*) To the khoti lands in *Ratnagiri*, to which Act I of 1880 (the Khoti Settlement Act) applies, "no Rule hereafter made shall be applicable, unless it is expressly directed in such Rule, or in some subsequent Rule, that it shall be applicable" [see 40 (*d*)]. Of the present Rules those which are not applicable are 15-16; 20-23; 30-38, 41-53; 73-74; 84; 92-98; 103-117; 119-127; 134-145. All the rest of the Rules are applied. Rules 72 (*b*) and 133 apply with the modifications. But rules 31-57 must be applied to Government lands, which do not include gaothan in which pardi lands are to be assessed (R 983-96, 7968-13), within the Khoti village limits.

(*ii*) In Ratnagiri, the Khot is not the owner of any waste land. But he has a right of cultivating—

(*a*) all assessed waste lands,

(*b*) unassessed unoccupied lands (I. L. R. 31 Bom. 456).

which are *in his village.*

B—Talukdari.

(*i*) Under sections 1 and 33 of the Gujarat Talukdars Act VI of 1888 certain sections of the Code do not apply to Talukdari villages. Consequently the Rules arising from those sections can have no application. These Chapters of the Rules are:—

Those relating to City Survey (in Chap. III—19); alluvion (X); the disposal of land (VII) and assignments for public purposes (XI); grazing (IX); fines for unauthorized uses and occupations (XIV); rights to trees (VIII); the Record of Rights (XV); permissions and altered assessments for N. A uses (XIII and XIV); and all the special leases, agreements, and sanads, which are in use where land is disposed of by Government; the new inalienable tenure and the law as to collections through village officers are also inapplicable.

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1 These Rules do not all apply in Khoti and Talukdari villages.

But Talukdari Wantas (chiefly in Broach and Kaira) summarily settled as Personal Inams under Act VII of 1863 are no longer treated as Talukdari estates at all.

(*ii*) The Code has been applied in certain Native States, presumably in virtue of a decree of the Ruler, *e. g.*, in Akalkot (P. 5728-79), Jath (P. 5730-79). When a new set of rules is finally confirmed, it is desirable that any State adopting them should notify the fact and republish the rules with the modifications approved by the State administration.

2. *Interpretation.*—In these rules, unless there is anything repugnant in the subject or context,

(*a*) "Chapter" and "Section" mean a chapter and a section of that Code.

(*b*) "Mamlatdar" includes Mahalkari and (in Sind) "Mukhtyarkar."

(*c*) "Public Document" has the same meaning as in section 74 of the Indian Evidence Act I of 1872.

(*d*) "Chavdi" in Sind includes a Tapedar's Dera.

CHAPTER II.

(Administrative Orders only.)

CHAPTER III.

REVENUE SURVEYS

Survey and assessment of agricultural land.

3. *Survey numbers and sub-divisions.*—(1) Every holding not less in area than the minimum fixed under section 98 shall be separately measured, classified, assessed and defined by boundary marks, and entered in the land records as a survey number.

(2) Every holding of which the area is less than such minimum shall be separately measured, classified, and assessed and entered in the land records as a sub-division of that survey number in which it is directed to be comprised; it may also be separately demarcated if the Commissioner of Survey so directs, provided that the said Commissioner may require the persons interested in such holding to prepay the costs, or such portion of the costs as he thinks fit, of so defining the holding.

4. *Record of measurements.*—All measurements shall be recorded in a book or embodied in a plane table map kept in such form as shall be prescribed by the Commissioner of Survey for each survey. The said books or maps shall be preserved as a record of the survey.

5. *Test of measurements.*—The original measurements made by the subordinate survey officers employed for the purpose shall be tested by the officers in charge of measuring establishments in such manner and to such extent as the Commissioner of Survey shall deem sufficient.

6. *Village maps.*—Village maps shall be prepared under the orders of the Commissioner of Survey showing each survey number and its boundary marks.

7. *Classification of Land.*—For the purposes of assessment all land shall be classed with respect to its productive qualities. The number of classes and their relative value reckoned in annas shall be fixed under the orders of the Commissioner of Survey with reference to the circumstances of the different tracts of country to which the survey extends and to the nature of the cultivation.

8. *Field-books.*—Every classer shall keep a field-book and record therein the particulars of his classification of each survey number and sub-division and the reasons which led him to place it in the particular class to which in his estimation it should be deemed to belong. Such field-books shall be preserved as permanent records of the survey.

9. *Test of classification.*—A test of the original classification made by the subordinate officers employed for this purpose shall be taken by the officers in charge of classing establishments, in such manner and to such extent as may be directed by the Commissioner of Survey.

10. *Assessment.*—When rates of assessment have been sanctioned by Government, the assessment to be imposed on each survey number or sub-division shall be determined according to the relative classification value of the land comprised therein.

10-A. All agricultural assessments (or judi) shall be calculated out to the nearest pie at the rate (per acre or otherwise) sanctioned upon the area chargeable and rounded off in the following manner:—

When the assessment (or Judi)

(*a*) does not *exceed one rupee* the nearest half anna shall be taken neglecting 3 pies and under and counting 4 pies and 5 pies as 6 pies, in case of all districts, except the Konkan and below-ghat talukas of Kanara, where the nearest 3 pies shall be charged. For example, in the Thana, Kolaba, Ratnagiri districts and the below-ghat talukas of Kanara—

an assessment of Re. 0-10-4 shall be taken as Re. 0-10-3;

an assessment of Re. 0-10-5 shall be taken as Re. 0-10-6;

an assessment of Re. 0-0-2 shall be taken as Re. 0-0-3.

Elsewhere

an assessment of Re. 0-8-3 shall be taken as Re. 0-8-0;

an assessment of Re. 0-9-4 shall be taken as Re. 0-9-6.

(*b*) *exceeds one rupee*—

the nearest anna shall be taken in all cases, neglecting 6 pies and under and counting 7 to 11 pies as one anna, for example—an assessment of Rs. 1-3-6 shall be taken as Rs. 1-3-0;

an assessment of Rs. 1-3-7 shall be taken as Rs. 1-4-0:

Provided that—

(1) when the calculation results in the sum total of the new assessments (or Judi) of all sub-divisions of a survey number being greater or less than the whole assessment (or Judi) of that number, the difference shall be equitably distributed over the sub-divisions by deduction or addition in the largest shares, so as to make the total equal to the assessment (or Judi) on the survey number;

(2) Subject to proviso (1), the assessment of a sub-division shall in no case be less than a pie and every fraction of a pie shall be considered as one pie, the addition being counterbalanced by deduction in the assessment of any of the other sub-divisions of the same survey number in an equitable manner.

(3) No new assessment (or Judi) on a survey number or sub-division of a survey number shall be less than 3 pies in the Thana, Kolaba and Ratnagiri Districts and in the below-ghat talukas of the Kanara District, or less than 6 pies elsewhere, but this provision shall be subject to the condition that the total of the assessments of all the sub-divisions of a survey number shall not exceed the assessment (or Judi) of that survey number. Where this condition cannot be fulfilled, any assessment of less than 3 pies or 6 pies, as the case may be, may be retained subject to proviso (2).

Note.—This rule does not apply to Sind which has another but equivalent method.

11. *Amalgamation* —(1) Any survey number or sub-division of a survey number may be amalgamated with any other coterminous survey number with the sanction of the Collector and upon the application of the holder, whenever all the parcels of land proposed for amalgamation are held by the same holder upon the same tenure.

(2) Any sub-division may be amalgamated without prior sanction with any coterminous sub-division of the same survey number held by the same holder upon the same tenure.

(3) When such amalgamation is effected, the two or more portions of land shall become one entry in the land records, bearing the same distinguishing number as the first in series of the amalgamated numbers. Any boundary marks placed between the amalgamated holdings shall be removed : and the village map corrected accordingly.

12. *Application of rules 3 to 11.*—(1) Rules 3 to 11, unless otherwise directed by Government, shall be observed in the conduct of revenue surveys of lands used, or which may be used, for the purposes of agriculture.

(2) *Form and details.*—Matters of detail not provided for in the foregoing rules shall be determined in each survey in accordance with such general or special orders as the Commissioner of Survey, acting under the general control of Government, may, from time to time, issue.

Survey and assessment of non-agricultural land.

13. *Non-agricultural land not to be classified in accordance with foregoing rules.*—(1) Land of any of the kinds specified in sub-rule (2) shall be measured and mapped in accordance with rules 3 to 6 inclusive, but shall not be classified or assessed in accordance with rules 7 to 10.

(2) The lands referred to in sub-rule (1) are the following :—

(*a*) occupied unalienated lands, which are situated within an area in which a survey under rules 3 to 11 is in progress and which are used for any non-agricultural purposes ;

(*b*) unoccupied unalienated lands, situated within any such area, which are deemed to be likely to be more in demand for building or industrial purposes than for agriculture ; and

(*c*) all lands to which a survey is extended under section 131.

14. *Assessment of non-agricultural land.*—The Collector on receipt of a schedule of the lands referred to in rule 13 (2) shall assess them at the same rates and for the same period as if he were altering an agricultural assessment under whichever of Rules 81 to 85 has been applied to the locality.

Provided that land wholly or partially exempt from assessment under the proviso to section 52 or under section 128 or otherwise shall not, so far as it is so exempt, be assessed.

And also provided that land held under unexpired leases shall become liable to the rate of assessment in force for the locality only upon the expiry of those leases.

14-A (1) All non-agricultural assessments, rents and fines leviable under rules 43, 47, 49, 51, 80—83, 92, 93, and 99—103 shall be calculated out to the nearest pie at the rate (per acre or otherwise) sanctioned upon the area chargeable : but any sum so calculated that–

(*i*) is less than two annas, shall be raised to 2 annas ;

(*ii*) exceeds two annas, and is not an exact multiple of two annas, shall be rounded off, upwards or downwards, and when equidistant upwards, to the nearest multiple of two annas—*e. g.*,

an assessment (fine or rent) of one anna and 3 pies will be charged as two annas ;

an assessment (fine or rent) of 2 annas and 11 pies will be charged as two annas ;

an assessment (fine or rent) of 3 annas will be charged as four annas ;

an assessment (fine or rent) of Rs. 8-9-5 will be charged as Rs. 8-10-0 ;

an assessment (fine or rent) of Rs. 8-10-7 will be charged as Rs. 8-10-0 ;

an assessment (fine or rent) of Rs. 8-11-0 will be charged as Rs. 8-12-0.

15. *Maintenance of records.*—For all lands which have in the past been surveyed or assessed, or which shall be hereafter surveyed or settled under the provisions of the Code and these rules, it shall be the duty of the Director of Land Records—

(1) to cause to be corrected any arithmetical or clerical error whenever discovered ;

(2) to cause to be incorporated punctually in the land records all changes in boundaries, areas, tenures and assessments either of survey numbers or of their sub-divisions which are made under orders of competent authority as defined in the Code and these rules or any other Act :

Provided that where the assessment of any survey number has been fixed by a declaration under section 102, such assessment shall not be raised upon the discovery of any mistake in classification until the term of such declaration expires.

Note.—**Rule 15 which embodies existing practice also partly replaces old secs. 109, 110, which are in part also superseded by the Record of Rights.**

16. Detailed instructions and forms shall be drawn up and maintained by the Director of Land Records, subject to the orders and

approval of Government from time to time for the proper carrying out of Rule 15.

Introduction of settlements of land revenue.

17. *Notifications of Settlements and of period of guarantee.*—(1) Where the assessments have received the sanction of Government under section 102, a notification shall be published in the district or portion of the district to which the Settlement extends in form A, if such district or portion of the district is situate in the Bombay Presidency excluding Sind or in form A A, if it is situate in Sind, as the case may be, and when the Governor in Council has, under section 102, declared such assessments, with any modifications which he may deem necessary, fixed for a term of years, such declaration shall be notified in the official *Gazette*.

(2) Where a Settlement is introduced into a part of a taluka of which part has been already settled the guarantee will be restricted to the unexpired portion of the period for which the assessments in the already settled part of the taluka were fixed.

Note.—When the term of a settlement expires, but no action is taken, that settlement continues integrally, and cannot be applied to some lands and not to others (R. 784 92, 1397-12); and this holds good for Inam villages also (I. L. R. 44 Bom. 110).

18. *Notice of sanction and announcement of assessments.*—(1) The notice required by section 103 shall be given by beat of drum in the village for which the assessments have been sanctioned and a written notice shall be posted in the chavdi or some other public place in the village.

(2) Such notice shall be given by or under the orders of the officer in charge of the survey, referred to in section 100, or the Collector.

(3) Persons affected by the assessments who do not attend at the time and place specified in the notice shall be subject to the same liabilities as if they had attended.

Survey Fees in Towns and Cities.

19. *Survey fees in towns and cities.*—(1) Where a survey is extended to the site of a town or city, the survey fees payable under section 132 shall ordinarily be so fixed that the total sum payable in respect of such site shall cover the cost of the survey and preparation of the Record of Rights thereof.

(2) In fixing the fees for each building site or any portion thereof held separately the Collector shall have regard to the provision of sub-rule (1) and to the position, value (or rental), and area of such building site or portion thereof, but such fee shall not exceed ten rupees.

CHAPTER IV.

SUB-DIVISION OF SURVEY NUMBERS.

20. *Notices to be issued.*—Before field operations a notice shall be issued by the Mamlatdar and posted in the village chavdi and proclaimed by beat of drum, stating that the sub-divisions of survey numbers in the village are about to be measured according as they have been divided by the holders, and daily notices shall be given as far as possible specifying the numbers or parts of numbers which are to be measured next day and warning landholders to be present.

Notes.—This is a process carred out by the Land Records Department.

Partitions made by the Collector under Civil Court decree cannot be revised by that Court (11 Bom. 662; 15 Bom. 527).

21. *Boundaries to be laid down.*—(1) When there is no dispute the boundary of each sub-division shall be laid down according to the statements of the holders.

(2) Where there is any dispute, the boundary to which the dispute relates shall be measured and mapped in accordance with the claims of both disputants, and the dispute entered in the register of disputed cases. After the dispute has been settled under sections 37 and 119–120, or Rule 108 as the case may be, the map shall be corrected accordingly and the areas finally entered into the land records.

22. *Fees.*—The fees to be recovered for making subdivisions in cases to which section 135G (*b*) applies shall, unless Government in any case otherwise direct, be such as will cover the entire cost of measuring, assessing and mapping the subdivision; they shall be assessed by the Collector.

23. *Assessment.*—The proportionate assessment of subdivisions to the land revenue settled upon the survey number shall be calculated subject to the proviso to section 117A (2) according to the relative classification value of the several parts of the survey number as directed in rule 10. Detailed instructions shall be prescribed by the Commissioner of Survey subject to the approval of Government, and may provide for the rounding off of fractions of annas.

CHAPTER V.

BOUNDARY MARKS.

24. *Details of boundary marks to be furnished by the Survey Department to the Collector.*—On the introduction of a Survey settlement, the Superintendent of Survey shall furnish the Collector with a map and statements showing the position and description of the boundary marks erected or prescribed by or under the orders of the Commissioner of Survey. It shall be the duty of the Director of Land Records to amend these maps in accordance with any subsequent alteration of boundaries, in a revision survey or in the subdivision of a survey number or on any other authorised occasion.

Notes.—But when an Inam village is surveyed otherwise than under the L. R. C. and no survey settlement is introduced L. R. C. 123–24 cannot be applied, R. 3613–88. But in Talukdari villages (including Udhad Jamabandi) when surveyed under section 4 of the Gujarat Talukdars Act, B. M. can be maintained by appointing the Collector a Superintendent of Survey for the purposes of Sec. 122. (R. 7642–20—24-4-28).

These rules apply to surveyed alienated villages where the landholders have the same responsibility as occupants and the Collector has the full obligations imposed by sec. 124 (R. 7169-09) (Anderson).

25. The following boundary marks are authorized :—

Continuous marks—

(1) A boundary strip.

(2) Sarbandhs or hedges and other permanent continuous structures, such as walls.

Discontinuous marks—

(3) Conical earthen mounds or cairns (*buruz*) of loose stones.

(4) Pillars of cut stone, or brick or rubble-stone masonry.

(5) Prismatic or rectangular earthen mounds.

(6) Roughly dressed long stones.

(7) Any other marks found suitable for special localities and sanctioned by the Collector or Survey Officer, such as teak posts in the marine marshes on the Gujarat coasts.

26. *Maintenance of boundary strips.*—(1) Boundary strips or ridges shall not be ploughed up or otherwise injured by cultivation.

(2) The minimum width of boundary strips shall be as follows:—

(*a*) in dry crop lands ... ... 1½ feet.

(*b*) in rice and garden lands ... ... 9 inches.

(*c*) On the frontier lines between British India and Baroda State:—3 ft. (on the British side of the exact pillar-to-pillar demarcation line).

This strip shall also be kept free from tree-growth, any young plant being destroyed at inspection time.

Provided that—

(*i*) where the boundaries of such lands are well defined by banks, hedges, or the like, the actual width of the strip covered by such bank, hedge, or the like, shall be sufficient for the purpose of this rule;

(*ii*) where the boundary of a survey number also forms the boundary of a native or Foreign State, the minimum width prescribed above shall be maintained for the portion of the boundary strip on the British side; and

(*iii*) where village boundaries have been defined at the time of survey by double lines of boundary marks, the whole of the intermediate strip shall be maintained as a boundary strip.

27. *What boundary marks to be considered out of repair and how to be repaired.*—The following boundary marks shall be considered out of repair and shall be repaired in the manner prescribed for each kind as follows:—

(*a*) A continuous mark (strip, sarbandh, hedge, etc.), if it deviates more than three feet from the true straight line of the boundary. *Mode of repair*—either the deviation shall be rectified or the continuous mark not being a boundary strip must be replaced or supplemented by discontinuous marks.

(*b*) Any conical mound or cairn less than 2½ feet in height and 6 feet in diameter at the base. *Mode of repair*—raise it to 3 feet in height and 6 feet in width at the base.

(*c*) Any rectangular mound less than 2 feet high, or less than 5 feet long and 4 feet wide at the base. *Mode of repair*—the mound shall be raised to full dimensions, that is, 2½ feet high, 6 feet long and 5 feet wide at the base.

(*d*) Any mound, conical or rectangular, within 4 feet of which earth has been dug for repairs, when such excavation has affected the stability of the mark or allows water to lodge. *Mode of repair*—the excavation shall be filled up.

(*e*) Any pillar (i) less than 1 foot square or 2½ feet in depth, (ii) broken down, or (iii) rising less than 4 or more than 9 inches clear above the adjacent ground level. *Mode of repair*—(i) replace by one of proper dimensions, (ii) rebuild, (iii) raise the pillar or clear away or make up the ground.

(*f*) Any stone less than 2 feet long and 6 inches thick. *Mode of repair*—a stone of proper size shall be substituted.

(*g*) Any stone out of the ground, or buried less than two-thirds of its length and loose. *Mode of repair*—the stone shall be replaced or fixed firmly.

(*h*) Any mark considerably out of proper position or so repaired or erected as to indicate a materially incorrect line of boundary. *Mode of repair*—the mark shall be correctly placed.

(*i*) Any mark overgrown or surrounded by vegetation of any kind so as not to be easily visible. *Mode of repair*—the vegetation shall be cleared away until the mark is easily visible.

(*j*) Any sarbandh, or continuous embankment less than 2 feet high and 4 feet wide at the bottom. *Mode of repair*—the sarbandh shall be made full 2 feet high and 4 feet wide at the bottom throughout, unless the occupant prefers the substitution of authorized discontinuous marks.

(*k*) Any hedge or other continuous mark which by reason of want of continuity or disrepair fails to define the boundary. *Mode of repair*—the necessary renewals shall be made or other authorised marks substituted.

(*l*) Any boundary strip or ridge which has been ploughed up or otherwise obliterated or the dimensions of which are less than those prescribed by Rule 26. *Mode of repair*—the landholder shall be ordered to restore the strip or ridge within a prescribed period by leaving it unploughed and undisturbed; on his failure to comply he may be prosecuted under section 125.

(*m*) Missing marks. *Mode of repair*—new marks shall be erected.

Proviso as to marks liable to injury from flooding.—Provided that in any case where a boundary mark cannot, owing to flooding of a nala, or river, the breaking away of the bank, or other causes, be kept in repair, another kind of authorised mark may be substituted. Where even that is impracticable the direction of the boundary must be fixed by a pair of discontinuous marks erected at an adequate distance back from the abandoned position; either both on the same side, or one on each opposite side thereof.

28. *Determination of responsibility for maintenance.*—(1) The responsibility of the several landholders for boundary marks on a common boundary lies on the holder of the survey number which is numerically lowest.

(2) Sub-rule (1) is subject to the proviso that when any survey number is unoccupied or assigned for public or Government purposes the responsibility for repair of the marks on its periphery will pass to the landholder on the other side of the boundary. Repairs will be made at Government expenses only when the marks in disrepair lie between survey numbers each of which has no holder except Government.

(3) Within each survey number the holder or holders of each sub-division are responsible for the marks if any have been prescribed on the periphery of that sub-division to the same extent as they would be responsible if 'sub-division' were read instead of 'survey number' in sub-rules (1) and (2).

(4) A mark which is on the common boundary of two or more villages must be repaired by the holder of the land in the village which is under restoration when the marks are found out of repair.

CHAPTER VI.

ENQUIRIES UNDER SECTION 37.

29. *Notice of enquiry.*—(1) (*a*) Before an enquiry under section 37 a written notice in form B of the proposed enquiry and of the time and place and subject-matter thereof shall be affixed not less than ten days before the enquiry at the chavdi or some other public place in the village in which the property is situate; and in a conspicuous position upon the property with respect to which the inquiry will be held.

(*b*) A copy of the notice shall also be served not less than ten days before the enquiry on all persons who are known or believed to have made any claim to the subject-matter of the enquiry, and every such notice shall be served in the manner provided in section 190 for the service of a summons.

Notice of decision (2) (*a*):—Written notice in form C of any order passed under section 37, specifying briefly the subject-matter, contents and date of the order passed, shall be served in the manner specified in clause (*b*) of sub-rule (1) upon the persons referred to in that clause.

(*b*) Such written notice shall also be affixed in the places specified in clause (*a*) of sub-rule (1).

Notes.—**(i) The minimum legal notice is 10 days: this still leaves upon the officer holding the enquiry an obligation to give longer notice, and to allow adjournments, when the case is complicated and cannot be adequately presented in so short a time**

(ii) The notice must also take the form of a summons since the Enquiry officer cannot hold an enquiry without also desiring the attendance of parties and witnesses. So he has intrinsically power to summon these (sec. 189).

CHAPTER VII.

THE DISPOSAL OF LAND VESTING IN GOVERNMENT, AND EXEMPTION FORM LAND REVENUE.

30. (*a*) The right of Government to mines and mineral products which is reserved by section 69 shall not be disposed of without the sanction of Government, and in all grants of land the right to mines and mineral products and full liberty of access for the purpose of working and searching for the same shall be deemed to be reserved unless Government direct to the contrary and unless such right and liberty are expressly granted.

(*b*) No land situate within port limits shall be disposed of without the written concurrence of the Collector of Salt Revenue and without the reservation as to the tree-growth provided for in Rule 58 (*d*).

(*c*) In all grants and disposals of land the right of occupation and use only subject to the provisions of the Code shall be granted: and not the proprietary right of Government in the soil itself.

31. Land may not be granted free of land revenue without the sanction of Government except as hereinafter provided.

Gifts of the possession and the revenue.

32. *Limits of revenue-free grants for different purposes.*—(1) Land may be given free of price and free of revenue, whether in perpetuity or for a term, for any purpose hereinbelow mentioned by the authorities and to the extent specified in this table :—

Purpose	Estimated revenue-free value.		
(1) For sites for the construction at the cost of Local or Municipal Funds, of—	By the Governor in Council	By the Commissioner.	By the Collector
(*a*) Schools, or Colleges (*b*) Hospitals, (*c*) Dispensaries and (*d*) other public works from which no profit is expected to be derived.	10,000	5,0000	250
(2) For sites for the construction at the cost of other than Local or Municipal funds, of any of the works referred to in item (1) above and for religious use.	1,000	500	50
(3) To any private individual for Services—			
to be performed or already rendered to the State	1,000	...	...
to be performed to the community ...	500	...	...

Proviso as to land near railway stations.—Provided that the land in the neighbourhood of railway stations shall not be granted for dharmashalas under head (2) in the table unless when erected they are to be in the charge of the Local Board or Municipality concerned.

(2) Such gifts shall ordinarily be made in form D.

33. (1) When it is clear that such a sale is preferable to any other course on grounds of obvious convenience to Government no less than to the parties concerned :—

(*a*) any land wherever situate, of which the estimated revenue-free value does not exceed one hundred rupees, and

(*b*) with the previous sanction of Government, any land included in a village site of which the estimated revenue-free value does not exceed five hundred rupees

may be sold revenue-free by the Collector to a private person for a private purpose.

Grant of land for agricultural purposes.

37. *Survey numbers how to be disposed of.*—(1) Any unoccupied survey number not assigned for any special purpose may, at the Collector's discretion, be granted for agricultural purposes to such person as the Collector deems fit, either upon payment of a price fixed by the Collector, or without charge, or may be put up to public auction and sold subject to his confirmation to the highest bidder.

(2) In the case of such grants an agreement in form F shall ordinarily be taken from the person intending to become the occupant.

(3) When the land is granted on inalienable tenure the clause specified in form I shall be added to the agreement.

*(4) When the land is granted on impartible tenure an agreement in Form F (1), and, when it is also granted on inalienable tenure, an agreement in Form I (1), shall ordinarily be taken from the person intending to become the occupant.

* (Cl. (4) was added by R. 4702/24 III of 12-3-1931.)

(5) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

Note.—The meaning of the rule (which is literally capable of the above interpretation, but must be interpreted consistently with the Code) is that—

(*a*) ordinarily the occupancy of land will be offered at public auction ;

(*b*) some plots, such as strips between fields and roads, abandoned roads, alluvion, etc., can only be usefully taken up by one person who might refuse to bid at all (if there were persons who wished to obstruct him) or might get it for practically nothing (for want of competition) if an auction were held. In such cases the Collector fixes a fair price such as might be got at auction if circumstances permitted open competition.

38. *Survey number not already assessed to be assessed before it is disposed of.*—Where any survey number disposed of under rule 37 has not already been assessed, it shall be assessed by the Collector (after reference to the Superintendent of Land Records) at the rates placed on similar soils in the same or neighbouring villages; and the asessment so fixed shall hold good for the period for which the current Settlement for the village in which the land is situated has been guaranteed, and shall be liable thereafter to revision at every general settlement of the said village.

39. *Where survey numbers may be given at reduced assessment.*—Where it appears that the bringing of any survey number under cultivation or its reclamation for other purposes will be attended with large expense, or where for other special reasons it seems desirable, it shall be lawful for the Collector (with the previous sanction of the Commissioner, in cases where *the assessment* on the land included in the total grant exceeds one hundred rupees) to grant the survey number revenue free or at a reduced assessment for a certain term, or revenue-free for a certain term and at a reduced assessment for a further term, and to annex such special conditions as the outlay or other reasons aforesaid may seem to him to warrant, and to cancel the grant or levy full assessment on breach of these conditions.

Explanation.—Assessment on the land means the assessment fixed at the settlement or, where no such assessment has been fixed, the assessment determined in accordance with the procedure prescribed in Rule 38 (G. R. No. 745-28 of 7-2-29).

Provided that, on the expiry of the said term or terms, the survey number shall be liable to full assessment under the rules then in force for lands to which a settlement for agricultural use has been extended or which are assessed for other uses.

(2) Form G1 may generally be used in cases under this rule.

40. *Grants of salt-marsh lands for reclamations.*—Salt land or land occasionally overflowed by salt-water, which is not required or likely to be required for salt manufacture, may, after consultation with the Commissioner of Salt, be leased for purposes of reclamation by the Collector, subject to the confirmation of the Commissioner, on the following maximum terms, and with such modifications in particular cases as may be deemed fit :—

(*a*) no rent shall be charged for the first ten years ;

(*b*) rent at the rate of four annas per acre shall be levied for the next twenty years on the whole area leased, whether reclaimed or not;

(*c*) after the expiry of 30 years the lease shall be continued in the case of re-claimed lands at the rate at which they would be assessed to land revenue from time to time if they were subjected to survey settlement; and in the case of unreclaimed lands, if any, at the average rate of the reclaimed lands (Notification No. 372-B. of 17th April 1923);

(*d*) any portion of the land used for public roads shall be exempt from the payment of rent ;

(*e*) if the reclamation is not carried on with due diligence within two years, or if half the area is not reclaimed so as to be in a state fit for use for agricultural purposes at the end of ten years, and the whole at the end of twenty years, or if any land once reclaimed as aforesaid is not maintained in a state fit for use for agricultural purposes, the lease shall be liable to cancellation at the discretion of the Collector ;

Provided that the lessee shall be at liberty during the first ten years to relinquish any area which he cannot reclaim.

(*f*) if the land reclaimed is used for any non-agricultural purpose, its rent shall be liable to be revised according to the rates under whichever of rules 81 to 85 has been applied to the locality notwithstanding that any of periods specified above may not have expired ;

(*g*) Form G2 may generally be used in cases under this rule.

41. *Land in beds of river.*—Land situated in the bed of a river and not included in a survey number shall, save as otherwise provided in sections 46 and 64, ordinarily be leased annually by auction to the highest bidder for the term of one year or such further period as the Collector thinks fit. The accepted bid shall be deemed to be the land revenue chargeable on such land. But in Sind the Collector may grant it for cultivation to those holders who have lost land by erosion.

Note.—Bed does not include shore or bank. (G. R. No. 4551 of 1885).

Grant of land for non-agricultural purposes.

42. *Disposal of land for building and other purposes.*—Unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots

by auction to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose; but the Collector may, in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him, or without charge, as he deems fit.

Note.—No waste land near Railway stations should be disposed of for building sites and no permission should be given under sec. 65 for such use without concurrence of the Railway. If there is any difference of opinion, the Commissioner will decide it (G. R. No. 4606 of 1899).

43. *Conditions of grants or building.*—(1) Save in special cases in which the Collector with the sanction of Government otherwise directs, or in localities falling under rule 44, land for building sites shall be granted in accordance with the following provisions:—

(*a*) The land shall be granted in perpetuity subject to the provisions of the first paragraph of section 68, and shall be transferable.

(*b*) Where the land has already been assessed for agriculture, the assessment shall be altered under whichever of rules 81 to 85 has been applied to the locality.

(c) Where the land has not been assessed the Collector shall fix the assessment in accordance with the principles laid down for alteration of assessment in rules 81 to 86 and the provisions of the said rules shall, as far as may be, apply.

(*d*) All such assessments shall be fixed for the period specified in Rule 87 (*a*) and may be commuted when they do not exceed one rupee in accordance with the provisions of rule 88.

(2) In the case of such grants an agreement in form F or form H, as the Collector may deem fit, shall ordinarily be taken from the person intending lo become the occupant, and in the case of land in development schemes undertaken by Government in the Bombay Suburban District an agreement shall be taken in form HH.

(3) When the land is granted on inalienable tenure, the clause specified in form I shall be added to the agreement.

(4) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

Note.—This provision relates only to the terms of the tenure, and does not in any way authorize free grants or charitably reduced assessments which fall under rules 32-35.

43-A. *Terms on which land intended for future building sites may be temporarily disposed of.*—Unoccupied lands which are eventually intended for building sites within the Bombay Suburban District or any other area, to which Government may by notification in the *Bombay Government Gazette*, extend this rule but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let under written leases in a form approved by Government for short terms not exceeding in any case seven years at a ground rent equal to double the standard rate of non-agricultural assessment in force in the locality, or at a ground rent which may in special cases or localities be fixed with the sanction of the Commissioner.

44. *In hill stations.*—In hill stations and such other localities as Government may direct land shall not be granted for building except on such conditions as are considered desirable regarding the style of building, the period for construction and the observance of municipal or sanitary regulations. Such conditions should be embodied in the instrument (Form H).

45. *Establishment of entirely new village site.*—Where an entirely new village site is established, or an addition is made to an existing site, the disposal of the lots therein shall be made under such of the rules 42, 43 or 44 as may be applicable.

46. *Substitution of a new village site for an old one.*—Where a new village site is established, in lieu of a former one which it is determined for any reason to abandon, an agreement shall be taken in form J, from each occupant before he is permitted under section 60 to enter into the occupation of any lot.

47. *Conditions of grant of land for non-agricultural purposes other than building sites and alteration of assessment.*—Where unoccupied land is granted for non-agricultural purposes other than building sites, the Collector shall annex such conditions to the grant as may be directed by Government or, in the absence of any order of Government, may annex such conditions thereto as he thinks fit, subject to the control of the Commissioner; and where the land has already been assessed for the purpose of agriculture, the assessment of such land shall, in the absence of any order of Government to the contrary, be altered in accordance with the provisions of rules 81 to 85. Where it has not been assessed, its assessment shall be fixed by the Collector, as far as may be in accordance with the principles laid down for alteration of assessment in the said rules.

Special rules for certain city surveyed areas.

48. *Special rules for the sites of Ahmedabad, Broach, Surat, Rander, Bulsar and Godhra, and certain other places.*—Except as may be otherwise specially directed by Government, nothing in rules 37 to 47, both inclusive, shall be applicable to the grant of any lands to which a City Survey has been extended under Bombay Act IV of 1868 or under section 131 and which do not vest in the municipality, within the sites of the towns and cites of Ahmedabad (inclusive of its suburbs of Saraspur, Dariapur Cajipor, Rajpur Hirpur, Asarwa, Kochrab, Chhadavad, Changispur and Paldi), Broach, Surat, Rander, Bulsar, Godhra, Igatpuri, Bandra-Danda and Ahmednagar, Tando Adam (Nawabshah) (R. 7080—B/24-27th November 1926.) or of any other town or city to which Government may by notification in the official *Gazette* extend this rule: and nothing in rules 81 to 85 shall apply to any agricultural land lying within the same sites, but to which a City Survey cannot by law extend.

The granting of such lands for building sites, and the granting of permission to use such lands (when assessed for agricultural use) for non-agricultural purposes, shall be regulated by the following rules 49 to 52.

Encroachment on a public road.—The accused encroached on a part of a public road and enclosed it in his own field with an embankment and cultivated it; he was thereupon convicted of an offence under this rule and sentenced

to pay a fine under rule 111 cl. (2) (*a*). *Held*, that as the land encroached upon by the accused did not fall under the prohibition contained in this rule, the conviction was illegal (*Queen-Empress v. Yadu*, 1 Bom. L. R. 161).

49. *Disposal of strips of land adjacent to existing building sites.*—Whenever the holder of a building site desires to acquire any small strip of ground belonging to Government which is adjacent to his site and which could not reasonably be disposed of by the Collector as a separate site, the Collector may, if he thinks fit and notwithstanding anything to the contrary contained in rule 33, sell such strip to the said holder on the same tenure on which he holds the said site, and on payment of ground rent or assessment at the same rate, if any.

50. *Mode in which other lands may be disposed of.*—(1) Any unoccupied land to which rule 49 does not apply and which is not assigned for special purposes may be granted to such person as the Collector deems fit either for purposes of agriculture only or for other purposes.

(2) *Lands to be ordinarily sold by auction.*—Any such land shall ordinarily be sold by auction to the highest bidder; but the Collector may in his discretion sell the same by private agreement.

51. *Terms on which building sites may be disposed of.*—(1) Unoccupied land shall be granted for building sites and permission under section 65 to use for non-agricultural purposes lands occupied and assessed for agriculture shall be given by an instrument in a form approved by Government, for terms expiring on the date fixed in this behalf by Government for each city or town, at a rent or altered assessment, as the case may be, of two pies per square yard per annum, or such other rate as Government may prescribe for any particular site or portion thereof.

(2) (*a*) *Terms on which land intended for future building sites may be temporarily disposed of.*—Unoccupied lands which are eventually intended for building sites, but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let under written leases in a form approved by Government for short terms not exceeding in any case seven years at a ground rent of not less than one anna per square yard per annum.

(*b*) Unoccupied lands under clause (*a*) shall ordinarily, subject to the provisions of the said clause, be let by auction to the highest bidder; but the Collector may in his discretion let any such land by private agreement (G. R. R. D , No. 5189/28 dated 13-1-33).

52. *Terms on which lands may be disposed of for agricultural purposes only.*—Unoccupied lands may be leased for purposes of agriculture for terms of one year. An agreement in form F, with such modification as may be necessary, shall be taken from every person who is to become an occupant of land under this rule, and the provisions of sub-rules (2) to (4), inclusive, of rule 37 shall be applicable to every agreement so taken.

53. *Unoccupied building sites, etc., within municipal limits to be distinguished from lands forming part of public streets.*—(1) In municipal districts, building sites and plots of open ground, which have not been dedicated to public use or already transferred to the municipality,

are hereby declared to be specially reserved by Government within the meaning of sub-section (2) of section 50 of the Bombay District Municipal Act, 1901.

This reservation does not apply to small pieces of ground lying between the houses and the road-way in an irregular street or road of varying width, which should be recognized as forming part of the street and vesting in the municipality unless private individuals have rights thereto. But separate vacant sites between houses do not vest in the municipality even though they are unenclosed unless they have been transferred to the municipality by Government.

BOTH FOR AGRICULTURAL AND NON-AGRICULTURAL GRANTS.

54. *Form of written permission to occupy under section 60.*—The permission in writing to be given by a Mamlatdar under section 60 to enable an intending occupant to enter upon occupation shall be in form K, or Form KK.

Exceptional cases.

55. *Disposal of land to which foregoing rules are inapplicable.*—Unalienated land to which none of the foregoing rules is applicable and concerning which no other rules have been framed by Government, shall be disposed of in such manner for such period and subject to such special conditions, if any, as the Collector, subject to the control of the Commissioner, deems fit.

56. *Special forms.*—The forms appended to these rules shall be used where applicable, but where a grant is made on special terms and none of such forms is suitable and a special form has not been sanctioned, the orders of Government shall be obtained regarding the form to be used.

57. *Records.*—The document evidencing a grant shall be drawn in duplicate and one copy, which shall be retained by the Government officer concerned or by Government, shall be signed by the grantee.

CHAPTER VIII.

TREES AND FOREST RIGHTS.

58. *General reservations.*—The extent to which the right of Government to trees is generally conceded to occupants under the third paragraph of section 40 shall be specified in the notification issued under rule 17. The said general concession will ordinarily extend to all trees, except the following :—

(*a*) all road-side trees planted by or under the orders of Government ;

(*b*) teak, blackwood, and sandalwood ;

(*c*) trees, the produce of which has hitherto been disposed of by Government :

Provided that whenever any land is disposed of after the first introduction of a settlement of land revenue, such trees shall also be disposed of under section 62 ;

(*d*) any trees specially reserved in the terms of the grant of the land.

59. *Special reservations.*—Trees in groves, trees round temples or places of encampment declared to be such by the Collector, and trees

other than teak, blackwood or sandalwood, which for any reason are of special value or utitity shall be specially reserved at the settlement and entries to that effect made in the settlement records.

60. *Disposal of trees on occupied lands.*—(1) Subject to the provisions of rule 63 the disposal of trees on land occupied or being given out for occupation shall be regulated by the following sub-rules :—

(2) Of the trees to which the rights of Government are reserved, such number or kinds as Government may from time to time direct will be at the disposal of the Forest Department. Lists shall be kept of all occupied numbers, over the trees in which the Forest Department has any control or lien ; the clearing of these numbers by the Forest Department shall be arranged in concert with the Collector, and every number when cleared shall be recorded as exempt from all interference in the future on the part of the Forest Department. In districts, where there is no Forest Officer, these functions will be discharged by the Collector alone.

(3) All other reserved trees shall be in charge of the Collector who may dispose of the same or of their produce as he may deem fit, subject to the general rules for the disposal of Government property.

(4) In talukas in which the demarcation of forests has been completed, when any unoccupied land containing jungle or valuable trees which have not been included in any forest reserve is granted to any person for cultivation, the Collector may offer the trees, or such of the trees as he may see fit, to the occupant. If such person agrees to purchase the same, the value shall be recovered from him by the Collector and credited as land revenue. If the occupant refuses to buy under this sub-rule or sub-rule (3) then the Forest Department should clear the land of trees.

(5) In talukas in which the demarcation of forest reserves has not been completed, the Collector may, if he thinks fit, consult the Conservator of Forests before any land containing jungle or valuable trees is granted ; and if any such land is granted to any person the provisions of sub-rule (4) shall apply ; in no case shall land be granted which is likely to be required for forests.

(6) In Sind the clearance of reserved trees under sub-rule (1), and of trees not accepted by the new occupant under sub-rule (4) shall be effected by the Collector.

Note.—In 22 Bom. L. R. 884, it is *held* that 'trees reseved' means trees existing at the time of the settlement ; not trees which may afterwards grow. See too Rule 62. This is almost certainly the contrary of the intention of the law.

When such trees are sold by Forest Department, it takes the credit.

61. Whenever the right to unreserved trees in any land is at the disposal of Government simultaneously with such land all such trees shall invariably be disposed of to the same person who acquires the holding and not to any other person.

62. When the right of Government to the trees in a holding has been once disposed of to the occupant, or when all the reserved trees have been once cut and removed either—

(*a*) at the grant of the land, or

(*b*) after such grant, or

(*c*) in Sind, at any time before such grant, or

(*d*) elsewhere than in Sind, within five years before such grant,

Government will have no further claim to trees which may afterwards grow in the holding, or which may spring up from the old roots or stumps, so long as the land continues in occupation.

63. *Exception of reserved trees in varkas and beta lands in certain districts from rules 60–62.*—(1) Nothing in rules 60 to 62 inclusive shall be deemed to apply to varkas lands in the districts of Thana, Kolaba and Ratnagiri, and beta lands in the district of Kanara, or to any land in the Dindori Taluka or the Peth Taluka of the Nasik District or to any land on the banks of streams and nalas in the Godhra Taluka of the Panch Mahals District, or to any riverside jambul trees growing in occupied lands on the banks of the rivers Mula, Pravara, Mhais and Mhalungi in the Parner, Rahuri, Sangamner and Akola Talukas of the Ahmednagar District; or (pending the completion of the acquisition of all occupied lands within the sanctioned demarcation limits of the forest in the Haveli, Purandhar and Junnar Talukas and the Ambegaon Petha of Poona District) to any teak trees in such unalienated land.

(2) In the said lands the trees on which the rights of Government are reserved shall be available for cuttings to be made from time to time by or under the orders of the Forest Department, in consultation with the Collector.

(3) The sale of any such tree or of the timber thereof will confer no right to the after-growth from the root or stump of the tree so cut. The reservation of the rights of Government over the trees will extend to all such after-growth also.

CHAPTER IX.

DISPOSAL OF GRAZING AND MINOR PRODUCTS OF LAND.

64. *Sale of produce of Government trees.*—(1) The produce of trees belonging to Government may be sold by auction annually or for a period of years.

(2) Where any such trees are sold under section 41, the sale shall be by auction or otherwise as the Collector may direct.

65. *Grazing and other similar produce to be ordinarily disposed of by sale for periods not exceeding five years.*—(1) The grazing or other produce of all unoccupied land vesting in Government whether a survey settlement extends to such land or not, and whether the same is assessed or not and of all land specially reserved for grass or for grazing (except land assigned to villages for free pasturage), may be sold by public auction or otherwise, as the Collector deems fit, year by year, or for any term not exceeding five years, either field by field or in tracts, and at such time as the Collector shall determine.

Provided that the purchasers' rights over such land shall entirely cease on the dates respectively fixed in the following table, unless, under special circumstances, the Collector deems it necessary to alter the time so fixed:—

Collectorates	Waste assessed Dry-crop Land.	Waste assessed Rice Land.	Reserved Kurans and unassessed Waste.
All in Sind ...	31st July ...	31st July ..	31st July.
Thana ..	31st March ...	31st March ...	31st December.
Dharwar ...	31st March ..	31st December ..	1st May.
All others ...	31st March ...	31st March ...	1st May.

66. *Disposal of earth, stone, etc., by the Collector.*—(1) The Collector may, at his discretion, sell by public auction or otherwise dispose of the right to remove earth, stone, kankar, sand, muram, or any other material which is the property of Government for such period and in such quantities and on such terms as he thinks fit:

Provided that such sale or other disposal shall be made subject to the privileges conceded by rules 67 to 70 inclusive.

(2) The rate charged by the Collector under this rule, when the right in question is not put up for sale by public auction, may be either a lump sum, or so much per cubic foot of excavation, or in the case of a Railway Company requiring land for excavating ballast, so much per mile of the railway line for which ballast is obtained, or otherwise as the Collector thinks fit.

Note.—It is important to note that in *occupied* lands charges for quarrying etc, are levied not as 'Stone and Mineral and Sand fees from *Government* land" but are altered assessments under L. R. C. sections 48 and 65. Such altered assessment is not assigned to or to be paid to the Local Boards (R. 10424/17; R. 5428/-22). See rule 82 IV.

67. *Removal of earth, stone, etc., by villagers for their own use without fee with permission of the revenue patel.*—(1) With the previous permission in writing of the revenue patel, or where there is no such patel of the Mamlatdar or (in Sind) of the Tapedar, but without payment of fees (*a*) any potter or maker of bricks or tiles may, for the purposes of his trade, (*b*) any person may, for his domestic or agricultural purposes, remove earth, stone, kankar, sand, muram or other material from the bed of the sea or from the beds of creeks, rivers and nalas or from any unassessed waste land not assigned for special purposes within the limits of the village in which he resides or in which the land for the benefit of which the materials are required is situated.

(2) Nothing in this rule applies to any case falling under rule 69, and where it appears to the revenue patel or Tapedar that any case in which application is made to him under this rule falls under rule 69 he shall refer the application to the Mamlatdar for orders.

68. With the previous permission in writing of the Mamlatdar but without payment of fee, any person may, for the purpose of building a well, remove stone from any of the sources specified in sub-rule (1) of rule 67 if those sources are within the limits of the taluka in which he resides.

69. *Excavation.*—(1) In any case where excavation of the soil is likely to damage or destroy any valuable building or any land

required for any special or public purpose or any boundary mark, the previous sanction of the Mamlatdar to any such removal shall be required and he shall refuse permission to the extent necessary to prevent such damage or destruction.

(2) *Ports.*—No patel or Mamlatdar may permit any removal under rule 67 or 68 from land within port limits, or on the banks or shore of any port, without the written concurrence of the Collector of Salt Revenue, and under such conditions, if any, as he may impose.

(3) *Bricks, etc.*—In any case where it appears to the Mamlatdar that the trade carried on by any potter or maker of bricks or tiles is sufficiently extensive and lucrative to render such a charge fair and equitable, he may grant permission only on payment of fees at such rates as may be prescribed by the Collector in this behalf under rule 66.

(4) In such cases or localities as he thinks fit, the Collector may prohibit the Mamlatdar, the Tapedar or the revenue patel from giving permission without obtaining his previous sanction; and in any such case all applications for permission shall be referred to the Mamlatdar for the Collector's order.

(5) Where the revenue patel or Tapedar refuses permission when the same is applied for under rule 67 or does not refer the application to the Mamlatdar under sub-rule (4) an appeal shall lie to the Mamlatdar.

70. *Removal of earth, etc., from village tanks.*—Any person may, with the sanction of the revenue patel, take free of all charge from village tanks as much earth, stone, kankar, sand, muram or other material as he requires: provided that no stones shall be removed that may have fallen from the banks of built tanks, and that no excavation shall be made within 10 cubits of the foot of the embankment of any such tank.

CHAPTER IX-A.

DISPOSAL OF WATER VESTING IN GOVERNMENT.

70-A. No person shall without the previous permission of the Collector in writing make use of any water of a river, stream or nala which is the property of Government, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad.

70-B. The Collector may grant permission for the use of the water of a river, stream or nala which is the property of Government and for which no water-rate is levied under the Bombay Irrigation Act, 1879, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad, on payment of such water-rate as he may deem fit, but not exceeding the rate per annum per acre which may have been fixed for the locality by Government for occasional irrigation by *Pats* under section 55 of the Bombay Land Revenue Code, or where no such special rate has been fixed, the maximum *Patasthal* rate sanctioned in the current settlement for the group in which the village in which the land in question is situate may have been included. Provided that in precarious tracts irrigation

by *budkis* or pumping plant shall be exempt from the water-rate leviable under this rule.

70-C. Any person who, without the previous written permission of the Collector, makes use of any water of a river, stream or nala which is the property of Government and for which no water-rate is levied under the Bombay Irrigation Act, 1879, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad, shall be liable to pay such water-rate as the Collector may deem fit, but not exceeding Rs. 50 per annum per acre of land so irrigated.

70-D. The water-rates payable under rules 70-B and 70-C shall be recoverable as arrears of land revenue.

Explanation.— For purposes of rules 70-A, 73-B and 70-C *'budki'* includes a *'dhekudi'* or any similar appliance for raising water.

CHAPTER X.

ALLUVION AND DILUVION

71. *Holders of land with shifting boundaries may occupy up to such boundaries.*—When a holding is bounded on any side by the bank or shore of a river, creek or nala or of the sea, the holder will be permitted, subject to the provisions contained in sections 46, 47, 63 and 64, to occupy and use the land up to such bank or shore, notwithstanding that its position may shift from time to time.

Note.—The subject of alluvion is one of the most difficult in the law of land. The references in secs. 37, 46 and 63 to "any law for the time being in force" are vague since so far as is known there is no such law in force behind the L. B. C. except in the case-law or judge-made law bassed upon the common law and natural equity, and some special Municipal and Port Trust enactments outside Bombay Island. Alluvion must, according to these rulings, be interpreted to mean strictly gradual, slow, and imperceptible [imperceptible day by day as it occurs but of course perceptible enough in the long run (Halsbury's Laws of England, Vol 28, p. 362)] accretion by deposit of fresh soil by water upon existing riparian land (Justinan and 3 Bengal L. R., p. 525, 1870.) Sand blown by the wind or a mass of shingle suddenly flung up after a storm, or new land left bare by a receding sea or a diverted river is not alluvion but derelict land. Nor would the deposits in a river bed which raise their surfaces above the hot weather water-level be treated as alluvion in respect of a holding terminating on the upper edge of the steep bank of a river high above the deposit; there is no physical connexion between them, to which the term 'accretion' would be applicable. L. R. 27 All. 655, 28 All. 647.

Kabulayatdar (including Sanadi) Khots have a right only to assessed unoccupied land (and they pay revenue for it). Therefore they can have no rights to alluvion, except that which forms on Khoti Khasgi lands. In such villages therefore secs. 47, 63 and 64 all apply.

It would seem that both classes of Kolaba Khots are entitled to remission on account of diluvion.

72. *The Collector to dispose of claims under section 47.*—(*a*) Claims to decrease of assessment on account of diluvion under section 47 shall be disposed of by the Collector.

(*b*) It shall be the duty of the village officers to ascertain and to record the increases due to diluvion and losses due to diluvion in every holding subject to such changes. They shall also report to the Mamlatdar for orders when the area of any newly formed alluvial land or island, or of any abandoned river bed, or land lost by diluvion exceeds the limits prescribed in sections 46, 47 and 61.

Note.—In Khoti villages, read "Village Accountant or Japtidar, or Circle Inspector if there be none (R. 3451-08) and "Japtidar or Band Karkun" in Talukdari and omit reference to sections 46–47 (R. 2180-F.-29-3-22). For Alluvion increasing forest land, see G. R. 5080-24—17-7-26.)

CHAPTER XI.

ASSIGNMENT OF LAND FOR SPECIAL PURPOSES.

73. *Cattle stands and dhobis' and potters' grounds.*—(1) Gurcharan (gairan) or grazing ground for cattle, burial and burning grounds, spots near villages on which the village cattle stand, and lands for the use of village dhobis and potters, and for other recognised public needs may be assigned by the Collector for these purposes respectively, according to the reasonable requirements of the villagers without charge : and he may for sufficient reasons at any time revoke such assignment.

(2) Orders under this rule shall be passed in writing and recorded.

(*i*) Land so assigned remains public property ; there is no disposal of possession or proprietary right under sec. 37 (G.R. 555-01). There is therefore no limit of value (G. R. 3317-99). Grants of sites for idgah, temple, or extensions of village sites are not assignments but disposals (G. R. 9424-06). Instances of public or Municipal purposes are land for rab-cutting, public latrines.

Municipalities may retain half the income derived from the strictly temporary use of such land subject to the approval of the Collector or City Survey Officer ; the other half will be credited to Government (G. R. 125-24—7-2-25).

(*ii*) Such assignments do not include transfers to other departments which must be sanctioned by Government.

(*iii*) The annual statement of such assignments was discontinued (G. R. 11506-11).

(*iv*) 'Gairan' may be transferred to 'Burial ground' without Government sanction (G. R 3317-99, 5701-01); and Government can modify any gairan assignment (G. R. 3121-88).

(*v*) When any expenditure on provision of burial grounds is required, then it devolves upon the local bodies (G. R. 4953-00). But after acquisition, the land would be assigned under sec. 38, and not as L. B. property.

Inamdars cannot enclose free pasture or other such assigned land (*Vishvanath v. Madhvji*, 1879).

CHAPTER XII.

RELINQUISHMENTS.

74. *Endorsement as to identify required below rajinamas.*—(1) Every notice given under section 74 shall be in Form L and the declaration below the notice shall be subscribed by two respectable witnesses.

(2) The Mamlatdar who receives any such notice will be held responsible for exercising due care in ascertaining the identity of the person who has signed the same, notwithstanding that such notice has been duly endorsed as hereinbefore required.

Note.—All notices received under sec. 74 shall be kept in the records of the village accountant until the expiry of one year after the end of the year in which they were given and afterwards in the records of the Mamlatdar for at least 12 years. Entry will at once be made in the Diary of Mutations and certified in due course : this will ensure resufficient record (*Anderson*).

CHAPTER XIII.

RESTRICTIONS ON USE OF LAND.

75. *Cultivation of unarable land in survey number when prohibited.*—(1) Land included as unarable (*pot kharab*) in a survey number assessed for purposes of agriculture only is of two kinds:—

(*a*) that which is classed as unfit for agriculture at the time of survey including the farm buildings or threshing-floors of the holder ;

(*b*) that which is not assessed because it is reserved or assigned for public purposes ; or because it is occupied by a road or recognized footpath, or by a tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes, or used for a burial or burning ground by any community, or by the public ; or because it is assigned for village potteries.

(2) Class (*a*) may be brought under cultivation at any time by the holder and no additional assessment shall be charged therefor.

The cultivation of class (*b*) is hereby prohibited under section 48, sub-section (4):

Provided that this prohibition shall not apply in the case of a tank or stream when such tank or stream is used for irrigation only and waters only land which is in the sole occupation of the holder, or when the privilege of cultivating the dry bed of the tank or stream has been specially conceded to the holder.

76. *Use of land for the manufacture of salt prohibited except on certain conditions.*—(1) No occupant of unalienated land shall use the same or any part thereof for the manufacture of salt without the previous permission in writing, first of the Collector of salt Revenue and then of the Collector of the district.

(2) The Collector of the district may, in any case where such permission is granted, either

(*a*) require the occupant to relinquish his rights of occupation, and to enter into an agreement that such land shall be placed at the disposal of the Salt Department, subject to a lease in favour of the applicant on such terms as the Deputy Commissioner of Salt Revenue under the general orders of Government may require ; or

(*b*) permit the use applied for without requiring the occupant to relinquish his rights of occupation on the following conditions :—

(*i*) that the occupant shall pay such fine as the Collector may deem proper, not exceeding one-tenth of the amount which would be leviable under section 66 in a case of unauthorized use, and

(*ii*) that the occupant shall execute an agreement that he will pay in lieu of the existing assessment and Local Fund cess, such amount or rate as may be imposed by the license to be granted by the Deputy Commissioner of Salt Revenue in accordance with the general and special orders of Government, and shall also in respect of the land used conform to all the conditions of such license ; and

(*iii*) that whenever the Deputy Commissioner of Salt Revenue declares that the land, or any part thereof, is not used or has ceased to be used for the manufacture of salt, such land shall forthwith become liable to the survey assessment which was chargeable upon it immediately before it was permitted to be used for the manufacture of salt.

77. *Removal of earth, stone, etc., prohibited, if injurious to cultivation and for purposes of trade, etc.*—Save as provided in section 65 and rule 76, no occupant of land assessed or held for purposes of agriculture only, and no person claiming under or acting by authority of any such occupant, shall excavate or remove earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, or make any other use of the land so as, in the opinion of the Collector, thereby to destroy or materially injure the land for cultivation or for purposes of trade or profit, or any other purpose except his own domestic or agricultural purposes.

78. *Removal of earth, stone, etc , from building site prohibited except on certain conditions.*—No holder of land assessed or held as a building site, or lease-holder of a building site in a hill station, and no person claiming under any such holder or lease-holder, shall, subject to any special provision in the conditions annexed to his holding under section 62, section 67 or otherwise, or prescribed by his lease, excavate or remove for any purpose whatever earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, except with the previous permission in writing of the Collector, and in accordance with such terms (including the payment of fees for any such excavation or removal) as the Collector in each case thinks fit to prescribe.

79. *Excavation of unalienated land within site of village, town or city prohibited except for certain purposes.*—(1) No unalienated land within the site of any city, town or village shall be excavated without the previous written permission of the Collector, for any purpose except the laying of foundations for buildings, the sinking of wells and the making of grain-pits.

(2) When permission is granted by the Collector to excavate any such land as aforesaid for any purpose other than those above mentioned, such excavation shall not be made otherwise than in accordance with such terms (including the payment of fees for any such excavation) as the Collector in each case thinks fit to prescribe.

CHAPTER XIV.

THE USE OF LAND FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT HAS BEEN ASSESSED.

Alteration of assessment in the case of unalienated lands.

80. *Alteration of assessment when land assessed or held for agricultural purposes is used for non-agricultural purposes.*—When unalienated

land assessed or held for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall (except in the cases provided for in rule 59 or 76 and except as otherwise directed by Government) be altered under sub-section (2) of section 48 and such alteration shall be made by the Collector in accordance with the following rules.

81. *Ordinary rates of altered assessment.*—*Ordinary rates of altered assessment.*—(1) For the purpose of determining generally the rate of altered assessment leviable, each Commissioner shall, from time to time, by notification published in the official *Gazette*, divide the villages, towns and cities in each district in his division (to which a standard rate under Rule 82 has not been extended) into two classes.

(2) The assessment shall then be fixed by the Collector at his discretion, subject to the general or special orders of Government at a sum per square yard within the following limits :—

Maximum—For Class I land 2 pies.

For Class II land 1 pie.

Minimum.—The agricultural assessment.

In fixing the rate within the above limits due regard shall be had to the general level of the value of lands in the locality used for non-agricultural purposes.

"Provided that the altered assessment of plots of land not built upon in Development Department Schemes shall be limited to a maximum rate of Re. 1 per 250 square yards or part thereof.";

(3) "The Collector with the previous sanction of the Commissioner which shall only be given for special reasons to be recorded in writing, may levy on any land altered assessment at a rate higher than the maximum fixed under Sub-rule (2) in respect of any village, town or city in which such land is situated, in cases where the land is either situated in an exceptionally favourable position, or where it is used temporarily for a non-agricultural purpose, or where the purpose for which it is used is of a special kind. Such higher rate shall not however exceed 50 per cent. of the estimated annual rental value of the land when put to non-agricultmal use in question."

(G R. R D., No. 1390-23 of 29th March 1932.)

82. *Special rates of altered assessment in certain areas.*—In any area in which, or account of there being a keen demand for building sites or for any other special purpose, Government may, by notification in the official *Gazette*, direct that this rule shall be applied, the rate of altered assessment shall be determined in accordance with the following provisions and not under rule 81 :—

I.—The altered assessment shall ordinarily be a percentage on the full market value of the land as a building site.

II.—In cases where this rule is applied on account of there being a demand for building sites, the market value of the land shall be estimated as far as possible on the basis of actual sales of unoccupied land for building purposes in the locality. In cases where this rule is applied on account of the demand being for other special purposes, the market value shall be estimated as far as possible, on the basis of actual sales of unoccupied land of which the value is enhanced by the existence of the special demand.

III.—Government shall determine what percentage shall be charged in any locality to which this rule is applied, and the standard rates of altered assessment shall be calculated thereupon and shall be levied in place of the current rate of assessment. At intervals of ten years or, in particular localities, at such shorter intervals as Government may direct, the rates shall be revised with the sanction of Government. Until the rates are so revised, the old rates shall remain in force. The rates sanctioned from time to time shall be published in the official gazette. A public notice shall be given one year before any revised rate comes into force.

IV.—A rate differing from the standard rate of altered assessment in any locality shall not be levied without special reasons which shall be recorded : provided that the Collector, with the previous sanction of the Commissioner, may levy a higher rate in the case of land situated in an exceptionally favourable position.

V.—*Deleted* (G. R. 1890-28 of 1-2-29).

VI.—The rates of altered assessment leviable on lands in the Bombay Suburban Division, to which this rule applies, shall however be reduced to such extent as Government may specify by a notification in the official *Gazette*.

82-A. Notwithstanding anything in rules 81 and 82 in any area to which Government may by notification in the official Gazette direct that this rule shall be applied an additional rate of Rs. 2½ for every lakh of bricks manufactured in any one year shall be levied in addition to the annual assessment of Rs. 40 per acre on land used for the manufacture of brick : Provided that where exact accounts of manufacture are not available, the Collector shall be at liberty to fix the number according to the known capacity of the kiln, and his decision shall be final.

Note.—This new rule 82-A finally sanctioned in R. 5812 of 9-11-25 assesses land not according to its value or area or profits or other consideration recognised in the Code but at an arbitrary "Royalty" no doubt roughly proportionate to profit. It is framed under section 214 (*d*) (Regulating permission to use) and is considered by R. L A. to be covered by the law.

83. (*Cancelled* by G. R 1890-28 of 20th Aug. 1929.)

84. *Grant of permission in hill stations, etc.*—In hill stations and such other localities as Government my direct, permission shall not be granted under section 65 except on such conditions as are considered desirable regarding the style of building, the period for construction and the observance of municipal or sanitary regulations. Such conditions shall be embodied in the Sanad.

85. *Assessment leviable on compounds ; reduced in certain cases* — Altered assessment shall ordinarily be levied upon the whole of the land within the compound of a building and not merely upon the land covered with building.

86. *Levy of altered assessment when to begin.*—(*a*) The altered assessment shall ordinarily be levied from the first day of the revenue year next succeeding the revenue year in which permission to use the land for non-agricultural purposes was given, provided that (1) where the use is temporary the Collector may in his discretion levy it from the first day on which or the commencement of the year in which the non-agricultural use begins.

(2) In the case of building sites held by Co-operative Housing Societies which are not built upon, no altered assessment shall be levied for the three years subsequent to the date on which possession of the land was taken or the building permission granted, whichever was later; And on the expiry of that period, altered assessment shall be levied with effect from the first day of the next revenue year at half the rate current in the locality, unless for special reasons which shall be specified in writing the Collector considers it desirable that the full exemption from altered assessment should be continued for a further period or periods. In all cases, the full altered assessment payable in the locality shall be levied as soon as a plot is built upon."

(G. R., R. D., No. 620 28, dated 14-10-32.)

(*b*) Where no permission was given the altered assessment levied for non-agricultural use shall always be levied from the first day of the revenue year in which the use commenced. (Notification G. R. 9113-24 3rd January 1928).

87. *Revision of altered assessment.*—(*a*) *Revision of altered assessment.*—The peroid for which the altered assessment is to be fixed shall ordinarily be 30 years from the date prescribed in the sanad except in the Bombay Suburban District where, on account of its special conditions the period shall ordinarily be fifty years. On the expiry of this or any other period mentioned in the sanad, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment fixed shall be liable to revision in accordance with the Code and the rules and orders for the time being in force thereunder.

(*b*) When land used for non-agricultural purposes is assessed under the provisions of rules 81 to 85, a sanad shall be granted in the Form M if the land is used for building purposes, in form N1 if the land is used temporarily for a non-agricultural purpose other than building and in Form N in all other cases.

88. *Commuting altered assessment.*—In cases where the altered assessment is fixed under rule 87 the assessment, if not exceeding one rupee, instead of being rendered annually, may, with the consent of the Collector, be commuted by the occupant for a lump payment of its present value, for the residual term for which that assessment is fixed, at a rate of interest not more than half per cent. above the market rate at the time of commutation upon public securities the interest on which is liable to income-tax; and a note of such payment or commutation shall be made in or at the foot of the sanad granted in respect of the land under Rule 87 (*b*) on the expiry of the period for which it has been commuted the assessment, whether revised or not, shall again be leviable unless it is again commuted under this rule.

Note.—**The commutation is permissive and is to be restricted to cases where the annual revenue is so small as not to be worth annual collection(G. R. 4578-18) Such cases must be so rare that commutations will practically not be allowed.**

89. *Maps showing altered assessment.*—(1) Each Collector shall permanently maintain in his office and from time to time as required renew a map of his district upon which it shall be clearly shown by distinct colours, or otherwise as may be convenient, under which of the foregoing rules and classes all the land of the district falls.

(2) When an area is very small, or when its limits intersect a village in an intricate way, insects on a larger scale or a supplementary file of village maps shall be provided.

(3) Whenever any area is brought under a different class or rate by a fresh order, the map shall be corrected and the authority for the change noted over the Collector's signature on the map.

(4) Each Mamlatdar shall similarly maintain a map of his taluka with similar supplements which shall be similarly corrected and endorsed by the Collector at each change.

(5) These maps shall be open to public inspection free of charge during all office hours.

"90. *Levy of rate when land assessed for a purpose other than building is used for building.*—(1) When any holding which has been assessed or is held for non-agricultural purposes other than building, is with the Collector's permission, used for residential building, the Collector shall levy the rate of assessment imposed on land used for such purpose in the locality."

(2) In such cases the holder shall be given a new sanad in the form prescribed from time to time under rule 87 (*b*).

91. *Re-imposition of agricultural assessment.*—(1) When any holding, which has been assessed or of which the assessment has been altered for any non-agricultural use, is used for agriculture only, the Collector may on the application of the holder, remove the non-agricultural assessment and impose either the old agricultural assessment, if any, and if the settlement period has not expired ; or may impose in other cases a new agricultural assessment equivalent to that imposed on other similar agricultural lands in the vicinity.

(2) Such agricultural assessments shall be subject to the same conditions as to periodical revision and the same rules and provisions of law as if they had been imposed at the ordinary revenue settlement of the village in which land is situated.

Provided that if the holder has paid any lump sum as commuted assessment for any period, he shall not be entitled to any refund or to any change in the conditions of his lease or agreement until the period for which the commutation has been paid expires.

ALTERATION OF ASSESSMENT IN SURVEYED AND SETTLED ALIENATED VILLAGES.

92. *Application of rules ; certain powers of Collector to be exercised by holder with commission.*—When land assessed for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall, unless otherwise directed by Government, be altered under sub-section (2) of section 48 by the Collector in accordance with rules 81 to 87 inclusive :

Provided that the powers of the Collector under those rules, other than the power of estimating the full market value and fixing standard rates of assessment, shall be exercised by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under section 65 or 66 upon such holder or holders under section 88 (*d*).

93. *Fines.*—For the purposes of determining the amounts of the fines leviable under section 66, rules 99 to 102 shall be applied :

Provided that the powers of the Collector under section 65 or 66 respectively shall be exercised in accordance with the provisions of

rules 99 to 102 by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under section 65 or 66 respectively upon such holder or holders under section 88 (*d*).

94. *Applications how to be dealt with.*—(1) When the Collector receives an application under section 65 for permission to use for any other purpose land assessed for purposes of agriculture only, he shall forthwith forward to the holder or holders of the alienated village in which the land is situated a copy of the application and shall as soon as possible thereafter also forward to such holder or holders a letter showing the altered assessment leviable upon use of the land for such other purpose and requesting such holder or holders to intimate within one month of the date of the letter whether the application should be granted or refused.

(2) If such holder or holders intimate that the application should be granted it shall be granted accordingly; but if such holder or any of such holders intimate that the appliation should be refused or do not make any intimation within the time specified, the application shall be refused.

95. *Procedure when information of use for non-agricultural purposes is received.*—(1) When the Collector receives information that any inferior holder of land assessed for purposes of agriculture only has rendered himself liable to any of the penalties specified in section 66 the Collector shall address to the holder or holders of the alienated village a letter communicating the information and the liabilities of the holder of the said land and showing the altered assessment or fine or both leviable and requesting the holder or holders of the alienated village to intimate within such time as the Collector considers reasonable whether the liabilities should or should not be enforced.

(2) If such holder or holders intimate that the liabilities should be enforced, they shall be enforced accordingly; but if such holder or any of such holders intimate that the liabilities should not be enforced or do not make any intimation within the time specified or within such further time as may specially be granted, they shall not be enforced.

"(3) Provided that the Collector shall not pass any such orders in respect of land specified in a commission conferring the powers of a Collector under section 66 upon the holder or holders of the alienated village under section 88 (*d*) but shall forthwith communicate the information for the orders of such holder or holders of the alienated village; and also provide that any such information may be received and acted upon by such holder or holders of the alienated village direct."

(G. R., R. D., 1890-28 of 15th May 1931)

96. *Communication of orders and levy of assessment.*—(1) The Collector, or the holder or holders of the alienated village, as the case may be, shall communicate any orders passed by him or them under these rules to the Mamlatdar, who shall communicate such orders to the applicant or holder of the land concerned and shall direct the village officers to levy any altered assessment or fine so ordered.

(2) Such altered assessment or fine shall be levied in the same manner as other land revenue and shall be paid wholly to the holder

or holders of the alienated village when such holder or holders are entitled to the whole land revenue of the village or proportionately to their shares when such holder or holders are entitled to a proportion only of the land revenue in accordance with the conditions under which they hold the alienated village.

97. *Kadim and sheri land exempted.*—Nothing in rules 92 to 95 shall be deemed to apply to lands which are alienated lands apart from the alienation of the village in which they are situated, nor alienated land in the possession of and occupied in person by the holder or holders of the alienated village.

Note—Tenants-at-will do not deprive the Inamdar of his possession ; but "permanent" or occupancy tenants do. The distinction between permanent tenants and tenants-at-will is often hard to draw, when not defined by written leases (I. L. R. 17 Bom. 475, 29 Bom. 415), but the "sutidars" of Kurla are admitted to be permanent.

98. *Meaning of "holder" of alienated village.*—For the purposes of rules 92 to 97 the holder or holders of any alienated village shall be taken to mean the actual holder or holders or in cases of doubt the person or persons whose name or names is or are registered as such in the register kept under section 53.

PERMISSION FOR NON-AGRICULTURAL USE AND FINES IN CASES OF UNAUTHORIZED USE.

99. *No fine ordinarily to be imposed under section 65.*—No fine shall ordinarily be imposed under section 65, that is to say, where land assessed or held for purposes of agriculture is used for any purpose unconnected with agriculture with the permission of the Collector.

100. *Maximum fine leviable under section 66.*—Any fine imposed by the Collector under section 66 shall be fixed by him at his discretion subject to rule 101 and shall not exceed ten times the altered assessment imposed under this Chapter."

(G. R., R. D., 1890-28 of 15th May 1931).

"101. *Maximum fine leviable for unauthorised use for building, brick making etc.*—When the material of the soil of any occupied land is employed for bricks or tiles or pottery or for any other non-agricultural purposes, without the permission of the Collector being first obtained and the value of the land is thereby adversely affected, a fine may be levied at a rate not exceeding double the rate prescribed in rule 100."

(G. R., R. D., 1890-28 of 15th May 1931).

102. *Saving of special cases dealt with by Government.*—Notwithstanding anything contained in rules 99 to 101, the Collector may, in such cases as Government deem exceptional or unusual, impose a fine, whether under section 65 or under section 66, at such rate as may be fixed by Government in that behalf.

Note.—No extra high maximum may be generally prescribed for certain areas ; but an individual order in each case is necessary (G. R. 1881-97).

103. *Limit of fine under section 61.*—The limit of fine to be levied under section 61, when land is unauthorizedly occupied and used for

any non-agricultural purpose, shall be double the amount of the assessment that would be leviable under section 65 and rule 100 if the same land being in lawful occupation had been used by the holder for the same purpose without the permission of the Collector :

"Provided that a fine up to Rs. 100 may be levied in any such case irrespective of the area of the land involved."

(G. R., R. D., 1890-28 of 15th May 1931).

CHAPTER XV.

RECORD OF RIGHTS.

104. The record of rights and mutations, the Index of lands and the register of disputed cases shall be kept in forms O, P, and Q respectively ; provided that in sites surveyed under section 131, these forms may be modified by the Director of Land Records to suit the requirements of cities, the record of rights being termed the "Property Register." After the original preparation of the Record, all later entries altering or transferring those rights are termed "mutations."

Notes.—The method of writing the record has been changed. The rules have therefore been modified as per G. R. 352-28 of 10-4-29.

The subject of the Record of Rights was first mooted by the Government of India in their letter 2770-369 dated '-12-97 and it was intended purely for Settlement purposes In April 1898 orders to make experiments were received. The first draft was prepared by Sir J. W. P. Muir Mackenzie, and the experiments were carried out in 1899 by Messrs. A. B. Fforde, F. B. Young, H. B. Sathe. The first Act was passed in 1903 (IV of 1903) but this was repealed and incorporated in the L. R. C. of 1913. The Record has now also become the basis of the accounts of liability to pay land revenue : and also of the audit of alienations of land revenue.

105. (1) When the record of rights is first introduced in any village, as soon as the preparation has begun, the vilage accountant shall cause notice thereof to be given by beat of drum and shall post up a written notice in the chavdi. He shall also write at the head of the record a certificate that such notice was duly given.

(2) Prior to the preparation of the fair copy of the record of rights, the villag e accountant shall prepare a rough copy of the record in the form of an Index of Lands with all rights noted against each parcel. Until the fair copy is prepared, such rough copy shall be used as and be deemed to be the register of mutations, and the provisions of the Code and of these rules which apply to the said register shall apply so far as may be to such rough copy, and the provisions of rule 111 respecting the introduction of the re-written copy of the index shall apply so far as may be to the introduction of this first fair copy of the record.

Note—The assistance of all village servants is of course required (G. R. 4950-1902).

106. (1) Every mutation shall be posted in the Diary by the village accountant and examined by the Circle Inspector and shall be read out and explained by the latter to all persons present.

(2) The Circle Inspector shall initial all entries so examined.

(3) If any person adversely affected admits an entry to be correct the Circle Inspector shall note the admission.

(4) If any interested person disputes the correctness of an entry, the Circle Inspector shall not erase but shall correct any errors admitted by all parties either by bracketing the errors and inserting the correct entries by interlineation or side note or by an entirely fresh entry in either case authenticated by his signature: if the error is not admitted, he shall enter the dispute in the Register of Disputed Cases (form Q), and it shall be disposed of under rule 108.

Dispute.—The dispute must be between holders; a claim against Government must be decided under sec. 37 and the result recorded: it cannot be dealt with under this Chapter.

107. (1) The entries in the Diary of mutations shall be further tested and revised, by a revenue officer not lower in rank than a Mamlatdar's First Karkun.

(2) Any entry found by such officer to be correct shall be certified by him.

(3) Any entry found to be incorrect shall, if no dispute is brought to his notice, be corrected as in rule 106 (4) and certified by him: such correction shall be a new mutation for the purpose of section 135 D (2).

(4) Where such officer finds that there is a dispute regarding any entry examined by him, he shall enter the dispute in the register of disputed cases and the dispute shall be disposed of under rule 108. Such officer shall, wherever possible, himself dispose of the dispute under the said rule forthwith.

(5) One appeal only shall lie against any entry certified under sub-rule (3) or corrected under sub-rule (3) otherwise than by the Collector himself, to the same authority to which an appeal lies in a case decided under rule 108.

Correction.—The correction may possibly be made without the knowledge of the opponent or some interested third party. This provision secures notice to them also.

Appeal.—There is *no appeal* against Collector's order. Chap. XIII, of the L. R. C., as to appeals and revision does not apply to the Records of Rights. Therefore papers cannot be called for or proceedings revised otherwise than as provided in this chapter, that is to say, otherwise than during inspection and test in the village. If a party presents an appeal this can be decided by taking evidence, etc] or on local enquiry by the Appellate Officer. When a party makes a formal appea no entry in the Dispute Register is needed, if not already made; as the appellate decision can be posted direct to the Mutation Register (V. F. VII) and will operate as a decision of the dispute. (*Andersan*).

108. (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar, but may be disposed of by the District Inspector of Land

Records or by any revenue officer of superior rank to that of First Karkun.

(2) The enquiry shall ordinarily be made in the village in which the land is situate or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register, and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been passed by the Mamlatdar's first karkun, the Mamlatdar, the District Idspector or a revenue officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer or an officer appointed by Government in this behalf, and if the order has been passed by the Sub-Divisional Officer, the Superintendent of Land Records or by a Revenue Officer of not lower rank than that of a Deputy Collector, to the Coll ctor; and must be presented within 60 days from the day the appellant first knew it had been made The decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector and no second appeal in any case.

(6) If the appellate order coufirms the previous decision, it should be noted in the remarks column, against the confirmed entry. If it alters it, the change shall be entered as a fresh, but not disputable, mutation.

109. Entries in the Diary of mutations shall ordinarily be transferred to the Index of lands as soon as certified.

110. The index of lands shall be re-written incorporating all mutations recorded up to the date prescribed by the sub divisional officer whenever that officer, in view of the number of entries in the Diary of mutations, shall so direct.

111. (1) When the re-written Index of land is reported to be complete, the Collector or sub-divisional officer shall fix a date for its inspection and shall cause notice thereof to be given calling upon all persons interested to appear on such date at a specified place in or in the immediate vicinity of the village concerned, and notifying that any such person may before such date inspect the Index on appllcation.

(2) On the date at the place appointed, the Collector or subdivisional officer shall compare the new copy with the old Index and the diary of mutations, cause such portions thereof to be read out as any of the persons present may desire to hear, read and make any correction that may be necessary.

(3) Such officer shall then sign the new Index and subscribe below it a certificate that the entries therein have been duly tested and found correct.

112. Where a revenue officer or a village accountant issues any summons or notice under section 135E (1) or G, he shall follow the provisions of section 190 or 191 as the case may be.

113. Record of such tenancies as are not perpetual or notified under section 135B (2) shall be kept in form R. The enties therein shall be tested by the Circle Inspector when he examines the crops, and by other officers of higher rank. When any error is discovered by any of these inspecting officers, they may correct it and initial the

corrected entry. The register will be compiled every ten years, but there will be no notification. When any dispute as to such tenancies is found to exist, a note of the fact may be made in the register, but no entry will be made in the register of disputed cases, nor will any revenue officer decide the dispute.

CHAPTER XVI.

RECOVERY OF LAND REVENUE.

114. *Land revenue where and to whom to be paid.*—All payments of land revenue shall be made to the officers of the village in which such revenue is due: provided that, with the sanction of the Collector, such payment may in special cases be made into a Government Treasury within the district to which the payment appertains.

Notes.—For collection of inamdars' rents directly as Government dues, see sec. 94A. When there is no watandar kulkarni, or when the watandar has commuted (G. R. 8733-16), this power cannot be used. Inamdars must stamp the receipts they give to occupants or to the kulkarni for sums exceeding Rs. 20. (G. R, 2641-84); but not receipts given to their tenants on "sheri" lands.

Payment is ordinarily to be made to the patel in the presence of the accountant.

115 Except in Sind, Ratnagiri, Kolaba, Kanara and Thana, Collectors shall, with the sanction of the Commissioner, classify the villages in their districts into the following three classes :—

Class I : kharif villages in ghat districts and elsewhere where it is necessary that the revenue be secured specially early ;

Class II : kharif villages in Gujarat and elsewhere where no such special provision is necessary :

Class III : rabi villages generally.

116. *Dates on which agricultural revenue to be paid.*—(1) The land revenue payable in respect of lands assessed for purposes of agriculture only shall be paid in equal or nearly equal instalments on the following dates :—

(*a*) in Sind—for kharif cultivation the 15th February and the 15th April, and for rabi cultivation the 15th May and the 15th June, (Notification 6961-24 July 1927).

(*b*) in Thana district—the 1st January and the 16th February ;

(*c*) and in villages classed under rule 115 in—

Class I, on the 5th December and the 5th January ;

Class II, on the 5th January and the 5th March ;

Class III, and the whole of the District of Ratnagiri, Kanara and Kolaba the 5th February and the 5th April :

(2) Provided that—

(*i*) in any district or in any part of a district where the dates above specified are found unsuitable, the Collector may, with the sanction of the Commissioner, fix such other dates as he may deem expedient according to the circumstances of the season and of the villages concerned and the character of the crops generlly sown therein;

(*ii*) Where the annual amount of the revenue is five rupees or under, it shall be payable in a lump sum at the date of the first instalment;

(*iii*) if the person from whom the year's revenue is due so wishes, he may in any case pay the whole amount at once instead of by instalments.

117. *Other land revenue.*—Land revenue, other than that due upon agricultural land, shall ordinarily be paid in one instalment, at the time of the first instalment of agricultural land revenue or on such other date as the Collector thinks fit in any case to prescribe; but in special cases the Collector may in his discretion allow the payment to be made in two or more instalments on dates which shall be fixed by him.

118. *Form of notice of demand.*—The notice of demand to be issued under section 152 shall be in form S.

119. *Duties of village officers.*—(*a*) It shall be the duty of the village officers to warn landholders verbally from time to time of the dates on which their instalments are due, and to use their influence in securing prompt payment without resort to notices of demand or other compulsory processes.

(*b*) Village officers shall report to the Mamlatdar the names of landholders who, they have reason to believe, will not punctually pay their instalments, in order that precautionary measures under sections 140-145 may be, when necessary, adopted in time: and shall immediately report any case where the produce of any land on which the assessment has not been paid is attached by a Civil Court.

Restriction upon distraint.—For restrictions upon distraints, see sec. 60 (1), Civil Procedure Code, V of 1908. There is no *form* of distraint order (G. R. 9401-83 and 1302-89). Dwelling houses may not be broken open (G. R. No. 9982 of 1884). It is under consideration whether Civil Courts should be required to notify the Collector when they attach crops (G. R. No. 9188 Of 1916).

Notes.—Whenever the consolidated demand is ordered to be half suspended or half remitted, the division shall be so made that no fraction less than a whole anna shall be taken in the portion to be suspended or remitted.

Whenever an amount is suspended, the suspension shall always be conditional upon the payment of the amount which is not suspended. When, for instance, half the revenue is suspended, but any revenue-payer defaults in respect of any remaining unsuspended revenue the suspension shall be cancelled so that the suspended amount also becomes due for the current year.

CHAPTER XVII.

DISPOSAL OF FORFEITED LAND.

120. *Restoration or grant on inalienable tenure.*—Where the Collector thinks it advisable that the holding of a defaulter should, after forfeiture, be either restored to the defaulter or given out with or without any occupancy price to any other person, subject to the condition that he shall not transfer it in any way to another person without the previous sanction in writing of the Collector, the Collector, after having declared such holding to be forfeited to Government, may, without

having resort to any of the other means provided in the Code for the recovery of an arrear of land revenue, restore, or give it out (as the case may be) accordingly, and shall take an agreement in form T.

Notes.—Land cannot be forfeited for arrears of Local Fund Cess (G. R. No. 5673-28 of 28th August 1930).

Sale expenses are levied even if arrears are paid on the day of sale (G. R. 9482-92, 5304-94). A certificate of sale must always be given (G. R. 3009-80) and sent to the Sub-Registrar (sec. 89 (4), Act XVI of 1908). The form is discussed in G. R. 6023-83; and it must be stamped (Art. 16, Sch. I, Stamp Act), and the purchaser must execute a kabulayat (G. R. 2600-83).

Where Rule 120 is not applied, resort should not be had to forfeiture of land unless it appears to the Collector that the arrear cannot be readily recovered by any of the other means provided in Chapter XI of the Code.

121. *Partial forfeiture.*—Where the land in respect of which an arrear is due consists of two or more survey numbers or of two or more sub-divisions of survey numbers or of two or more estates separately assessed, and the Collector is of opinion that the whole amount of such arrear could be realized by the sale of less than all of such survey numbers, portion or estates, he shall restrict forfeiture to such one or more survey numbers or the sub-divisions as prove sufficient to realise the arrears.

122. *Deleted, as it merely repeated sec. 117 B (i).*

123. *Disposal of forfeited land otherwise than by sale in certain cases.*—Forfeited land shall not be put up for sale in the follwing cases, but shall be disposed of in the manner hereinafter prescribed for the particular case under which it falls, namely :—

(*a*) Where the Collector thinks that, owing to general agricultural depression or to the want of demand for such land, or to a combination of the neighbouring land-holders, or for any other special cause, there will be no bidders at the sale, or that the highest amount bid will be considerably below the reasonable value, he shall cause the land to be entered in the land records as unoccupied.

(*b*) Where the Collector finds that the land is likely to be required either immediately or within a reasonable time, for any of the purposes described in section 38, he shall take steps at once to assign it for such purpose.

(*c*) In the case of a forfeited alienated holding, where the Collector considers it expedient to allow the land to continue in the possession of its actual holder or tenant, as an occupant of unalienated land, annulling the alienation, he shall pass orders accordingly for its continuance.

(*d*) In the case of an inferior holding forfeited on account of an arrear of rent or land revenue due to a superior holder, for the recovery of which assistance is being rendered under sections 86 and 87, the Collector may in his discretion transfer the holding to the superior holder thereof, subject to such tenures, rights, incumbrances or equities (if any) as he may direct under section 56.

(*e*) In any other case, where the Collector considers it is expedient that the disposal of a forfeited holding should be otherwise than by sale, and obtains the sanction of Government thereto, he shall dispose of it in accordance with the particular orders for its disposal passed or sanctioned by Government.

Note.—It may be inexpedient to lose the tenant, even if the superior holder be bankrupt.

124. *Forfeited land to be sold for recovery of arrears in other cases.*—In cases not falling under rule 120, 121, 122 or 123, forfeited land shall, subject to the provisions of rule 126, be put up for sale for recovery of the arrears due.

125. *Rules and orders applicable to sales of forfeited land.*—(1) Every sale of forfeited land shall be made subject to the same rules as are applicable to the sale of unoccupied unalienated land so far as the same are consistent with the provisions of Chapter XI.

(2) The Collector should ordinarily set aside the sale under section 179, if in his opinion—

(*a*) the bidding at such sale has not been *bona fide*; or

(*b*) there has been collusion to recover the holding without payment in full of the arrears and charges due to Government or the superior holder; or

(*c*) there has been some material irregularity or mistake or fraud, in publishing or conducting such sale, which is likely to have affected the amount of the highest bid or otherwise to have caused substantial injury to any person.

Notes.—The purchaser of forfeited land, like purchasers of unoccupied land, passes an agreement in Form F or H (with or without Form I) or if in Hill Stations, or certain Municipal areas, or for certain kinds of *leasehold* land then O. E, O-F, O-G, O-H or O-I as may be applicable.

No permission to occupy (Form K) is needed since sec. 181 requires the Collector to put him in possession; but a sale-certificate should be issued on impressed stamp paper : so printed form is provided (*Anderson*).

126. *Restoration of forfeited land.*—(1) It shall be the discretion of the Collector to restore any forfeited land at any time previous to any sale or other disposal under these rules on payment of the arrear in respect of which the forfeiture was incurred together with all costs and charges lawfully due by the defaulter, or on security being given to his satisfaction for the payment of the said arrear, costs and charge within a reasonable period:

Provided that no forfeited alienated holding, which is not held for service, shall be restored as alienated land without the previous sanction of

(*a*) The Commissioner if it is assessed at more than Rs. 20;

(*b*) Government if it is assessed at more than Rs. 50.

(2) Where in the case of a forfeited alienated land held for service by a watandar the Collector is satisfied that the failure to pay the land revenue due thereupon arose solely from the inability of the defaulter to meet the demand, he may deduct from the forfeited land a portion of which the price would be likely to equal the amount of the arrear recoverable, and deal with such portion in accordance with such of rules 122 to 125 as are applicable, and restore the remainder of the forfeited land to the defaulter, or may restore the entire forfeited land to the defaulter, and either remit the arrear of land revenue due, or make such arrangements for its being paid in the future as he thinks fit.

CHAPTER XVIII.

Sales.

127. *Auction sales under rule 42 where to be held.*—Auctions held under rules 37 (1), 41, 42 and 50 (2) shall ordinarily be conducted in the town or village in which the land is situated.

Note.—It is of course desirable that most other auctions should similarly be conducted near the property to be sold. Sometimes, however, for some contracts and farms there is better bidding at the taluka head-quarters than at a distant village.

128. *Upset price may be fixed.*—Where any land or other property is sold by public auction, an upset price shall, if the Collector thinks fit, be placed thereon.

129. *Sales how to be conducted.*—(1) Every sale by auction, under these rules, or in pursuance of any of the provisions of the Code, shall be conducted, so far as may be, in accordance with sections 165, 166, 170 to 177 both inclusive and 180. The proclamation and written notice of sale required to be issued under sections 165 and 166 shall be in one of the forms U or W, with such modifications, if any, as may be necessary :

(2) Provided that, in conducting the follwing sales, namely :—

(*a*) sales of the right of grazing and of the right to take or cut grass in waste lands,

(*b*) sales of the right to take the fruit of specified Government trees for a specified period, and

(*c*) sales of dead-wood,

the procedure shall be in accordance with such orders as may from time to time be made by the Collector either generally or in a particular case instead of the procedure prescribed in sections 165 and 166.

Notes.— When a bidder at an auction defaults in fulfilling his contract, he can be sued for damages, if any are provable (G. R. 3-12), in addition to any other forfeitures provided by the Code.

After forfeiture there could be no other claim to which the footnotes in Form U could apply.

CHAPTER XIX.

Appeals.

130. *Form and contents.*—(1) Every appeal shall be made in the form of a petition addressed to the authority to whom an appeal lies, and shall be drawn up in concise, intelligible and respectful language; and shall bear the signature or mark of the appellant or of his duly authorized agent.

(2) The petition should give the following particulars :—

the name, father's name, occupation and place of residence or address of the appellant ;

the name and address of the writer of the petition.

(3) The petition should also contain a brief and unexaggerated statement of the facts on which the appellant relies in support of his

appeal and the grounds of the appellant's objection to the order or decision appealed against.

Notes.—This chapter does not apply to appeals under the Record of Rights (See rule 108, etc).

Applications for compassionate allowances from discharged Revenue officers are treated as "appeals" (G. R. No. 4997-08).

131. *Presentation.*—(1) Appeals may either be presented to the authority to whom an appeal lies in person or be forwarded to him by post.

(2) Where an appeal is sent by post, the postage on the cover containing it must invariably be fully prepaid.

Note.—In dealing with Civil Court darkhasts, the Collector is not subject to appeals to or revision by the Commissioner, but only by the Court. The Collector cannot set aside a darkhast sale, but can only confirm or refuse to confirm it.

131. *Rejection of appeals without enquiry into their merits.*—Inattention in any material respect to the requirements of rule 130 or 131 will render an appeal liable to be rejected without enquiry into its merits.

CHAPTER XX.

PENALTIES.

133. *Breaches of the rules how punishable.*—Breaches of rules hereunder mentioned shall be punishable on conviction before a Magistrate as follows :—

(I) Whoever commits a breach of rules 67, 68, 69, 70 or 78, by excavating or removing earth, stone, kankar, sand, muram or any other material of the soil without due authority :

with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees.

(2) Whoever commits a breach of rules 75, 76, 77 or 79, by using or excavating land in a prohibited manner, or for a prohibited purpose, without the due authority :

with fine which may extend to five hundred rupees.

(3) Breach of any of rules 67, 70, 72 (*b*), 119 (*a*), 119 (*b*), 134 or 135 committed by a village officer or city surveyor—

(*a*) by taking or levying any fees for preparing any document or copy or extract of any document which he is bound by any such rule to prepare without charge, or

(*b*) by charging any fee (*i*) for granting any permission or inspection which he is authorized by any such rule to grant, or (*ii*) for making any search for records, for which no fee can lawfully be charged,

(*c*) by refusing without reasonable cause an inspection of land records which he is required by any such rule to permit :

with imprisonment which may extend to one month, or

with fine which may extend to five hundered rupees,

(*d*) by refusing or neglecting to prepare any document or copy or extract of any document, or to sign or to certify the same, in the manner prescribed by any such rule, or

(*e*) by neglecting to make any report or to perform any duty which he is required by any such rule to make or to perform :
with fine which may extend to five hundred rupees.

Notes.—'Magistrate' means *any* Magistrate (G. R. 3103-83; H. C. Ruling 46-16, 11, 93).

Fines are recovered as arrears of land revenue under sec. 187 (not by the ordinary police procedure) (*G.* R. 4697-85).

CHAPTER XXI.

CERTAIN DOCUMENTS TO BE PREPARED FREE OF CHARGE.

134. *Village accountants to prepare certain documents without charge when so desired.*—(1) It shall be the duty of every village accountant, if so requested by any occupant, or by any person about to become an occupant, of land in his village, to prepare any agreement that may be necessary under either rules 37, 43, 46 or 120 without fee or charge of any kind, and any notice of relinquishment under section 74.

(2) A village accountant who prepares any such agreement or notice shall affix his signature beneath the words "written by" on the lower left-hand corner of such agreement or notice.

CHAPTER XXII.

COPIES, INSPECTION AND SEARCHES.

I.—Inspection.

135. *Certain documents to be open to inspection.*—Documents, maps, registers, accounts and records, the right of inspection of which is provided for in section 91 of the Indian Registration Act (XVI of 1908) and in section 213 and all *public documents* which any person has, under the provisions of any law for the time being in force, a right to inspect, shall be open to inspection in the office of the officer in charge of the same during the usual office hours every day, except Sundays and public holidays, on payment of the fee hereinafter prescribed in this behalf : and not otherwise.

Provided that no fee shall be charged for inspection (with the permission of the Officer in charge) of the Enquiry Proceedings or register or Property Register of a City Survey by a Municipal Official for municipal purposes (Notification R. 5228/24—13-12-27).

Provided further that no fee shall be charged for the inspection of village records by an officer or a member of any Co-operative Society for the business of the Society (Notification 248/28-3-10-28.)

Notes.—These rules do not apply to Bombay City (see rules in R. 2374-14 under sec. 40, Bombay City Land Revenue Act of 1876) or to Civil or Criminal Courts (see High Court Circulars). For copies from the records of the Registrar of Co-operative Societies, see R. 3047-14. For Registration Department Records, see Notification R. 7368-81.

The documents referred to in sec. 213 are " all maps and land records".

These are defined in sec. 3 (*26*).

Persons suing *in forma pauperis* cannot have free copies (G. R. No. 3098 of 78).

II.—Extracts and copies.

136. *Uncertified copies.*–(1) No uncertified copy or extract shall be obtainable of or from any documents other than those prescribed in rule 135, nor otherwise than under this rule.

(2) Any person may himself or by an agent make a copy of any public document or of any portion of any public document of which he has duly obtained inspection, but no copy so made shall be certified by any public officer.

Notes.—Local Boards should be supplied free of charge with copies of, or information from, public documents provided that copies from preliminary survey records shall only be given with the sanction of the Collector.

The form of this certificate is prescribed by sec. 76 of the Evidence Act.

137. *Village accountants to grant certified copies of certain records.*–(1) So long as the originals are in their charge, all village accountants, and in the cities surveyed under section 131 all City Surveyors, shall themselves receive and grant applications for certified copies of any serial number (entry) in the record of rights, register of mutations (Property Register) or of tenancies, or of a map of a survey number or sub-division thereof.

(2) The Collector may, in his discretion in respect of his whole district or any part thereof, also empower village accountants to receive and grant applications for certified copies of village forms Nos. (old) 1, 3, 5, 6, 9, 11, 13, 14 and 18; (new) Nos. I, III, VII—XII combined, VIII-A and B, IX, XI, XII, XIV and XV, and of orders for levying miscellaneous land revenue.

(3) Such copies shall after comparison with the original be certified by the accountant as true, and given to the applicants direct within ten days from their application.

Note—The period is determined by the orders in the A. B. C. D. lists of Records.

138. *Mamlatdars generally to grant certified copies of village papers* – Except as provided in rule 137 every application for a certified copy of any public document in the charge of a village accountant shall be made to the Mamlatdar to whom he is subordinate, who shall cause the copy to be prepared, compared with the original, and signed in token of correctness by the village accountant. The copy shall then be certified and made over to the applicant by the Mamlatdar.

139. *Officer in charge of document generally to grant certified copy.*—In all other cases the officer in charge of any public document described in rule 135 shall, and in the case of any public document or portion thereof other than those described in rule 135 may, cause to be prepared and give certified copies of the same or of any portion thereof under his own signature to any person applying for such copy on payment of the fees hereinafter prescribed :

Provided that (*a*) no copy shall be granted of any record, map or plan which has been printed or lithographed and published under the authority of Government and is on sale; but small extracts of not more than five fields or plots may be granted under rule 142 (6);

(*b*) that no copy of any document is to be given in any case in which the grant would be prejudicial to the public interest.

Notes.—(*i*) Petitions of parties would not be documents maintained under the provisions of or for the purposes of the Act (sec 3 (*26*)), nor are they records of the proceedings of any public officer, and therefore fall entirely into the optional class.

(*ii*) When an original document is filed in a case under the Code, including cash allowance cases and general revenue matters (R. 2071-8) concerning private parties only, and the parties then apply for its return, a certified copy should be retained on the record, unless (G. R. 4492-98) the period of appeal or revision has already expired. This rule was extended to Mamlatdars' Courts (J. 3394-81) and to Watan Proceedings (G. R. 148-86). No court-fee is leviable on such applications (*B. G. G.*, Part I, P. 368 of 1887). The originals of Government Records should therefore always be brought back (*Anderson*).

140. *Receipt to be endorsed on copy.*—On every certified copy or extract granted under these rules and delivered otherwise than through the agency of the value payable post there shall be endorsed by the officer who receives the fee for the same a receipt in the following form:—

Received Rs. a. , as fee for this certified copy.

Dated of 19 .

(Signed) A. B.

III.—Searches.

141. *Search fees when to be charged.*—When an application is made for an inspection or copy of any public document or of any portion of a public document and such application does not distinctly describe the number, date and nature of the document required ; or if the description given in such application is incorrect, and it shall in consequence be necessary for the officer in charge of the document to search his records in order to find it, a fee, at the rate hereinafter prescribed, shall be payable by the applicant for such search whether the inspection or copy for which he applies, on examination of the said document by the said officer, be granted or not.

IV.—Fees.

142. *Fees.*—The following fees shall be levied in cash under these rules :—

(1) For an inspection granted under Rule 135 for each day on which inspection is made.	Twelve annas an hour for each applicant subject to a minimum of Rs. 1-8-0, to be paid in advance.
(2) For every certified copy of a public document not falling under Articles 3, 4 and 5 of this table—	
(*a*) if the original be in English, for every 25 words or fraction of 25 words :	Nine pies.
(*b*) if the original be in the vernacular, for every 33 words or fraction of 33 words :	Nine pies.

(*c*) (*i*) for examining or comparing 100 words or fraction of 100 words, whether the original be in English or the vernacular :	Nine pies.
(*ii*) for comparing copies of maps etc., under Articles (5), (6) and (7) out of the copy fee there will be credited as comparing fee :	One-fourth.
(*d*) if the original be in a tabular form, whether in English or the vernacular :	Twice the rates, respectively, named in clauses (*a*) and (*b*).
(*e*) if the copy be given on a printed form, for every sheet or page of forms used :	Three pies *plus* the fees at the rates herein prescribed for the manuscript additions made on the form.
(*f*) For each form of extract of a City Property Register :	Two annas.
(*g*) When no printed form is supplied or available, for each sheet of foolscap paper used in preparing the copy other than that of a map or plan under Articles (5), (6) and (7) :	Six pies.
(3) For every certified extract from a register of alienations granted under section 53 :	One anna for every rupee of the amount of alienated revenue, or if the sanad lost or destroyed had been granted under Bombay Act IV of 1868 or under section 133, a sum equal to one-half of the survey fee which the holder of the building site included in the sanad would be liable to pay under section 132 if not exempted by the second paragraph of that section. Povided that the fee shall in no case exceed Rs. 10 or be less than 8 annas.
(4) For every certified copy of a serial number (or entry) in the record of rights, register of mutations, or register of tenancies, and for every Holding Sheet in V. F. VIII-A (including the printed form), and in villages to which rule 137 (2) applies for every certified copy of each entry in the forms named, or for each khata in V. F. VIII-B : provided that there shall be no charge for correcting the Holding Sheet at any time during the 5 years for which it is current.	One anna.

(4-A) (*i*) For every certified copy of the tabular annewari statement of a village with the annewari decision worked out therein ...	Five annas.
(*ii*) For every certified copy of the decision of the Collector or Mamlatdar not embodying such a form, or of the opinion of the village committee as to the anna valuation	Two annas.
(5) For every certified copy of a map of a survey number or subdivision of a survey number or of any (uncoloured) map of any immovable property prepared under clause (*a*) of section 135 G, or of an entry in a City Property Register ;	Two annas.
(6) Subject to proviso (*a*) to rule 139 for every other certified copy of a map of a survey number or of a subdivision or of a field or of any ordinary, (uncoloured) map or plan of any immovable property, or extract of City Survey map, for each field or plot :	Eight annas.
(7) For every certified copy of a map or plan or of any portion of a map or plan not falling under Article (5) or (6) of this table :	Such fee not exceeding fifteen rupees, and not less than one rupee, as the officer who certifies the copy shall determine : provided that no fee exceeding Rs. 5 shall be charged by any officer subordinate to a Collector except with the permission of the Collector, or by an Officer of the Land Records Department except with the permission of the Superintendent of Land Records, to whom he is subordinate.
(8) For every search	One rupee for each year of which the records are searched.
(9) For every authenticated translation of orders, and the reasons therefor, and of exhibits in formal or summary inquiries under the Code :—	
(*a*) for the first 100 or fraction of 100 words :	Eight annas.
(*b*) for every subsequent 100 or fraction of 100 words	Four annas.

Provided that—

(*a*) when any fee is required to be recovered through the agency of the value payable post, postage and postal commission shall be levied

in addition, and when the total amount of fee together with postage and commission includes a fraction of an anna a whole anna shall be levied in place of the fraction :

(*b*) any revenue officer shall be entitled to receive free of any charge a certified copy of the final order recorded in his own case under section 33.

Notes.—The copies or certified extracts from the Record of Rights required to be produced in Civil Courts [sec. 135 H (4)] are free of court-fee stamps (G. of I. Notfn. F. & C. 4353 S. R. 20-7-03). But this exemption does not extend to copies produced in Assistance Suits under sec. 86, which are not Civil Suits (R. 6507-18).

Translators may keep three-fourths of the fee, if the work is done out of office hours (G. R. 3101-83).

The V. P. commission and postage may be paid by affixing service stamps if they are recovered, but it is more convenient to use ordinary stamps.

142. (*b*). While recovering copying and comparing fees, any amount less than six pies shall be remitted, and six pies or more shall be rounded to the extent of whole anna.

143. *Fees how to be paid.*—Every fee payable in accordance with the foregoing table shall either be paid in advance or recovered in pursuance of a specific request through the agency of the value payable post.

Note.—Fees held in deposit must be kept in a separate box under seal of the Record Karkun in the Treasury if there is one : or in the Presidency Town, in a secure place provided with a Police Guard: or, in Sind, in charge of a Munshi who has given security (G. R 4305-08).

V.—Miscellaneous.

144. *Applications how to be made.*—Every application under rules 135 to 143 must be made in writing, and except in the case of an application for inspection made to a village accountant, must be duly stamped. The application may contain a request that the copy, extract, or translation be forwarded by value payable post (unregistered book packet) to any post Office which is also a Money Order Office.

145. *Stamp duty or court-fee payable in addition.*—Nothing in these rules affects the provisions of the Stamp Act (II of 1899) or Court Fees Act (VII of 1870). The stamp duty or court-fee with which an application, copy or extract made or furnished under these rules may be chargeable is in addition to the fees prescribed herein and care is to be taken that the requirements of the Stamp Act and Court Fees Act are properly fulfilled in respect of every such application, copy or extract.

Note.—Applications for the return of documents (or of certified copies) are free of C. F. stamps (*B. G. G.* 1-368-1887). But if the period of appeal is not expired, copies may be retained at applicant's expense (G. R. 4492-98).

FORM A (Rule 17).

NOTIFICATION OF SETTLEMENT FOR THE BOMBAY PRESIDENCY EXCLUDING SIND.

(Notice under sections 102 and 103, Land Revenue Code, 1879).

For Revised Settlements.

(For original settlements and revised settlements when the basis of classification is changed see notes below.)

Whereas the Governor of Bombay in Council has been pleased to sanction, under section 102 of the Bombay Land Revenue Code, 1879, the levy of assessments for the revised Settlement, which have been fixed under the provisions of sections 100 and 101 of the said Code in the case of such lands as are now actually used for the purposes of agriculture alone and in the case of unoccupied cultivable lands (but excepting lands classed as *pot kharab*) within the village of of the taluka it is hereby declared under section 102 of the said Code that the said assessments calculated as noted below shall henceforth be leviable *in accordance therewith and shall be fixed for a term of years from to*

Class of land.	Approximate increase or decrease in the rupee of existing assessment. annas pies
Dry-crop	
Rice, etc.	

2. Notice of the same is hereby given under section 102 of the said Code to all holders of land in respect of which the assessments have been *sanctioned* [approved].

3. By this notice the Revised Settlement shall be deemed to have been introduced in the aforesaid village.

4. But in the case of land which may hereafter be brought under irrigation by the use of water the right to which vests in Government or which is supplied from works constructed and maintained by, or at the instance of, Government, or in the case of land which may be supplied with an increased amount of water from works constructed, repaired or improved at the cost of the State, Government reserve the right of imposing an extra cess or rate, or of increasing any existing rate, for the use of water supplied or increased by such means, whether under the provisions of the Bombay Irrigation Act, 1879, or otherwise.

5. In addition to the fixed assessment, a cess not exceeding such rate as may be allowed by law will be levied under the Bombay Local Fund Act, 1869, or other law for the time being in force, for the purpose of providing funds for expenditure on objects of local public utility and improvement.

6. The reservations respecting the right of Government to trees as made by any general notification at the time of, or after the Survey-Settlement and reproduced in the margin, or as made by any express order at the time of Survey Settlement and recorded in the Settlement Records, are hereby continued. All other rights over trees are conceded to occupants.

Note 1.—In cases of original settlements the following changes should be made in the above form :—

(1) Substitute "original" for "revised" occurring in line 3 of paragraph 1 and in line 1 of paragraph 3.

(2) After the word "assessments" in line 7 of paragraph 1 add "as shown in the accompanying Akarband" and omit "as noted below."

(3) For the words "Approximate increase or decrease in the rupee of existing assessments" in paragraph 1 substitute "Maximum Rates.

Rs. as. "

(4) Substitute the following for paragraph 6:—

"6. The right of Government to trees standing in lands which are now occupied is hereby conceded to the occupants thereof subject to the general excep-

tions entered in the margin and the special exceptions inscribed in the Settlement Records."

Note 2.—In cases of revised settlements in which the classification basis is altered the following changes should be made in the above form :—

(1) *After the word* "assessments" *in line 7 of paragraph 1 add* "as shown in the accompanying Akarband" *and omit* "calculated as noted below."

(2) *For the words* "approximate increase or decrease in the rupee of existing assessment" *in paragraph 1 substitute* "Maximum Rates.

Rs. as. "

Note 3.—This form was finally confirmed in G. R. No. 3012 of 1920.

"FORM AA (Rule 17).

NOTIFICATION OF SETTLEMENT FOR SIND.

(Notice under sections 102 and 103 of the Bombay Land Revenue Code, 1879).

For Revised Settlements.

Whereas the Governor in Council has been pleased to sanction, under section 102 of the Bombay Land Revenue Code, 1879, the levy of assessments for the revised settlement in the case of such lands as are now actually used for the purpose of agriculture alone and in the case of unoccupied cultivable lands within the village of in the Taluka of the District. Now, it is hereby declared under section 102 of the said Code that the said assessments as noted below shall hereafter be leviable in accordance therewith and shall be fixed for a term of years commencing with the revenue year and ending with the revenue year.

Class of cultivation.	Sanctioned rates per acre.		
	Flow	Lift.	Combined Flow and Lift
	Rs. a.	Rs. a.	Rs. a.
Rice ...			
Sugarcane ...			
Cotton ...			
Tobacco ...			
Other Kharif ...			
Rabi Wheat ...			
Rabi Oil-seeds ...			
Leguminous crops (Kharif or Rabi) ...			
Huris ...			
Gardens ...			
Watered Dubari ...			
Unwatered Dubari ...			
Adhawa ...			
Barani ...			
Cultivation on river side of bund ...			

2. Notice of the same is hereby given under section 102 of the said Code to all holders of land in respect of which the assessments have been sanctioned.

3. By this notice the revised settlement shall be deemed to have been introduced in the aforesaid village."

(G. R., R, D., No. 557-B. dated 5-7-32)

FORM B [Rule 29 (1)].

A FORM OF NOTICE UNDER SECTION 37 (2), AND SUMMONS UNDER SECTIONS 189-190.

To

A. B.

Whereas (*here describe the property or right in or over any property*) is claimed by Government (or by C. D. against Government) notice is hereby given that an enquiry will be held by me in order to decide the said claim.

You are hereby required to attend before me either in person or by a duly authorized agent at o'clock of the noon (at the site in dispute or) at my office (camp at in the taluka) on the day of 19 at which time and place an enquiry into the same claim will be made.

And you are hereby required to produce before me at the above-named time and place any documents or evidence you may wish to be heard.

If you fail to attend in person or by a duly authorized agent in pursuance of this notice the abovementioned claim will be decided in your absence and you will not afterwards be entitled to be heard with respect thereto, except in an appeal filed within 60 days or in a suit civil if filed within one year from the date of my decision.

Dated this day of 19

(Signed)

Designation of Officer.

FORM C [Rule 29 (2).

Whereas in accordance with a notice duly issued and served under rule 29 (1) of the Land Revenue Rules an enquiry was held by me on and an order was passed on

Notice is hereby given to all persons concerned and to (*here specify the person to whom this notice is directed*) that my decision and order is that:—(*here summarise the order and define the property or right to which it relates*).

You are not entitled to be heard by me in respect thereof. After my decision has been communicated to you, there remain only two ways by which you can get it altered if you are dissatisfied with it, namely:—

(*i*) You must within 60 days of the date of my decision appeal to (specify the proper appellate authority), and again to the next higher revenue authority, or

(*ii*) within one year from the date of my decision you may (without recourse to the appeals above detailed) and notwithstanding anything contained in section 11 of the Bombay Revenue Jurisdiction Act, 1876, file a suit in the proper Civil Court.

A suit filed more than a year from the date of my decision or from the date of the decision of the last of the appeals if you make them cannot be entertained by any Court.

Dated this day of 19

(Signed)

Survey Officer,
or
Collector.

FORM D (Rule 32).

FORMS OF SANAD FOR REVENUE-FREE GRANTS OF LAND FOR RELIGIOUS, CHARITABLE OR EDUCATIONAL EDIFICES OR INSTITUTIONS.

(SANCTIONED BY G. R. 7010 of 1905).

(To be used where the land is granted by Government.)

To

A. B.

Whereas Government have been pleased to grant revenue-free to you, *A. B.*, the possession of the below-mentioned piece of land situated in the village of in the taluka for the purpose of

(namely)—

All that piece of land bounded on the North by on the South by , on the East by , and on the West by , and measuring from North to South , and from East to West , comprising square in superficial area, be the same more or less, and bearing No. in the Land Records.

It is hereby declared that the said land shall be continued for ever / for a term of years free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said , [(*a*) on the condition that neither the said land nor any building erected thereupon shall at any time, without the express consent of Government, be diverted either temporarily or permanently to any other than the aforesaid purpose, and that no change or modification shall be made of such purpose, and that in the event of any such unauthorized diversion, change or modification being made, the said land shall thereupon, in addition to the assessment to which it becomes liable under section 48 of the Bombay Land Revenue Code, 1879, become liable to such fine as may be fixed in this behalf by the Collector under the provisions of section 66 of the said Code, or other corresponding law for the time being in force relating to the recovery of land revenue, as if the land, having been assessed for purposes of agriculture only, had been unauthorizedly used for any purpose unconnected with agriculture (*a*)] and in any such event as aforesaid, or in the event of the land being notified by Govern-

ment for acquisition under Act I of 1894, it shall be lawful for Government, on causing six months' previous notice in writing to be given to the said holder or manager, to take one of the two following courses (namely), either—

(1) to require that the said land be vacated and delivered up to Government free of all claims or incumbrances of any person whatsoever,

or (2) to resume and take possession of the said land and any buildings erected or works executed thereon, free of all claims and incumbrances of any person whatsoever, on payment of compensation not exceeding the following amount, namely:—

(*a*) the amount (if any) paid to Government for this grant, and

(*b*) the cost or value at the time of resumption, whichever is the less, of any buildings or other works authorizedly erected or executed on the said land by the said grantee.

This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products and of full liberty of access for the purpose of working and searching for the same, with all reasonable conveniences.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor of Bombay in Council, by the Collector of this day of 19

Seal of the Collector

(Signed)

Collector.

**If there be any further conditions, add here the words " and subject to the following further special conditions, namely:—"

The Commissioners suggest a further condition:—

" that an open space shall be kept free from any building whatever, as marked on the plan hereto appended as land not to be built upon. "

FORM E (Rule 35).

(To be used where the land is not granted by Government.)

To

A. B.

Whereas, in consideration of your having built (or undertaken to build, *as the case may be*)* on the piece of land hereinafter described, which is your property, Government have been pleased, at your request, to exempt the said piece of land from liability to rent or land revenue.

It is hereby declared that the said land shall be continued $\frac{\text{for ever}}{\text{for a term}}$ of ——— years free of all claim on the part of Government for rent or land

The nature of the building and the extent of the public interest in it should be clearly set forth, as for instance " a temple with a Dharmashala attached, for the use of the Digambar Jain community."

revenue to whoever shall from time to time be the lawful holder or manager of the said , [Insert "(*a*) . . . (*a*)" as in Form D.] [If there be any further special conditions, here add: "and subject to the following further special conditions, namely":—]

The piece of land herein referred to is situated in the village of in the taluka, and is bounded on the North by , on the South by , on the East by and on the West by , and comprises about square in superficial area, be the same more or less, and bears No. in the Land Records.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor of Bombay in Council, by the Collector of , this day of 19

Seal of the Collector	(Signed) Collector.

FORM F (Rules 37, 43 and 52).

FORM OF AGREEMENT* TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS.

To the Mamlatdar of

I, *A. B.*, inhabitant of in the taluka, hereby accept the right of the occupation of the land comprised in Survey No. (or of the building site hereinbelow described, or otherwise as the case may be), in the village of in the taluka, and I pray that my name be entered in the Government records as the occupant of the said land.

The said land has been granted to me subject to the provisions of the Bombay Land Revenue Code, 1879, and of rules in force thereunder, in perpetuity†, from the day of 19 ; ‡ and I undertake to pay the land revenue from time to time lawfully due in respect of the said land (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue as may be lawfully imposed

* This agreement is (so far as it is application) exempt from Court fee; item O-24 of Notification of the Govt. of India, 4650, 10.9.89. It is also exempt from stampduty; item A-9 of Notification of the Govt. of India 3616-Exc., 16.7.09 R. 8022, 17.8.

† When not granted in perpetuity delete the words and insert "until the day of 19 ".

‡ When land is sold for a fixed period free of land revenue the agreement should end here, and the second endorsement may be omitted.

thereupon under the orders of Government or otherwise as the case may be).

Dated the day of 19 at

Written by (Signed) *A. B.*

We declare that *A. B.*, who has signed this agreement, is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *C. D.*

E. F.

We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) G. H. Patel.

I. J., Village Accountant.

"FORM F-1 Rule 37 (4)

FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS OF LAND ON IMPARTIBLE TENURE.

To the Mamlatdar of

I, A. B., inhabitant of in the taluka, hereby accept the right of occupation of the land comprised in survey No. in the village of in the taluka and I pray that my name be entered in the Government records as the occupant of the said land.

The said land has been granted to me in perpetuity from the day of 19 , subject to (1) the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder and to (2) the further condition that I, my heirs, assigns and legal representatives shall not at any time by partition, inheritance, lease, mortgage or otherwise howsoever transfer the said land except as a whole or allow any portion of it to be cultivated, used, or occupied by any other person so as to divide it.

If I fail to perform any of the aforesaid conditions I shall be liable without prejudice to any other penalties that I may incur under the said Code, and the rules made thereunder, to have the said land summarily forfeited by the Collector, and I shall not be entitled to claim compensation for anything done or executed by me in respect of the said land.

*And I undertake to pay the land revenue from time to time lawfully due in respect of the said land (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from

* When land is sold for a fixed period free of land revenue the agreement should end here, and the second endorsement may be omitted.

(G. R. 4702-24-III of 12-3-1931).

In Sind the Collector is empowered to allow division of survey number if in view of any special circumstances, he considers it necessary to do so.

(G. R. 4702-24 III of 8-3-1932).

payment of land revenue to pay such revenue as may be lawfully imposed thereon under the orders of Government or otherwise, as the case may be).

Dated the day of 19

Written by

(Signed) A. B.

We declare that A. B. who has signed this agreement is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) C. D.

(,,) E. F.

We declare that, to the best of our knowledge and from the best information which we have been able after careful enquiry to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time on the above land.

(Signed) G. H.
Patel.
I. J.,
Village Accountant."

FORM G-1 (Rule 39) (as amended by G. 11514—11)

RECLAMATION LEASE.

Form of lease to be granted to an occupant who takes up land on special terms.

This is to certify that, with the previous sanction of the Commissioner (in Sind, *or as the case may be*), of has been granted the right of occupation of survey No. in the village of in the taluka for a term of years from the day of 19 , subject to the payment of land revenue as follows (*viz.*):—

(*a*) for the first years, A. D. 19 to 19 , nil;

(*b*) for the next years, A. D. 19 to 19 , a reduced assessment of Rs.

The reason for the grant of the said land on the favourable terms aforesaid is that the lessee has undertaken, at his own expense, within a period of from the day of 19 , to carry out to the satisfaction of the following work, whereby the cultivation of the said survey No. will be improved (or rendered feasible *or otherwise as the case may be*), *viz.*:—

(*Here describe as accurately as possible the work to be executed*)

The conditions on which this lease is granted are:—

(1) That the lessee shall completely execute the work aforesaid to the satisfaction of the said within the period above mentioned;

(2) that he shall keep the said work when executed in good order and repairs to the satisfaction of the said until the expiry of this lease;

(3) It shall not be lawful to the lessee to partition, bequeath, alienate, asign, mortgage or otherwise charge or encumber any portion of the said land less than the area—hereby fixed by the Collector as the economic holding, nor shall any such portion of the said land be liable to seizure, requestration, attachment, sale or partition by process of a Court:—

(4) that if the lessee shall fail th perform any of the aforesaid conditions he shall be liable, notwithstanding anything hereinbefore written, to pay the full assessment of the land comprised in this lease amounting to Rs. , for the year or years during which such failure shall take place and it shall be open to the Collector either to cancel the remaining portion of the lease and re-enter upon the land, or to levy full assessment from the lessee for every subsequent year of the term of this lease;

(5) that provided the lease shall not have previously determined under the last preceding condition, the lessee shall be entitled, on the expiry of this lease, to retain th occupation of the land herein comprised, subject to the payment of the full assessment from time to time fixed thereupon under the law and rules in force in this behalf, on his executing an agreement in the form prescribed for persons who intend to become occupants.

This lease is executed on behalf of the Secretary of State for India in Council, by order of Government of Bombay in Council, by the Collector of and under his seal of office, this day of 19

Seal (Signed)
Collector.

I the aforesaid lessee do hereby accept this lease in the terms and conditions therein mentioned.

Signed by
lessee.

in the presence of—

Note.—Form G-I is prineed as amended by Draft Notification No. 4702-24, dated 1st June 1933.

FORM G-2 (Rule 40).

RECLAMATION LEASE.

THIS INDENTURE made the day of 19 BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Lessor) of the one part and inhabitant of hereinafter called the lessee of the other part WITNESSETH that the Lessor doth hereby lease unto the Lessee all the Salt Marsh Lands situated in the village of in the Registration Sub-district of and in the taluka the Survey Numbers, Area and Boundaries of which are set forth in Schedule A hereunder written which said Lands were late in the occupation of and are now in the occupation of

and are delineated in the Plan attached hereto and signed by the Collector of (hereinafter referred to as the Collector) TO HOLD the said Lands unto the Lessee for the term of 999 years from the day of 19 , paying during the said term unto the Lessor for the said lands save such portion as may be appropriated for Public Roads which portion shall be exempt from payment the yearly Rents following that is to say for the first ten years of the said term the rent of One Pie if demanded and for the next 20 years, *viz.*, from the day of 19 , till the day of 19 a yearly sum equal to Four annas *per* Acre in such Instalments on such Dates and to such Person as may be from time to time prescribed and designated by the Collector and for such Period if any as shall intervene beeween the day of 19 , and the date of the first settlement of Assessment hereinafter provided for the yearly sum hereinbefore lastly reserved payable in the manner hereinbefore mentioned AND from and after the first settlement of assessment hereinafter provided for such sum of Land Revenue as under the Laws or Rules having the force of Law for the time being in force in respect of Lands held under Government by ordinary Occupants shall from time to time be found to be payable AND the Lessee hereby covenants and agrees with the Lessor in manner following that is to say FIRST that the Lessee shall at his own expense and with due diligence completely reclaim the lands hereby leased so as to be in a state fit for use for agricultural purposes AND shall so reclaim at least one-half of the said lands within ten years and the whole thereof within twenty years from the day of 19 , respectively and shall maintain such Reclamation during the residue of the term hereby granted AND shall not until the whole of the said Lands shall have been completely reclaimed and rendered cultivable assignd or underlet the said Lands or any portion thereof or charge or receive any Tax or Fee for Cattle-grazing upon any portion thereof and that the lessee shall not at any time partion, bequeath, alienate, assign, mortgage or otherwise charge or encumber or allow to be cultivated, used or occupied by any other person, any portion of the said Land less than the Area—hereby fixed by the Collector as an economic holding in respect of the said lands, nor shall any such portion of the said land be liable to seizure, requestration, attachment, sale or partition by process of a Court. PROVIDED that if any Officer of Government duly empowered in this behalf by the Government of Bombay shall certify in writing that any portion of the said Lands is unreclaimable such portion shall be excluded from the operations of the covenants hereinbefore contained. Provided further that the lessees shall be at liberty during the first ten years to relinquish any portion of the said lands which he cannot reclaim : and such portion shall thereupon be excluded from the operation of the covenants herein contained (R. 372-B-17th April 1923) SECOND that the Lessee shall at his own expense (*a*) keep open the several Roads mentioned and described in Schedule B hereunder written and delineated in the Plan hereunto annexed (*b*) provide and keep in good order to the satisfac-

* The portion in brackets was inserted as per Draft Notification No. 4702-24, dated 1st June 1933 which would be taken into consideration on or after 1st August 1933.

tion of the Collector such water-ways in and along the Lands hereby leased as may from time to time be required by the Collector (*c*) erect such new Boundary-marks upon the said Lands as may from time to time be required by the Collector and maintain and keep in good repair to the satisfaction of the Collector all such new Boundary-marks as well as all those at present existing thereon, THIRD that the said Lessee shall pay the rents hereinbefore respectively reserved at the times and in manner hereinbefore provided for payment of the same respectively and that whenever any Instalment of the said Rents respectively shall be in arrear, it shall be recoverable from the Lessee as an arrear of Land Revenue under the provisions of the Law for the time being in force in that behalf AND the Lessee shall also pay all Rates, Taxes and other Outgoings (if any) which shall at any time during the continuance of this Lease be payable in respect of the said Premises or any part thereof FOURTH that from and after the day of 19 the Lands hereby leased shall be liable to be from time to time surveyed and assessed to the Land Revenue under the Laws or Rules having the force of Law for the time being in force in respect of Lands held under Government by ordinary occupants and thenceforward during the residue of the term hereby granted the Lessee shall hold the said Lands subject to all the provisions of such Laws and Rules and subject also to such of the Covenants and Provisions of this Lease as shall then be capable of continuing effect PROVIDED ALWAYS AND IT IS HEREBY AGREED that if and whenever there shall be a breach by the Lessee of any Covenant, Condition or provision herein contained the Lessor may re-enter upon the said Lands or upon part thereof in the name of the whole and thereupon this Lease shall determine AND that in case default shall be made in reclaiming the half or the whole of the Lands within the periods respectively hereinbefore prescribed in that behalf the Lessor may re-enter upon the said Lands and determine this Lease under the power in that behalf hereinbefore contained AND that if in the opinion of the Collector (whoe decision shall be final) the reclamation is not carried on with due diligence during the two years ending on the day of 19 the Lessor may on or after the said day re-enter upon the said Lands and determine this Lease under the power in that behalf hereinbefore contained AND that notwithstanding anything hereinbefore contained if at any time any portion of the said Lands (other than such portion as may be appropriated for Public Roads) is after being reclaimed used for any purpose unconnected with agriculture, such portion shall be liable to such assessment or altered assessment as may be leviable under the Law or Rules having the force of Law for the time being in force in respect of land which is held for agricultural purposes and subsequently used for purposes unconnected with agriculture and such assessment or altered assessment shall be leviable notwithstanding that any of the periods hereinbefore specified shall not have elapsed AND that the right of the said Lessor to all Mines and Mineral Products and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences shall be reserved.

AND IT IS LASTLY AGREED that the word "Lessor" in this Lease shall mean the Lessor and his Successors and Assigns and the word "Lessee" shall mean the Lessee and his Legal Representatves.

IN WITNESS WHEREOF
Esq., Collector of , has, by order of the Governor of Bombay in Council, hereunto set his hand and affixed his official seal on behalf of the said Secretary of State in Council, and the Lessee has hereunto set his hand the day and year first above written.

Schedule A above referred to :

Schedule B above referred to :

Signed by the above name

in the presence of

Seal of the Collector.

Signed by the above named

in the presence of

FORM H (Rule 43).

ALTERNATIVE FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS, IF THE COLLECTOR SO REQUIRES.

Agreement.

To

The Mamlatdar of

I, A, B., of in the said taluka, agree on behalf of myself and my assigns to occupy the land specified in the Schedule

appended hereto on the conditions stated below, and I pray that my name may be entered in the land records as occupant of the said land.

Conditions.

1. I will pay the land revenue from time to time lawfully due in respect of the said land, to wit: as assessment the sum of Rs. (being at the rate of per) for the period of years commencing on , and thereafter I will pay such assessment for such further periods as may from time to time be fixed by lawful authority.

2. Within the period of two years from the date hereof or within such further period as may be fixed by lawful authority, I will erect on the said land one or more buildings of a permanent character.

3. I will keep as an open space, free from any buildings whatever, the piece of land marked on the plan appended hereto as the land not to be built upon.

4. The provisions of the Bombay Land Revenue Code, 1879, and all rules and orders for the time being in force thereunder, shall apply to my occupation of the said land, so far as the same may be applicable and not inconsistent with these conditions.

5. Subject to the foregoing conditions I shall be entitled to occupy the said land in perpetuity, but if I contravene any of foregoing conditions the Collector may declare the said land forfeited to Government and may dispose of the same in any way he may deem fit, free from any claim by me or by any person holding through or under me.

The Schedule.

Dated the day of 19

Written by Signed.

[Declaration, if necessary.]

Then follows the Plan.

Note.—**This agreement is exempt from Court-fee under item C (24) of the Notification of the Government of India, 4650—10-9-89.**

It is also exempt from the payment of stamp duly, under item A-9 of Notification of Government of India, No. 3616-Exc., 16-7-09.

FORM HH.

Form of agreement to be passed by persons intending to become occupants of land included in a development scheme or in other special cases (*vide* Rule 43)

AGREEMENT.

The Special Mamalatdar,
The Mamalatdar, taluka Bombay Suburban District,

I, AB, of agree on behalf of myself and my heirs, executors, administrators and assigns to occupy the land specified in the schedule appended hereto (hereinafter referred to as the said land) on the conditions stated below, and I pray that my name may be entered in the land records as occupant of the said land :—

Conditions.

(1) I will pay the land revenue from time to time lawfully due in respect of the said land to wit: as assessment the sum of Rs. (being

at the rate of per or at such lower rate as is leviable under the rules for the time being in force and applicable to such land) for the period of years commencing on and thereafter, I will pay such assessment for such further periods as may from time to time be fixed by lawful authority.

(2) *Use.*—I will use the said land only for building purposes of the nature specified in condition (3) of this agreement.

(3) *Building.*—I will erect and complete on the said land* of a substantial and permanent description; I will in regard thereto duly comply in every respect with the building regulations contained in clauses , etc., of the second schedule hereto;† (and I will not use, or permit the use of, any of the buildings erected or to be erected on the said land as a shop, or carry on in any of the said buildings any trade or business, other than).

‡(4) *Reservation of margin.*—If at any future date the Collector shall give me notice in writing that a strip from the margin of the said land not more than feet in depth is required by Government for the purposes of a road, I will, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such strip to the Collector in consideration of receving from Government in exchange and as full compensation therefor a sum equivalent to ( ) times the assessment proportionately payable upon the strip so surrendered.

Provided that, where the materials of any gate, wall, pavement or other such authorised erection or construction on such strip cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to me as the Collector may deem fit.

(5) *Liability of rates.*—I will pay all taxes, rates and cesses leviable in respect of the said land.

(6) *Penalty clause.*—The Collector may, without prejudice to any other penalty to which I may be liable under the provisions of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code"), direct the removal or alteration of any building or structure erected or used contrary to the provisions of this agreement within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from me as an arrear of land revenue.

(7) *Code provisions applicable.*—The provisions of the said Code and all rules and orders for the sime being in force thereunder shall apply, to my occupation of the said land, so far as the same may be applicable and not inconsistent with the conditions of this agreement.

(8) Subject to the foregoing conditions I shall be entitled to occupy the said land in perpetuity, but if I contravene any of the foregoing conditions, the Collector may declare the said land forfeited to Government and may dispose of the same in any way he may deem fit, free from any claim by me or by any person holding through or under me.

---

* Here insert description of the buildings such as a "residential bungalow and outhouses."

† To be scored out in areas where business premises are permitted.

‡ To be omitted where not required.

MAP.

Schedule.

Length and Breadth		Total Superficial area	Boundaries				Remarks
North to South	East to West		North	South	East	West	

Schedule II.

(The number of the conditions which are applicable should be entered in condition 3 of the grant; and special conditions should be inserted in continuation.)

1. Buildings may be erected only within the area marked on the map annexed and the remaining area of the said land shall be left as an open space.

2. Three-quarters of the said land shall be left open to the sky.

3. No latrine, cesspool or stables shall be constructed on the said land in any place which shall not have been approved for such purpose by the Collector or an officer authorised by him.

4. No building shall be erected in the said land with more than a ground floor and one upper storey.

5. The building erected on the said land shall be used for residential purposes only.

6. No building erected on the said land shall be used as a factory or as a place for carrying on an offensive trade.

7. The grant shall be subject to the following special conditions:-

(*a*)

(*b*) etc., etc.

Dated the day of at

(Signed) A. B.

We declare that AB, who has signed this agreement, is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto, in our presence.

(Signed) E. F.
G. H.

N. B.—1. **This document need not be registered.**

2. This document is exempt from stamp duty.

FORM I [Rules 37 (3) and 43 (3)].

CLAUSE FOR INALIENABLE TENURE ADDITIONAL TO FORMS F AND H OR OTHER AGREEMENTS.

In cases where the land is granted subject to the condition that the occupant shall not transfer it in any way to another person without the sanction of the Collector, the following clause should be added in the agreement to be taken from him:—

"The said land has been granted to me subject to the condition to which I hereby assent, namely, that I, my heirs, executors, administrators and approved assigns may not at any time lease, mortgage, sell, or otherwise howsoever encumber the said land or any portion thereof without the previous sanction in writing of the Collector."

"FORM II [Rule 37 (4)]

FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS OF LAND ON THE INALIENABLE TENURE.

To the Mamlatdar of

I, A. B., inhabitant of in the taluka, hereby accept the right of occupation of the land comprised in survey No. or of the building site hereinafter described or otherwise, as the case may be), in the village of in the taluka, and I pray that my name be entered in the Government records as the occupant of the said land.

The said land has been granted to me in perpetuity from the day of 19 subject to the conditions hereinbelow mentioned and to the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder;

* And I undertake to pay the land revenue from time to time lawfully due in respect of the said land (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue, as may be lawfully imposed thereon under the orders of Government or otherwise, as the case may be).

The said land has been granted to me subject also to the further condition to which I hereby assent, namely, I, my heirs, assigns and legal representatives shall not at any time—

(1) partition the said land;

or

(2) lease, mortgage or otherwise howsoever encumber the said land or any portion thereof without the previous sanction of the Collector, which shall not be given except in respect of the whole land.

If I fail to perform any of ths aforesaid conditions I shall be liable without prejudice to any other penalties that I may incur under the said Code, and the rules made thereunder, to have the said land summarily forfeited by the Collector, and I shall not be entitled to claim compensation for anything done or executed by me in respect of the said land.

Dated the day of 19 at

Written by

(Signed) A. B.

* When land is sold for a fixed period free of land revenue this paragraph should end here, and the second endorsement may be omitted.

In Sind the Collector is empowered to allow division of a survey No. if in view of any special circumstances, he considers it necessary to do so.

We declare that A. B. who has signed this agreement is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) C. D.
(") E. F.

We declare that, to the best of our knowledge and from the best information which we have been able after careful enquiry to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) G. H.,
Patel.
I. J.,
Village Accountant.

(*G. R. No. 4702/24. III of* 12-*3-1931*).

FORM J (Rule 46).

FORM OF AGREEMENT* FOR EXCHANGE TO BE EXECUTED BY VILLAGERS REMOVING TO A NEW VILLAGE-SITE.

Agreement executed the day of 19 by *A. B.* resident of in the taluka :

Whereas Government have been pleased to sanction a change being made in the position of the site of the village of in the registration sub-district of , and in pursuance of such sanction the following plot of ground has been allotted to me in the new site in exchange for the ground held by me in the old site, namely, the piece of land bounded as follows, that is to say on the North by , on the South by , on the East by , on the West by , measuring in length from North to South, and in length from East to West, and comprising about square in superficial area and bearing No. in the Land Records.

I do hereby agree, in consideration of the allotment to me of the new piece of land aforesaid, as follows, namely :—

(1) That all my right, title and interest in any land whatsoever, situate within the old site of the said village, shall be deemed to be, and is hereby, surrendered to Government, together with the trees standing thereon and all rights over or other benefits arising out of or enjoyed by me in respect of the said land :

(2) That I shall hold the piece of land aforesaid in the new site from the date of this agreement on the same terms and with the same rights and subject to the same liabilities as would apply to my tenure

*The stamp duty for this agreement is reduced to four annas ; item 10 of Notification of the Government of India, 3616-Exc., 16-7-09, G. R 7317-09.

of the ground held by me in the old site, if I continued to be the holder thereof,†
In witness whereof I have hereto set my hand the day and year aforesaid.

Written by (Signed) *A. B.*
Signed and delivered by in our presence.

FORM K (Rule 54).

FORM OF WRITTEN PERMISSION TO OCCUPY LAND TO BE GIVEN BY A MAMLATDAR UNDER SECTION 60.

Permission is hereby given to *A. B.*, inhabitant of in the taluka, to occupy Survey No. (*or* the building-site hereinbelow described *or otherwise as the case may be*) in the village of in the taluka, in accordance with the Sanad granted (*or*, upon the conditions sanctioned by the Collector in his order No. dated).

Dated the day of 19 at

Seal

(Signed)
Mamlatdar.

Form KK (*Rule 54 Bombay Suburban*).

Permission is hereby given to you AB, inhabitant of , to occupy the building site hereinbelow described in the village of in the taluka in accordance with the conditions sanctioned by the Collector and accepted by you in the agreement dated the day of 19 subject to which this permission is given.

Description of Land.

Plot No. in the Suburban Scheme No.
Dated the day of 19 ,
at

Seal

(Signed)
Mamlatdar.

FORM L (Rule 74).

FORM OF* NOTICE OF RELINQUISHMENT.

To the Mamlatdar of
I, A. B., inhabitant of in the taluka,
(the $\frac{\text{occupant}}{\text{holder}}$) of Survey No. (or sub-division

† In omitting a clause reserving the right to impose land revenue if hereafter thought fit, Government nevertheless do actually reserve that right. (G. Rs. Nos. 9021 and 10096-85—see Note 27 to Rule 14).

*No Court-fee is chargeable, *vide* Court-fees Act, VII of 1870, section 19 (XI)

No.) or the building-site hereinbelow described (*or otherwise as the case may be*), in the village of in the taluka, hereby give notice under section 74 of the Bombay Land Revenue Code, 1879, that it is my intention to relinquish and I hereby do relinquish the said Survey No. (or building-site, etc.) at the end of the current year,† subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any person (other than Government or the $\frac{\text{occupant}}{\text{holder}}$)

Dated this day of 19 at

Written by

(Signed) *A. B.*

FORM M.

Form of sanad in cases where the assessment on land appropriated to building purposes is altered under section 48.

WHEREAS appplication has been made to the Collector of (hereinafter referred to as the Collector which expression shall include any officer whom the Collector shall appoint to exercise and perform his powers and duties under this grant) under section 65 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as " the said Code " which expression shall where the context so admits include the rules and orders thereunder) by inhabitant of being the registered occupant of Survey No. in the village of in the taluka hereinafter referred to as " the applicant " which expression shall where the context so admits include his heirs, executors, administrators and assigns) for permission to use for building purposes the plot of land (hereinafter referred to as the " said plot ") described in the first schedule hereto and indicated by the letters on the site plan annexed hereto, forming part of Survey No. and measuring be the same a little more or lsss.

When used under rule 51 for land already occupied for agricultural purposes within certain surveyed cities the period for which the assessment is leviable will be ordered to coincide with the expiry of 99 years' period running in that city. (G. R. No. 9508-24—23-8-27.)

Now this is to certify that permission to use for building purposes the said plot is hereby granted subject to the provisions of the said Code, and on the following conditions, namely:—

(1) *Assessment.*—The applicant in lieu of the assessment heretofore leviable in respect of the said plot shall pay to Government on the day of in each year an annual assessment of Rupees (Rs.) during the thirty (30) years commencing on the day of 19 , or in composition therefor a lump sum of Rupees (Rs.) being twenty times the said annual assessment; and on the expiry of the said period of thirty years, such revised assessment as may from time to time be fixed by the Collector under the said Code.

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†These notices must be given before the 31st March, or such other date as Govt. prescribe under sec. 74 for each district.

" Provided that where the applicant is a Co-operative Housing Society, it shall be entitled to such exemption from the payment of altered assessment in whole or in part as is permissible under proviso (2) to clause (*a*) of rule 86. "

(This Proviso was added by G.R., R. D., NO. 620-38, dated 14-10-32).

(2) *Use.*—The applicant shall use the said plot only for building purposes of the nature specified in condition (3) of this sanad.

(3) *Building Time Limit.*—The applicant shall within three (3) years from the date hereof, erect and complete on the said plot* of a substantial and permanent description, and shall in regard thereto duly comply in every respect with the building regulations contained in clauses etc., of the second schedule hereto.

" From the date of permission " has been suggested by one Commissioner: but there *ought* not to be any material difference and the " permission " can only date from its formal expression in the Sanad. Government did not accept the suggestion. (R. 1432-24-3-1-25).

(4)‡ *Reservation of Margin.*—If the Collector shall give the applicant notice in writing that a strip of land from the margin of the said plot not more than feet in depth, is required by Government for the purposes of a road, the applicant shall, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such strip of land to the Collector in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to ( ) times the assessment proportionately payable upon the strip so surrendered.

An agreement executed before 1913 was by compromise modified and recast in G. R. No. 9955—9-2-24.

Provided that, where the materials of any gate, wall, pavement or other such anthorized erection or construction on such portion cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to the applicant as the Collector may deem fit.

(5) *Liability for Rates.*—The applicant shall pay all taxes, rates and cesses leviable on the said land.

(6) *Penalty clause.*—The Collector may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, direct the removal or alteration of any building or structure erected or used contrary to the provisions of this grant within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from the applicant as an arrear of land revenue.

(7) *Code provisions applicable.*—Save as herein provided, the grant shall be subject to the provisions of the said Code.

(8) *Execution.*—The applicant shall bear all costs incurred in the preparation, execution, stamping and registration of these presents.

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*Here insert description of the buildings such as " a residential bungalow and out-houses. "

‡ Omit this condition if not required. And see Note 1.

MAP.

Schedule I.

Length and Breadth		Total Superficial area	Forming (part of) Survey No or Hissa No.	Boundaries				Remarks
North to South	East to West			North	South	East	West	

Schedule II.

(The numbers of the conditions which are applicable should be entered in condition 3 of the grant : and special conditions should be inserted in continuation).

1. The applicant may build on the area marked on the map annexed and shall leave the remaining area of the said plot as an open space.

2. of the said plot shall be let open to the sky.

3. Any latrine, cesspool or stables constructed on the said plot shall, if any place shall have been set apart in the map annexed for such purpose be constructed in such place and not elsewhere.

4. No building shall be erected in the said plot more than feet in height.

5. The building erected on the said plot shall be used for residential purposes only.

6. No building erected on the said plot shall be used as a shop or a factory or as a place for carrying on an offensive trade.

7. The grant shall be subject to the following special conditions:-

(*a*)

(*b*) etc., etc.

IN WITNESS WHEREOF the Collector of has hereunto set his hand and the seal of his office on behalf of the Secretary of State for India in Council; and the applicant has also hereunto set his hand this day the of 19

(Signature of applicant).

(Signatures and designations of witnessses).

Signature of Collector).

(Signatures and designations of witnesses).

(Seal of Collector).

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*

G. H.

N. B.—1. This document need not be registered [sec. 90 (1) (*d*), Act XVI of 1908] unless condition 4 is retained [sec. 17 (1) (*b*) *ibid*].

2. This document is exempt from stamp duty (Rule 7, G. of I. Notfn. 3616-Exc.-16-7-09) unless condition 4 is retained when it should be stamped under Article 55 of Schedule 1 to Act II of 1899. See also R. 7431-23. Form was sanctioned in G. R. 1291-20

FORM N [Rule 87 (*b*)].

Form of Sanad in cases where the assessment on land appropriated to non-agricultural purposes other than building is altered under section 48.

WHEREAS the land hereinafter described by measurement and by the boundaries specified in the schedule (and delineated in the map hereto appended) and forming (part of) Survey No. in the village of in the taluka of , entered in the name of and at present held by , resident of , has been hitherto assessed for purposes of agriculture at the rate of ; AND WHEREAS the said land has been used for a non-agricultural purpose, to wit for (*describe purpose*) (but not for building) and such assessment has thereby become liable under section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate :

Now this is to certify that under the provisions of the said Code, and rules in force thereunder the assessment of the amount to be paid annually as land-revenue on the said land has been fixed: for a term of years from the day of 19 , at the sum of Rs. (*figures*) [Rupees (*words*)] payable in each year of the said term in one instalment due on* in each year.

On the expiry of the said term, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment aforesaid will be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

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* Here insert the usual date of the Land Revenue first instalment or such other date as the Collector may fix (Rule 116).

Schedule hereinbefore referred to.

Length and Breadtth		Total superficial area	Forming (part of) Survey No. or Hissa No.	Boundaries				Remarks
North to South	East to West			North	South	East	West	

In witness whereof the Collector has hereto set his hand and the seal of his office this day of 19

Seal

Collector.

Note.—In such Sanads also the Collector has full power to impose conditions, which will be inserted after the schedule.

" FORM NI [Rule 87 (*b*)]

Form of Sanad in cases where the assessment on land temporarily appropriated to non-agricultural purposes other than building is altered under section 48.

Whereas the land hereinafter described by measurement and by the boundaries specified in the schedule (and delineated in the map hereto appended) and forming (part of) Survey No. in the village of in the taluka of entered in the name of, and at present held by , resident of , has been hitherto assessed for purposes of agriculture, at the rate of ; and whereas the said land has been used for a non-agricultural purpose, to wit for (describe purpose) (but not for a permanent building) and such assessment has thereby become liable under section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate:

Now this is to certify that under the provisions of the said Code and rules in force thereunder, the assessment of the amount to be paid as land-revenue on the said land, has been fixed for a term of from the day of 19 , at the sum of Rs. (figures) [Rupees (words)] payable in one instalment on

On the expiry of the said term the assessment aforesaid will be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

In case of a breach of any of the conditions of this Sanad the Collector may, without prejudice to any other penalty to which the holder of the said land may be liable under the provisions of the said Code, direct the removal or alteration of any structure erected or used contrary to the provisions of this Sanad within a time precribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from the holder as an arrear of land revenue:—

Schedule hereinbefore referred to.

Length and Breadth		Total superficial area	Forming (part of) Survey No. or hissa No.	Boundaries				Remarks
North to South	East to West			North	South	East	West	

In witness whereof the Collector has hereto, set his hand and the seal of his office this day of 19 .

Seal.

Collector.

Note.—The Collector has full power to impose any conditions he thinks fit. Such conditions will be inserted after the schedule for the erection of tempoary structures."

FORM O (Rule 104 and Rule 113).

RECORD OF RIGHTS.

A double-page form with sufficiently wide columns for (or cards in V. F. VII-XII ruled to contain) the following particulars :—

1. Serial Number.
2. Survey Number (if inam, the kind of inam).
3. Area.
4. Ordinary or Special Assessment and Judi.

5. Sub-division Number.
6. Area.
7. Assessment.
8. Judi or Special or Non-agricultural Assessment payable.
9. Occupant of Khalsa Land or Holder of Alienated Land.
10. Nature and origin of Title.
11. Other rights or encumbranees with names of right-holder or encumbrancer.
12. References to Mutation Diary, Form P.
13. Remarks.

FORM P (Rule 104).

Mutation Register.

A single page form with columns showing the following particulars :—

Serial No. of entry	Nature of right	Survey and anti-division Nos. affected	Initials or ramarks by testing officers
1	2	3	4

FORM Q (Rules 104 and 108).

Register of Disputed Cases.

Serial No.	Number in Form O. or P.	Survey No. and Hissa No. (or part).	Date of receipt of objection	Particulars of dispute with names	Orders of Mamlatdar or Collector
1	2	3	4	5	6

FORM R (Rule 113).

Now Combined with V. F. XII (Form 6) in card form.

FORM S (Rule 118).

NOTICE TO A DEFAULTER.

To *A B* residing at

You are hereby required to take notice that the sum of Rs. a. p. due by you on the as the* instalment of land revenue on the land held by you, of which full details can be obtained from the village Accountant (or otherwise as the case may be), in the village of in the taluka of has not been paid, and that, unless it is paid within ten days from the date of this notice together with the sum of annas, being the fee chargeable for this notice, complusory proceedings will be taken according to law for the recovery of the whole of the revenue still due by you on the said land, together with an additional penalty not exceeding one-fourth of the said arrears under section 148 of the Land Revenue Code.

Dated the day of 19

(Signed) Mamlatdar (or Aval Karkun). ‡

FORM T (Rule 120).

FORM OF AGREEMENT TO BE PASSED WHEN FORFEITED LAND IS RESTORED ON NEW TENURE.

Agreement.

To

The Mamlatdar of

I, A. B., inhabitant of in the Taluka hereby accept the right of occupation of the land comprised in Survey Number in the village of in the Taluka and I pray that my name may be entered in the Government records as the occupant of the said land.

The said land which has been forfeited for arrears of land revenue has been regranted to me subject to the provisions of the Bombay Land Revenue Code, 1879, and of the Rules in force thereunder in perpetuity† from the day of 19 ; and I undertake to pay the land revenue from time to time lawfully due in respect of the said land.

The said land has been regranted to me after forfeiture, subject to the condition to which I hereby assent in consideration of the regrant, namely, that I, my heirs, executors, administrators and approved assigns may not at any time lease, mortgage, sell or otherwise howsoever encumber the said land or any portion thereof without the previous sanction in writing of the Collector.

Dated the day of 19 at

Written by

(Signed) *A. B.*

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* " First " or " Second ", as the case may be.

‡ Authorised by G. R. No. 2459–83; 9263–11.

† When not granted in perpetuity delete the word and insert " until the day of 19 . "

We declare that *A. B.*, who has signed this agreement, is to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *C. D.*
E. F.

We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) *G. H.* Patel,
I. J., Village-Accountant.

FORM U (Rule 129).

(*Standard form R. M. 20*)

FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF ATTACHED PROPERTY.

(Under Section 165, L. R. C.)

Whereas the property of hereinunder specified has been attached on account of the Government assessment Rs. due by the said ; and whereas it is necessary to recover the said amount by sale of the said property, together with all lawful charges and expenses resulting from the said attachment and sale:

Notice is hereby given that on the day of 19 at o'clock A. M. A. B. the Mamlatdar of (or other person appointed) will, at in taluka in this district, sell by auction to the highest bidder and upon such conditions as to upset price and other conditions as are set out in the subjoined Schedule of Conditions of Sale, the right, title and interest of the said in the property hereinunder specified, and every power of disposing of the same or any of them or of the profits arising therefrom which the said may now consistently with the law exercise for his own benefit.

Movable Property.

(This table only should be omitted when the form is to be used under rules for the execution of decrees.)

1	2	3	4	5	6
Lot No.	Number and description of articles	Where attached	Where now placed	When to be viewed	Whether the sale is subject to confirmation or not

Immovable Property.

1	2	3	4	5	6 7 8	9
Lot No.	Description of Lot including local situation supposed or estimated rent or annual value, and if leased, for how long, on what terms and to whom	Survey number, municipal number and other cadastral designation	Government Revenue including any Local Cess and any other known fiscal charge resting on the Lot.	Present occupant	(Here enter any other particulars the Collector may see fit)	(This column should be used for particulars which the Collector may see fit to enter under the rules for the execution of Civil Court decrees)

N. B.—No guarantee is given of the title of the said or of the valldity of any of the right charges or interests claimed by third parties.

(Signed)

Collector.

A printed *schedule* setting forth the conditions of sale according to the Code and Rules shall be appended.

FORM W (Rule 129).

FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF RIGHT OF OCCUPATION OF UNOCCUPIED LAND.

Notice is hereby given that the right of occupation of the undermentioned unoccupied land, situate in the village of in the taluka will be put up to public auction at on the day of 19 , at or after o'clock A. M.
P. M.

The written (or printed) conditions of sale signed by *[may be seen on application during office hours, on any office day before the day of the auction, to the Mamlatdar of or, at the time of the auction, to the officer who conducts the same] and intending bidders are warned that they should ascertain the said conditions before bidding, *[*or* are subjoined to this Proclamation"].

Description of the Land.

Here give a full description of the land, *viz.*, the Survey Number or Numbers, if it has been surveyed, if not, its boundaries; the class of land, *i. e.*, whether it is dry-crop land, garden land, or a building-site, etc., the area of the land, adding "be the same more or less"; the assessment, if any, at present payable for the land, and the term for which that assessment has been fixed.

(Signed)

Dated the day of 19 } Collector (or other competent officer).

RULES
under sub-section (1) of s. 214 of L. R. Code

Regulating entry into any premises by any officer empowered under s. 154 of this Code for the distraint of moveable property of a defaulter.

(Vide G. R. R. D. No. 4112, dated 13th November 1930).

No. 4112.—In exercise of the powers conferred by sub-section (*1*) of section 214 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), the Governor in Council is pleased to make the following rules regulating entry into any premises by any officer empowered under section 154 of the said Code for the distraint of moveable property of a defaulter:—

1. *Service of notice.*—Where an officer in exercise of his power of distraint under section 154 of the Bombay Land Revenue Code, 1879, intends to enter any building used as a human dwelling, the notice required by the proviso to section 200 shall be served by presentation to the defaulter or to any adult male member of his family present in the building, or failing either of the aforesaid methods, by being affixed to any prominent part of the building.

2. *Breaking open doors.*—An officer in exercise of the aforesaid power of distraint may break open, at any time between sunrise and sunset, the gate of any private street or any outer or inner door or window of any permises, if he has reasonable grounds for believing that such street or premises contain any property liable to distraint as aforesaid, and if after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtain admittance;

Provided that such officer shall not enter, or break open a door or window of any apartment in the actual occupation of a woman who according to custom does not appear in public, until he has given notice to such woman that she is at liberty to withdraw and has given her every reasonable facility for withdrawing.

3. *Forcing open of receptacle.*—An officer in exercise of the aforesaid power of distraint may break open any closed receptacle found on any permises entered in exercise of the said power, if he cannot otherwise, after demand duly made from the persons, if any, occupying the said premises to open the receptacle, obtain inspection of the contents of the same.

4. *Value of property distrained.*—The estimated sale-proceeds of the property distrained shall be as nearly as possible equal to the amount in respect of which the defaulter has made default.

5. *Inventory.*—An officer on distraining any property from any permises shall make an inventory thereof; and shall supply a copy of the inventory to the defaulter, or to any adult male member of his family present; if neither the defaulter nor any such member is present, the officer shall affix a copy of the inventory to a prominent part of the premises from which distraint has been made.

A List of Applications

UNDER THE

LAND REVENUE CODE

Requiring Court fee stamps.

	Description of Applications.	Proper fee	
		Rs.	As.
1.	*Appeals*—		
	(1) against imposition of fine under section 61, L.R.C., for unauthorized occupation of Government land	0	8
	(2) against imposition of fine for unauthorised conversion of land for non-agricultural purposes	0	8
	(3) against the order of the Deputy Collector	0	8
	(4) against refusal or grant of permanent, punjsala or eksali land	0	8
	(5) against refusal of fasuli remission and suspension ...	0	8
	(6) against notice of demand, distraint, auction of moveable and immoveables, notice of forfeiture	0	8
	(7) against the order re : precautionary measure	0	8
	(8) against the imposition of fine under s. 148, L.R.C. ...	0	8
	(9) regarding grant of copies	0	8
	(10) against levy of land revenue	0	8
2.	*Assessment*—		
	application for commutation of altered assessment ...	0	8
3.	*Assistance suits*—		
	(1) application for assistance under section 86, L.R.C.—		
	when the amount claimed is less than Rs. 50.	0	2
	when the amount claimed is Rs. 50 or more	0	8
	(2) process fee for every notice or summons in assistance cases	0	6
4.	*Boundaries*—		
	(1) application for fixing boundaries of building plots ...	0	8
	(2) applicaton for demarcration of boundaries of survey numbers	0	8
5.	*Bricks*—		
	application for removing earth from Govt. land for brick manufacture	0	8
6.	*Burial grounds*—		
	application for burial ground	0	8
7.	*Charitable and public purposes*—		
	application for free grant of stone, sand, earth and stones for charitable and other purposes	0	8
8.	*Commissian*—		
	application for grant of commission under section 88, L.R.C.	0	8

Description of Applications.	Proper fee	
9. *Copies*—	Rs.	As.
(1) application for copies	0	2
(2) application for true copies and sketches from City Survey record	0	8
(3) certified copies for every 360 words or fraction of 360 words	0	8
10. *Decrees*— application in decree after agreement...	0	8
11. *Dispute*—		
(1) application in connection with dispute over landed property	0	8
(2) petition regarding dispute over produce and payment of land revenue	0	8
(3) petition regarding dispute on pattadari and jagirdari ...	0	8
(4) application for dispute of karia	0	8
12. *Farm building*— application for permission to erect farm building ...	0	8
13. *Fishery rights*— application for grant of fishery rights of Revenue Dhands.	0	8
14. *Forfeiture*— application claiming over property forfeited by Revenue Officers	0	8
15. *Fuel*—		
(1) application to cut fuel	0	8
(2) application for fuel for kilns	0	2
(3) application for transit pass for removing or carrying fuel	0	2
16. *Huri*—		
Application for Huri grants	0	8
17. *Hari or an agent*— application to appoint a hari or an agent	0	8
18. *Ijazatnama*— application for grant of Rubkari or Ijazatnama ...	0	2
19. *Kiln*—		
(1) application for permission to burn a kiln	0	8
(2) application for burning a brick kiln	0	8
(3) petition for fuel for kiln	0	2
(4) petition for grant of kiln	0	8
(5) application for conversion of land for kiln purposes ...	0	8

Description of Applications.	Proper fee Rs.	As.
20. *Khads*—		
application for excavation of khads	0	8
21. *Lands*—		
(1) application for exchange of land	0	8
(2) application for leasing out land	0	8
(3) application for transfer or conversion of building sites to agricultural land and *vice versa*	0	8
(4) application for permission to lease, transfer or sell land granted on restricted tenure	0	8
(5) application for reservation of track out of occupied or unoccupied land	0	8
(6) application for temporary occupation of Government land for non-agricultural purposes	0	8
(7) application for grant of Government land for non-agricultural purposes	0	8
(8) application for reservation of land for public or special purposes	0	8
(9) application for exchange of land on restricted tenure or to become a partner in the same	0	8
(10) application for conversion of land other than non-agricultural purposes	0	8
(11) application for transfer of land from one deh to the other..	0	8
22. *Land Revenue*—		
(1) application for postponement of the date of payment of Land Revenue	0	8
(2) application from co-occupant to pay Land Revenue to save the forfeiture of Ka buli Survey number	0	8
(3) appeal against the levy of Land Revenue	0	8
23. *Partition*—		
application for partition	0	8
24. *Pasturage*—		
application for farming of pasturage rights	0	8
25. *Postponement*—		
1. Application for postponement of auction sale in execution of Civil decrees	0	2
Note.—The applications for postponement of Land Revenue, Tacavi, Hakabo are exempt.		
26. *Quarry*—		
application for granting permission to quarry stones ...	0	8
27. *Rebate*—		
1. application for rebate	0	8
2. application for grant of rebate of karia clearance ...	0	8
28. *Restricted tenure*—		
application for removal of restricted tenure conditions ...	0	8

Description of Applications.	Proper fee Rs.	As.
29. *Restriction*—		
1. application for removal of restriction	0	8
2. application for removal of rice restriction	0	8
3. application for removal or imposition of restriction against extension or grant of land on Government canal	0	8
30. *Rotation*—		
application for rotation	0	8
31. *Sale*—		
application to set aside sale...	0	8
32. *Site*—		
application for new village site	0	8
application for building site	0	8
33. *Sub-division*—		
application for sub-division of a survey number ...	0	8
34. *Wadharvaras*—		
application for wadharvaras	0	8
35. *Well*—		
application for sinking of a well in Government land ...	0	8

RECORD OF RIGHTS.

1. Application regarding disputes between Inamdars and tenants	0	8
2. Application regarding disputes about tenancy, easements in Rayali land	0	8
3. Application regarding disputes about inheritance, possession and other rights	0	8
4. Application regarding acquisition of a right by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise	0	8
5. Appeals against decisions passed in serial Nos. 1 to 4 above..	0	8
6. Appeals against imposition of fine under s. 135 (F) L.R.C....	0	8
7. Appeals regarding City survey matters	0	8
8. Applications for grant of copies from the Records of Rights.	0	2

THE
Bombay Revenue Jurisdiction Act

—:o:—

ACT No. X OF 1876

(*As amended by Acts XVI of 1877, XV of 1880, XII of 1891, IV of 1894, XIV of 1895 and Bom. Act XXI of 1929*).

[*28th March 1876*

An Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.

Preamble.

WHEREAS in certain psrts of the Presidenay of Bombay, the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive that it is in the rest of the said Presidency;

And whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing;

And whereas it is also expedient to amend the Bombay Civil Courts Act, section 32, and to revive certain provisions of the [1] thirteenth section of Regulation XVII of 1827 of the Bombay Code, which was repealed by the Land Improvement Act, 1871; [2]

[1] Section 17 of this Act which revised s. 13 of Bom. Reg. 17 of 1827 was repealed by Act XV of 1880, except in scheduled districts to which the Bombay Land Revenue Code, 1879 (Bom. Act 5 of 1879) does not extend.

[2] The portion repealed by the Repealing and Amending Act IV of 1894 is omitted.

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1876:"

Commencement.

So much of section four as relates to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land revenue, shall come into force on such* day as the Governor General in Council directs in that behalf by notification in the *Gazette of India*. The rest of this Act shall come into force on the passing thereof.

Extent.

And it shall extend to all the territories for the time being under the Government of the Governor of Bombay in Council, but not so as to affect—

The 10th September 1881—G. N. 1881, Pt. I, s. 92.

(*a*) any suit regarding the assessment of revenue on land situated in the Collectorate of Bombay, or the collection of such revenue;

(*b*) any of the provisions of Bombay Acts V of 1862 and VI of 1862, or of Act XXI of 1881, or of Act XXIII of 1871;

[*a*] * * * * *

[*a*] Clause (*c*) was repealed by the Repealing and Amending Act XVI of 1895.

2. [*Repeal of enactments*] *Rep. Act XII of 1891.*

Interpretation clause.

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

"Land." "Land" includes the sites of villages, towns and cities: it also includes trees, growing crops and grass, fruit upon, and juice in, trees, rights-of-way, ferries, fisheries and all other benefits to arise out of land, and things attached to the earth, or permanently fastened to things attached to the earth:

"Land-revenue." "Land-revenue" means all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force:

"Revenue officer." "Revenue officer" means any officer employed in or about the business of the land-revenue, or of the surveys, assessment, accounts or records connected therewith.

Bar of certain suits.

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:—

(*a*) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjam or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service;

Scope.—So far as a plaintiff's claim to perform the duties of any office or claim for the cancellation of the watan register is concerned, the words of this section are wide enough to preclude the Civil Courts from entertaining such claim. A suit, however, for a declaration that the plaintiffs are the nearest heirs of the deceased representative watandar is not barred by this section (*Hanmant v Secretary of State*, 54 Bom. 126, s. c. 32 Bom. L. R. 155).

Where a person in possession of vatan lands under a miras lease or mortgage from the owner continues in adverse possession of the land after death of the owner for the statutory period, he is still liable to be ousted under the Hereditary Offices Act, and so he is at most entitled only to an injunction restraining the owners from taking proceedings other than under the Hereditary Offices Act to recover possession. An order which, though purporting to be passed under the Hereditary Offices Act, is not authorized by the Act, does not come within the purview of this Act (*Maganchand v. Vithalrao*, 37 Bom. 37).

Suit to recover Saranjam lands.—A suit to recover back possession of land, the Saranjam rights in which have been resumed by Government, is not barred by this section (*Gururao v. Secretary of State*, 41 Bom. 408).

"**Claims to perform duties of Hereditary officer.**"—The plaintiff who was a Deshpande, an Hereditary District Officer, claimed against Government to perform the duties of a Deshpande's office *Held*, that such suits were excluded from the jurisdiction of the Civil Courts (*Narayan v Secretary of State*, P. J. 1897, p. 425).

"**Claims relating to property of village officer.**"—When it has been decided that a particular land is service inam land, the Civil Court, under this clause, ceases to have jurisdiction over the plaintiff's claim against Government in respect of the trees growing thereon, as such claims related to property appertaining to the office of a village officer (*De souza Devino v Secretary of State for India*, 18 Bom. 319).

"**Claims in respect of injury**"—A suit in respect of any injury caused by exclusion from office or service is barred by the 2nd paragraph of cl. (*a*) of this section. Having regard to the wording of the clauses of this section, the bar therein provided is not limited to suits against Government (*Naro v. Mahadeo*, 12 Bom. 614).

"**Treaty.**"—The word 'treaty' in this clause ought not to be broadly interpreted. The word 'treaty' must, seeing that it is not defined in this Act, receive its generally accepted meaning, *viz*, that it is an agreement between two or more independent sovereign powers of State (*Kalabhai v. The Secretary of State for India*, 29 Bom 19).

"Claims to lands held on political tenure."—A suit in a Civil Court against Government to recover possession of inam lands together with arrears of the amals is barred both under this section and s. 4 of the Pensions Act (XIII of 1871). It was barred under Reg. XXIX of 1827. These Acts, though not retrospective in their operation, still do not create rights to relief against the Government where none subsisted before (*Shivram v. Secretary of State for India*, 11 Bom. 222).

Commutation of watan.—Where a Collector orders commutation of vatan services at the instance of the widow of the last vatandar, but without

observing the procedure prescribed by s. 73 of the Bom. Hereditary Offices Act, 1874, the order passed is *ultra vires* of him ; and a suit to set it aside can be entertained by a Civil Court notwithstanding the provisions of cl (*a*) of this section (*Bhikaji v. Secretary of State*, 27 Bom. L. R. 463).

Suit for declaration.—A suit for a declaration that the plaintiffs are hereditary Vatandar Kulkarnis, and that they are entitled to be Vatandar and entitled to the Vahivat of the Vatan hereditarily, is barred by the provisions of clause (*a*) of this section (*Damodar v. Collector of Nasik*, 44 Bom 261).

Suit for share in emoluments of watan.—Neither Act III of 1874 nor this Act contains any provision excluding the jurisdiction of Civil Courts in a suit brought to establish a share in the emoluments of a watan which has ceased to be a service watan (*Mohsyodin v. Chhotibibi*, 5 Bom. 578).

Suit for damages.—A suit, in respect of any injury caused by exclusion from office or service, claiming damages by reason of a breach of an agreement between the co-sharers, is barred by para. (2) of cl (*a*) of this section (*Naro v. Mahadeo*, 12 Bom. 614).

This section applies to all suits, and not to suits against Government only (*Ibid.*).

Maintainability of suit as against Government.—Where an order was passed by the Government under s. 36 of the Watan Act recognizing the claim of a certain person to succeed a deceased representative watandar, it was *held* that a suit against Government to have the resolution of the Government set aside is barred under this section (*Hanmant v. Secretary of State*, 54 Bom. 125, s. c. 32 Bom. L. R. 155).

Suit against Government.—So far as the plaintiffs seek to have their own right to officiate declared, the Civil Court has no jurisdiction since the passing of the Bom Hereditary Offices Act, 1874 ; but that Act did not take away the jurisdiction of Civil Courts to determine who were watandars. The discretion of the Collector only came into play when it is determined if one is a watandar ; so far as the plaintiffs ask for a declaration that defendant is not entitled to be on the list of watandars, the Civil Courts have jurisdiction (*Yellappa v The Secretary of State*, P. J. 1888, p. 224).

Where an order is passed by revenue officers that a person is not a Vatandar a suit to obtain a declaration from a Civil Court that the decision is bad, is barred under the 3rd paragraph of cl. (*a*) of this section. If such a suit seeks relief against Government relating to vatan land, it falls also within the first paragraph of cl. (*a*) (*Baslingappagouda v. Secretary of State*, 28 Bom. L. R 651).

A party against whom an order *ex-parte* is made by revenue authorities is entitled to have the matter fully heard after arguments on both sides. An order so passed on further hearing is not an order passed in revision, but an order properly made after hearing both the parties, one of whom had not been heard on the previous occasion (*Ibid*).

Jurisdiction of Civil Courts—The Civil Court has no jurisdiction to set aside orders made under ss. 11, 11A and 9 (2) of the Bombay Hereditary Offices Act (*Ibid.*).

Under para. 2 of cl. (*a*) of this section the jurisdiction of a Civil Court is excluded in a suit by a Deshpande, an hereditary district officer, claiming against

Government the right to perform the duties of a Deshpande's office. The meaning of the words "claims to perform the duties of any such officer or servant" is to be taken from the preceding sentence (*Narayan v. Secretary of State*, P. J. 1894, p. 450).

A Civil Court has no jurisdiction to entertain a suit brought by Mahars for a declaration that they are entitled to a share in the Maharki Vatan and for an injunction restraining the defendants from obstructing them in the enjoyment of the said share (*Bhiva v Vithya*, 25 Bom. 186).

Under this section a Civil Court has no jurisdiction to entertain a suit for a declaration that the plaintiffs are watandar patils and kulkarnis of the village, and for cancellation of the watan register. The words of this section in question are wide enough to preclude the Civil Courts from entertaining any claim to the watan offices in oppposition to the claim of the hereditary officers appointed or recognized under the Bom. Hereditary Offices Act, 1874, and also any claim for the cancellation of the watan register (*Laxmanrao v Shriniwas*, 51 Bom. 830, P. C.).

The jurisdiction of the Civil Courts to entertain the claim for a refund of the contribution levied under the Bom. Hereditary Offices Act, 1874, is not barred by this section (*Ibid*).

The Mamlatdar passed a decree in plaintiff's favour in an assessment suit for rent. In the course of the execution proceedings under that decree, the plaintiff got attached a buffalo belonging to the defendant. On this, the petitioner applied to the Mamlatdar to raise the attachment on the ground that the buffalo had been pledged to him and the same was ordered. Plaintiff's case was that the alleged pledge was a fraud and she sued for damages. *Held*, that the suit was intended for the rehearing of the decision of the Mamlatdar as to whether the buffalo was pledged to the applicant and was not a *bona fide* suit for damages for a fraud practised on the court and that consequently it was not maintainable (*Sadashiv v. Radhabai*, 31 Bom. L. R. 504).

It is competent to a Civil Court to grant a declaration that the plaintiffs are Watandars of a Maharki Watan (*Raoji v. Dagdu*, 11 Bom 23; s. c. 18 Bom. L. R. 839).

Where Government have resolved that a certain person should be recognized as a representative watandar of a watan, a suit brought against Government to set aside the Government Resolution is barred under this section (*Hanmant v. Secretary of State*, 54 Bom. 125; s. c. 32 Bom. L. R. 155).

Cognizance of Civil Court.—A suit by the Mahar Vatandars to restrain the villagers of their village from delivering the carcasses of dead animals and paying baluta to the mangs, is not cognizable by a Civil Court, having regard to s. 18 of the Bom. Hereditary Offices Act, 1874 (*Mahadu v Krishna*, 47 Bom. 95).

A suit to obtain a declaration that the Plaintiff, being of the eldest family, is the nearer heir to the late Vatandar than the defendant, is cognizable by the Civil Court (*Shankar v Dattatraya*, 17 Bom L. R. 725).

Cl. (a) ultra vires—The plaintiff, a watandar patil, was, under orders of Government, dismissed from his office, and his life-interest in Patilki watan was forfeited. He sued the Secretary of State for a declaration that the order of Government was illegal and did not legally effect forfeiture within the meaning of

s. 61 of the Bom. Hereditary Offices Act, and for possession of the lands. The lower Court dismissed the suit on the ground that is was barred by para. (1) of cl. (*a*) of this section. The plaintiff appealed contending that para (1) of cl. (*a*) was *ultra vires* of the Government of India: *Held*, that para. (1) of cl. (*a*) was not *ultra vires* of the Government of India, inasmuch as a claim like the plaintiffs could not have been brought in the ordinary Civil Courts against the East India Company by virtue of the preamble to Act XI of 1852 (*Rachangauda v Secretary of State*, 21 Bom. L. R. 1155).

"**Claims to land held for service.**"—This clause bars the jurisdiction of the Civil Courts to entertain suits against Government regarding land of which the plaintiff is put into occupation by Government free from exemption of the reward of his service. The plaintiff cannot escape from the bar by contending that his claim is for the possession of land, while the property that appertains to his office is not the land but the revenue arising from the land (*Appaji v. Secretary of State*, 28 Bom. 435).

Land held in Saranjam—Suit against Government.—The Inam Commissioner decided in 1858, under the provisions of Act XI of 1852, that certain estate was Saranjam and not sarva Inam. On the death of its holder P, in 1899, Government resumed the property on the ground that it was Saranjam and granted it to V, one of the grandsons of P. The plaintiff, another grandson of P, sued the Secretary of State for India and V, for a declaration of title to and for possession of the property, alleging that it was Serva Inam and that it was not competent to Government to resume and regrant it to any one it liked. *Held*, (1) that the decision of the Inam Commissioner was, by virtue of the provisions of r. 2 of Sch. A of Act XI of 1852, final as regards interests concerned in the decision; (2) that the title to and continuance of the estate must be determined under Sch. B. r. 10 of the Act under such rules as Government might find it necessary to issue from time to time; (3) that in accordance with those rules the estate was on P's death resumed by Government who re-granted it to V; (4) that the suit having been one against Government relating to land held as Saranjam, was excluded from the jurisdiction of the Civil Court by the provisions of sub-section (*a*) of this section (*Ramrao v. The Secretary of State*, 11 Bom. L. R 1333)

Mahar Vatan.—The plaintiffs, who were residing in a village, sought for an injunction to prevent the skins of their dead animals being taken away by defendants who were Village Mahars and claimed the right of taking away the skins as Vatandars. The lower Courts held that the suit was barred by s. 18 of the Hereditary Offices Act, 1874, and sub-section (*a*) of this section. The plaintiffs having appealed, it was *held*, (1) that the question, whether there was or was not a Mahar Vatan as contended for, was within the jurisdiction of the Civil Court; (2) that the plaintiffs would be entitled to injunction unless the Mahars should succeed in showing that there was an hereditary office as alleged by them (*Savla v. Santya* 20 Bom. L. R. 993).

Alienation.—Where, on an application by a Vatandar to declare that a particular alienation is null and void, the Collector refuses to make an order that the alienation is null and void, it is open to the party aggrieved to file a suit in a Civil Court against the alienee in respect of the alienation (*Dattatraya v. Tukaram*, 23 Bom. L. R. 376).

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

Objections—An objection to come with either of the two heads 1 and 3 of cl (*b*) of this section must be an objection which reaches them directly, *i e*, an objection to them *per se* which admits the liability to pay land revenue on the part of the objector but quarrels with its amount or incidence or the validity and effect of the notification of survey settlement as *by themselves* objectionable, not because some other right affects them or makes them inapplicable to his particular case. Objections in cl (*b*) may be raised by a suit or in defence to a suit; but in whichever way they are raised they must be of the particular nature described in cl. (*b*). Where they fall outside that class, they can be raised in defence as well as by a suit (*Lakshuman v. Govind*; *Govind v. Lakshuman*, 28 Bom. 74)

"Objection to amount.....land-revenue."—

In a suit by an inamdar of a village against a Khot to recover rent in kind (according to the market rate at the time of payment), the defendant (Khot) contended that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid and that the Civil Court had no jurisdiction to entertain the suit under this clause. *Held*, that as there was no objection by either party to the amount or incidence of assessment of land-revenue fixed by Government, and the question being whether the Khot was liable to pay to the inamdar maktas or assessment, the suit was not taken away from the cognizance of a Civil Court by this clause (*Gangadhar v. Morbhat*, 18 Bom. 525).

Jurisdiction of Civil Court.—Where water-rate is levied under s. 48 of the Irrigation Act, the question whether the Civil Courts have jurisdiction in view of cl. (*b*) of this section, in a suit for the determination of the legality or otherwise of such levy, depends upon whether the incidence of the rate is authorized by the provisions of s. 48 of the Irrigation Act. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal, but the opinion of the Canal Officer that it has so percolated, he and not the Civil Court being made the Judge of such percolation for the purposes of the Act. Such water-rate falls within the denomination of land-revenue (*Balwant v. Secretary of State*, 22 Bom 377).

(*c*) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance, by Government or any officer duly authorized in that behalf, to superior holders or occupants for the recovery of their dues from inferior holders or tenants;

claims to set aside, on a account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue;

"Claims connected with proceedings for realization of land-revenue."—

The plaintiff sued to redeem certain land mortgaged by him to the first defendant. The second defendant claimed the land as owner, alleging that the mortgagee had failed to pay the assessment on the land to the Native Chief to whom it was due. The latter had accordingly sold it by public auction to realise the assessment, and he (defendant No. 2) had bought it. The Court of first instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under the provisions of this Act and the Land Revenue Code. On appeal the District Court reversed the decree and remanded the case for trial on the merits. *Held*, confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the Native Chief on whom the defendant relied, the jurisdiction of the Civil Court was not taken away by cl. (*c*) of this section (*Mahadu v. Lakshman*, 17 Bom. 68').

"Claim to set aside sale for arrears of land-revenue."—

Plaintiff was the owner of a certain village. Defendant No. 3 was the watandar Kulkarni of the village. He enjoyed for the performance of his duties some inam lands, and a cash allowance of Rs 5 paid annually by the inamdar. In 1884, defendant No. 3 having failed to perform the service in person or by deputy the Collector appointed defendant No. 2 to act as Kulkarni. Defendant No 2 officiated from 20th November 1884 to 4th December 1886. On the application of Defendant No. 2, the Collector increased his remuneration according to the scale fixed for Government villages known as the Wingate scale, and ordered plaintiff to pay the increased remuneration, so as to make up the amount due under that scale. On 26th September 1890, the Collector recovered the sum of Rs 171 from the plaintiff by attachment of his property. The plaintiff thereupon sued the Secretary of State for India in Council to recover this amount as being illegally levied. The defendant pleaded that the Collector, having determined the amount of Defendant No. 2's remuneration under s. 17 of the Hereditary Offices Act, 1874, the plaintiff had no cause of action against him, and that the suit was barred under this clause. *Held*, that as the cash payment made by the plaintiff to the vatandar was certain, and not of a fluctuating or indeterminate character, the Collector had no power to increase the remuneration of the officiator under s. 17 of the Hereditary Offices Act, and that the suit was not barred by this clause (*Anantacharya v. Secretary of State*, 19 Bom. 581).

An order made by a Collector removing A's lands from his Khata, and transferring them to B's Khata, on the ground that A had allowed the assessment thereof to fall into arrears and that B had paid the assessment, does not by itself amount to forfeiture of A's interest in the lands. A suit by A to recover such land from B being simply a suit between private parties for the purpose of establishing a private right, this clause does not bar the jurisdiction of the Civil Court (*Bhau v. Hari*, 20 Bom. 747).

"Proceeding for the realization of land-revenue."—

A suit for a declaration that an order of forfeiture under s. 153 of the Bombay Land Revenue Code passed after an attachment issued under s 159 of the same Code was illegal is not barred by this clause, as the order of forfeiture is not a proceeding for the realization of land-revenue (*Samaldas v. Secretary of State*, 16 Bom. 455).

Land-revenue does not include abkari revenue.—The plaintiff sued to recover from the defendant, a farmer of Abkari duties on the manufacture of spirits, under s. 60 of Bom. Reg. XXI of 1827, a sum of money alleged to have been illegally levied by him as a tax or rent in respect of certain cocoanut trees tapped by the plaintiff. *Held*, that the Civil Courts have jurisdiction to entertain such a suit. If the claim be held to be one in respect of land-revenue, it falls within the exception contained in cl. (*c*) of s. 5. If it is not, this section has no application (*Narayan v. Sakharam*, 9 Bom. 462).

Right of Government to sell land.—Whenever the land-revenue is in arrears, Government is entitled to sell the land and to realize its due, whoever is the defaulter (*Balkrishna v. Madhavrao*, 5 Bom. 73).

Suit to set aside sale on ground other than fraud.—This clause excepts from the jurisdiction of the Civil Courts claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue. It is doubtful whether the exception of fraud in this clause is confined to fraud on the part of officers conducting sale for arrears of land revenue (*Ibid.*).

Suit to set aside Collector's order.—The predecessor-in-title of defendants Nos. 2 to 8 alienated his vatan land to the plaintiff. After the death of the alienor, the defendants applied to the Collector to take proceedings for the protection of the vatan. On October 5, 1904, the Collector made a declaration, under s. 11 of the Vatan Act, that the alienation was null and void. The Collector did not summarily resume possession of the land but decided to assess it at a full rent On July 6, 1908, the Collector held further proceedings and assessed the land at a rental of Rs. 75 per annum. On March 15, 1915, the Collector ordered to forfeit the land as the plaintiff had not paid the full amount of arrears of rent then due. The plaintiff sued for a declaration that the order of forfeiture made by the Collector was invalid. He contended that the rent was due from July 6, 1908, when the assessment was fixed ; and there were, therefore, no arrears of rent due *Held*, that the plaintiff's suit was barred by cl. (*c*) of this section (*Dhondi v Secretary of State*, 25 Bom. L. R 785).

Wrongful attachment.—The defendant who was a Mamlatdar of Khanapur, in the Satara District, attached some pieces of jaggery which were being taken in five carts on a public road by the plaintiff's son from the fields of D, who owed arrears of land-revenue to Government and had to satisfy two decrees in assistance cases. The defendant was not invested, by the Collector of Satara District, with the powers contained in s. 140 of the Land-Revenue Code. The plaintiff filed a suit against the defendant to recover damages for wrongful attachment. The lower Court dismissed the suit on the ground that it was barred by s. 4 (*c*) of this Act ; and that as the defendant acted *bona fide* and was authorized under s. 154 of the Land-Revenue Code to distrain the property, the suit was barred by s. 6 of this Act. On appeal it was *held*, that s. 4 (*c*) was not a bar to the suit, in which there was a claim arising out of the alleged illegality of the proceedings taken for the realization of the land-revenue. The proceedings mentioned in s 4 (*c*) must be in their inception legal (*Gangaram v. Dinkar*, 15 Bom. L. R. 665).

(*d*) claims against Government—

(1) to be entered in the revenue survey or settlement records or village papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue survey or settlement, or

(3) to have any such entry either omitted or amended;

(*e*) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act IV of 1868, or any other law for the time being in force;

(*f*) claims against Government—

to hold land wholly or partially free from payment of land-revenue, or to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized by Government under the provisions of any law for the time being in force, or respecting the occupation of waste or vacant land belonging to Government;

Claim to hold lands free from payment of Government revenue.—The effect of the amendment of this section by Act XVI of 1877 is that Civil Courts mentioned in the Districts annexed to the amending Act are not prevented from exercising their jurisdiction over claims against Government to hold lands wholly or partially free from payment of land-revenue (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

'**Claims respecting occupation of waste land.**"—The fact that the tenants of the neighbouring lands have cut the grass on the disputed land for the rab of their rice cultivation and have taken the produce of the tree standing thereon would not change the character of the land which was always treated as unassessed waste land (*Shridhar v. The Secretary of State*, P J. for 1893, p. 248).

Right of Government over waste lands.—While the Courts may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village, still they can go no further and enjoin the Collector to pursue any particular course in connection with them, while he is acting *bona fide* in pursuance of the powers which the provisions of the statute confer upon him. The claim being against Government respecting the occupation of the waste land belonging to Government, the Civil Courts are precluded from entertaining it under cl. (*f*) of this section. A question relating to the discontinuous occupation of village wastes by the village cattle is as much a question of land-revenue as one relating to the permanent occupation of them or a portion of them by an individual (*Trimbak v Secretary of State*, 21 Bom. 684).

(*g*) claims regarding boundaries fixed under Bombay Act No. I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks:

Provided that if any person claim to hold land wholly or partially exempt from payment of land-revenue under—

Proviso.

The jurisdiction of a Civil Court is not *ousted* by this clause, in case of a dispute as to the position of the boundary line between two survey numbers as laid down by the survey authorities, the defendant alleging that the boundary marks were changed, the plaintiff alleging that they are in their right direction (*Bala v. Nana*, P. J. 1898, p. 41).

Adverse possession of survey numbers.—The Collector's decision as to the fixation of boundaries, under sec. 121 of the Land-Revenue Code, 1879, does not prevent one of the disputing parties filing a suit in the Civil Court on the ground that he has acquired a portion of his neighbour's survey number by adverse possession (*Bhaga v Dorabji*, 43 Bom. 67).

Proviso contains no exceptions in respect of holdings unaccompanied by proprietary right in the soil and there is no saving clause which would suggest that such a claim to such holdings might fall within the purview of the Pensions Act. The right of an alienee of the revenue to sue for disturbance of his possession by a stranger or by Government is clearly recognized by the proviso, and the only condition required is that the claim should be under an enactment, instrument, sanad, written grant or judgment such as is described in the proviso (*Balvant v. The Secretary of State for India*, 29 Bom. 480).

A person claiming the benefit of the proviso must prove that there was a written grant by the British Government, and it cannot be presumed that a written grant of some kind must have been made simply because a grant is not denied (*The Secretary of State v. Dalpatbhai*, P. J. for 1893, p. 168)

The effect of the proviso is that where an occupancy tenant holding under Government is called upon to pay land revenue according to the survey rates, it is open to him to resist the claim of Government in a Civil Court on the ground that he holds under a written grant or an enactment, &c., which prevents Government from claiming more than can be recovered under the grant or enactment, &c. (*Laksuman v. Govind*, 28 Bom 26).

(*h*) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

Note.—Clauses (*h*), (*i*), (*j*) and (*k*) stand independent of one another ; the source of title, referred to in each, stands apart from the rest, and each clause is connected only with that portion of the proviso which precedes clause (*h*) (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

(*i*) an instrument or sanad given by or by order of the Governor of Bombay in Council under Bombay Act No. II of 1863, section 1, clause first, or Bombay Act No. 7 of 1863, section 2, clause first, or

(*j*) any other written grant by the British Government expressly creating or confirming such exemption, or

"Any other written grant."—The phrase "any other written grant" in this clause means any written grant other than that which falls within cls. (*h*) and (*i*) of this section (*Kalabhai v. Secretary of State*, 29 Bom. 19).

Such exemption.—These words obviously refer to the exemption mentioned in that portion.

(*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of 1827, chapter X, or under Act No. XI of 1852, which declares the particular property in dispute to be exempt;

such claim shall be cognizable in the Civil Courts.

"Competent officer."—These words, as used in this clause, included the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852 (*Janardanrao v. Secretary of State*, 13 Bom. 442).

Khatib inam.—Lands assigned to a Khatib inam were enjoyed rent-free by the grantee and continued to him on the same terms by the Inam Commissioner in 1856 under Act XI of 1852. Plaintiff, an alienee from a Khatib, enjoyed them similarly from 1864 to 1910 and claimed to have performed the Khatib service. In 1911 the Commissioner resumed the lands by levying full assessment on them. Plaintiff sued for a declaration that he was the full owner of the lands of the Khatibgari right appertaining to them. *Held*, that the plaintiff's claim to hold the land wholly or partially free from payment of land revenue under an adjudication order passed by a competent officer under Act XI of 1852 was cognizable in the Civil Courts under proviso (*k*) to this section (*Fakrodin Saheb v. Secretary of State*, 22 Bom. L. R. 1166).

Land exempted from land-revenue.—Lands appurtenant to Kaji Vatan were continued by the Inam Commissioner in 1852 as sarva inam to a predecessor-in-title of the plaintiff. Plaintiff, an alienee from a Kaji, held the lands free of assessment, though the service of the Kaji continued to be performed by the descendants of the Kaji. The Collector ordered in 914 full assessment to be levied for the lands in question and in case of non-payment lands to be forfeited. Plaintiff sued for a declaration that the Collector's order was illegal and *ultra vires*. *Held*, that cognizance of the suit by the Civil Court was not barred under s. 4 (*a*)(1) of this Act, for the suit fell within proviso (*k*) (*Mahamadsaheb v. Secretary of State*, 21 Bom. L. R. 1159).

Illustrations to (*h*).

(1) It is enacted that, in the event of the proprietary right in lands, the property of Government, being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain land is transferred to A at an assessment of Rs. 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2) It is enacted that when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of land worth Rs. 100 for assessment. He claims to be assessed at Rs. 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption

not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3) It is enacted that land-revenue shall not be leviable from any land held and entered in the land-registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land-register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5) It is enacted that assessment shall be fixed with reference to certain considerations, and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class, and no objection to an assessment under such an enactment is cognizable in a Civil Court.

Saving of certain suits.

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits :—

(*a*) Suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount;

(*b*) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue survey or settlement or in any village papers;

A suit between private parties relating to inam land for the purpose of establishing a private right falls within cl. (*b*) of this section (*Mootoo v. Trivenabai*, P. J. for 1881 p. 191).

(*c*) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (*g*), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government, for possession of any land being a whole survey number or a recognized share of a survey number

* and nothing in section 4 shall be held to prevent the Civil Courts in the district mentioned in the second schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March 1876, they could have exercised over claims against Government—

(*a*) relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village-officer or servant;

(*b*) to hold land wholly or partially free from payment of land-revenue;

(*c*) to receive payments charged on, or payable out of, the land-revenue.

* This para. was added by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877).

Bar of certain suits against Revenue officers.

6. Revenue officers shall not be liable to be sued for damages in any Civil Court for any act *bona fide* done, or ordered to be done, by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue officer absconds or does not attend when called on by his official superior, and if the Collector of the District proceeds against him or his sureties for public money, papers or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

Act not done in pursuance of law.—

The defendant who was a Mamlatdar of Khanapur in the Satara District, attached some pieces of jaggery which were being taken in five carts on a public road by the plaintiff's son from the fields of D, who owed arrears of land revenue to Government and had to satisfy two decrees in assistance cases. The defendant was not invested, by the Collector of Satara District, with the powers contained in s. 140 of the Land Revenue Code. The plaintiff filed a suit against the defendant to recover damages for wrongful attachment. The lower Court dismissed the suit on the ground that as the defendant acted *bona fide* and was authorized under s. 154 of the Land Revenue Code to distrain the property the suit was barred by this section. On appeal, it was *held* that the defendant was not entitled to claim protection under this section which required that the act complained of should have been done *bona fide* in pursuance of the provisions of any law, as he was not invested by the Collector of the District with powers contained in s. 140 of the Land Revenue Code and it was not proved that he believed the property distrained to be that of the defaulter, as required under s. 154 of the Land Revenue Code (*Gangaram v. Dinkar*, 15 Bom. L. R. 665).

Punishment or prosecution of Revenue officers no bar to Civil remedies.

7. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue officer for any offence or breach of duty, or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such officer.

8–10. [*Suits against Revenue officers; appeals from their proceedings; power for Local Government to call for record.*] *Rep. Act XV of 1880.*

Suits not to be entertained unless plaintiff has exhausted right of appeal.

11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

This section requires only presentation of appeal and not waiting for the reply.—

This section does not require that a plaintiff should wait till he receives a reply to his appeal from Government. It is enough that he has presented an appeal—otherwise his suit might become time-barred before he receives the reply (*Abaji v. Secretary of State for India*, P. J. for 1896, p. 686 ; s. c. 22 Bom. 579).

"**Act.**"—Under section 62 of the Land Revenue Code, the Collector ordered certain Government land to be sold. *Held*, that passing this order is an "act" within the meaning of this section (*Natha v. The Secretary of State*, P. J. for 1896, p. 341).

Forest Officer is not a Revenue Officer.—This section only applies to an act or omission of a revenue officer, and only in cases where the law allows an appeal. A Forest Officer is not a Revenue Officer. This Act must be construed strictly. No right of appeal can be given except by express words (*Narayan v. Secretary of State*, 20 Bom. 803).

The bar of jurisdiction contained in this section does not apply to cases in which a Collector moves under s. 81 of the Forest Act (VII of 1878) to recover, at the request of a Forest Officer, the price of cut-timber sold by the latter under s. 81 of the Forest Act (*Haribhai v. Secretary of State*, 20 Bom. 714).

"**All such appeals.**"—This expression means appeals in respect of the "act or omission." Hence the bar created by this clause does not apply where the act or omission concerned is not an order or decision in respect of which there is a right of appeal under the Land Revenue Code (*Sakharam v. Collector of Ratnagiri*, 28 Bom. 332).

"**Appeal allowed by law.**"—The words "appeal allowed by law" do not mean "an appeal within the time allowed by law." They refer to the appeals which the law prescribes, and have no reference to the limitation in point of time, which the law may impose upon the bringing of such appeals (*Ranchhod v. Secretary of State*, 22 Bom. 583).

Application to Commissioner is appeal allowed by law.—Where the plaintiffs had obtained a decree declaring that the Government had not the right to enhance the land revenue on their village, and the Collector pending an appeal from such decree, took measures to levy such enhanced assessment, it was *held* that though the plaintiffs might have obtained an injunction against the Collector by motion either in the Court which had passed the decree, or in the High Court, that did not prevent the plaintiff from bringing an independent suit for that purpose, and that this section did not apply. Even assuming that an application to set aside a Collector's order made to the Revenue Commissioner would be an "appeal allowed by law" within the meaning of this section, the present case was not within Bombay Regulation V of 1830, inasmuch as cl 4 (1) of that Regulation would have excluded his intervention, as the claim to exemption from liability to enhancement of revenue had already been the subject of judicial investigation, and was still *sub-judice* in the High Court (*The Government of Bombay v. Bhimabhai*, P. J. for 1879, p 351).

Practice—Procedure.—Under this Act, in a suit to which this Act applies, the Court, before taking evidence on the merits, should require the plaintiff to prove first of all that he has, previously to bringing the suit, presented all such appeals allowed by the law for the time being in force as within the period of limitation allowed for bringing such suit it was possible to prevent (*Ranchhod v. Secretary of State*, 22 Bom. 173).

No appeal to revenue authority.—Where a plaintiff files a suit for the reversal of an order of the Collector directing him to remove an encroachment on a public road and for an injunction, his omission to file an appeal from the Collector's order to the Revenue Commissioner or Government bars the suit under this section (*Dayal Khushal v. Secretary of State*, 22 Bom. L R 1089).

Suit to set aside Collector's order.—The plaintiff's land was forfeited on the 6th May 1911; after which he applied first to the Collector and then to the Commissioner to set aside the order. Eventually he filed a suit on 14th October 1915 for a declaration that the proceedings held by the revenue authorities in respect of the forfeiture were illegal and *ultra vires*. *Held*, that the suit was barred by limitation since if the plaintiff wished to have a decision of the Court upon the legality or illegality of the order of forfeiture, he was bound to put his plaint on the file within one year of the date of the order (*Ganesh v. Secretary of State*, 44 Bom. 451).

Suit to set aside notice of demand to pay assessment.—The plaintiffs, who held their land free of rent, were all of a sudden served by the Mamlatdar with a notice of demand to pay assessment. No order of the Collector was forthcoming. The plaintiffs having filed a suit for a declaration that they were entitled to hold their land rent free, the Secretary of State contended that the suit was barred under this section. *Held*, that this section did not apply to the case, since the notice of demand by the Mamlatdar could not be treated as an order or decision within the meaning of ss. 203 and 204 of the Bombay Land-Revenue Code (*Nathuram v. Secretary of State*, 46 Bom. 811).

Suit for injunction.—The Collector of Surat ordered the plaintiff, on the 6th February 1917, to remove an encroachment on a public road. No appeal was made to the Revenue Commissioner or to Government. On the 21st April, the

Collector intimated to the plaintiff that unless he filed a suit, the encroachment would be removed. On the 27th April, 1917, the present suit was filed for a reversal of the order and for an injunction to restrain the defendant from carrying out the order. *Held*, that no appeal from the Collector's order having been made either before the suit was filed or afterwards, the suit was barred by the provisions of this section (*Dayal v. Secretary of State*, 22 Bom. L. R. 1089).

Power of Government to refer questions for decision of the High Court.

12. If, in the trial or investigation of any suit, claim or objection, which, but for the passing of this Act, might have been tried or investigated by a Civil Court, there arises any question on which the Governor General in Council or the Local Government desires to have the decision of the High Court, the Governor-General in Council or the Local Government, as the case may be, may cause a statement of the question to be prepared, and may refer such question for the decision of the High Court of Judicature at Bombay.

The said High Court shall fix an early day for the hearing of the question referred, and cause notice of such day to be placed in the Court house.

The parties to the case may appear and be heard in the High Court in person or by their advocates or pleaders.

The High Court, when it has heard and considered the case, shall send a copy of its decision, with the reasons therefor, under the seal of the Court, to the Government by which the reference was made, and subject to any appeal which may be presented to Her Majesty in Council, the case shall be disposed of conformably to such decision.

If the High Court considers that any such statement is imperfectly framed, the High Court may return it for amendment.

The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs.

Reference by Government to High Court.—Under this section Government can refer a question for the decision of the High Court, when investigating any claim or objection which before 1876 may have been excluded from the cognizance of a Civil Court (*Vasudev Harihar Pandit, In re*, 23 Bom. L. R. 161 ; s. c. Bom. 45 463).

This section gives the High Court absolute power not only to deal with costs by directing as to who should pay them, but also by giving directions as to how those costs should be ascertained (*Jagannath Vasudeo Pandit In re*, 23 Bom. L. R. 189 ; s. c. 45 Bom. 1177).

The British Government granted by a Sanad in 1818 some villages in the talukas of Chikodi and Manowlee in Inam Dharmadaya from generation to generation to a predecessor of the respondent. Thereafter the Government ceded those talukas to the Maharaja of Kolhapur subject to the grant. In 1821, the Maharaja granted some more villages in the said talukas to the same grantee. In 1827, the two

talukas came to be handed back to the British Government by the Maharaja of Kolhapur under a treaty which confirmed the grant. In about 1864 the Government made a summary settlement of the village with the grantee's son. The widow of a descendant of the grantee made an adoption which was upheld by the Privy Council in 1914. The Maharaja took up the position that the adoption was invalid in absence of his consent; and that as the lands were held under treaty or on political tenure they were excluded from the settlement by s. 1 (2) of the Summary Settlement Act. *Held*, that the claim of the Maharaja was excluded from the jurisdiction of the Civil Courts under s. 4 *supra* and that, therefore, the Government were entitled to make a reference to the High Court under this section (*Maharaja of Kolhapur v Bala Maharaj*, 48 Bom 1, 50 I. A. 308).

"**In each case..**"—These words in the last paragraph of this section imply the jurisdiction of the High Court to give special directions in each case (*Ibid*).

Power of Civil Judge to refer questions of jurisdiction to High Court.

13. If in any suit instituted, or in any appeal presented in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

The High Court may order the Judge making the reference, either to proceed with the case or to return the plaint.

The order of the High Court on any such reference shall be subject to appeal to Her Majesty in Council, and save as aforesaid, shall be final.

Composition of Bench.

14 Every reference under section twelve or section thirteen shall be heard by a Bench consisting of such number of Judges not less than three, as the Chief Justice from time to time directs.

Amendment of section 32 of Bombay Civil Courts Act.

15. For section thirty-two of the Bombay Civil Courts Act, No. XIV of 1869, the following shall be substituted (namely): "No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section nineteen) such suit shall be instituted.

Privileges of Government in suits defended by it.

* **16.** Whenever any suit is brought in any Court of a Subordinate judge of the first class against Government, or against any Revenue Officer, and the Government undertakes the defence thereof, it shall be lawful for the Government, by certificate signed by a Secretary thereto, to require that the trial of

* This section was substituted for the original section by Bom. Act XXI of 1929, s. 2.

any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in the Court of the first class subordinate judge, or, if the suit is transferred, in the Court of the District Judge; and the Court shall give effect to every such requirement.

The privilege conferred on Government by this section shall, *mutatis mutandis*, apply to any appeal or special appeal against any decree in any such suit as is described in this section.

17. [*First clause.—Revival of section 13 of Bom. Reg. XVII of 1827.*] *Repealed by Act XV of 1880; but the repeal does not operate in any scheduled district unless and until the Bombay Land Revenue Code (Bom. Act V of 1879) has been extended to such district.*

[*Second clause.—Operation of Bom. Reg. XVII of 1827 in sites of villages and towns.*] *Rep. Act XV of 1880.*

[*Third clause.—Recovery of certain advances made by Local Government.*] *Rep. Act XV of 1880.*

SCHEDULE

[ENACTMENTS REPEALED]

Repealed by Act XII of 1891

THE SECOND SCHEDULE [1]

The district of Ahmedabad.

The district of Kaira, exclusive of the Panch Mahals.

The district of Broach.

The district of Surat, exclusive of the lapsed State of Mandvi, as described in the schedule annexed to [2] Act X of 1848.

The district of Thana.

The district of Kolaba, exclusive of the lapsed State of Kolaba mentioned in [2] Act VIII of 1853.

The district of Ratnagiri.

The district of Kanara.

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[1] This schedule was added by the Bombay Revenue Jurisdiction (Amendment) Act 1877 [16 of 1877]. It is referred to in s. 5.

[2] Acts 10 of 1848 and 8 of 1853 were repealed by the Repealing and Amending Act, 1891, 12 of 1891.

THE
Survey Settlement Act
BOMBAY ACT No. I OF 1865.

[*21st January 1865.*

An Act to provide for the survey, demarcation, assessment and administration of lands held under Government, in the districts belonging to the Bombay Presidency, and for the registration of the rights and interests of the occupants of the same.

Preamble. *Rep. locally by Bom. Act V of 1879.*

1 *to* **36.** [*Rep. locally by Bom. Act V of 1879*].

37 [*a*] Whenever, in the Ratnagiri collectorate and in the Raigarh, Rajpuri and Sanksi taluqas of the Tana collectorate, the survey-settlement is introduced into villages or estates held by Khots, it shall be competent for the Superintendent of Survey or Settlement-officer, with the sanction of the Governor in Council to grant the Khot a lease for the full period for which the settlement may be guaranteed, in place of the annual agreements under which such villages have hitherto been held, and, further, the provisions of [*b*] section 36 in respect to the right of permanent occupancy at the expiration of a settlement-lease shall hold good in regard to those villages or estates.

Leases for period for which settlement guaranteed may be granted to Khots in Ratnagiri and in certain taluqas of the Tana collectorate

[*a*] Ss. 37 and 38 of Bom. Act I of 1865 are repealed so far as they apply to any village in the Ratnagiri or the Kolaba District to which the Khoti Settlement Act, 1880 (Bom. Act I of 1880) extends or is extended—see s. 2 of the latter Act.

[*b*] S. 36 was repealed (locally) by the Bombay Land-revenue Code, 1879 (Bom. Act V of 1879).

38. It shall also be competent to such officer, with the sanction of the Governor in Council, to fix the demands of the Khot on the tenant at the time of the general survey of a district, and the terms thus fixed shall hold good for the period for which the settlement may be sanctioned.

Power to fix demands of Khot on tenant at time of Survey.

But this limitation of demand on the tenant shall not confer on him any right of transfer by sale, mortgage or otherwise, where such did not exist before, and shall not affect the right of the Khot to the reversion of all lands resigned by his tenant during the currency of the general lease.

Proviso.

Suit to recover rent at mamuli rates.—The plaintiff who was the khot of a village in the Kolaba District took a lease of the khoti rigths from Gov-

ernment in 1869. From 1864 to 1892 the original survey settlement remained in force In 1902 the revised settlement was introduced but the demands of the khot were not fixed under this section upto 1914. The plaintiff passed annual kabulyats to Government and continued to levy rates at the settlement rates. In 1923 the plaintiff having filed a suit to recover from the defendant, a khoti tenant of his rent at the *mamuli* rates for the years S. 1839–1844, it was *held* that the plaintiff was entitled to recover at the *mamuli* rates. In the absence of any exercise of their power under this section or evidence of intention to continue the rates of the expired settlement and the amount of the old rent being in law expressly enforced for the period of the old settlement and not enforced after the revised settlement the plaintiff cannot be prevented from falling back on his rights under the *mamuli vahiwat* (*Abdul Rahim v. Pandu Sadhu*, 32 Bom L. R. 175).

An order of the settlement-officer under this section, fixing the demand of the Khot on the tenant, could not bind the ryots to the land against their will. It was not intended to reduce them from the position of free tenants to *adscriptiglebae* (*Narayan v. Babu*, P. J. 8879, 213).

Fixing and sanctioning, distinction between.—There is a distinction between "fixing" a period within which a sanctioned settlement is to be continued and "sanctioning" a settlement which simply accepts the rates proposed by the settlement Officer. So where a settlement has been sanctioned and a period fixed, the Khot is to levy rents at the sanctioned rate till the period comes to an end and even after it; if no new settlement is introduced, the settlement must be deemed to continue.—*Secretary of State v. Sadashiv*, 36 Bom. 290).

39-51. *Repealed locally by Bom. Act V of 1879.*

THE
Revenue Recovery Act
ACT No. I OF 1890.

[*14th February 1890.*

An Act to make better provision for recovering certain public demands.

WHEREAS it is expedient to make better provision for recovering certain public demands; It is hereby enacted as follows :—

Title, extent and commencement.

1. (1) This Act may be called the Revenue Recovery Act, 1890.

(2) It extends to the whole of British India, and British Baluchistan; and

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) "district" includes a presidency-town;

(2) "Collector" means the chief officer in charge of the land-revenue administration of a district; and

(3) "defaulter" means a person from whom an arrear of land-revenue or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.

Recovery of public demands by enforcement of process in other districts than those in which they became payable.

3. (1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a disdrict other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating—

(*a*) the name of the defaulter and such other particulars as may be necessary for his identification, and

(*b*) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

Remedy available to person denying liability to pay amount recovered under last foregoing section.

4. (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount for any part thereof and pays the same under protest made in writing at the time of pay-

ment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid.

(2) A suit under sub-secetion (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

Recovery by Collectors of sum recoverable as arrears of revenue by other public officers or by local authorities.

5. Where any sum is recoversble as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or autaority, proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

Property liable to sale under this Act.

6. (1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immoveable property belonging to the defaulter in the district.

(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as against the Government and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immoveable property under this Act for the recovery of an amount stated in certificate, the interests of the defaulter alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

Saving of local laws relating to revenue.

7. Nothing in the foregoing sections shall be construed—

(*a*) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land-revenue, or

(*b*) to authorize the arrest of any person for the recovery of any tax payable to the corporation, commissioner, committee, board, council or person having authority over a municipality under any enactment for the time being in force.

Recovery in British India of certain public demands arising beyond British India.

8. When this Act has been applied to any local area which is under the administration of the Governor-General in Council, but which is not part of British India, an arrear of land-revenue accruing in that local area, or a sum recoverable as an arrear of land revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in British India.

THE SCHEDULE

CERTIFICATE.

See section 3, sub-section (1).]

From

The Collector of

To

The Collector of

Dated the of 18

The sum of Rs. is payable on account of by , son of , resident of , who is believed (to be at) (to have property consisting of at) in your district.

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at

A. B.

Collector of

The Bombay Irrigation Act, 1879.

BOM. ACT No. VII OF 1879.

[*2nd October, 1879.*

(*As amended by Bom. Acts III of 1880, III of 1886, XVI of 1895, I of 1910, II of 1914 and XV of 1933*).

An Act to provide for Irrigation in the Bombay Presidency.

Preamble.

WHEREAS it is necesarry to make provision for the construction, maintenance and regulation of canals, for the supply of water therefrom and for the levy of rates for water so supplied, in the Bombay Presidency ; It is enacted as follows :—

PART I

PRELIMINARY.

Short title.

1. This Act may be called the Bombay Irrigation Act, 1879.

Local extent.

It extends to the whole of the Presidency of Bombay, except the City of Bombay.

Construction of Statutes.—Statutes which encroach on the rights of the subjects, whether as regards person or property, must receive a strict construction (*Secretary of State v. Balwant*, 5 Bom. L. R 790 ; 28 Bom. 105).

Sections 55, 101 and 105 of Bombay Land Revenue Code, 1879, amended

2. In section 55 of the Bombay Land Revenue Code, 1879, for the words "or which has been made available in consequence of the construction, improvement or repair of any irrigational or other work by, or at the instance of, Government," the words "and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879" shall be substituted :

and in section 101 of the said Code, for the word "leviable" the word "levied" shall be substituted, and the words "or under the Bombay Irrigation Act, 1879," shall be inserted after the figures "55";

and to section 105 of the said Code, the words "or of the Bombay Irrigation Act, 1879" shall be added,

Interpretation clause.

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

(1) "Canal" includes—

(*a*) all canals, channels, pipes, and reservoirs constructed, maintained or controlled by Government for the supply or storage of water ;

(*b*) all works, embankments, structures and supply and escape channels connected with such canals, channels, pipes or reservoirs and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs;

(*c*) all water-courses, drainage-works and flood embankments as hereinafter respectively defined ;

(*d*) any part of a river, stream, lake, natural collection of water or natural drainage, channel, to which the Governor in Council may apply the provisions of section 5, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal ;

(*e*) or land belonging to Government which is situate on a bank of any canal as hereinbefore defined, and which has been appropriated under the orders of Government for the purposes of such canal ;

(2) "water-course" means any channel or pipe not maintained at the cost of Government, which is supplied with water from a canal, and includes all subsidiary works connected with any such channel or pipe, except the sluice or outlet through which water is supplied from a canal to such channel or pipe ;

(3) "drainage work" means any work in connection with a system of irrigation or reclamation made or improved by the Government for the purpose of the drainage of the country, whether under the provisions of section 15 or otherwise, and includes escape channels from a canal, dams, weirs embankments, sluices, groins and other works connected therewith, but does not include works for their removal of sewage from towns ;

(4) "flood embankment" means any embankment constructed or maintained by Government in connection with any system of irrigation or reclamation-works for the protection of lands from inundation or which may be declared by the Governor in Council to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments :

(5) "Collector" [*a*] includes any officer appointed by the Governor in Council to exercise all or any of the powers of a Collector under this Act ;

(6) "Canal officer" means any officer lawfully appointed or invested with powers under section 4 ;

(7) "Owner" includes every person having a joint interest in the ownership of the thing specified; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

Appointment of Canal officers.

4. Government or, subject to such orders as may from time to time be passed by Government, any officer of Government whom the Governor in Council empowers in this behalf may—

(*a*) appoint such officers with such designations and assign to them respectively such powers and duties, under this Act, as Government or such officer may deem fit ;

(*b*) invest any Government officer, in any department, either personally or in right of his office, or any other person, with such powers, and impose upon him such duties, under this Act, as Government or such officer may deem fit ;

Proviso.

Provided that any assignment of, or investment with, powers or duties made under this section may at any time be cancelled or varied by the authority who made it.

[*a*] Words repealed by Bom. Act III of 1886, Schedule B. are omitted.

PART II.

OF THE CONSTRUCTION AND MAINTENANCE OF CANALS

Application of Water for purposes of Canals

Notification when water supply to be applied for purposes of Canal.

5. Whenever it appears expedient to the Governor in Council that the water of any river or stream flowing in a natural channel, or of any lake or any other natural collection of still water, should be applied or used by the Government or for the purpose of any existing or projected canal, the Governor in Council may by notification in the Bombay Government Gazette declare, that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Note.—A natural stream, though its flow of water be in part derived by percolation from a canal, is not a canal until the Governor in Council has applied to it the provisions of this section (*Secretary of State v Balwant*, 5 Bom. L. R. 790, 28 Bom. 105).

Powers of entry on Land, etc.

Powers of Canal officers for purposes of so applying water-supply.

6. At any time after the day so named, any Canal-officer duly empowered in this behalf may enter on any land, remove any obstruction, close any channel and do any other thing necessary for such application or use of the said water, and for such purpose may take with him, or depute or employ, such subordinates and other persons as he deems fit.

Entry for enquiry.

7. Whenever it shall be necessary to make any enquiry or examination in connection with a projected canal, or with the maintenance of an existing canal, any Canal-officer duly empowered in this behalf, and any person acting under the general or special order of any such canal-Officer, may—

(*a*) enter upon such land and as he may think necessary for the purpose, and

(*b*) exercise all powers and do all things in respect of such land as he might exercise and do if the Government had issued a notification under the provisions of section 4 of the Land Acquisition Act, 1894, [*a*] to the effect that land in that locality is likely to be needed for a public purpose, and

(*c*) set up and maintain water-gauges and do all other things necessary for the prosecution of such enquiry and examination.

Power to inspect and regulate water supply.

8. Any Canal-officer duly empowered in this behalf and any person acting under the general or special order of any such Canal-officer, may enter upon any land, building or water-course, on account of which any water-rate is chargeable for the purpose of inspecting or regulating the use of the water supplied, or of measuring the land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

Note.—This section only empowers a canal officer to enter on any land, etc., and in no way defines what he may do for the proper regulation and management of the canal (*Secretary of State v. Balwanc*, 5 Bom. L. R. 790 ; s c. 28 Bom. 105).

[*a*] The reference to Act X of 1870 is altered in accordance with Act I of 1894, s. 2.

Power to enter for repairs, and to prevent accidents.

9. In case of any accident being apprehended or happening to a canal, any Canal-officer duly empowered in this behalf, and any person acting under the general or special order of any such Canal-officer, may enter upon any land adjacent to such canal, and may take trees and other materials and execute all works which may be necessary for the purpose of preventing such accident or repairing any damage done.

Notice to occupier of building, etc.

10. When a Canal-officer or other person proposes, under the provisions of any of the three last preceding sections, to enter into any building or enclosed court or garden attachched to a dwelling-house, not supplied with water from a canal, and not adjacent to a flood embankment, he shall previously give to the occupier of such building, court or garden such reasonable notice as the urgency of the case may allow.

Canal Crossings.

Means of crossing canals to be provided and obstruction to drainage to be avoided.

11. Suitable means of crossing canals shall be provided at such places as the Governor in Council [*a*] or any Commissioner if empowered by Government in this behalf [*a*] thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands; and suitable bridges, culverts or other works shall be constructed to prevent the drainage of the adjajent land being obstructed by any canal.

Removal of Obstructions to Drainage

Government may prohibite formation of obstructions of rivers, etc. within certain limts.

12. Whenever it appears to the Govenor in Council that injury to the public health, or public convenience, or to any canal or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream or natural drainage-course, the Governor in Council may by notification published in the Bombay Government Gazette, prohibit, within limits to be defined in such notification, the formation of any such obstruction, or may, within such limits order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream or natural drainage-channel, as is comprised within such limits, shall be held to be a drainage-work as defined in section 3.

Canal-officer may issue order to person causing obstraction.

13. Any Canal-officer duly empowered in this behalf may, after such publication, issue an order to any person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in such order.

Canal officer may cause obstruction to be removed

14. If, within the time so fixed, such person does not comply with the order, the Canal-officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification,

[*a*] The words were inserted by Bom. Act I of 1910, Schedule I, Part II, Serial No. 11.

such expenses shall be recoverable by the Collector as an arrear of land revenue.

Construction of Drainnage-works.

When drainage-works are necessary, Government may order scheme to be carried out.

15. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution,

and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on Canal-officers by sections 7, 8 and 9, and shall be liable to the obligations imposed upon Canal officers by sections 10 and 34.

PART III

OF WATER-COURSES

Construction of new water-courses

Construction of new water-courses by private arrangement.

16. Any person may, with the permission of a Canal officer duly empowered to grant such permission, construct a new water-course if he has obtained the consent of the holder of the land required thefor.

Appliction for construction by Canal-officer of new water course.

17. Any person desiring to construct a new water-course, but being unable or unwilling to construct it under a private arrangement with the holder of the land required for the same, may apply, in writing, to any Canal-officer duly empowered to receive such applications, stating

(1) that he is ready to defray all the expenses necessary for acquiring the land and constructing such water-course ;

(2) that he desires the said Canal-officer, in his behalf and at his cost to do all things necessary for constructing such water-course.

Procedure when Canal-officer considers construction of water-course expedient.

18. If the Canal-officer considers the construction of such water-course expedient, he may call upon the applicant to deposit any part of the expense such officer may consider necessary,

and, upon such deposit being made, shall cause enquiry to be made into the most suitable alignment for the said water-course,

and shall mark out the land which, in his opion, it will be necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the water-course is proposed to be taken, that so much of such land as is situated within such village has been so marked out,

and shall send a copy of such notification to the Collector of every district in which such land is situated, for publication on such land.

The said notification shall also call upon any person who wishes to share in the ownership of such water-course to make his application in that respect to the Canal-officer within thirty days of the publication of such notification.

Application by person wishing to be joint owner.

If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such water-course, and in the cost of acquiring the land for the same, and shall be an owner of such water-course when constructed.

If application admitted, applicant liable for share of cost.

19. On receipt of copy of such notification the Collector shall proceed to acquire such land under the provisions of the Land Acquisition Act, 1894, [*a*] as if a declaration had been issued by the Government for the acquisition thereof under section 6 of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section 7 of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section 17 of the said Act.

Collector to acquire land.

20. On being put in possession of the land, the Canal-officer shall construct the required water-course; and on its completion shall give to the owner notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the water-course. On such norice being given, such sum shall be due from the owner to the Canal-officer. On receipt of payment in full of all expenses incurred, the Canal-officer shall make over possession of such water-course to such owners.

Procedure after construction or water-course.

Rights and obligations of Owners of Water-Courses

21. Every owner of a water-course shall be bound—

Obligations of owners of Water-courses.

(*a*) to construct and maintain all works necessary for the passage across such water-course, of canals, water-courses, drainage channels and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands;

(*b*) to maintain such water-course in a fit state of repair for the conveyance of water;

(*c*) to allow the use of it to others or to admit other persons as joint owners thereof on such terms as may be prescribed under the provisions of section 23;

and every owner of a water-course and every person duly authorised under the provisions hereinafter contained to use a water-course shall be entitled—

Rights of owners and users of water-courses.

(*d*) to have a supply of water by such water-course, at such rates and on such terms, as may from time to time be prescribed under

[*a*] The reference to Act X of 1870 is alltered in accordance with Act I of 1894, Si 2.

section 44 and by the rules made by the Governor in Council under section 70 :

Provided always that any owner of a water-course and, subject to the terms of any agreement between the parties, or to any condition imposed under section 23, any such person as aforesaid may at any time, by giving three months' previous notice in writing in this behalf to a Canal-officer duly empowered to receive such notices, resign his interest in such water-course.

Arrangement with owner by other person

22. Any person desiring to have a supply of water through a water-course of which he is not an owner may make a private arrangement with the owner for permitting the conveyance of water thereby, or may apply to a Canal-officer duly empowered to receive such applications for authority to use such water-course or to be declared a joint owner thereof.

Scope.—This section speaks merely of a supply of water and there is no valid reason for restricting these words to the case of a first supply of water, which a person may desire to have, or which may be authorised under s. 23 ; but where the special statutory powers given by the Act have been exercised without complying with the statutory requirements as to serving notice and hearing objections, the order is one passed without jurisdiction and is *ultra vires* (62 I.C. 225).

Canal-officer after enquiry may authorise supply, or declare applicant to be joint owner.

23. On receipt of any such application, the Canal-officer shall serve a notice on the owner to show cause why such authority should not be granted, or such declaration should not be made, and, if no objection be raised, or if any objection be raised and be found insufficient or invalid, shall, subject to the approval of the Collector, either authorize the applicant to use the water-course, or declare him to be a joint owner thereof on such conditions as to the payment of compensation or rent or otherwise as may appear to him equitable.

Order of Collector.—An order made by a Collector under this section falls within the purview of s. 203 of the Bom. Land Revenue Code and is the order of the Collector though it is a confirmation of an order of a Canal-officer. An appeal from such an order lies to the Commissioner, and until presentation of the appeal, suit to set aside the order is incompetent (*Secretary of State v. Jeramdas Khatomal*, 6 S. L. R. 241).

Use of land acquired for water-course for other purpose.

24. No land acquired under this Part for a water-course shall be used for any other purpose without the previous consent of a Canal-officer duly empowered to grant such permission.

If owner fails to execute work or to repair water-course, Canal-officer may execute same.

25. If any owner of a water-course fails to fulfil any obligation imposed upon him by clause (*a*) or (*b*) of section 21, any Canal-officer duly empowered in this behalf may require him by notice, to execute the necessary work or repair within a period, to be prescribed in such notice, of not less than fifteen days, and, in the event of failure, may execute the same on his behalf, and, except as hereinafter provided in this section, all expenses incurred in the execution of such work or repair shall be a sum due by such owner to Government.

Person using water-course to pay share of expenses of repair.

Every person other than an owner who uses any water-course in respect of which any repair has been executed by a Canal-officer under this section shall, in the absence of any agreement between the parties or of any condition imposed under section 23 at the time such person was authorized to use such water-course to the contrary, be liable to pay to Government such proportion of the expenses incurred in the execution of such repairs as shall be determined by the said Canal-officer.

Settlement of Disputes concerning Water-courses.

Settlement of disputes as to mutual rights and liabilities of persons interested in water-course.

26. Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, or among joint owners of a water-course, as to their respective shares of the expense of constructing or maintaining such water-course, or as to the amount severally contributed by them towards such expense, or as to failure on the part of any owner to contribute his share,

any person interested in the matter of such dispute may apply, in writing, to any Canal-officer duly empowered to receive such applications, stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter,

and if all the persons interested consent, in writing, to his being arbitrator, he may pass his order thereon ;

failing such consent, he shall transfer the matter to the Collector, who shall enquire into and pass his order thereon.

Any order passed by the Collector under this section shall remain in force until set aside by a decree of a Civil Court.

PART IV

OF THE SUPPLY OF WATER

Applications for supply

Water to be supplied on written application.

27. Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a Canal-officer duly empowered to receive such applications, in such form as shall from time to time be prescribed by Government in this behalf.

and water may be supplied for purposes other than those of irrigation.

If the application be for a supply of water to be used for purpose other than those of irrigation, the Canal-officer may, with the sanction of Government, give permission for water to be taken for such purposes under such special conditions and restrictions as to the limitation, control and measurement of the supply as he shall be empowered by Government to impose in each case.

Provisions as to supply

Power to stop water supply.

28. The supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except—

(*a*) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority ;

(*b*) whenever and so long as any water-course by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water therefrom ;

(*c*) whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water ;

(*d*) whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water ;

(*e*) within periods fixed from time to time by a Canal-officer duly empowered in this behalf, of which due notice shall be given.

Note.—Thie section contemplates the supply of water (1) to a water-course, and (2) to a person. It does not deal with the supply of water to any person entitled to such supply, which means entitled under the Act to such a supply (*Secretary of State v. Balwant*, 5 Bom. L R. 790, s. c. 28 Bom. 105).

Duration of supply.

29. When canal-water is supplied for the irrigation of one or more crops only, the permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops.

Agreements for supply of water transferable with property in respect of which supply given.

30. Every agreement for the supply of canal-water to any land, building or other immoveable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building or other immoveable property takes place.

Right to use of water not transferable in other case without permission of Canal-officer.

No person entitled to the use of any work or land appertaining to any canal, and, except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell or sub-let, or otherwise transfer, his right to such use without the permission of a Canal-officer duly empowered to grant such permission.

PART V

OF THE AWARD OF COMPENSATION

Compensation when claimable

Compensation in cases of ascertainable substantial damage.

31. Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compension ;

Exceptions.

Provided that no compensation shall be so awarded in respect of any damage arising from—

(*a*) deterioration of climate, or

(*b*) stoppage of navigation, or the means of rafting timber or of watering cattle, or

(*c*) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section 5, if no use have been made of such supply within the five years next before the date of the issue of the notification under section 37, or

(*d*) failure or stoppage of the water in a canal, when such failure or stoppage is due to—

(1) any cause beyond the control of Government,

(2) the execution of any repairs, alterations or additions to the canal, or

(3) any measures considered necessary by any Canal-officer duly empowered in this behalf for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation ;

but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes named in clause (*d*) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by the Governor in Council.

Remission of water rates when allowable.

Scope.—The section does not bar any suit for compensation for deficiency of water due to Govt. Engineer's action against the Secretary of State (*Gangaram v. Secretary of State*, 58 I. C. 769) (Sind).

32. No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained of commenced, unless the Collector is satisefid that the claimant had sufficient cause for not making the claim within such period.

Limitation of Claims.

33. [*Repealed by Act XVI of 1895.*]

Summary Decisions.

34. In every case of entry upon any land or building under section 6, section 7, section 8 or section 9, the Canal-officer or person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building or other property,

Compensation for damage caused by entry on land, etc.

and within one month from the date of such entry compensation shall be tendered by a Canal-officer duly empowered in this behalf to the landholder or owner of the property damaged.

If such tender is not accepted, the Canal-officer shall forthwith refer the matter to the Collector for the purpose of making enquiry as to the amount of compensation and deciding the same.

35. If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in clause (*d*) of section 31, the holder of such land may present a petition for compensation to the Collector for any loss arising from

Compensation on account of interruption of water-supply.

such interruption, and the Collector, after consulting the Canal-officer, shall award to the petitioner reasonable compensation for such loss.

Jurisdiction of Civil Court.—A Civil Court has no jurisdiction to entertain a claim to recover compensation from Government for failure by the Irrigation Department to supply water for his crops when the claim has already been decided by the Collector under this section (*Vishnu v. Secretary of State*, 46 Bom. 738).

Decision as to amount of compensation under either of last two sections conclusive.

36. The decision of the Collector under either of the last two preceding sections as to the amount of compensation to be awarded, or, if in any rule framed under section 70, such decision shall be declared to be appealable, then the decision of the authority to whom the appeal lies, shall be conclusive.

Formal Adjudications.

Notice as to claims for compensation in certain cases.

37. As soon as practicable after the issue of a notification under section 5, the Collector shall cause public notice to be given at convenient places, stating that the Government intend to apply or use the water as aforesaid and that claims for compensation may be made before him.

A copy of sections 31 and 32 shall be annexed to every such notice.

Claims to be preferred to Collector.

38. All claims for compensation under this Act, other than claims of the nature provided for in sections 34 and 35, must be made before the Collector of the district in which such claim arises.

Scope—This section does not bar any suit for compensation for deficiency of water due to Government Engineer's action against the Secretary of State (*Gangaram v. Secretary of State*, 58 I. C. 769 (Sind).

Collector to be guided by provisions of Land Acquisition Act, 1870.

39. The Collector shall enquire into every such claim and determine the amount of compensation, if any, which should in his opinion be given to the claimant; and sections 11, 12, 14, 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51 and 58 of the Land Acquisition Act, 1870 (*a*) shall apply to such enquiries:

Provided that instead of the last clause of the said section 26, the following shall be read :—

"The provisions of this section and of sections 31 and 40 of the Bombay Irrigation Act, 1879, shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded."

Diminution in market value to be considered in fixing compensation.

40. In determining the amount of compensation under the last preceding section, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed ;

[*a*] Act X of 1870 has been repealed by Act I of 1894, but see saving in s. 2 (3) of the latter Act.

and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

Compensation when due.

41. All sums of money payable for compensation awarded under section 39, shall become due three months after the claim for such compensation was made ;

Interest.

and simple interest at the rate of six per centum per annum shall be allowed on any such sum remaining unpaid after the said three months, except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

Abatements of Land-revenue and rent.

Abatement of revenue demand on interruption of water-supply.

42. If the compensation is awarded under section 39 no account of a stoppage or diminution of supply of water to any land paying revenue to Government, and the amount of the revenue payable on account of such land has been fixed with reference to the water-advantages appertaining thereto, the holder of the said land shall be entitled to an abatement of the amount of revenue payable to such extent as shall be determined by the Collector.

Abatement of inferior holder's rent on interruption of water supply.

43. Every inferior holder of any land in respect of which such compensation has been paid shall, if he receives no part of the said compensation, be entitled to an abatement of the rent previously payable by him to the superior holder thereof in proportion to the reduced value of the holding ;

Enhancement of inferior holder's rent on restoration of water-supply.

but, if a water-supply which increases the value of the holding is afterwards restored to the said land otherwise than at the cost of the inferior holder, the superior holder shall be entitled to enhance the rent in proportion to such increased value : provided that the enhanced rent shall not in any case exceed the rent payable by the inferior holder before the abatement, unless the superior holder shall, independently of the provisions of this section, be entitled so to enhance the previous rent.

PART VI.

OF WATER-RATES.

Supply Rates.

Determination of rates for supply of canal-water.

44. Such rates shall be leviable for canal-water supplied for purposes of irrigation, or for any other purpose, as shall from time to time be determined by the Governor in Council.

Provision for cases in which existing water-supply is improved.

If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water supply, in respect of which either no revenue or a fixed amount of revenue has hitherto been paid to Govt. is increased,

rates shall be leviable under this section in respect of the increased water-supply only.

The said rates shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied.

Occasional Rates.

Liability when person using water unauthorizedly cannot be identified.

45. If water supplied through a water-course be used in an authorized manner, and if the person by whose act or neglect such use has occurred cannot be identified, the person or all the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or, if no land has derived benefit therefrom, the person, or all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules prescribed by the Governor in Council under section 70.

Liability when water runs to waste.

46. If water supplied through a water-course be suffered to run to waste, and if, after enquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered,

the person or all the persons chargeable in respect of the water supplied through such water-course shall be liable or jointly liable, as the case may be, for the charges which shall be made in respect of the water so wasted, under the rule prescribed by the Governor in Council under section 70.

All questions arising under this and the last preceding section shall, subject to the provisions of section 67, be decided by a Canal-officer duly empowered in this behalf.

Charges recoverable in addition to penalties.

47. All charges for the unauthorized use or for waste of water may be recovered, as water-rates in addition to any penalties incurred on account of such use or waste.

Percolation and Leakage-rates.

Land deriving benefit from percolation liable to water rate.

48. If it shall appear to a Canal-officer duly empowered to enforce the provisions of this section, that any cultivated land within two hundred yards of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation,

or that any cultivated land, whenever situate, derives by a surface flow, or by means of a well sunk within two hundred yards of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal,

he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply to land similarly cultivated.

For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

49 to 56. [*Reapled by Bom. Act III of 1880.*]

Recovery of Water-rates and other Dues in Arrears.

Water rates when and to whom to be paid.

57. Every water-rate leviable under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the Governor in Council [*a*] or of any Commissioner empowered by Government in this behalf [*b*].

Arrears to be recoverable as land-revenue.

Any such rate, or instalment of the same, which is not paid on the day when it becomes due, and any sum due to Government or to a Canal officer, whether on behalf of Government or of any other person, under Part III [*a*] which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue.

Rent due to owners of water courses to be recoverable as arrears of land-revenue.

Rent payable to the owner of a water-course by a person authorized to use such water-course shall be payable in such instalments and on such dates as the Canal-officer duly empowered to act under section 23 shall direct, and may be recovered on behalf of the owner according to the law and rules aforesaid : Provided always that no more shall at any time be payable to the owner than is actually recovered from the said person.

PART VII

OF OBTAINING LABOUR FOR CANALS ON EMERGENCIES

Procedure for obtaining labour for works or repairs urgently required.

58. Whenever it appears to a Canal-officer duly empowered to act under this section, that unless some work or repair is immediately executed, such serious damage will happen to any canal as to cause sudden and extensive public injury,

or, that unless some clearance of a canal or other work which is necessary in order to maintain the established course of irrigation is immediately executed, serious pulic loss will occur,

and that the labourers necessary for the proper execution of such repair, clearance or work cannot be obained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss,

the said officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such repair, clearance or work ; and thereupon every able-bodied person who resides or holds land in the vicinity of the locality where such repair, clearance or work has to be executed, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such repair, clearance or work by

[*a*] These words were added by the Bombay Repealing and Amending Act 1910 (Bom. Act I of 1910), Schedule I, Part, II, Serial No. 12.

[*b*] The words "of this Act" repealed by the Bombay General Clauses Act, 1886 (Bom. Act III of 1886), Schedule B, are omitted.

labouring thereat as such officer or any person authorized by him in his behalf may direct.

All persons so labouring shall be entitled to payment at rates which shall not be less than the highest rates for the time being paid in the neighbourhood for similar labour.

List of labourers.

59. Subject to such rules as may from time to time be prescribed under section 70 in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Reports to be made by Canal-officer.

60. All orders made under section 58 shall be immediately reported to the Collector for the information of the Commissioner of the Division, and likewise to the Chief Engineer for Irrigation, for the information of Government.

PART VIII.

OF PENALTIES.

For damaging canal, etc.

61. Whoever voluntarily and without proper authority—

(1) damages, alters, enlarges or obstructs any canal ;

(2) interferes with, or increases or diminishes the supply of water in or the flow of water from, through, over or under any canal, or by any means raises or lowers the level of the water in any canal ;

(3) corrupts or fouls the water of any canals so as to render it less fit for the purposes for which it is ordinarily used ;

(4) destroys, defaces or moves any land or level mark or water-gauge fixed by the authority of a public servant ;

(5) destroys, tampers with, or removes any apparatus, or part of any apparatus, for controlling, regulating or measuring the flow of water in any canal ;

(6) passes, or causes animals or vehicles to pass, in or across any of the works, banks or channels of a canal contrary to rules made under section 70, after he has been desired to desist therefrom ;

(7) causes or knowingly and wilfully permits cattle to graze upon any canal or flood-embankment, or tethers or causes or knowingly and wilfully permits cattle to be tethered, upon any such canal or embankment, or roots up any grass or other vegetation growing on any such canal or embankment, or removes, cuts or in any way injures, or causes to be removed, cut or otherwise injured, any tree, bush, grass or hedge intended for the protection of such canal or embankment ;

(8) neglects without reasonable cause, to assist or to continue to assist in the execution of any repair, clearance or work, when lawfully bound so to do under section 58 ;

(9) violates any rules made under section 70 for breach whereof the Governor in Council shall, in such rules, direct that a penalty may be incurred ;

and whoever—

(10) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper percautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water thereform, or uses such water in an unauthorized manner or prevents or interferes with the lawful use of such water course by any person authorized to use the same or declared to be a joint owner thereof under section 23 ;

shall when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a magistrate, be punished for each such offence with fine which may extend to fifty rupees, or with imprisonment [*a*] for a term which may extend to one month, or with both.

For endangering stability of canal, etc.

62. Whoever without proper authority—

(1) pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy or endanger the stability of any canal;

(2) opens, shuts or obstructs, or attempts to open, shut or obstruct, any sluice in any canal ;

(3) makes any dam or obstruction for the purpose of diverting or opposing the current of a river or canal on the bank whereof there is a flood-embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required so to do ;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate of the first or second class, be punished for each such offence with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Obstruction to be removed and damage repaired.

63. Whenever any person is convicted under either of the last two preceding sections, the convicting Magistrate may order that he shall remove the obstruction or repair the damage in respect of which the conviction is held within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any Canal-officer duly empowered in this behalf may remove such obstruction or repair such damage, and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector as an arrear of land-revenue.

Persons employed on canal may take offenders into custody.

64. Any person in charge, or employed upon, any canal may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest Police station, to be dealt with according to law, any person who within his view—

(1) wilfully damages, obstructs or fouls any canal, or

(2) without proper authority interferes with the supply or flow of water, in or from any canal, or in any river or stream, so as to endanger, damage, make dangerous or render less useful any canal.

[*a*] Words repealed by Bom. Act III of 1886, Schedule B, are omitted.

65. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act: provided that no person shall be punished twice in respect of one and the same act or omission.

Saving of prosecution under other laws.

66. Whenever any person is fined for an offence under this Act, the Court which imposes such fine, or which confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of award to any person who gave information leading to the detection of such offence or to the conviction of the offender.

Payment of fine as award to informant.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

PART IX.

MISCELLANEOUS

67. Every order passed by a Canal-officer under sections 13, 18, 25, 30, 45, 46 and 48 shall be appealable to the Collector: provided that the appeal be presented within thirty days of the date on which the order appealed against was communicated to the appellant.

Appeals against orders under Act.

All orders and proceedings of a Collector under this Act shall be subject to the supervision and control of the Commissioner. [*a*]

Effect.—This section does not amount to an express provision to the contrary as said in s. 203 of the Bombay Land Revenue Code [*Secretary of State v. Jeramdas*, 6 S. L. R. 241].

68. Any officer empowered under this Act to conduct any enquiry may exercise all such powers connected with the summoning and examining of witnesses and the production of documents as are conferred on Civil Courts by the Code of Civil Procedure [*b*]; and every such enquiry shall be deemed a judicial proceeding.

Power to summon and examine witnesses.

69. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable, the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which person therein named ordinarily dwells or carries on business; and, if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

Service of notices.

[*a*] Words repealed by Bom. Act III of 1886, Schedule B, are omitted.

[*b*] This reference should now be read as applying to Act V of 1908.

Power to make, alter and cancel rules.

70. The Governor in Council may from time to time make rules not inconsistent with this Act to regulate the following matters :—

(*a*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;

(*b*) the cases in which, the officers to whom and the conditions subject to which orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable ;

(*c*) the person by whom, the time, place or manner at or in which, anything for the doing of which provision is made in this Act, shall be done ;

(*d*) the amount of any charge to be made under this Act ;

(*e*) and generally to carry out the provisions of this Act.

The Governor in Council may, from time to time, alter or cancel any rules so made.

Publication of rules.

Such rules, alterations and cancelments shall be published in the Bombay Government Gazette, and shall thereupon have the force of law.

Saving of municipal water works.

71. Nothing in this Act shall be deemed to apply to any canal, channel, reservoir, lake or other collection of water vesting in any municipality.

PART X [*a*]

OF SECOND-CLASS IRRIGATION WORKS

Application of this Part.

72. This Part shall apply to Second-class Irrigation Works only.

Notification of Second-class irrigation Works.

73. (1) The Governor in Council may publish a notification in the Bombay Government Gazette—

(*a*) declaring that it is proposed to constitute any canal, channel, stream, river, pipe or reservoir, natural or artificial, or any part thereof, whether constructed, maintained or controlled by Government or not, which is actually used or required for the purposes of irrigation, a Second-class Irrigation Work ;

(*b*) fixing a period of not less than four months from the date of publication of such notification in the Bombay Government Gazette for the submission of objections to such proposal.

Provided that no artificial reservoir or water-course supplied from such reservoir which is actually used for the purposes of irrigation by a single irrigator shall be included in such notification except either with the consent of such irrigator, or if in the opinion of the Governor in Council such inclusion is necessary in the pulic interests, then without such consent but subject to the payment, after the issue of the declaration mentioned in sub-section (3), to such irrigator of such

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[*a*] This Part was inserted by Bom. Act II of 1914, sec. 2.

compensation for his rights as may be settled in accordance with the provisions of section 79.

(2) After the publication of such notification in the *Bombay Government Gazette* it shall also be published by the Collector as soon as practicable in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is likely to be affected by such notification.

(3) After considering such objections as may have been received within the period fixed as aforesaid the Governor in Council may, by notification in the *Bombay Government Gazette*, declare such canal, channel, stream, river, pipe or reservoir or any part thereof to be a Second-class Irrigation Work.

Proclamation by the Collector.

74. When a notification has been issued under sub-section (3) of section 73 the Collector shall publish in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated, and in every town and village which in his opinion is likely to be affected by such declaration, a proclamation—

(*a*) specifying, as nearly as possible, the source of supply, situation and limits of the Second-class Irrigation Work notified under sub-section (3) of section 73;

(*b*) stating that this Part applies to the work so notified from the date of the notification published under sub-section (3) of section 73; and

(*c*) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right in the work so notified either to present to the Collector within such period a written notice specifying, or to appear before him and state, the nature of such right.

Application of certain sections of the main Act.

75. (1) A Second-class Irrigation Work shall be deemed to be a canal within the meaning of sub-section (1) of section 3 and to such work the following sections and Parts only shall, so far as may be, apply, namely :—

Sections, 3, 4, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 30, Part V, Part VIII, except sub-section (8) of section 61, and Part IX.

(2) The aforesaid sections and Parts shall, for the purposes of this Part, be subject to the following modifications, namely :—

(i) In section 16 before the word 'any' prefix the words—

'Subject to any rights recorded in the Record-of-rights prepared or revised as hereinafter provided'.

(ii) In section 17 before the word 'any' prefix the words 'Subject as aforesaid'.

(iii) In section 21 for clause (*d*), the following shall be substituted, namely :—

(*d*) To have a supply of water on such terms as may be prescribed in the Record-of-rights prepared or revised as hereinafter provided.'

(iv) To section 22 the following proviso shall be added, namely:—

'Provided that no such private arrangement shall affect any rights to water recorded in the Record-of-rights prepared or revised as hereinafter provided.'

(v) In section 30 for the words 'every agreement for' the words 'all rights to' shall be substituted and in the same section after the word 'property' the words 'which have been recorded in the Record-of-rights prepared or revised as hereinafter provided' shall be inserted. Paragraph 2 of the same section shall be omitted.

(vi) In Part V, section 31, proviso clause (*c*) and the last paragraph shall be omitted.

(vii) In Part V, section 34, the words 'section 6, section 7' shall be omitted.

(viii) In Part IX, section 67, after the figures '48' the words 'and Part X' shall be inserted.

Framing Record-of-rights.

76. (1) As soon as possible after the expiry of the period fixed by the Collector under section 74, clause (*c*), a Canal-officer duly empowered in this behalf, who shall be a Revenue officer not below the rank of a Mamlatdar, shall enquire into and settle claims to any right in the Second-class Irrigation Work, and shall record the extent of such right and draw up in the form from time to time prescribed by the Governor in Council an Irrigation Record-of-rights so far as the same may be ascertainable from the records of Government and the evidence of any person likely to be acquainted with the same and any other documentary or oral evidence which the parties concerned or their witnesses may produce.

(2) Such Record-of-rights shall contain the following matters:—

(*a*) the nature of the Second-class Irrigation Work and any work subsidiary thereto,

(*b*) the lands irrigable therefrom,

(*c*) the custom or rule of irrigation,

(*d*) the rights to water and the conditions on which such rights are enjoyed, and

(*e*) such other matters as the Governor in Council may by rules prescribe in this behalf,

Powers of Canal-officer.

77. (1) For the purposes of the inquiries under section 76 such Canal-officer may enter, by himself or any officer authorised by him for the purpose, upon any land adjacent to any such work, and may survey, demarcate and make a map of the same.

(2) Notwithstanding anything contained in section 76 where no sufficient evidence is forthcoming as to all or any of the matters specified in that section such Canal-officer shall, so far as may be, settle and record the aforesaid matters in such manner as he may deem fit.

Revision of Record-of-rights.

78. The Record-of-rights prepared under section 76 may be revised from time to time by a Canal-officer duly empowered in that behalf, who shall be a Revenue-officer not below the rank of a Mamlatdar.

Commutation of rights.

79. Where the Canal-officer who has prepared or revised any Record-of-rights under this Part finds that, having due regard to the maintenance or management of the Second-class Irrigation Work, any right contained in the Record-of-rights cannot continue to be exercised to the extent recorded, he shall (subject to such rules as the Governor in Council may from time to time prescribe in this behalf) commute such right wholly or in part, either by the payment to the holder of such right of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he may think fit; and he shall revise the Record-of-rights accordingly.

Power of Government where works are undertaken increasing supply.

80. In the event of Government undertaking at their own cost any work whereby the supply of water in any Second-class Irrigation Work is increased beyond the amount of such supply at the time of preparing or revising the Record-of-rights under this Part the Governor in Council may, without prejudice to any rights so recorded, direct that the right to such surplus water shall vest in Government and shall be applied as Government may deem fit and the Record-of-rights shall be revised in accordance with such direction.

Publication of Record-of-rights.

81. When any Record-of-rights has been prepared or revised under this Part it shall be published in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is affected by such Record-of-rights.

Entries in the Record-of-rights to be relevant as evidence.

82. An entry in any Record-of-rights prepared or revised under this Part shall be relevant as evidence in any dispute as to the matters recorded, and shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor:

Provided that no such entry shall be so construed as to limit any of the powers conferred on the Governor in Council by this Part.

Notice of suit to be given to the Collector.

83. (1) In any suit or proceeding in which an entry made in any Record-of-rights prepared or revised under this Part is directly or indirectly called in question, the Court shall, before the final settlement of issues, give notice of the suit or proceeding to the Collector, and if moved to do so by the Collector, shall make the Secretary of State for India in Council a party to the same.

Suits against Government.

(2) Save as provided in sub-section (1) no suit shall lie against Government in respect of anything done by the Collector, Canal-officer or any other person acting under the orders of Government in the exercise of any power by this Part conferred on such Collector, Canal-officer or other person or on Government.

Period of limitation.

(3) Any suit or proceeding in which an entry made in any Record-of-rights prepared or revised under this Part is directly or indirectly called in question shall be dismissed although limitation has not been set up as a defence if it has not been instituted within one year from the date of the publication under section 81 of the Record-of-rights containing the

said entry, or, if one or more appeals have been made against any order of a Canal-officer with reference to any entry in such Record-of-rights, then from the date of any order passed by the final appellate authority, as determined according to this Part.

Obligation to carry out petty repairs.

84. In every Second-class Irrigation Work the following repairs shall be performed by the persons on whom the obligation to perform them is imposed by the next following section, that is to say :—

(1) The filling up of gullies, ruts and holes especially at the back of revetments, and all petty repairs of a like nature essential for the safety of bunds, of tanks, channel-banks or other portions of the said Second-class Irrigation Work.

(2) The prevention of the growth on such work of prickly pear, young trees and other vegetation endangering the safety or concealing the condition of such work.

(3) The preservation of such bushes and grasses as have been planted for the protection of the interior water slopes of such work.

(4) The clearance of silt from sluices, supply and distributing channels.

(5) The clearance of waste weirs and waste channels.

Incidence of obligation.

85. The obligation to perform the repairs prescribed by the last preceding section shall, with reference to any land irrigated from such work, be deemed to be imposed jointly and severally, in the case of unalienated land, on the occupants of the land, and, in the case of all other land, on the holders of the land, as defined in either case in the Bombay Land-revenue Code, 1879.

Power to enforce rights and obligations.

86. If any person on whom any obligation is imposed with reference to any Second-class Irrigation Work by any of the provisions of this Part, fails to fulfil the obligation so imposed, or if any person infringes any right recorded in the Record-of rights prepared or revised as hereinbefore provided, the Canal-officer may require him by notice to fulfil such obligation or to desist from infringing such right within a period to be prescribed in the notice of not less than fifteen days, and in the event of failure may take such steps as may be necessary for the discharge of the said obligation, or the enforcement of the said right, and the amount of any expense so incurred shall be a sum due to Government and recoverable as an arrear of land revenue.

Duty of Patel to report failure to effect repairs.

87. It shall be the duty of the Patel of any village within the limits of which any Second-class Irrigation Work or portion of such work is situated to report to the Mamlatdar without unnecessary delay any failure or neglect to carry out any of the repairs specified in section 84.

Public servant and some other persons protected from legal proceedings.

88. No suit, prosecution or other legal proceeding shall be maintained against any public servant or person appointed under this part in respect of anything in good faith done or purporting to be done under the provisions thereof or the rules made thereunder.

89. The Governor in Council may, from to time by notification in the Bombay Government Gazette and after previous publication, make rules as to all or any of the following matters—

Power to make rules.

(*i*) The manner of framing and revising the Record-of-right.

(*ii*) the proceedings of any officer who under the provisions of this Part is required to take action in any matter ;

(*iii*) and generally to carry out the provisions of this Part.

"PART XI

SPECIAL PROVISIONS FOR CERTAIN LANDS IRRIGABLE BY THE LLOYD BARRAGE CANALS

90. This Part shall apply, in the first instance, to lands irrigable by the Lloyd Barrage Canals only. The Governor in Council may, from to time, by notification in the *Bombay Government Gazette*, extend this part to lands irrigable by such other canals in Sind as may, from time to time, be improved or re-modelled for the more efficient distribution of water therefrom :

Application of this Part,

Provided, however, that no such notification may be published until the said notification together with the scheme in respect of such lands has been laid on the Council table and approved by the Council on a motion made by Government.

Provided further that if and when this part is extended to such lands, the cost of reconstructing water-courses shall not be charged on lands watered within the 20 years immediately preceding the date of such notification by canals in lower Sind outside the zone commanded by the Lloyd Barrage Canals.

Commentary.

This section incorporates the principle accepted in the Council that these provisions should apply in the first instance to lands irrigable by the Lloyd Barrage Canals only.

91. (1) Whenever it appears to any Canal-officer not inferior in rank to an Executive Engineer that it is expedient to change the source of water-supply of any land for the more efficient distribution of water, he shall serve a notice on the holder or holders of the land and, if he proposes to transfer the source of water-supply of the land to any existing water-course, on the owner or owners of such water-course also, calling upon them to state in writing their objections, if any, as to the source or alignment or construction of the proposed water-course.

Power to change source of water-supply.

(2) (*i*) If no objection is raised within thirty days from the date of service of the notice, the Canal-officer may change the source of water-supply of the land in such manner as he thinks expedient.

(ii) If any objections are received within the said period of thirty days, the Canal-officer shall give the holder or holders of [1] "the land and the owner or owners of the water course" [1] a reasonable opportunity of being heard and may, if the said objections are settled, proceed to change the source of water-supply accordingly.

[*f*]-[1] **These words were substituted for the original words "land concerned" by the Bombay Irrigation (Amendment) Act (XV of 1938), s. 2.**

(*iii*) If no settlement in respect of the said objections be arrived at between the Canal-officer and the holder or holders of [*a*] the land and the owner or owners of the water course [*a*] the Canal-officer shall forthwith refer the matter to the Collector whose decision subject to any orders that may be passed in revision by the Commissioner, shall be final and conclusive as regards the alignment and construction of the proposed water-course and shall not be called in question in any Civil Court.

(3) *Repealed by the Bom. Irrigation (Amendment) Act, XV of 1933, s. 2 (2).*

Commentary

Sub-section (1) provides that the Canal-officer who exercises powers under this section should not interfere in rank to an Executive Engineer.

Sub-section (2) deals with the procedure to be adopted after objections have been called for under sub-section (1).

Construction of new water courses and liability of landholders for payment of cost thereof.

92. (1) If it shall appear to any Canal-officer not inferior in rank to an Executive Engineer that new water-courses should be constructed for the irrigation of any land in place of any existing water-courses or of any existing sources of water supply, it shall be lawful for him to construct such water-courses as he thinks necessary :

Provided that befoce a Canal-officer constructs a water-course under the provisions of this sub-section, the provisions of the last preceding section relating to notice, objections, reference and revision shall, so far as may be, apply as if such water-course were a water-course to be constructed under the said section :

Provided that if the holder or holders of such land agree to construct such water-courses at his or their own cost to the satisfaction of the Canal-officer within a specified period, the said officer shall give the said holder or holders an option of so constructing the same.

(2) In the event of the holder or holders of any land failing to construct any such water-course under the option given to such holder or holders in the proviso to sub-section (1) either to the satisfaction of the Canal-officer or within the period specified, the Canal-officer may construct or reconstruct the same in whole or in part, as he thinks necessary.

(3) The Canal-officer shall, on completion of any such water-course as is referred to in sub-section (1) or (2), give to the holder or holders of land concerned notice thereof, and shall make over possession of the water-course to the said holder or holders.

4. (*a*) *Costs of construction of new water courses in local areas.*— It shall be competent to the Canal-officer to fix the boundaries of local areas which are irrigated by one canal system, and within which water-courses have been or are to be constructed in whole or in part under the provisions of sub-section (1) or (2), and to determine the cost or estimated cost, as the case may be, of such water courses,

[*a*] **These words were substitutex for the original words "land concerned" by the Bombay Irrigation (Amendment) Act (XV of 1933), s. 2.**

and the sums to be recovered from all holders of lands irrigated or to be irrigated within such areas as their share of the cost thereof. The estimated cost of such water-courses to be constructed within a local area shall be determined by the Canal-officer on the basis of the actual cost of such water-courses constructed within the local area before the 30th day of September 1933.

Explanation.—For the purposes of this sub-section a canal system means a canal taking off direct from the river Indus, except in the case of the Nasrat Branch, Jamrao, Thar and Hiral Canals each of which shall be deemed to be a canal system.

(*b*) *Distribution of costs of construction over irrigated lands.*—When the Canal-officer has determined the cost of the construction of water-courses in any local area in accordance with the provisions of clause (*a*), he shall distrtibute such cost proportionately over the lands irrigated or to be irrigated and shall declare the amount payable on account of such cost in respect of the land constituting each survey number as defined in the Bombay Land Revenue Code, 1879, and the amount so determined shall be deemed a charge upon such land and shall be payable in the manner hereafter prohibited, by the holder for the time being of such land and no such survey number shall be sub-divided so long as the amount so determined with interest remains unpaid :

Provided that in distributing such cost in accordance with the provisions of this clause land belonging to Government on the 1st day of August 1931 shall be assessed to such cost at twice the rate of occupied land.

Provided further that when the holder or holders of land have constructed a part only of a water-course under the option given by the proviso to sub-section (1) and the Canal-officer has constructed the remaining part of such water-course there shall be credited to such holder or holders the cost of the construction of the part constructed by them, such cost being based upon and proportionate to the cost of the construction of water-courses by the Canal-officer within the local area as determined by the Canal-officer in accordance with the provisions of clause (*a*).

(*c*) The Canal-officer after determining and declaring the sum payable by each holder of land on account of the cost of construting or reconstructing a water-course in accordance with the provisions of clause (*a*) or (*b*) shall give notice thereof to such holder or holders of the land concerned, with an intimation that the sum payable on account of such cost has become due from the date on which possession of the water-course was made over to such holder or holders and that, if so desired, such holder or holders shall be permitted to pay the sum due in twenty equal instalments payable either annually or at such lesser instalments as may be convenient to such holder or holders together with interest at such rate as may be fixed by Government but not exceeding the rate payable by Government on its own borrowings on the date on which the said sum became payable as aforesaid.

(*d*) In the event of any default in payment of any sum due under clause (*c*) by the holder or holders, the sum payable shall be recoverable under section 57.

(5) The holder or holders of land to whom possession of a water-course is given in accordance with the provisions of sub-section (3) shall be the owner or owners of such water-course.

(6) Any person aggrieved by an order of a Canal-officer under sub-section (4) as to the apportionment of the cost of construction of a water-course may present a petition to the Collector requesting him to revise that order, and the Collector after such inquiry as he thinks necessary and after giving the persons concerned a reasonable opportunity of being heard may pass such orders as he thinks fit. The orders passed by the Collector shall, subject to revision by the Commissioner, be final and conclusive unless modified by a Civil Court of competent jurisdiction.

(7) If after the construction of any water-course under the provisions of this section the Canal-officer finds that any further alterations in the alignment or construction of the said water-course are necessary, it shall be lawful for him with the previous sanction of the Collector to carry out such alterations at the expense of Government.

Explanation.—For the purposes of this section 'the cost of constructing a water course' shall include the cost of aligning the water-course and of such preliminary operations as are necessary for such alignment, but shall not include more than two-thirds of the cost of main rectangulation and sub-rectangulation.

Note.—Section 92 is printed as amended by Bom. Act XV of 1933, s. 3.

Retrospective operation of sections 91 and 92.

93. The provisions of sections 91 and 92 except the proviso to sub-section (1) of section 92 shall be deemed to have come into operation and to have had effect from the 1st June 1926 :

Provided that anything done by the Canal-officer under the said provisions between the 1st June 1926 and the date of the coming into operation of the Bombay Irrigation (Amendment) Act, 1931, shall not be invalid merely on the ground that any procedure laid down in the said provisions have not been followed.

Provided further that no compensation shall be payable for the stoppage of the supply of water to any water-course or to any person who was entitled to such supply if such stoppage was due to any action of the Canal-officer in changing or transferring the source of water-supply under the provisions of section 91 during the period aforesaid.

THE
Suits for Lands Act

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ACT No. XVI of 1838.

[*23rd July 1838*].

Suits to be brought in Civil, and not Revenue, Courts.

1. *First.*— In the territories subject to the Presidency of Bombay, all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right to possession of land is claimed, shall be brought in the Courts of Adalat and the Courts subordinate thereto, and not in the Courts of Revenue.

Second.—Repealed by Bombay Act III of 1876.

Third.—Repealed by Bombay Act II of 1866.

Procedure on suit being presented to superior Court doubting its jurisdiction.

2. If a suit be presented in the Court of a Judge or Collector, which such Judge or Collector shall not deem within his jurisdiction the party presenting such suit shall be referred by the Court in which it may be first presented to that in which, in the opinion of such Court, the jurisdiction lies, and the latter Court shall, in the event of its doubting its jurisdiction in the case, refer the question of jurisdiction to the Sadar Diwani Adalat, whose decision on the point shall be final.

And in subordinate Court so doubting.

3. If a suit be presented in any Court subordinate to the Court of a Judge or Collector, which suit such subordinate Court shall not deem to be within its jurisdiction, such subordinate Court shall submit the case to the Judge's or Collector's Court to which such subordinate Court is subordinate; and if the superior Court to which the case is so submitted shall be of opinion that such subordinate Court has jurisdiction in the case, such superior Court shall direct such subordinate Court to proceed with the case; and if such superior Court shall be of opinion that such subordinate Court has not jurisiction in the case, such superior Court shall proceed in the manner directed in the last preceding section.

Transfer of suit entered in Court not having jurisdiction.

4. Whenever a Court of Adalat or a Revenue Court shall have entered on its file, under this Act, a suit in which it has not jurisdiction, it shall be competent to the Sadar Divani Adalat, either on a reference from the Judge or Collector (as the case may be), or on application from the parties, to direct that the suit be transferred, with all the proceedings which may have taken place therein up to the period of transfer, to the Court possessing jurisdiction, which shall proceed therewith as if the suit had been originally filed in that Court.

*** Act XVI of 1838 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 5.**

Procedure on Court of appeal finding original suit was decided in wrong Court.

5. When any Court trying an appeal finds that the action was originally brought and decided in a Revenue Court, when it ought to have been brought and decided in a Court of Adalat, or a Court subordinate thereto, or that the action was originally brought and decided in a Court of Adalat or a court subordinate thereto, when it ought to have been brought and decided in a Revenue Court, the Court trying the appeal shall, instead of quashing the whole proceedings, annul only the decree, and refer the suit to be tried in the Court to which the jurisdiction properly belongs, and the Court trying any such case referred under the foregoing section shall take further pleadings, exhibits, and evidence only if it deem such necessary, and shall pass a new decree.

THE

Bhagdari and Narwadari Tenures Act

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BOMBAY ACT No. V OF 1862

[*24th April, 1862*

An Act for the preservation of the Bhagdari and Narwadari Tenures

Preamble.

WHEREAS it has been found that the permanence of the tenures known as the Bhagdari and Narwadari tenures, which have existed from time immemorial in certain parts of the Presidency of Bombay, is endangered by the increasing practice of attachment and sale by civil process of the homesteads and building sites ("gabhan") appertaining or appendant to the constituted bhags or the recognized sub-divisions or such bhags or shares, in bhagdari or narwadari villages;

and whereas it is desirable to prevent the alienation, assignment, mortgaging, charging or incumbering of any portion of any bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share, or the alienation, assignment, mortgaging, charging or incumbering of any homestead, building site (gabhan), or premises appurtenant or appendant to any such bhag or share, or recognized sub-division separately or apart from such bhag or share or recognized sub-division;

It is, therefore, enacted as follows:—

No portion of bhag in bhagdari or narwadari village to be liable to seizure, etc., by process of Civil Court.

1. No portion of a bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share shall [1]* * be liable to seizure, sequestration, attachment or sale by the process of any Civil Court, and no process of such Court shall be enforced so as to cause the dismemberment from any such bhag or share or recognized sub-division thereof, of any homestead, building site (gabhan) or premises appurtenant or appendant to such bhag or share, or recognized sub-division thereof.

Object of this Act.—The principal object of this Act is to prevent the further dismemberment of bhags or shares in bhagdari villages; it renders null and void any future alienation of any portion of a bhag, other than a recognized sub-division, but it does not invalidate previous alienations (*Bhaishankar v. Collector of Kaira*, 5 Bom. 77).

[1] The words "from and after the passing of this Act" were repealed by the Repealing Act, 1873 (XII of 1873).

A 'bhag' means not only a sub-division but an aliquot share of a village subject to an aliquot portion of the total land-tax imposed on it, and not any sub-division by partition or otherwise. When, therefore, certain co-sharers partitioned a bhag between them before the passing of this Act, each share did not thereby become a separate bhag so as to enable the proprietor thereof to alienate it as a whole after the passing of this Act (*Gulam Narotam v Secretary of State*, 8 Bom. 596). R, on whom certain land forming part of a bhag had devolved by marriage and inheritance before this Act came into force alienated it to the plaintiff after this Act came into force. *Held*, following the above case, that the alienation being after this Act came into force, fell within its operation (*Rahim v. Bai Gulab*, P. J. 1890, p. 5).

This section does not prohibit the sale of an unascertained share of an undivided bhag. The object and intention of this Act is to prevent a *physical* dismemberment of a bhag, or recognized sub-division thereof, and not a mere increase in the number of persons who may from time to time be owners of the bhag (*Bai Kuvarbai v. Bhagwan Ichcharam*, 13 Bom. 203).

This section does not bar the right of action.—A Civil Court would not be bound to make a decree though it might anticipate that this section would stand in the way of the execution of the decree. After a decree has been passed against a portion of a bhag, the Collector might recognize such portion as a division of the bhag, if assured that justice required that the decree should be executed (*Ibid.*)

Sale of portion of bhag in execution of a decree.—The appellant was the mortgagee of a portion of a bhag under a mortgage, dated 1880, and in a suit brought upon the mortgage obtained a decree for a sale of the mortgaged property. An attachment was issued, and an order for sale was made. Thereupon the Collector applied under s. 2, to set aside the attachment and order for sale. *Held*, distinguishing 1 Bom. 581 cited above, that the mortgage of a portion of a bhag was unlawful under s. 3, and a process having been issued for the sale of such portion, the Collector was entitled to have it quashed (*Narbheram v. Collector of Broach*, 22 Bom. 737).

Narwa land.—Where the proprietor of a recognized sub-division of a Narwa land separates a portion of the land for building purposes and the separation has been recognized by the Collector, such separation in no way derogates from the constitution of the Narwa homestead, and the separated portions become recognized sub-divisions of the Narwa (*Bai Samju v. Lallubhai*, 27 Bom. 958).

Bhagdari tenure.—There is nothing in this Act which debars a Civil Court from making a decree for the partition of narwadar land among the bhagdars, even though such partition may cause a further division of recognized sub-divisions of bhags (*Veribhai v. Ragabhai*, 1 Bom. 225).

On issue of such process, Collector may move that it be set aside.

2. Whenever any process has issued out of any Civil Court for the seizure, seqestration, attachment or sale of any portion of a bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share, or for the seizure, sequestration, attachment or sale of any homestead, building site (gabhan) or premises appurtenant or appendant

to such bhag or share, or recognized sub-division thereof, it shall be lawful for the Collector or other chief revenue-officer of the district in which any such bhagdari or narwadari village is situated, although not a litigating party, to move in such Civil Court, that such process shall be set aside or quashed, and that the provisions of this Act be put in force ;

Court to set aside process if case fall within Act.

and if such Court be of opinion, on the evidence adduced by the Collector or other chief revenue-officer of the district on such motion, that the case is one following within this Act, it shall set aside or quash such process, and cause the provisions of this Act to be put in force ; [1]* * * any order which the said Court may make on such motion shall be appealable in the same manner as a decree of the Court in which it is made.

Mortgage of portion of bhag invalid.—Under this section the Collector is entitled to move the Court to quash the process issued for the sale of a portion of a bhag in satisfaction of a mortgage debt thereon. The remark to the contrary in *Ranchhoddas v. Ranchhodhas* (1 Bom. 581) must be confined to a mortgage made before the Act was promulgated. The fact that a mortgage, though of a portion of a bhag, other than a recognized sub-division, is a mortgage of the whole remaining interest of the mortgagor by reason of a prior sale, similarly illegal, of the rest of his interest in that bhag does not validate the mortgage (*Narbheram v. Collector of Broach*, 22 Bom. 737).

Sale of unrecognized portion of a bhag.—*N* held unrecognized fourth share in a certain bhag. *R* obtained a decree against *N* and in execution of it sold his right, title and interest in the bhag on the 28th February 1876. It was purchased by *B*. The sale was subsequently confirmed, and *B* was put in possession of a portion of the land. On the 30th September 1880, the Collector applied to the Court to set aside the sale on the ground that it was illegal under this Act. It appeared that the Collector did not know till November 1877 that the land sold was an unrecognized portion of the bhag, and not the whole of it. *Held*, that the sale might be set aside under this section notwithstanding its confirmation and subsequent delivery of possession (*Collector of Broach v. Rajaram*, 7 Bom. 542).

Bar to alienation, etc., of any portion of bhag in bhagdari or narwadari village other than recognized sub-division thereof.

3. It shall not be lawful to alienate, assign, mortgage or otherwise charge or incumber any portion of any bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share, or to alienate, assign, mortgage or otherwise charge or incumber any homestead, building-site (gabhan) or premises appurtenant or appendant to any such bhag or share or recognized sub-division, appurtenant or appendant thereto, apart or separately from any such bhag or share, or recognized sub-division thereof.

[1] The words " and it is hereby further enacted that " were repealed by the Repealing Act, 1876 (XII of 1876).

Any alienation, assignment, mortgage, charge or incumbrance, contrary to the provisions of this section, shall be null and void ; and it shall be lawful for the Collector or other chief revenue-officer of the district, whenever he shall, upon due inquiry, find that any person or persons is or are in possession of any portion of any bhag or share of any homestead, building-site (gabhan) or premises appurtenant or appendant to such bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share, in violation of any of the provisions of this section, summarily to remove him or them from such possession, and to restore the possession to the person or persons whom the Collector shall deem to be entitled thereto ;

Power to remove person in possession of portion of such bhag.

and any suit brought to try the validity of any order or orders which the Collector may make in such matter must be brought within three [1] months after the execution of such order or orders.

Limitation of suit on Collector's order.

This section has no bearing on sales by order of a Civil Court, but is intended to apply to unlawful sales and alienations of portions of bhag made out of Court, or by private individuals (*Collector of Broach v. Desai Raghunath*, 7 Bom. 564).

'Alienation.'—The word 'alienation' as used in this section not only covers transfers *'inter vivos'*, but extends to testamentary dispositions also (*Javar Jijibhai v. Haribhai*, 40 Bom 207).

Alienation of lands in bhag.—This section does not prohibit alienation by a permanent tenant of lands in a *bhagdari* and *narwadari* village, whose rights existed before the Act. The Collector's interference with the sale is wrong (*Venidas v. Bai Hari*, 38 Bom. 679).

Alienation of undivided share of a bhag.—The alienation of an undivided portion of a bhag, or share in the bhag, to a person who is not a bhagdar, is void under this section (*Purshotam v. Hira*, 15 Bom. 172).

The prohibition against alienation of an unrecognized sub-division of a bhag, provided by this section, applies to the person in possession of the bhag, though he may not be the bhagdar. Where an alienation is declared to be void under this section, an order for refund of the consideration money which has passed under the impeached transaction may be made (*Jijibhai v. Nagji*, 11 Bom. L. R. 693.)

Sale of unrecognized portion is illegal.—The sale of a portion of a bhag or share in a bhagdari or narwadari village other than a recognized sub-division of such bhag or share, or of a building site appurtenant to it is illegal under this section ; and judgment-creditor cannot, in execution of his decree, evade the law by describing his debtor's separate portion in a bhag as his "right, title and interest in the whole bhag"; for under s. 213 of the Code of Civil Procedure, the creditor is bound to specify the debtor's share or interest to the best of his belief, or so far as he has been able to ascertain the same (*Ardesir Nasarmanji v. Muse Nath Amiji*, 1 Bom. 601).

[1] The word " calendar " was repealed by the Bombay General Clauses Act, (Bom. Act 3 of 1886), Schedule B.

There is no alienation such as is prohibited by this section, where the effect of a transaction had not been to effect dismemberment of bhags or shares, but to bring together the various severed portions of a recognized sub-division into the hands of one owner (*Gulab v. Bai Tej Bai*, 21 Bom. L. R. 707).

Award-Division of recognized sub-division of bhag.—An award the result of which will be to effect further partition in a certain recognized sub-division of a bhag is void under this section. The substance and effect of the transaction is what must be looked to, for the purpose of determining whether it is within the mischief of the Act. If the transaction clearly amounts to an alienation of an unrecognized sub-division of share in a *narva*, its real nature cannot be disguised by calling it a compromise (*Nagar Kashi v. Bai Dkuli*, 20 Bom. L. R. 342).

Mortgage of unrecognized sub-division of bhag.—An unrecognized sub-division of a bhag, namely, a house, was mortgaged and the mortgagors were in possession as tenants. In a suit for possession the defendant admitted the mortgage deed and rent notes. *Held*, that the mortgage and rent notes were void under this section, the consideration for the mortgage failed *ab initio* and a suit for its recovery is barred if brought more than 3 years after (*Javerbhai v. Gordhan*, 39 Bom. 358).

Adverse possession of an unrecognized share.—Under this section the Collector can act at any time, and the Statute of Limitation is no bar to his action. So adverse possession for however a long time for an unrecognized share of a Bhagdari village is no bar to the Collector acting under this section and removing the occupant from possession (*Dala v. Parag*, 4 Bom. L. R. 797).

Where the parties to a suit arrive at a compromise the effect of which is that a nerva is split up into two portions over one of which one party gives up his right in favour of the other and the division so effected is not a recognised sub-division, the compromise is void under this section and s. 5. Where a transaction is not lawful under cl. (1) of this section, the Civil Court is bound to adjudicate upon it independently of the question whether the Collector interferes or not under cl. (2) of this section. The Collector can under this section take action at any time and the plea of adverse possession cannot prevail against any order that he may make (*Jethabhai v. Nanabhai*, 6 Bom. L. R. 128 ; 28 Bom. 399).

Possession, acquired under an alienation made in contravention of this section can become adverse and bar a suit for recovery by the individual alienor, or his representatives in interest (*Adam Omar Sale v. Bapu Bavaji*, 10 Bom. L. R. 1128 ; 33 Bom. 116).

Alienation of fruit of the trees on land.—There is nothing in this Act to prevent a permanent tenant of a Bhagdar, from alienating the fruit of the tress on the land, of which he is a tenant in the same way as he could alienate the crops or grass upon such land. The position of a tenant—of a Bhagdari land-who is presumed to be a permanent tenant under s. 33 of the Land Revenue Code, 1879, is not affected in any way by the prohibition contained in this Act against alienation (*Nahanchand v. Kekhushru*, 9 Bom. L. R. 50 ; 31 Bom. 183).

Suit to try validity of Collector's order of ouster.—The suits referred to in this section are such as are instituted by persons against whom the order of the Collector is made or whom it affects injuriously and which are

brought to try the validity of the order of ouster. The Collector is not competent under this section to pass any order as to the title of the sharers in the Narwa (*Haribhai v. Gokal*, P. J. 1897, p. 109).

Issue and execution of process in other respects authorised by law not barred.

4. * * * * [1] Nothing in this Act contained shall be construed as prohibiting the issue and execution of any such process as aforesaid against any bhag or share, or recognized sub-division of any bhag or share, in any such village as aforesaid, conjointly and in the gross with its homestead, building-site (gabhan) and other proper appurtenonces, if the issue and execution of such process be in other respects authorized by law.

Alienation, etc, of bhag or share, as aforesaid, if in other respects warranted by law, not barred.

5. * * * * [1] Nothing in this Act contained shall be construed as prohibiting the alienation, assignment, mortgaging, charging or incumbering any bhag or share, or recognized sub-division of any bhag or share, in any such village as aforesaid, enjointly and in the gross with its homestead, building-site (gabhan) and other proper appurtenances, if such alienation, assignment, mortgage, charge or incumbrance, be in other respects warranted by law, the object and intention of this Act being to prevent the dismemberment of bhags, or shares, or recongnized sub-divisions thereof, in bhagdari or narwadari villages and also to prevent the severance of homesteads, building-sites (gabhan) or other premises, appurtenant or appendant to bhags or shares, or recognized sub-divisions of bhags or shares, from the same or any of them.

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[1] The words in ss. 4 and 5 "And it is hereby further declared that" were repealed by the Repealing Act, 1873 (XII of 1873).

The Gujarat Talukdars' Act, 1888

BOMBAY ACT No. VII 1888

[*25th March, 1889*

An Act to provide for the Revenue Administration of Estates held by certain superior land-holders in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals, and to limit the further operation of Bombay Act VI of 1862

WHEREAS it is expedient to remove doubts as to the applicability of certain portions of the Bombay Land-Revenue Code, 1879, to estates held by certain superior land-holders in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals, and to make special provision for the revenue administration of the said estates and for the partition thereof ; It is enacted as follows :—

PART I

PRELIMINARY

Short title.

1. (1) This Act may be cited as the Gujarat Talukdars Act, 1888.

(2) It extends only to the districts of Ahmedabad, Kaira, Broach and the Panch Mahals.

Definitions.

2. (1) In this Act, unless there be something repugnant in the subject or context,—

(*a*) "talukdar" includes a thakur, mehwassi, kasbati and naik and a mulgameti who holds land directly from Government ;

Talukdar.—A purchaser from a talukdar does not become a "talukar' within the meaning of this clause (*Narandas v. Purushottam*, 26 Bom. 657).

Thakors.—The expression "Thakor" means any individual entited to reverence or respect whence it is generally applied to persons of rank and authority in different parts of India as a lord, a chief a master.

Mehwassi.—This term is derived from the expression "Mehwas" meaning literally, residence or country near or on the borders of the river Mahi (Wilson's Glossary of Revenue and Judicial terms, p. 320). It is a general term for a lawless tribe of Kolees and Bheels and free-booters in Gujarat ((Do.) p. 46).

Kasbatis.—In different parts of the Ahmedabad District, but especially in Dholka, a body of men called *kasbatis* or townsmen, the descendants of rich soldiers, had by lending money and acting as revenue securities raised themselves to be upper landlords or middlemen.

The tenure known as *kasbati* in the Viramgaon taluka is permanent (*i e.*, as opposed to temporary and not in the sense of perpetual); at the same time, it is not an unconditional holding and the British Govarnment have the power to resume the villages in case any of the conditions imposed is not fiulfilled (*Secretary of State v. Bai Rajbai*, 39 Bom. 625, (P. C).

Bombay Act VI of 1862 (Ahedabad Talukdars) does not apply to *Kasbatis* and a *Kasbati's* rights under this Act are subject to, and limited by, his *vattas*

The kathis of the village of Salagpur in the Dhandhuka Taluka of the District of Ahmedabad are Mulgametis, but they do not hold land directly from Government and consequently are not Talukdars within the meaning of this clause (*Sir Dolatsingaji v. Oghat Vitha*, 25 Bom. L. R 726).

Naiks.—Naiks or Naikdars' are found only in Panch Mahals and Rewakantha.

Gometis—Gometis mean Rajput Grashigas in the Ahmedabad Collectorate. *Gometis* or village owners are a class of owners of proprietary villages in the Ahmedabad District.

(*b*) "registered talukdar" means a sole talukdar, or the eldest or principal of several co-sharers of a talukdari estate, whose name is authorizedly entered in the Government records as holding such estates, or as the representative of the several co-sharers holding the same ;

(*c*) jama" means land-revenue payable by a talukdar to Government ;

(*d*) "alienation" means a transfer of ownership, and "alienee" means a person to whom ownership is transferred ;

(*e*) "incumbrance" includes a mortgage, charge, usufructuary grant and any interest other than that of an ordinary tenant or of an alienee or talukdar, and "incumbrancer" means a person in whom an incumbrance vests ;

(*f*) Any word or expression which is defined in the Bombay Land-Revenue Code, 1879, snd is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code.

Expressions defined in the Bombay Land-Revenue Code.

(2) In Part II, unless there be something repugnant in the subject or context, "talukdar" includes any class of holders of unalienated estates, upon which the land-revenue is fixed by a lump assessment, to whom the Governor in Council deems fit from time to time, by notification in the *Bombay Government Gazette*, to extend the provisions of the said part.

Meeting of "talukdar" in Part II.

3. [*Repeal of part of s. 114, Bombay Act V of 1879.*] *Rep. Act XVI of 1895.*

PART II.

SURVEY AND SETTLEMENT.

Revenue survey.

4. It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct a revenue-survey or a revised revenue survey of any talukdari estate, under the provisions of the Bombay Land-Revenue Code, 1879, applicable to such surveys.

Government may direct survey of a talukdari estate.

Talukdar's estate—Talukdari estate.—When an estate is held by a single talukdar it is described as a talukdar's estate; whereas when an estate has different sharers having different interests therein, it is called a talukdari estate.

Settlement register

5. The settlement register prepared by the survey officer under section 108 of the said Code on the occasion of making any such survey shall, unless Government otherwise direct, contain, in lieu of the particulars specified in the said section, the following particulars (namely) :—

Settlement register of a taluqdari estate what to contain.

(*a*) the area and assessment of each survey number ;

(*b*) the name of the registered taluqdar, and if there are co-sharers, the name of each co-sharer and the extent of each one's interest in the estate ;

(*c*) if the estate is undivided,—

(*i*) the manner in which the profits derived from sources common to the co-sharers are to be distributed amongst them ;

(*ii*) the share to be contributed by each co-sharer of the jama, of police charges, of the cost of erecting and maintaining boundary marks, and of any other charge to which under any law for the time being in force the co-sharers are liable in common ;

(*iii*) the manner in which the co-sharers are to collect from the tenants ;

(*d*) if a partition of the estate has been effected and the co-sharers hold their respective shares in severalty—

(*i*) the extent and limits of each separate share ;

(*ii*) the same particulars in respect of the several sub-sharers, if any, of each such share, as are required to be given concerning all the co-sharers when an estate is undivided ;

(*e*) the name and description and the nature and extent of the interest of every alienee and of every incumbrancer of the estate or any portion thereof, together with a specification of—

(*i*) the aggregate area over which such interest extends ;

(*ii*) the amount and nature of rent, or land revenue, if any, payable or receivable by each alienee and incumbrancer;

(*iii*) the basis of such interest, whether grant, contract, custom or other;

(*iv*) the conditions of service or other conditions on which such interest depends ;

(*v*) any other particulars which Government shall from time to time direct.

Determination of disputes.

6. (1) If it appears to the Survey officer who frames the said register that there exists any dispute as to any matter which he is bound under this Act to record therein, he may, either on the application of any of the disputant parties, or of his own motion investigate and determine such dispute and frame the register accordingly:

Disputes concerning matters which have to be recorded under section 5 to be determined by Survey officer.

(2) Provided that, when any such dispute shall appear to the Survey officer to have been already finally decided by a Court of competent jurisdiction, the entry in the said register shall be made in conformity with such decision.

Custody and amendment of Records.

Settlement records by whom to be kept; and

7. (1) When the Survey Settlement of a talukdari estate is completed, the said register and the other records thereof shall be kept by the Collector, and every registered talukdar shall be entitled to receive one copy of the register free of any charge except the cost of copying.

to be from time to time corrected.

(2) So long as the said register and other records are in the charge of the Survey Officer, the said officer, and afterwards the Collector, shall cause to be entered therein all changes that occur, and everything that affects any of the rights or interests therein recorded; and shall at any time correct or cause to be corrected any clerical error therein and also any other error which all the parties interested admit to have been made in the same.

Bar of suits against Government, etc., to set aside decisions under section 6 or 7; but effect to be given to decrees obtained by parties *inter se*.

8. (1) No suit shall lie against Government or against any officer of Government to set aside any decision or order of a Survey Officer or of a Collector under section 6 or 7.

(2) But the said register and other records shall from time to time be amended by the Survey Officer, or, when the survey settlement is completed by the Collector, in accordance with any final decree of a Court of competent jurisdiction which the parties may obtain *inter se* on an application accompanied by a certified copy of such decree, being duly made to the Survey officer or Collector for that purpose.

(3) In any suit in a Civil Court between the parties or persons claiming under them, a decision or order of a Survey Officer or Collector under section 6 or 7 shall not be held to be conclusive as to any matter therein decided.

Changes in records to be communicated to parties affected thereby.

9. Every change in the said register and other records shall be communicated without delay by the officer making it to each of the parties affected thereby.

PART III

PARTITION

Persons entitled to partition.

10. (1) Every person who has obtained a final decree of a Court of competent jurisdiction declaring him to be entitled to a share of a talukdari estate and every co-sharer whose name is recorded,

as such, in the settlement register prepared in accordance with section 5 and pending the preparation of the said register, every person whose title to any such share as aforesaid is not disputed by any other person claiming a share in the same estate, shall be entitled to have his share divided from the rest of the estate and to hold the same as a separate estate.

(2) Any two or more such co-sharers or persons shall be entitled to have their shares divided from the rest of the estate and to hold the same jointly as a separate estate.

The Talukdari Settlement Officer is not a Court subordinate to the High Court of Bombay; and the latter, therefore, cannot interfere in revision under s. 115 of the Civil Procedure Code of 1908 with orders passed by that officer (*Gambhirsingji v. Agarsing*, 13 Bom. L. R. 118).

Res judicata.—Under this section every person who has obtained a final decree of a competent Court, declaring him to be entitled to a share of a Talukdari estate, is entitled as of right to have his share divided from the rest of the estate and to hold the same as a separate estate. There is no provision in this section that the decree alluded to must of necessity operate as *res judicata* between all the parties appearing before the Talukdari Settlement Officer (*Ibid*).

Applications for partition to whom to be made.

11. Applications for partition shall be made to the Talukdari Settlement-officer or to such other officer as the Governor in Council appoints in this behalf.

Notification of application.

12. (1) The Talukdari Settlement Officer, or other officer aforesaid, on receiving an application for partition, shall if the application be not open to objection on the face of it, publish a notification of the same in the office of the Mamlatdar of the Taluka and at some conspicuous place in the village in which the estate to which the application relates is situate or in each of the villages comprised in the said estate, as the case may be.

Notice to co-sharers not joining in the application.

(2) He shall also serve a notice on each of the known co-sharers who has not joined in the application, requiring any of them who objects to the partition to appear before him to state his objection either in person or by a duly authorized agent on a day to be specified in the notice, not less than thirty or more than sixty days from the date on which such notice is issued.

"Known co-sharers."—The phrase "known co-sharers' in this section covers all who are known to have interest in the property and is not limited to those only whose names are recorded under this Act (*Sursangji v. Pratapsing*, 28 Bom. 209).

Procedure where notice cannot be personally served on co-sharer.

13. Where, from any cause, notice cannot be personally served on any co-sharer, the Talukdari Settlement Officer or other officer aforesaid shall order the same to be served by affixing a copy thereof upon some conspicuous part of the house, if any, in which such co-sharer is known to have last resided, or in such other manner as the Talukdari Settlement-officer or other officer aforesaid thinks fit.

14. If, on or before the day specified, any objection is made to the partition by any sharer, and the Taluqdari Settlement-officer or other officer aforesaid, on a consideration of such objection, is of opinion that there is any good and sufficient reason why the partition should be disallowed, he may refuse the application, recording the grounds of his refusal.

Power to refuse partition when objection is admitted.

15. (1) If the objection raises any question as to the right of the applicant to partition or any other question of title which has not been already determined by a Court of competent jurisdiction, the Taluqdari Settlement-officer or other officer aforesaid may either decline to grant the application until the question in dispute has been determined by a competent Court, or if no suit is at the time pending in any such Court in which the question is likely to be determined, may proceed to inquire into the merits of the objection.

Procedure if question of title is raised.

(2) In the latter case, the Taluqdari Settlement Officer or other officer aforesaid, after making the necessary inquiry and taking such evidence as may be adduced, shall pass a decision declaring the nature and extent of the interests of the party or parties applying for the partition and of the other co-sharers of the estate, if any, and directing by whom, and in what proportion, the costs of the inquiry and of the partition (which shall be recoverable as an arrear of land-revenue) are to be paid.

Decision when and how to be made by Taluqdari Settlement-officer or officer appointed by Government.

(3) The procedure to be observed by the Taluqdari Settlement-officer or other officer aforesaid in any such inquiry shall be that laid down by the Code of Civil Procedure, 1882, for the trial of original suits, and the provisions of Chapter XLVII of that Code, in so far as they apply to a review of judgment in an original suit, shall be applicable to the decision of the Taluqdari Settlement-Officer or other officer aforesaid. The Taluqdari Settlement-Officer or other officer aforesaid may, with the consent of the parties, refer any question arising in such inquiry to arbitration, and the provisions of the same Code relative to arbitrators shall apply to such references.

Procedure previous to decision.

16. (1) An appeal shall lie from any decision, or from any part of a dicision, passed under the last preceding section by the Taluqdari Settlement-officer or other officer aforesaid, to the District Court, as if such decision were a decree of a Court from whose decisions the District Court is authorized to hear appeals.

District Court may hear appeal from Taluqdari Settlement-officer's or other officer's decision and may stay partition.

(3) Upon such appeal being made, the District Court may issue a precept to the Taluqdari Settlement-officer or other officer aforesaid, requiring him to stay the partition pending the decision of the appeal.

The decision contemplated by this section is the decision, referred to in sub-section (2) of s 15 *supra*, which is come to after the making of all necessary enquiry and the taking of such evidence as may be adduced (*Gambhirsingji v. Agarsing*, 13 Bom. L. R 118).

Second appeal to High Court not competent.—No second appeal lies to the High Court from the decision of the District Court under this section (*Amarsingji v. Deepsangji*, 27 Bom. L. R. 345).

Partition how to be effected.

17. (1) When it has been decided to make a partition, the Taluqdari Settlement-officer or other officer aforesaid shall give the parties the option of making the partition themselves; in the event of their not agreeing or of their failing to make the partition, within a period prescribed by the Taluqdari Settlement-officer or the officer aforesaid in this behalf, the Taluqdari Settlement-officer or other officer aforesaid shall either make it himself or, if he thinks fit, shall entrust it to arbitrators appointed for this purpose by the parties.

(2) In making the partition, the Taluqdari Settlement-officer or other officer aforesaid and any person acting under his orders shall have the same powers to enter on the estate under partition, for making out the boundaries, surveying the land and other purposes as are conferred on Survey-officers by the Bombay Land Revenue Code, 1879.

When partition is complete, order to be made confirming it.

18. (1) When the partition is completed the Taluqdari Settlement-officer or other officer aforesaid shall make an order confirming it.

Notification of order.

(2) On making such order the Taluqdari Settlement-officer or other officer aforesaid shall publish a notification of the fact in the office of the Mamlatdar of the taluka and at some conspicuous place in the village in which the estate which has been divided is situate, or in each of the villages comprised in the said estate, as the case may be; and the partition shall take effect on and from the first day of June next after the date of such notification, or such other date next after the date of such notification between the first day of June and the first day of October as the Taluqdari Settlement-officer or other officer aforesaid, having regard to the usual season of cultivation in the said estate, shall fix in this behalf.

Partition when to take effect.

Delivery of possession.

19. (1) If necessary, the Taluqdari Settlement-officer or other officer aforesaid may, at any time after the date aforesaid, order delivery of the share, or any portion of the share, allotted to any

co-sharer to be made to him in the manner in which delivery of the same might be ordered by a Civil Court, under the Code of Civil Procedure, 1882, in execution of a decree.

Resistance or obstruction how to be dealt with.

(2) If, in executing the order of the Taluqdari Settlement-officer or other officer aforesaid, the officer charged with the execution thereof is resisted or obstructed by any person, or if a co-sharer is resisted or obstructed in obtaining possession of the share or of any portion of the share allotted to him, the Taluqdari Settlement-officer or other officer aforesaid shall proceed in the manner in which, by section 202 of the Bombay Land Revenue Code, 1879, a Collector is authorized to proceed for the purpose of inquiring into the reasonableness of any resistance or obstruction to the execution of an order made under that section and of preventing the continuance thereof.

Appeals against order confirming partition to the Commissioner.

20. An appeal against the decision of the Taluqdari Settlement-officer or other officer aforesaid confirming a partition shall lie to the Commissioner within one year from the date of the order confirming such partition.

Civil Courts barred from entertaining suits or applications for partition.

21. No Civil Court shall entertain any suit or application for partition of a taluqdari estate; provided that nothing in this section shall be deemed to affect the jurisdiction of Her Majesty's High Court of Judicature at Bombay.

Note—The expressions "taluqdar's estate" and "taluqdari estate" in this Act are used to denote different matters; the former expression means something other than taluqdari estate. The expression "taluqdari estate" in this section means an estate of Taluqdari tenure (*Purshotam v. Bai Punji*, 4 Bom. L. R. 817).

PART IV

REVENUE ADMINISTRATION

Talukdar's Jama

Talukar's jama how to be calculated.

22. (1) If a talukdar's estate or any portion thereof, is not wholly or partially exempt from land-revenue and its liability to payment of land revenue is not subject to special conditions or restrictions, the jama payable to Government in respect of such estate or portion thereof shall, if a survey settlement has been extended thereto, be the aggregate of the survey assessments of the lands composing such estate or such portion thereof, minus such deduction, if any, as Government shall in each case direct.

(2) The Governor in Council may declare the amount of jama so ascertained fixed for any term not exceeding thirty years.

23. (1) Nothing in this Act shall be deemed to affect the validity of any agreement heretofore entered into by or with a talukdar and still in force as to the amount of his jama, nor of any settlement of the amount of jama made by or under the orders of Government for a term of years and still in force.

Saving of existing agreements and settlements as to amount of jama.

(2) Every such agreement and settlement shall have effect as if this Act had not been passed.

24. (1) The registered talukdar shall be primarily responsible to Government for the jama of his village, and, if there are sharers, all the co-sharers shall be jointly and severally responsible therefor.

Responsibility for jama.

(2) If the registered talukdar fails to pay the jama according to the rules legally prescribed in that behalf, it may be recovered from his co-sharers, if any, or to the extent to which it is due in respect of the holding of any mortgagee in possession, inferior holder or person in actual occupation of the estate or of any portion thereof, from such mortgagee in possession, inferior holder or person.

Liability of other persons if talukdar makes default.

(3) When jama is recovered from any such co-sharer, mortgagee in possession, inferior holder or other person, he shall be allowed credit for all payments which he may have made to the talukdar at or after the prescribed or usual time of such payments, and he shall be entitled to credit in account with the talukdar for the amount recovered from him.

Credit to be allowed for recoveries made from other persons.

25. (1) When a partition has taken place and a talukdari estate is held in severalty, the jama payable in respect of each separate portion into which the same has been divided shall be determined by the Collector, and thereupon each such portion shall, for the purposes of the last preceding section, be deemed to be a distinct estate.

Distribution of jama in case of partition.

(2) Provided that the aggregate jama payable in respect of the several portions into which the estate has been divided shall not exceed the jama which would be leviable from the entire estate if still undivided.

Management of talukdar's estates by Govevnment Officers.

26. (1) If owing to disputes among the sharers in any talukdari estate, or for other cause, the Governor in Council shall deem that there is reason to apprehend danger to the peace of the country or injury to the well-being of the inferior holders, he may direct the Collector

Management of talukdari estate may be assumed by Collector in certain contingencies.

to cause such estate to be attached and taken under the management of himself or any agent whom he appoints for this purpose; and, on the application of any registered talukdar or co-sharer, the Collector shall furnish him with a copy of the reasons on which the orders of Government were passed.

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

Power to take up management of estate pending partition.

27. (1) With the sanction of the Commissioner, the Talukdari Settlement-officer or other officer appointed by Government may hold the estate in which partition is being effected under his own management, pending the completion of the partition.

(2) Provided that, before applying to the Commissioner for sanction under this section, the Talukdari Settlement-officer or other officer aforesaid shall give to the parties reasonable notice of his intention so to do, and shall forward, with his application, for the Commissioner's consideration, any written statement of objection thereto which any of the parties shall present to him for this purpose.

Power to take up management of estate at talukdar's request.

[*a*] 28. (1) With the sanction of Government, the Taluqdari Settlement-officer or any other officer appointed by Government for this purpose may, upon the written application of a taluqdar in this behalf, take charge of such talukdar's estate and keep the same under his management for such period as may be agreed upon.

[*b*] (1A) Any co-sharer of a talukdari estate, other than a co-sharer in a family undivided according to Hindu law, may make an application under sub-section (1) in respect of his own share in such estate.

[*c*] (2) In every case where a talukdari estate is held by co-sharers in a family undivided according to Hindu law or otherwise, an application signed by co-sharers holding an agregate interest of not less than three-fourths of the whole estate shall, for the purposes of sub-section (1), be deemed to be an application by a talukdar in respect of the whole estate.

[*a*] S. 28 was renumbered 28, sub-section (1) by the Gujarat Talukdar's (Amendment) Act, 1905 (Bom. Act 2 of 1905) s. 3 (1), and sub-section, (2) and the provisos were substituted for the concluding words and proviso of section 28 by s. 3 (2) of the same Act.

[*b*] This sub-section was inserted by Bom. Act I of 1910.

[*c*] Printed as amended by Bom. Act I of 1910.

provided, *firstly*, that no sanction shall be given on any such application under sub-section (1) where it appears to the Governor in Council doubtful whether the aggregate interest of the co-sharers signing the application amounts to three-fourths of the whole estate; and

provided, *secondly*, that nothing in this Act shall be deemed to prevent any co-sharer other than those signing any such application from obtaining partition of his share.

Applicability of section 160 of Bombay Act V of 1879 when an estate is taken under management by a Government officer.

29. (1) When any talukdari estate is taken under management by Government officers under any of the three last preceding sections, the provisions of section 160 of the Bombay Land-Revenue Code, 1879, shall be applicable thereto.

(2) Provided that no "transfer" [*a*] or agreement entered into by a Government officer managing an estate under section 26, in respect of any land in such estate shall be for a period exceeding five years from the date thereof, and that no such "transfer" [*a*] or agreement by a Government officer managing an estate under section 27 shall have effect beyond the end of the revenue year in which such officer's management determines, unless the same is ratified by the co-sharer to whose share the said land is finally allotted when the partition of the estate is completed.

Disposal of surplus receipts.

(3) All surplus receipts, if any, which accrue during such management, after defraying the costs of the management, including the payment of the current land-revenue and of all arrears thereof, and the cost of the extension to the estate of a revenue-survey, if the Governor in Council directs, or has before directed, the extension of a revenue survey thereto under section 4, shall be divided amongst the co-sharers in proportion to their respective shares, at such periods as the Talukdari Settlement-officer or other officer aforesaid shall see fit.

Disabilities of a talukdar whose estate is taken under management.

[*b*] 29A. (1) Except with the approval of the managing officer, a talukdar whose estate is taken under management by Government officers under section 26 or 28 shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability; and no suit shall be brought in any Civil Court whereby to charge any such talukdar upon any promise made after the determination of such management to pay any debt contracted during the period of such management, or upon any ratification, made

[*a*] The word "transfer" was substituted for the original words "sale of occupancy rights" by Bom. Act IV of 1913, s. 94.

[*b*] Secs. 29-A and 29-B were inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905), s. 4.

after such determination, of any promise or contract made during the period aforesaid, whether there is or is not any new consideration for such promise or ratification.

(2) Nothing in sub-section (1) shall be deemed to affect the capacity of any such talukdar to enter into a contract of marriage :

Provided that no such talukdar shall incur, in connection with such a contract, any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the managing officer may, in writing, declare to be reasonable.

Power to continue management after death.

(3) On the death of any such talukdar,—

in case of disputed succession, and

(*a*) where the succession to his property or any part thereof is disputed, the managing officer may, with the sanction of the Governor in Council, either retain the superintendence of the property until one of the claimants has established his claim to the same in a competent Civil Court, or institute a suit of interpleader against all the claimants ; and

where property still incumbered.

(*b*) where his property is still incumbered with debts and liabilities, the managing officer may, with the sanction of the Governor in Council, retain the said property under his superintendence until such debts and liabilities have been discharged.

Ascertainment and liquidation of liabilities of talukars whose estates are taken under management.

Publication of notice to claimants against talukdar whose estate is taken under management.

29-B. (1) Where any talukdari estate has been taken under management by Government officers under section 26 or 28, the managing officer may publish in the *Bombay Government Gazette*, and in such other manner as the Governor in Council may by general or special order direct, a notice in English and also in the vernacular, calling upon all persons having claims against such talukdar or his property, to submit the same in writing to him within six months from the date of the publication of the notice.

(2) Where the managing officer is satisfied that any claimant was unable to comply with the notice published under sub-section (1), he may allow his claim to be submitted at any time after the date of the expiry of the period fixed therein ; but any such claim shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of such period until submission.

[*a*] See foot-note under s. 29-A *supra*.

(3) Every claim against such talukdar or his property (other than a claim on the part of Government) not submitted to the managing officer in compliance with the notice published under sub-section (1) or allowed to be submitted under sub-section (2), shall, save in the cases provided for by section 29 (*f*), sub-section (2), clause (*c*) and by sections 7 and 13 of the Indian Limitation Act, 1877, be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged, unless in any suit or proceeding instituted by the claimant, or by any person claiming under him, in respect of any such claim, it is proved to the satisfaction of the Court that he was unable to comply with the notice published under sub-section (1).

"Unable".—The word "unable" in this section is not confined to physical liability on the part of the claimant (*Manilal v. Khodabhai*, 38 Bom. 604).

Notice.—Although a decree had been passed against a Talukdar, which was being executed before this section was enacted, still notice of the claims is necessary after the notification under this section has been issued (*The Talukdari Settlement Officer v. Akuji Abharam*, 46 Bom. 993).

Claimants to furnish full particulars and documents.

[*a*] 29C. (1) The managing officer may by written order require that any claimant submitting his claim in compliance with the notice published under section 29B, sub-section (1), shall, within such reasonable time as he may prescribe in such order, furnish full particulars thereof, and produce all documents (including entries in books of account) on which he relies to support his claim, together with a true copy of every such document :

Provided that, where the claim relates to an amount secured by a decree or award, it shall be sufficient for the claimant to produce before the managing officer a certified copy of the decree and a certificate from the Court which passed or is executing the same declaring the amount recoverable thereunder, or a true copy of the award and a statement of the sum recoverable thereunder, as the case may be; and where the claim is pending adjudication in any Court or has been referred to arbitration, it shall be sufficient for the claimant to produce a certified copy of the plaint, or a true copy of the reference to arbitration, as the case may be.

(2) The managing officer shall, after making, for the purpose of identification, every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the claimant.

(3) Where any document, which is in the possession or under the control of a claimant, is not produced by him in accordance with an order under sub-section (1), the document shall not be admissible in evidence against the talukdar whose estate is taken under management, whether during the continuance of the management

[*a*] Section 29C was inserted by Bom. Act II of 1905, s. 4.

or afterwards, in any suit brought by such claimant or by any person claiming under him, in respect of any claim to which such document relates, unless it is proved to the satisfaction of the Court that it was not within his power to produce such document as required by such order.

Investigation and decision of claims.

[a] 29D. (1) On receipts of all claims submitted in compliance with the provisions of sections 29B and 29C, the managing officer shall proceed to investigate such claims and shall decide, subject to the provisions of sub-section (3), which of them are to be wholly or partly admitted or wholly or partly rejected, as the case may be, and shall communicate his decision in writing to each claimant concerned.

(2) Where the managing officer has admitted any claim under sub-section (1), he may make to the claimant a proposal in writing for the reduction of the claim, or of the rate of interest to be paid in future, or of both ; and if such proposal, or any modification of it, is accepted by the claimant, and his acceptance is finally recorded and attended by the managing officer or by any Revenue-officer not below the rank of an Assistant or Deputy Collector whom the Governor in Council may, by general or special order, appoint in this behalf, it shall be conlusively binding upon the claimant.

Provided that if, when the management is withdrawn, any portion of the claim reduced as aforesaid is still unsatisfied, the claimant shall be entitled to recover a sum bearing the same proportion to the original claim admitted under sub-section (1), as the unsatisfied portion bears to the reduced claim.

(3) Subject to the provisions of sub-section (2), nothing in this section shall be construed to bar the institution of a suit in a Civil Court for the recovery of a claim, against a talukdar whose estate is taken under management or his property, which has been duly submitted to the managing officer :

provided that no decision of the managing officer under this section shall be proved in any such suit as against the defendent.

Management of talukdar's estates by Government officers

Execution of decrees to be stayed till certificate filed.

[a] 29E. (1) On the publication of a notice under section 29B, sub-section (1), no proceeding in execution of any decree against the talukdar whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree-claim has been duly submitted, or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree.

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[a] Sections 29D and 29E were inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act 2 of 1905), s. 4.

(2) Any person holding a decree against such talukdar or his property shall be entitled to receive from the managing officer, free of cost, the certificate required by sub-section (1).

(3) In computing the period of limitation prescribed by the Indian Limitation Act, 1877, or by section 230 of the Code of Civil Procedure for any application for the execution of a decree, proceedings in which have been stayed or temporarily barred by reason of the claim not having been duly submitted, the time from the date of the notice published under section 29B, sub-section (1), or of the decree if it was passed subsequently to the publication of the notice, to the date of due submission shall be excluded.

The two things a claimant has to do under this section before asking the Court to execute decree.—Under this section the claimant has to do one of two things before he could ask the Court to execute the decree. He has either to produce a certificate from the Talukdari Setttlement-officer that the claim has been duly submitted or to apply in writing to that officer for such certificate accompanied by a certified copy of the decree and wait for the expiry of one month from the date of receipt by the officer of the application. If the officer gave no certificate within that month, the claimant's right to apply to the Court for execution revived (*Ganpatsing v. Bajibhai*, 35 Bom. 324).

Managing officer.—This section means that before execution of a decree can be proceeded with the Court must be satisfied that the decree claimed has been duly submitted. If the officer certifies that it has been duly submitted there is an end of the matter. If, however, he does not certify that it has been duly submitted, the Court must wait for one month from the date of the receipt by the officer of an application for a certificate, and upon being satisfied that a claim has been duly submitted in accordance with provisions of section 29B, it may then proceed with the execution. The expression "Managing Officer" is merely a compendious term used in this Act for "the Talukdari Settlement Officer or any other officer appointed by Government to take charge of the Talukdar's estate and keep the same in his management" referred to in section 28 of this Act, and where the officer who takes charge of the estate and keeps the same in his management is the Talukdari Settlemant Officer; the "Managing Officer" is merely a synonym for "Talukdari Settlement Officer." Where an application relating to a claim is presented to the Subordinate Judge and it is forwarded by him to the Talukdari Settlement Officer, it amounts to a submission of the claim in writing within the meaning of section 29B of this Act, if the Talukdari Settlement Officer is also the managing Officer (*Purushottam v Rejbai*, 34 Bom. 142).

Report to Government.

[*a*] 29F. (1) When all claims have been investigated under section 29D, the managing officer shall submit to the Governor in Council a schedule of the debts and liabilities of the talukdar whose estate is taken under management, and the Governor in Council may, where the property appears to be involed beyond all hope of extrication, or for any other sufficient reason, by order published in the *Bombay Government Gazette*, direct that, on a date to be fixed by the order, the management of such estate shall be withdrawn.

(2) On the date so fixed

(*a*) the management shall terminate ;

[*a*] Sec. 29F was inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905), s. 4.

(*b*) the owner of estate shall be restored to the possession thereof, subject to any contracts entered into by the managing officer for the preservation or benefit thereof ; and

(*c*) the claims referred to in section 29B, sub-section (3), shall revive.

(3) In calculating the periods of limitation applicable to suits to recover and enforce claims revived under sub-section (2), clause (*c*), the time during which the management has continued shall be excluded.

Application of provisions of the Bombay Court of Wards Act, 1905.

[*a*] 29G. On the issue of a notification under clause (*c*) of the proviso to section 3 of the Bombay Court of Wards Act, 1905, appointing the Talukdari Settlement-officer to be a Court of Wards for the whole or any part of the area to which this Act extends, the provisions of the said Bombay Court of Wards Act, 1905, shall without prejudice to, and save so far as they may be inconsistent with, anything contained in this Act, be deemed to apply to, or in respect of any estate, which may thereafter be taken under the management of the said Talukdari Settlement-officer under section 26 or 28, as if it were an estate under his superintendence as such Court of Wards, and the talukdar, whose estate is taken under management a Government ward within the meaning of that Act.

Application of the Bombay Court of Wards Act, 1905, when Talukdari Settlement officer appointed to be a Court of Wards.

Police-officers and establishment.

30. (1) The Governor in Council may from time to time determine—

Government to fix the number and remuneration of Police.

(*a*) What Police-officer and establishment are requisite in each village in a talukdari estate ;

(*b*) by whom and under what conditions the Police-officers and establishment shall be appointed, punished and dismissed ;

(*c*) what remuneration shall be paid to each Police-officer and member of the Police-establishment.

(2) Charges on account of police shall be defrayed by the talukdar at such times as shall from time to time be determined by Government, and in the event of failure by the talukdar to pay, at the time when the same becomes due, any sum so payable, the said sum shall be recoverable from him, in addition to the jama as if the same were a part of the jama.

Police-charges how recoverable.

(3) If a partition has taken place and the estate is held in severalty, the said charges shall be payable by, and recoverable

[*a*] Sec. 29G was inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. II of 1905), s. 4.

from, the holders of the various portions into which the estate has been divided in proportion to their respective shares in the estate.

PART V

MISCELLANEOUS.

Bar of incumbrances on a talukdar's estates, beyond talukdar's own life,

except with consent of the Talukdari Settlement-officer ;

[a] 31 (1) No incumbrance on a talukdar's estate, on on any portion thereof, made by the talukdar after this Act comes into force, shall be valid as to any time beyond such talukdar's natural life, unless such incumbrance is made with the previous written consent of the talukdari Settlement-officer, or of some other officer appointed by the Governor in Council in this behalf [b] (and after the death of a talukdar no proceeding for attachment, sale or delivery of, or any other process affecting the possession or ownership of, a talukdari estate, or any portion thereof, in execution of any decree obtained against such talukdar or his legal representative, except a decree obtained in respect of an incumbrance made with such consent as aforesaid, or made before this Act comes into force, shall be instituted or continued except with the like consent.)

and of all alienations except with consent of Governor in Council.

(2) No alienation of a talukdar's estate or of any portion thereof, or of any share or interest therein, made after this Act comes into force, shall be valid, unless such alienation is made with the previous sanction of the Governor in Council, which sanction shall not be given except upon the condition that the entire responsibility for the portion of the jama and of the village expenses and police-charges due in respect of the alienated area shall thenceforward vest in the alienee and not in the talukdar.

"Incumbrance."—A money-decree is not an incumbrance on the estate within the meaning of this section. The word "incumbrance" does not include a decree for the recovery of money from a talukdar or from the estate of a deceased talukdar in the hands of his heir. An attachment effects no transfer of ownership. It is rather a prohibition of transfer, since it is a process preparatory to sale by which intermediate transfers or charges are prevented and the title to the property kept *in statuquo* (*Shivlal v. Mulaji*, 1 Bom. L. R. 154).

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[a] Nothing in section 31 shall be deemed to apply to any incumbrance or alienation made before the passing of the Gujarat Talukdars' (Amendment) Act 1905 (Bom. Act II of 1905), by a mulgameti, who holds land directly from Government, except where his estate has been taken under management by a Government officer under Bom. Act VI of 1888. See s 2 (2) proviso, of that Act.

[b] These words were added by the Gujarat Talukdar's (Amendment) Act, 1905 (Bom Act II of 1905), s. 4.

"Talukdar's estate".—The expression "Talukdar's Estate" in this section means the estate held by the Talukdar as a Talukdar. It does not, therefore, include that which a Talukdar owns as assignee of a mortgage debt by a private investment of his money (*Khodabhai v, Chhaganlal*, 9 Bom. L. R. 1122; *Bichubha v. Vela Dhanji*, 11 Bom. L. R. 763).

This expression means only the estate held by a talukdar on talukdari tenure and not property held on any ordinary tenure which is distinguishable from the former (*Bichubha v. Vela Dhanji*, 11 Bom. L. R. 763).

Lands, situated in a talukdari village, which are shown in the Government register as Sirkari Udhar Jamabandi, but which are only recently described as Vanta in the register of Inami Vanta lands kept by the Talukdar do not thereby cease to be 'Talukdar's estate' for the purposes of this section (*Shankarlal v. Bajikhan*, 24 Bom. L. R. 709).

Jivaidar is a Talukdar.—A Jivaidar is a Talukdar within the meaning of this Act. A Talukdar and his son mortgaged a portion of talukdari estate and after the death of the Talukdar his son sold the property to the mortgagee. The Talukdari Settlement Officer having issued a notice, under s. 79-A of the Bom. Land Revenue Code, to summarily evict the mortgagee from possession of the property, the latter sued for a declaration that he was entitled to remain in possession. *Held*, (1) That the mortgage by the Talukdar ceased to be operative after his death; (2) that the mortgage by his son was inoperative from the start, for he was not a co-sharer with his father in the talukdari estate, and not having an interest in the property at the time, he was not competent to incumber the interest to which he might succeed on his father's death; (3) that the sale of the property by the son was an invalid alienation under sub-section (2) of this section; and (4) that the notice of eviction under s. 79-A of the Land Revenue Code was valid (*Bhaiji v. Talukdari Settlement Officer*, 22 Bom. L. R. 906, s. c. 44 Bom. 872).

Consent of the Talukdari Settlement Officer presumed to be given to the arrangement.—

The powers conferred on the Collector, under section 323 of the Civil Procedure Code, 1882, and those conferred on the Talukdari Settlement-officer under section 31 of the Gujarat Talukdar's Act, 1888, are both of enabling or discretionary and are not necessarily of a mutually contradictory character. Where the two offices are combined in one and the same person on grounds of public convenience or expediency, his action must be referred to the exercise of his discretionary powers under both sections, if it can be so referred. It is not that in respect of one office the action was without, and in respect of the other it was with, jurisdiction (*Parshotam v. Harbhanji*, 11 Bom. L. R. 665).

Saving of rights of Government under section 3 of Bombay Act VII of 1863.

32. (1) No consent or sanction given under the last preceding section shall be deemed to affect any right of Government under section 3 of Bombay Act VII of 1863 (an Act for the Summary Settlement of claims to exemption from the payment of Government land-revenue and for regulating the terms upon which such exemption shall be recognized in future, in those parts of the Bombay Presidency which are not subject to the operation of Act XI of 1852 of the Council of India).

(2) And nothing in the last preceding section shall apply to the property of any thakur to which section 28 of the Borach and Kaira Encumbered Estates Act, 1881, is applicable, or be deemed to affect the power of the manager of any Thakur's immoveable property under section 24 of the said Act.

Saving of sections 28 and 24 of Act XX of 1881.

[*a*] 33. (1) Nothing in sections 38 to 40, both inclusive, 44, 60 to 67, both inclusive, 76, 82, 85, 116, 117A, 127 to 134, both inclusive, 136, 163, 216 and 217 of the Bombay Land-Revenue Code, 1879, shall be deemed to apply to any estate to which this Act extends.

Applicability of the Bombay Land-Revenue Code to taluqdar's estates.

(2) The provisions of the said Code when applied to any such estate shall be subject to the following modifications (namely):—

(*a*) in section 3, clause (1), the words "the Talukdari Settlement-officer and every officer appointed by the Governor in Council to exercise any power or perform any duty under the Gujarat Talukdars' Act, 1888, and" shall be inserted after the word "means";

(*b*) in section 54, the words "or under the Gujarat Talukdars' Act, 1888," shall be inserted after the figures "136";

(*c*) in sections 46, 88, 89 and 94, the word "talukdar" shall be substituted for the words "holder of alienated lands" and the word "holder" wherever they occur;

[*b*] (*c-c*) to section 79A, clause (*a*), the words "which he uses or occupies in contravention of any of the provisions of the Gujarat Talukdars' Act, 1888, or", shall be added;

(*d*) in section 88, the clauses (*c*) to (*f*) and proviso shall be omitted;

(*e*) for section 111 the following section shall be deemed to be substituted, *viz*:—

"11. In the event of any talukdar's estate coming under the temporary management of Government officers, it shall be lawful for the Collector, Talukdari Settlement officer, or other officer appointed by Government in this behalf, subject, in any case to which it applies, to the proviso to section 29 of the Gujarat Talukdars' Act, 1888, to let out the lands thereof at rates determined by means of a survey-settlement or at such other fixed rates as he may deem to be reasonable, and to "grant unoccupied lands by lease" [*a*] and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands not comprised within a

Revenue management of talukdari estates which may be temporarily under Government management.

[*a*] Sub-section (1) of s. 33 was substituted for the original section by Bom. Act IV of 1913, s. 94.

[*b*] Clause (*c-c*) was insterted by s. 5 of the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905).

talukdar's estate, so far as such rules may be applicable and for so long as the said estate shall be under the managemnt of Government officers :

Provided, however, that any written agreements relating to the land made by the talukdar of such estate shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of Government on the land ; and provided also that, when the estate ceases to be under the management of Government officers, the possession and enjoyment thereof shall, except as is otherwise provided in section 29 of the Gujarat Talukdars' Act, 1888, revert to the talukdar, subject to the leases, if any, granted under this section";.....[*a*]

(*f*) section 113 shall be omitted ;

(*g*) in section 147, the words "or under the Gujarat Talukdars' Act, 1888," shall be inserted after the word " section";

(*h*) in section 150, clause (*f*), the word "alienated" shall be omitted ;

(*j*) in section 160, the word "be" shall be substituted for the words " revert to Government" ;

(*k*) in section 162, the words "at any time within twelve years from the first day of August next after the attachment" shall be omitted ;

(*l*) in section 214, clause *(h)* shall be omitted ;

(*m*) generally, the word " talukdar " shall be substituted for the word "occupant"; [*b*]...and the words "talukdar's holding" or such words to that effect as may be required by the context, for the word "occupancy".

And whereas it is also expedient to limit the period within which fresh estates may be subjected to the operation of Bombay Act VI of 1862 (an Act for the amelioration of the condition of Talukdars in the Ahmedabad Collectorate and for their relief from debt); It is further enacted as follows:—

Powers of Talukdari Settlement officer—A Government officer in the temporary management of a Talukdar's estate has, under this section, the same powers which the Collector has in an unalienated village, to recover arrears of revenue inclusive of rent (*Jinabhai v. The Collector*, 28 Bom. L. R 417).

Limitation of operation of Bom. Act VI of 1862.

34. No new declaration shall be made under section 1 of the said Bombay Act VI of 1862 at any time after six months from the date on which this Act comes into force.

[*a*] The words "grant unoccupied lands by lease" were substituted for the original words " sell the occupancy of unoccupied lands by auction," by Bom. Act IV of 1913, s. 94.

[*b*] The portion repealed by Bom. Act IV of 1913, s 94, is omitted.

THE

Broach and Kaira Inncumbered Estates Act

—:0:—

Act No. XIV of 1877.

[*28th June, 1877.*]

An Act to relieve from incumbrances the estates of Thakurs in Broach and Kaira.

Preamble. Rep. Act XXI of 1881.

1 to 38. [*Application and preliminary enquiry ; Order of management ; proof of debts ; Scheme for liquidation ; Proceedings subsequent to sanction of liquidation scheme ; Appeal and revision ; Miscellaneous.*] *Rep. Act XXI of 1881.*

Amendment of Bombay Act VI of 1862.

39. † Whereas doubts have been raised as to the validity of Bombay Act No. VI of 1862 (*for the amelioration of the condition of taluqdars in the Ahmedabad Collectorate, and for their relief from debt*) so far as it purports to affect the High Court of Judicature at Bombay ; for the purpose of precluding such doubts, it is hereby enacted that the said Act, so far as it purports to affect the said High Court, shall be deemed to be and to have been valid.

Taluqdari Settlement-officer to be—

40 ‡ [The Taluqdari Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7,] for the time being shall, unless the Local Government in any case otherwise directs, be—

deemed officer under Bombay Act VI of 1862, section 1 ;

(*a*) deemed to be an officer appointed under section 1 of the said Bombay Act No. VI of 1862 to manage all estates with respect to which a declaration is or has been made and published under the said section ;

assistant to certain Collectors.

(*b*) an assistant to the respective Collectors of Ahmedabad, Kaira and Broach.

Acts of Taluqdari Settlement-officer valid.

41. Nothing heretofore done by any Taluqdari Settlement-officer shall be deemed to be or to have been invalid by reason only of his not having been duly appointed,—

† The words "and" in paragraph 1 and " further " in the second paragraph were repealed by the Repealing and Amending Act 1894 (4 of 1894).

‡ These words and figures were substituted for the words " The said Taluqdari Settlement-officer " by s. 2 of the Broach and Kaira Incumbered Estates Act, 1881 (21 of 1881).

(*a*) under section 1 of the said Bombay Act No. VI of 1862 to manage any estates with respect to which a declaration has been made under the said section, or

(*b*) to be a manager under § * * * † Act No. XV of 1871, or

(*c*) to be an assistant to the respective Collectors of Ahmedabad, Kaira and Broach.

ACT No. XXI of 1881. *

[*7th September 1881*]

An Act to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira.

Preamble

WHEREAS it is expedient to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira ; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY

Short title.

1. This Act may be called the Broach and Kaira Incumbered Estates Act, 1881 :

Commencement.

and it shall come into force on the passing thereof.

Partial repeal of Act XIV of 1877.

2. Act No. XIV of 1877 (*to relieve from Incumbrances the estates of Thakurs in Broach and Kaira* , except the last three sections, is repealed.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under [*a*] Act No. XV of 1871 (*to relieve from Incumbrances the estates of Thakurs in Broach*) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act, No. XIV of 1877, for the words 'the said Taluqdari Settlement-officer," the words "the Taluqdari Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7," shall be substituted.

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§ The words " the said " were repealed by the Repealing and Amending Act 1894 (4 of 1894).

* This Act is not in force in the Panch Mahals.—See the Panch Mahals Laws Act, 1885 (7 of 1885), s. 2 (1).

† Act 15 of 1871 was repealed by s. 2 of this Act.

[*a*] Act 15 of 1871 was repealed by the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877).

Interpretation-clause.

3. In this Act—

"thakur" means also taluqdar, jagirdar and kasbati, and such other classes of holders of estates as the Local Government may, with the previous sanction of the Governor General in Council, [a] declare to be thakurs for the purposes of the Act;

"heir" means the person for the time being entitled as heir to a thakur:

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency or Bombay.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

Application for benefit of Act.

4. At any time within six months after the passing of this Act, any thakur, or any person who would be sole heir or one of the heirs to such thakur if he then died intestate, may apply, in writing, to the Commissioner stating that such thakur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any thakur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

Order to inquire.

5. When any such application is made by or on behalf of a thakur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

[a] The Maliks of Thara in the District of Kaira are declared Thakurs for the purposes of this Act (B. G. G. for 1883, Pt. I, p. 504).

Verified statement to be submitted.

6. When an inquiry has been directed under section 5, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

False averments in statement.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

Report of inquiry and proceedings thereon.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Taluqdari Settlement-officer* for the time being shall, unless the Local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

"Order of management" to what it extends.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to

* As to this officer, see the Broach and Kaira incumbered Estates Act, 1877, (14 of 1877), s. 40.

all debts and liabilities to which he is subject or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

Commencement of management.

The management shall be deemed to commence from the date on which the order is published.

Effect of order of management.

9. On the publication of the order of management the following consequences shall ensue :

first, all proceedings then pending in any Civil Court in British India in respect to the debts and liabilities mentioned in section 8 shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended ;

Stay of pending proceedings, etc.

secondly, so long as the management continues no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any Civil Court in British India in respect of such debts and liabilities ;

Bar of fresh proceedings.

thirdly, so long as the management continues, the debtor shall be incompetent—

The debtor incompetent—

to contract debts ;

(*a*) to enter into any contract involving him in pecuniary liability, or

to incumber or alinate property.

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or

to grants receipts for rent.

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom :

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties :

fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

Manager to have powers of owner and to receive rents and profits ;

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management ;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thakur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land revenue due to Government;

to have powers of Collector for their recovery.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

Manager to pay therefrom—

11. From the sums received under section 10, the manager shall pay—

costs of management, and repairs.

first, the costs of the management, including the costs of necessary repairs;

Government revenue, etc.

secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

rent due to superior holder.

thirdly, the rent (if any) due to any superior holder in respect of the said property;

allowance for maintenance and expenses of debtor and family.

fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

cost of improvements, etc.

fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

Residue how disposed of.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, or the debts and liabilities mentioned in section 8, other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION

Notice to claimants against debtor.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujarati calling upon all persons having

claim against the debtor or the property under managemnt to notify the same in writing to such manager within six months from the date of the publication.

Copies of notice to be exhibited.

He shall also cause copies of such notice to be exhibited at the Mamlatdars' kacheris in the district in which the said property lies, and at such other places as he thinks fit.

Claim to contain full particulars.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Documents to be given up.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Entries in books.

If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of indentification and, after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude documents not produced with claim.

If any docnment in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Claim not duly notified to be barred.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (*d*), be deemed for all purposes and all occasions, whether during the continuance of the management or afterwards, to have been duly discharged :

Admission of claims within further period of six months.

Provided that when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Determination of debts and liabilities.

15. The manager shall enquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. When the total amount of the debts and libilities including those due and incurred to Government has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme

18. The Commissioner may—

(*a*) as often he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

Proceedings of Commissioner on submission of scheme.

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme, under section 18, the Commissioner may, by an order published in the *Bombay Government Gazette* direct that on a date fixed by such order the management shall be relinquished.

Power to relinquish management.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owener of the property under management shall be restored to the possession thereof, subject to any leases made under section 10;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14 shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the Local Government may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section 9 shall be for ever barred ; and

2nd, every debt or liability due or owing to any person which was provable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

Suit in Civil Courts for partition not barred by liquidation-scheme.—In respect of the debts and liabilities of a Thakur, this Act ousts the jurisdiction of the Civil Courts as soon as a liquidation-scheme under this section is sanctioned ; but this ouster does not apply to a suit for partition among the debtor Thakurs themselves. Secs. 9, 20 and 27 show that conclusively (*Malek Jamiat Raju v. Karimkhan Mubarajkhan*, P.J. for 1896, p. 721).

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue-year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

Power to inquire into consideration given for leases

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given ; and if such consideration appear to him insufficient,

may by order with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease on require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and, in default of such payment, the lease shall be cancelled.

Power to lease.

23. Subject to the rules made under section 31, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to raise money by mortgage or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the Local Government.

Manager's receipt a discharge.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Termination of management.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section 24, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

Restoration of owner.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases

and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23 and 24.

Death of debtor during management

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided,—

1st, the management shall continue and proceed in all respects as if such debtor were still living ;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section 9 ; and

3rdly, no Civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Where the Thakur, whose indebtedness rendered necessary the application of this Act to his estate, dies during the management, there is nothing in the Act to bar a suit against the successor during the management in respect of his own debts, though a decree in such suit could not be executed against the family estate (*Bhikha v. Sidha*, P. J. 1886, p. 107).

Mortgages, etc., made by restored Thakur valid only for his life.

28. When a Thakur has been restored under section 26 to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thakur, shall be valid as to any time beyond his natural life [unless made or granted with the previous sanction of Commissioner.]†

Disability applies to successor of Thakur.—The disability contained in this section applies not only to the Thakur during whose life-time the estate was taken under management under this Act, but to his successor also (*Gavrishankar v Madhavsangji*, 27 Bom. L. R. 88).

Mortgage by Talukdar.—Where a mortgage effected by a Talukdar becomes void under this section, after the death of the Talukdar the mortgagee is not entitled to recover back the money advanced by him on the mortgage under sec. 65 of the Contract Act (*Parshottam v. Chatrasangji*, 19 Bom. L. R. 545 ; s. c. 41 Bom. 546).

CHAPTER VI

OF APPEAL AND REVISION

Appeal.

29. An appeal against any decision or order under sections 14, 15, 16 and 22, or imposing a fine or imprisonment in exercise of the powers conferred

† The words in brackets were added by Bom. Act II of 1919.

by section 35, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call for proceedings and pass order thereon.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII

MISCELLANEOUS

Power to make rules.

31. The Local Government may, from time to time, make rules consistent with this Act—

(*a*) to regulate the security to be required from Subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published, shall have the force of law.

Power to appoint new manager.

32. The Local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

Managers & their agents to be public servants.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Investigation a judicial proceeding.

35. For the purposes of this Act, the manager and any officer making an inquiry under section 5 may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure.

Power to summons witnesses and compel production of documents.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Bar of Suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Saving of jurisdiction of courts in Broach and Kaira in respect of certain suits.

As this section mentions succession only, it is argued that a suit for partition being not a suit relating to succession, on the principle of **unius expressio alterus exclusio**, the jurisdiction of the Civil Courts is excluded. The argument is not universally conclusive. It loses all force where one class of suits only are removed from the cognizance of the Civil Courts and no reason exists in the nature of purpose of this Act or extending the class.

This section requiries the manager to be made a party. His not being so is a matter for amendment and it does not take away the jurisdiction of the Court as it is the plaint which determines it (*Malek Jamiat Raju v Kasimkhan Mubarajkhan*, P. J. 1896, p. 721).

38. Nothing in section 9 shall be deemed to render any of the following thakurs, namely, the thakur of Ahmod, the thakur of Sarod, the thakur of Kerwara, the thakur of Dehej, and the thakur of Janiadra, incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section 38 apply to any of the said thakurs :

Exemption of certain thakurs from certain provisions of Act.

Provided that, if any such thakur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act, No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the Local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

THE
Ahmedabad Talukdars Act

BOMBAY ACT No. VI OF 1862.

[*14th October 1862.*]

An Act for the amelioration of the condition of taluqdars in the Ahmedabad Collectorate, and for their relief from debt.

Preamble.

WHEREAS the lands held in the zila of Ahmedabad in the Province of Gujarat under the title of taluqdari estates are now only held on leasehold tenure determinable at the pleasure of Government; and whereas it has been brought to the notice of Government that many of the taluqdars are in embarrassed circumstances and have borrowed money on the security of their landed estates; and whereas such of the said landed estates as are of the taluqdari tenure aforesaid could not and cannot be lawfully charged, encumbered or alienated; and whereas it is expedient to enable the said taluqdars to effect a settlement of their debts and liabilities; It is hereby enacted as follows :—

Operation of this Act.—This Act did not affect talukdari villages, the right, title, and interest of the talukdar in which had been sold before the Act came into operation, though possession of such villages had not then been obtained by the purchaser (*Collector of Ahmedabad v. Samaldas*, 9 Bom. 205).

Power to make declaration vesting management of estates of taluqdar in officer appointed by Government.

1. Whenever it shall appear to the Governor in Council that any taluqdar in the zila aforesaid is subject either personally or in respect of his landed estates of any description of tenure to debts or liabilities equal to or exceeding five times the average rents, profits and other annual income derived by the taluqdar from his estates aforesaid during the previous five years after deducting thereout the land tax and other dues of Government, it shall be lawful for the Governor in Council to make a declaration vesting the management of the said estates in an officer or officers who shall then be appointed by the Governor in Council in that behalf, and the said declaration shall be published in the *Bombay Government Gazette*.

Comment.—No new declaration is to be made under this section at any time after six months from the date on which Bom. Act VI of 1888 came into force (*See s. 34 of Bom. Act VI of 1888*).

"Liabilities."—The 'liabilities,' which the first ten sections of this Act were intended to deal with are liabilities which, at the time of the declaration mentioned in this section, were not merely contingent, but could be made the subject of an immediate claim. The case of debt or liability to which a talukdar has become subject during the period of management in consequence of an event

which at the commencement of such period could not be foreseen with certainty, is a *casus omissus* in this Act (*Sheik Gulam v. Waghela*, P J., 1883, p. 68).

After declaration, suits in respect of debts or liabilities in first section mentioned, other than debts to Government, to be permanently stayed.

2. From and after the publication of said declaration as aforesaid all suits or judicial proceedings for or in respect of debts or liabilities in the first section above mentioned, other than debts due or liabilities incurred to the Crown or Government, pending before or under appeal from any of the Civil Courts in the said Presidency, shall be, and are hereby declared to be, permanently stayed, and no further prosecution thereof shall be permitted, and all writs, processes, executions or attachments for or in respect of such debts and liabilities shall forthwith cease and be raised.

Power to remove mortgagee or encumbrancer from possession of estate of taluqdar.

3. From and after the publication of such declaration, the said officer or officers shall have power, without resorting to any Civil Court, to remove from possession of the landed estates of the taluqdar of any description of tenure, or any part thereof, any mortgagee or other encumbrancer who may be in possession of the same, without prejudice to such mortgagee or encumbrancer bringing his claim under sections 8 and 9 before the officer or officers appointed for the management of the said estates.

After declaration taluqdar not liable to arrest in respect of debts other than debts due to Government.

4. From and after the publication of such declaration as aforesaid, the taluqdar, the subject of such declaration, shall not be liable to arrest, nor shall his personal estates of any description whatsoever be liable to seizure, attachment or sale under any process, decree, judgment or execution of the Civil Court of the Presidency of Bombay for or in respect of any debts or liablities existing at the time of such declaration, other than debts due or liabilities incurred to the Crown or Government.

During management, estates exempt from civil process in respect of debts and liabilities aforesaid.

5. From and after the publication of such declaralion as aforesaid, the landed estates of such taluqdar of any description of tenure and the rents, profits and income thereof shall, during the period of the management thereof by the said officer or officers, be wholly exempt from seizure, attachment or sale under or by virtue of any process, decree, judgment or execution of any Civil Court of the Presidency of Bombay for or in respect of the debts and liabilities aforesaid, other than debts due or liabilities incurred to the Crown or Government.

6. It shall be lawful for the Governor in Council to make rules for the purpose of carrying this Act into effect, and from time to time to alter, vary or amend such rules as necessity may arise.

Power to make and alter rules.

7. The officer or officers shall, during the continuance of his or their management of the said estates, receive the whole of the rents, profits and income thereof and shall defray thereout land-tax and other debts due or liabilities incurred, or hereafter respectively to grow due or to be incurred, to the Crown or Government and pay to the taluqdar such annual sum only as shall appear to the Governor in Council requisite for the decent support of the taluqdar and his family, and any balance remaining after such payment as aforesaid shall be applied in discharge of the expenses of such management as aforesaid and in liquidation or settlement of the debts and liabilities to which at the time of the publication of the said declaration the taluqdar is subject either personally or in respect of his landed estates of any description of tenure, in accordance with the rules alluded to in the last preceding section.

Managing officer to receive rents, profits and income ;

and pay for support of taluqdar and family

expenses of management; and settlement debts and liabilities, in accordance with rules.

8. The said officer or officers shall publish in the Bombay Government Gazette a notice in English and Gujarathi, calling upon all persons having claims against the said taluqdars or their said landed estates in respect of any of the debts or liabilities aforesaid, to notify the same in writing to such officer or officers within three [a] months' time from the time of such notice in the Gazette, and the said officer or officers shall, before or contemporaneously with such publications in the Gazette, cause copies of such notice to be exhibited at the mamlatdars' kacheris in the said zilla and in such place or places as to such officer or officers shall seem fit and as may be directed by the said rules.

Managing officer to publish notice to claimants against taluqdar to notify claims.

Publication of copies of notice.

9. Any debt or liability of the taluqdar other than as aforesaid, to which he is subject, either personally or in respect of the said landed estates, existing at the time of the said declaration by the Governor in Council not duly notified to the said officer or officers within the time and in the manner in the

Debt or liability not notified to be barred.

[a] The word "calendar" was repealed by the Bombay General Clauses Act, 1886 (Bombay Act 3 of 1886), Schedule B.

last preceding sections specified, shall and is hereby declared to be for ever barred:

Upon proof of inability of claimant to comply, claim may be admitted within further period of nine months.

Provided always that, upon proof being given to the satisfaction of such officer or officers of the inability of the claimant to have complied with the provisions of this and the last preceding sections, it shall be lawful for the said officer or officers, to entertain and admit such claim within the further period of nine months from the expiration of the above-mentioned period of three months.

Scheme for settlement of taluqdar's debts and liabilities.

10. The said officer or officers shall as early as possible prepare and submit to the Governor in Council a scheme for the settlement of the taluqdar's debts and liabilities, and such scheme, when approved by the Governor in Council, shall be carried into effect.

Amount of debt fixed in scheme not to be increased.

The amount of any debt or liability as fixed in such approved scheme shall not be liable to increase.

Bar of debts disallowed.

Any debt or liability disallowed by such officer or officers shall, if such disallowance be approved by Government, be and it is hereby declared to be for ever barred.

Debt or liability.—The case of a debt or liability to which a Talukdar has become subject during such period in consequence of an event which could not be foreseen with certainty at the commencement of such period must be treated as a *casus omissus in this Act* (*Shaik Gulam v. Waghela Rajsangji*, P. J. 1883, p. 63).

Power to authorise raising of fund for settlement of debts and liabilities.

11. It shall be lawful for the Governor in Council to empower the officer or officers aforesaid to raise a fund to be applied to the settlement of the debts and liabilities of the talukdar by assigning the whole or a portion of his landed estates of any description of tenure to be held and enjoyed, for a period or periods not exceeding twenty years from the publication of the declaration aforesaid, by any fit person or persons who may advance money on the security thereof, or by the sale of such outlying portion or portions of the said estates as may appear expedient; but in case of such sale the consent of the taluqdar and of his next heir, if the latter be of age, shall first be obtained.

Debt or liability incurred by talukdar during management not enforceable against estates.

12. Any debt or liability, except as hereinbefore excepted, which may be incurred by the taluqdar, either personally or in respect to his said landed estates or any part thereof, during the period of such management as aforesaid, shall not be enforceable in any manner whatever, either

during or subsequently to such period of management, against his said landed estates or any part thereof, and it shall not be competent for the taluqdar during the said period of management to charge, encumber, sell or alienate his said landed estates or any part thereof, and such charge, encumbrance, sale or alienation shall be null and void.

Incompetency of taluqdar to charge or alienate.

Inability of guardian to contract on behalf of infant ward so as to bind him personally.—A guardian cannot contract in the name of a ward, so as to impose on him a personal liability. This Act is intended to deal with debts and liabilities which can possibly impose a charge upon the talukdar estate at the end of the period of management, when the estate was to be restored to the talukdar free of incumbrance, excepting the Government revenue (*Waghela v. Masludin*, 11 Bom. 551).

"Incurred".—The term "incurred" in this section is used in its proper sense of "run into" and implies an act done by the Talukdar during the period of management (*Shaik Gulam v. Waghela Rajsanji*, P. J. 1883, p. 63).

Maintenance grant.—In the Thakorate of Gamph Hindu Rajput family in the Bombay Presidency, holding an impartible estate subject to the rule of primogeniture it was customary to grant villages to junior sons of the holder of the *gaddi* for jivai or maintenance. The grant reverted to the *gaddi* on failure of the grantee's male descendants, widows being excluded. One of such grantees died issueless leaving a widow who purported to adopt a son subsequently. *Held* that the adopted son inherited the grant (*Pratap Singh Shivsingh v. Agarsinghji Raisingh*, 43 Bom. 773, P. C.).

13. It shall be lawful for every officer or officers appointed under this Act to demand and require the production of any writs, decrees, judgments, records, deeds, documents, exhibits, pleadings, books, accounts, letters, petitions, papers or writings filed in any of the suits mentioned in the second section of this Act, or relating to the debts or liabilities of any taluqdar whose landed estates are brought under such management as aforesaid, in the custody or control of any Civil Court, or in the custody or control of any Judges, Judge, Assistant Judge, officer or person connected with such Court, and upon notice being given in writing by such officer or officers to such Civil Court, or to any Judges, Judge, Assistant Judge, officer or person connected therewith, such writs, decrees, judgments, records, deeds, documents, exhibits, pleadings, books, accounts, letters, petitions, papers or writings in the said notice mentioned shall be immediately given up to the said officer or officers appointed under this Act, in the manner directed by the said notice, any act, usage or custom to the contrary in any wise notwithstanding.

Civil Courts, to give up writs, decrees, papers etc., when required.

Power to officer to take evidence, and compel production of books, etc.

14. It shall be lawful for every officer or officers appointed under this Act to summon witnesses and to take evidence, [1] * * * * and it shall also be lawful for the said officer or officers to compel the production of books, accounts, papers, deeds or other documents, and to inflict a fine not exceeding rupees one hundred for disobedience to any sanad or order made under this section.

Power of managing officer for releasing rents and profits.

15. The officer or officers appointed for the management of the landed estates of any taluqdar under this Act shall have, for the purpose of this realization and recovery of the rents, profits and income of such landed estates, the same powers as a Collector possesses under the Regulations or Acts now or hereafter in force for the realization and recovery of land-revenue due to Government.

Note.—The talukdari Settlement Officer seized under this section some moveables in levy of rent. *Held*, that his process was "legal process" under Art. 29 of Sch. II of the Limitation Act of 1877(*Makwanta v. The Tulkdari Settlement Officer*, P. J. 1892, p. 32).

Management limited to twenty years, and, at its expiration, claims, etc., to be considered settled.

16. The management of the landed estates of any taluqdar by such officer or officers as aforesaid shall not extend beyond the period of twenty years, to be calculated from the first publication of such declaration as aforesaid in the Bombay Government Gazette, and at the expiration of such management whether before or at the end of such period of twenty years, all debts and liabilities (except as hereinbefore excepted) existing at the time of such declaration, and comprised in such approved scheme as aforesaid, shall be deemed to be for all intents and purposes whatsoever fully discharged and satisfied, and neither the taluqdar nor his heirs nor representatives, nor his heir nor their estates, whether moveable or immoveable, or any part thereof shall be subject in any manner whatsoever to such debts or liabilities (except as hereinbefore excepted) or any part thereof.

Power to appoint new officers.

17. It shall be lawful for the Governor in Council from time to time to appoint new officers to carry this Act into effect, and all such officers shall have the same powers as the officer or officers first appointed.

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[1] The words repealed by the Repealing and Amending Act, 1876 (XII of 1876), are omitted.

Powers for enforcing payment of fines.

18. Officers appointed under this Act shall have the same powers for enforcing the payment of fines imposed under this Act as are given to Courts [*a*] by section 61, Act XXV of 1861.

Suits cognizable by Civil Courts.

19. Notwithstanding anything to the contrary in this Act, it shall be lawful for the Civil Courts to entertain and dispose of suits relating to the succession to, or rights of co-parcenary in, or rights of persons claiming maintenance out of, any landed estate or estates brought under the operation of this Act :

Indemnity to crown, Government or managing officer.

Provided always that neither the Crown nor Government, nor any officer or officers appointed under this Act, shall be liable to any suit for or in respect of any act or acts done in good faith by such officer or officers.

Proprietorship of taluqdar after termination of management.

20. From and after the expiration of the period of management of the estate of any taluqdar, whether such period extend, to, or be less than, twenty years, the taluqkdar shall be the absolute proprietor of his said landed estates as regards succession to, and possession, manamgement and transfer of, the same, subject to such land-tax as the Governor in Council may be pleased to reserve and all usual remedies for the recovery thereof.

Interpretation-clause.

21. * * * * [*b*] In this Act, [*b*] * * * * unless there be something in the subject or context repugnant to such construction* * * *.

(1) the term "Civil Court" shall mean and include every Court of Civil Judicature in the Presidency of Bombay whether established by Royal Charter or not.

(2) *and* (3) [*Rep. Bom. Act III of 1886.*]

[*a*] See now s. 386 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

[*b*—*b*] The words repealed by the General Clauses Act, 1886, are omitted.

The Khoti Settlement Act

BOMBAY ACT No. I OF 1880.

[*6th May, 1880.*

An Act to amend the law relating to the settlement of Villages held by Khots.

WHEREAS it is expedient to make special provision for the settlement and revenue-administration of villages in the Ratnagiri District which are held by khots ; It is enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the Khoti Settlement Act, 1880.

Extent.

It extends to all villages held by khots in the district of Ratnagiri.

The Governor in Council may from time to time, by notification in the *Bombay Government Gazette*, extend all or any of its provisions to any such village in the Kolaba District.

Repeal of sections 37 and 38 of Bombay Act I of 1865.

2. Sections 37 and 38 of the Bombay Survey and Settlement Act, 1865, are repealed so far as they apply to any village to which this Act extends, or may hereafter be extended : Provided that the said repeal shall not affect the validity of any settlement already made under the provisions of the said sections and which has been guaranteed by the Government for a fixed period under section 28 of the said Act.

Interpretation clause

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

(1) "village" means a village, or a portion or share of a village, to the extent to which a khot has any right or interest in such village or portion or share thereof :

(2) "khot" includes—

(*a*) a mortgagee lawfully in possession of a khotki,

(*b*) all co-sharers in a khotkti ;

(3) "khotki" means the aggregate of the rights and interests vested in a khot as such :

(4) "jama" means land-revenue payable by a khot to Government.

(5) privileged occupant" means—

(*a*) a dharekari, or

(*b*) a quase-dhari, or

(*c*) [*a*] a permanent-tenant :

(6) "dharekari" means a land-holder who holds on the "dhara" tenure :

[*a*] The phrase 'permanent tenant'' was substituted for the original phrase "an occupancy tenant" by Bom. Act V of 1913, s. 85 (*b*).

(7) "quasi-dharekari" means a land-holder of any of the denominations named in the first column of the schedule [*a*].

(8) "permanent tenant" [*b*] means a holder of khoti land who has a right of occupancy in such land :

(9) "dhara land" means land held by a dharekari, or by a quasi-dharekari :

(10) "khoti land" means land in respect of which a khot has, as such, any right or interest and which is not dhara land :

[*c*] (11) "Recording-officer" means any officer duly empowered to make or amend entries in the settlement-register or other settlement records by or under section 108 of the Bombay Land-Revenue Code, 1879, or Part III of this Act :

Expressions defined in the Bombay Land-Revenue Code.

(12) Any word or expression which is defined in the Bombay Land-revenue Code, 1879, and is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code.

PART II.

GENERAL PROVISIONS RELATING TO KHOTS AND THEIR INFERIOR HOLDERS.

Khots.

4. Khots shall continue to hold their villages conditionally on the payment of the amounts due on account of the jama of the same, according to the provisions of this Act and of the Bombay Land Revenue Code, 1879, and of any rules for the time being in force made under this Act or under the said Code, and subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure.

Continuance of Khots' villages to be subject to payment of jama.

Meanings of "Khot" and "Khoti".—A 'Khot' means a renter of a village, a farmer of land or revenue. In some provinces he is an hereditary officer whose duty it is to collect for Government the revenue of the village, also an officer appointed for this office. The 'khoti' means the practice, business or office of a khot (Molesworth's Dictionary). In some parts, *e. g.*, in the Satara District, the word "khoti" means contracting for a standing crop (*Ibid*).

A Khot is a farmer of land-revenue and that his office has become hereditary (*Pajubai v. Sub-Collector of Kolaba*, 3 Bom H. C. R. A. C. J. 132), He is a superior holder with respect to all the village lands over which he exercises khoti rights. Proprietary rights are not essential to the conception of a Khotship; in the absence of an express grant of the proprietorship of the soil a khot is to be presumed not to be the proprietor of the soil (*Ibid*). That does not, however, mean that he has no interest whatever in his Khoti village, nor that he is merely an officer or agent of the Government (*Collector of Ratnagiri v. Antaji*, 12 Bom. 534).

[*a*] Words repealed by Bom. Act III of 1886, are omitted.

[*b*] The phrase "permanent tenant" was substituted for the original phrase "an occupancy tenant" by Bom. Act IV of 1913.

[*c*] Clause (11) was inserted by Bom. Act III of 1904, s. 2, in the place of the former clause (11) which was repealed by Bom. Act III of 1886.

Inferior Holder.

5. Every holder of Khoti land who has actually occupied or cultivated the same continuously from any time previous to the commencement of the revenue year 1845-46 has a right of occupancy in the land so occupied or cultivated

What holders are to be deemed (*a*) permanent tenants. (*a*)

The occupation or cultivating of the father or other person from whom the present holder inherits, and in the case of permanent tenancies which are transferable otherwise than by inheritance, the occupation or cultivating of any former holder through whom the persent holder claims, or of any mortgagee or lessee of the present or any former holder, shall be deemed to be the occupation or cultivating of the persent holder within the meaning of this section ;

and, in the case of land which is periodically fallow, years of fallow shall be reckoned as years of occupation or cultivation for the purpose of this section.

6. If a permanent tenancy which is not transferable otherwise than by inheritance, has been so transferred, the actual holder of the land shall be deemed to be the tenant thereof, and if he, or his father or other person from whom he inherits, has occupied or cultivated the land continuously from any time previous to the commencement of the revenue year 1845-46 he shall have a permanent tenancy therein :

Permanent tenancy when land has been wrongfully transferred.

provided that, if the actual holder is in possession of the land as mortgagee, or lessee merely, his occupation or cultivating shall for the purpose of this section and of section 5 be deemed to be the occupation cultivating of the mortgagor or lessor, and that if such mortgagor or lessor has a permanent tenancy in the land such permanent tenancy shall, notwithstanding the provisions of section 9, be subject to the mortgage lien or lease of the said mortgagee or lessee until the same is duly discharged or determined.

Occupancy tenant.—There is no authority for saying that an occupancy tenant, whose tenancy is not determined, forfeits his tenancy by parting temporarily with the possession of his land to another without resigning the land as completely as would be necessary, in the case of privileged occupants of another subclass, to place the land at the disposal of the khot. And so long as his tenancy is not determined the land is not at the disposal of the khot. And the khot cannot claim to treat the person in possession under a right derived from the occupancy tenant either as a trespasser even as a yearly tenant, so long as the privileged occupant's rights remain undetermined by resignation, lapse or duly certified forfeiture (*Yesa v. Sakharam*, 30 Bom. 290).

7. Privileged occupants shall continue to hold their lands conditionally on the payment of the rent from time to time lawfully due by them to the khot or other person entitled to receive payment of the same.

Continuance of privileged occupants' tenures.

8. Tenants other than permanent tenants shall continue to hold their lands subject to such terms and conditions as may have been, or may hereafter be, agreed

Ordinary tenants.

(*a–a*) The phrase "permanent tenants" was substituted for the original words "occupancy tenants" by Bom. Act IV of 1913, s. 85 (*b*).

upon between the khot and themselves, and in the absence of any such specific agreement shall be held to be yearly tenants liable to pay rent to the khot at the same rates as are paid by permanent tenants in the village in which the lands held by them are situate : Provided that the said rate shall not exceed the maxima prescribed in section 33, clause (c).

Rents payable by other tenants in absence of agreement with the Khot.—Where in a khoti village the Settlement Officer has determined the share of that with regard to the occupancy tenancies, and the tenants other the occupancy tenants do not appear to hold ther lands on any terms agreed upon between the khot and themselves, such tenants are entitled, under this section, to pay rent to the khot at the same rates as are paid by occupancy tenants (*Krishnova v. Keshav, 27* Bom. 71).

Note.—*'Thal'* means the portion of produce due from an under-tenant to the landlord.

TRANSFER &c., OF RIGHTS

What rights are transferable.

9. The rights of khots, dharekaris and quasi-dharekaris shall be heritable and transferable.

Permanent-tenancies shall be heritable, but shall not be otherwise transferable without the consent of the khot, unless in any case the tenant proves that such right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or unless, in the case of a permanent tenancy conferred by the khot under section 11, the khot grants such right of transfer of the same :

Provided that a permanent tenant may without the consent of the khot grant a lease for a term not exceeding one year.

Occupancy tenant's right.—Under this section the managing khot is entitled to give consent to the transfer of a permanent tenancy (*Ibrahim v. Krishnaji*, 26 Bom. L. R. 421).

Resignation, lapse or forfeiture of privileged occupants' lands.

*10. If the land by a privileged occupant lapses for failure of heirs or is forfeited on the occupant's failing to pay the rent due in respect thereof, or if any permanent tenant resigns his land or any portion of his land or does any act purporting to transfer his land or any portion thereof or any interest therein without the consent of the khot (except in the cases provided for in section 9), such land shall be at the disposal of the khot as khoti land free of all encumbrances, other than liens or charges created or existing in favour of Government.

But it shall not be competent to a privileged occupant at any time to resign a portion only of his entire holding except with the consent of the khot ; and no privileged occupant shall be deemed to have forfeited his land on failure to pay rent unless such foreiture is certified by the Collector.

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*Note.—This section was substituted for the original section by Bom. Act VIII of 1912, s. 2.

Application.—*Agreement by tenant to sell whether amounts to transfer.* The provision of S. 10 is of a penal nature and must be construed strictly. *Held,* that a mere contract to sell khoti lands by a tenant without the consent of the Khot will not be sufficient to amount to a transfer and will not attract the operation of S. 10 and place the land at the disposal of the Khot. *Semble* : It may be that in the case of a contract to sell an occupancy holding, the managing Khot may give consent to the transfer and the transaction will then be good (NARAYAN BALKRSHNA v. VAMAN NARAYAN, 35 Bom. L. R. 1015).

Khot's powers over lapsed lands.—As long as a khot's power of permanent disposal rests with him and has not been alienanted to a tenant with privileged occupancy rights, the land must be regarded for all purposes as undistinguishable from ordinary *Khoti Khasai,* the right remaining with the khot at pleasure to recover the land on the determination of any yearly or short term tenancy (*Gajanan v. Nilo,* 6 Bom. L. R 864).

Occupancy tenants.—An occupancy tenant by transferring his land on sale does not resign it within the meaning of this section so as to place the land at the disposal of the khot (*Ramchandra v. Dattatraya,* 31 Bom. 261).

When an occupancy tenant transfers land to another on a sale deed he cannot, according to the ordinary usage of language, be said to have resigned the land. Though the consent of the khot is not necessary to a resignation still the resignation must be made to the khot, and it is only to the khot that the resignation can be made As to whether or not a particular transaction is a resignation to the khot must depend upon the circumstances of such case (*Badeshah v. Narayan,* 9 Bom. L. R. 829).

Under this section the occupancy tenant's right cannot be sold, either at a private sale or a sale in execution of a decree. To this bar there are two exceptions ; first, where the right of transfer is created by custom under the conditions specified in this section ; and, secondly, where the Khot has in granting lease conferred upon the lessee the right of occupancy at the time of creating the tenancy.

Hence, where after the occupancy has been created the Khot consents to the transfer of his rights by the tenant, such consent has no place whatever in this section (MAHADEV v. MAHADJI, 13 Bom. L. R. 1157).

Khoti land.—Where the permanent tenant of khoti lands transfers a portion thereof without the consent of the Khot, only the portion so transferred, and not the entire holding, is at the disposal of the khot, under this section (*Madhavrao v. Krishnaji,* 46 Bom. 470).

A simple mortgage of Khoti land by its occupant amounts to a transfer of his interest in the land, within the meaning of this section. The mortgage itself gives the khot a right to claim that the land is at his disposal ; the fact that the mortgage is satisfied before the date of the suit is no answer to the claim (*Vasu v. Madhavrao,* 24 Bom. L. R. 1160).

Grant of Privileged Occupant's Rights by Khots.

Privileged occupant's rights may be conferred by khots

11. It shall be competent to the khot at any time to confer on any tenant the right of a privileged occupant of any class, or on a privileged occupant of one class, the right of a privileged occupant of a superior class : Provided that the grant by the khot of

any such right shall not affect any right of Government in respect of the land which is the subject of such grant or of the trees or other forest-produce of such land.

Record of grant.

12. On receipt of a written application from the khot, in such form as shall be prescribed in rules to be framed under section 40, the Collector shall cause an entry to be made, in such record as may from time to time be prescribed by Government in this behalf, of any right conferred by the khot under the last preceding section, and an entry thus duly made and authenticated by the Collector's signature shall be conclusive proof of the facts therein recorded.

Nothing in this section or in section 11 shall be deemed to apply to a mortgagee lawfully in possession of a khotki unless such mortgagee shall have been expressly authorized by his mortgagor to exercise the powers conferred by the said sections.

Recovery of Rents.

13. [*Repealed by Bom. Act III of 1904, s. 3.*]

Rent of land which a permanent tenant neglects to cultivate.

14. If a permanent tenant neglect to raise a crop on any land in his holding on account of the rent of which he would, if he raised a crop, be liable to pay the khot a share of the produce, the khot shall be entitled to receive from him the same amount of rent as if he had raised a crop.

In the event of a dispute as to the amount of rent due under this section, such amount shall be determined by the Collector, but no such rent shall be recoverable by the khot if the tenant shall satisfy the Collector that in the year for which such rent is claimed it was proper having regard to the custom of the village in respect of lands of the same class, or to the nature and requirements of the soil, that the land should be left fallow.

Accounts.

15. The khot shall—

Khots to keep accounts;

(*a*) keep, or cause to be kept, such accounts as may from time to time be required by the Collector under the orders of Government :

and to produce them when required :

(*b*) produce such accounts whenever required, to the Collector or to any officer subordinate to the Collector not lower in rank than a mahalkari ; and

and to give written receipts.

(*c*) give a written receipt for every payment of rent or land-revenue made to him whether by a privileged occupant or tenant, or by a co-sharer in his khotki.

Penalty.

For disobedience of any order duly made under this section, or for any infraction of the provisions of this section, the khot shall, on conviction before the Collector or the Assistant or Deputy Collector in charge of the taluka in which such khot's village is situate, be liable to a fine not exceeding one hundred rupees, which shall be recoverable as an arrear of jama.

PART III

SURVEY AND SETTLEMENT.

Settlement-records.

Preparation of settlement register of khoti villages.

16. Whenever a survey-settlement of the land-revenue of any village to which this Act extends is made or revised under the provisions of Chapter VIII of the Bombay Land-Revenue Code, 1879, the settlement-register prepared under section 108 of the said Code shall show the area and assessment of each survey-number and also whether such survey number is held by a privileged occupant or not.

*If a survey-number is held by one or more privileged occupants, the said register shall further specify the tenure on which such number is held, the names of the occupants thereof, and, in the case of a survey-number held by a permanent-tenant, whether his interest therein is transferable otherwise than by inheritance or not.

Survey-numbers which are not held by privileged occupants shall be entered in the said register in the name of the khot, or, if a partition of the khotki has taken place, of the co-sharers to whose shares they respectively belong.

The said register shall also contain a list of all the co-sharers of the khotki, if the village be not held by one khot in his own sole right and shall specify the extent of each such co-sharer's interest in the khotki.

A mortgagee of a co-sharer of a khotki is not a co-sharer within the meaning of this section, and cannot claim to have his name entered in the register, though a mortgagee of a whole khotki may claim to be so registered (*Vithal v. Sitabai*, 3 Bom L. R 181).

Khot does not include mortgagee of a co-sharer in the khotki—The word "Khot" as used in this Act does not include a mortgagee of a co-sharer in the khotki. This Act does not give the Survey Officer, when preparing the settlement register, any authority to investigate and determine the title of persons who claim as mortgagees only of a share in the khotki, still less to determine whether an alleged mortgage of a share has been redeemed or is still subsisting (*Dattatraya v. Ramchandra*, 24 Bom. 533.)

Revision of order by survey officer making it or his successor.—A Survey officer has no power to revise an order made by himself or his predecessor in office in accordance with the provisions of this section or the next section (*Bhikaji v. Sakharam*, P. J., 1897, p. 119).

Other records to show privileged occupants' rents;

[*a*] 17. The other records prepared under the said section shall specify—

(*a*) the description and amount of rent, if any, payable to the khot by each privileged occupant according to the provisions of section 33; and

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* This para. was substituted for the original one by Bom. Act IV of 1913, s. 88.

[*a*] Sections 17 to 22, both inclusive, were substituted for the original sections 17 to 22, both inclusive, by Bom. Act III of 1904, s. 4.

and, when the khotki is undivided, the co-sharers' respective rights;

(*b*) if the khotki is undivided,—

(*i*) the survey-numbers in the possession of each co-sharer and the rent payable by such co-sharer on account of the same ; and

(*ii*) the terms and particulars of any written agreement which the co-sharers, or any of them, have entered into, or may at the time of the framing of the said record enter into, determining their respective reponsibility ; and

(*iii*) the order of rotation in which the said co-sharers agree in writing, if they do so agree, to take the management of the village under the provisions of section 27 ; or

or when the khotki is divided, each share treated separately.

(*c*) if a partition has been effected and the co-sharers of the khotki hold their respective shares in severalty,—

(*i*) the extent and limits of each separate share ; and

(*ii*) the same particulars in respect of the several sub-shares, if any, of each such share as are required by clause (*b*) to be given concerning all the co-sharers when a khotki is undivided.

Custody and Amendment of Records : Determination of Disputes.

Collector to keep records after survey-settlement completed.

18. (1) When the survey-settlement of any village to which this Act extends is completed, the settlement-register and other records thereof shall be kept by the Collector,

Power of Recording-officer to amend records with written consent of parties ;

(2) So long as the settlement-register and other records are in the charge of the Survey-officer, the said officer, and afterwards the Collector or any other officer whom the Governor in Council from time to time empowers in this behalf, may, in the cases specified in sub-section (3), but not otherwise save with the consent of the parties affected thereby given in writing before the Recording-officer, at any time amend, or cause to be amended, any entry in such register or records, whether by addition thereto, insertion therein, cancellation or other alteration thereof, as may be required ; and unless and until so amended, every entry made shall, as long as the survey settlement for which it was made remains in force, continue to be spplicable to the land referred to.

and in certain other cases,.

(3) The cases referred to in sub-section (2) are the following, namely :—

(*a*) any clerical error, or any error which all the parties affected thereby admit to have been in the same, may be corrected ;

(*b*) any entry which the Recording-officer is satisfied has been caused by mistake or obtained by means of fraud, misrepresentation or personation, or by other means amounting to an offence under the Indian Penal Code, may be cancelled, and such other entry (if any) substituted therefor as the Recording-officer shall determine ;

(*c*) any entry which is rendered inapplicable or incorrect by any change of cicumstances or transfer of rights or interests relating thereto may be cancelled or corrected, as the Recording-officer may deem fit ;

(*d*) an entry of the description and amount of the rent payable by a permanent tenant may be inserted or altered in accordance with

any of the provisions of rules IV and V under clause (c) of section 33; and

(*e*) subject to the provisions of section 20, any entry in respect of which the parties affected thereby may have obtained *inter se* a final decree of a Court of competent jurisdiction under section 21, shall be amended in accordance therewith, on an application, accompanied by a certified copy of such decree, being duly made to the Recording-officer for that purpose.

Disputes to be determined by Recording-officer.

19. (1) If it appears to the Recording-officer that there exists any dispute as to any matter which he is bound to record, or as to any amendment proposed to be made under section 18, he may, either on the application of any of the disputant parties, or of his own motion, investigate and decide such dispute, and frame or amend the settlement-register or other record accordingly.

Notice and opportunity of being heard to be given to parties.

(2) No such decision and no amendment of any entry in the settlement-register or other records shall be made until after due notice to the parties affected thereby, and without giving them an opportunity of being heard in respect thereto:

Proviso.

Provided that no such decision or amendment of an entry shall be deemed invalid merely for want of such notice or opportunity as aforesaid

Remedy of party affected to whom no such notice or opportunity given.

(3) But any person affected by any such decision or amendment, to whom such notice or opportunity as aforesaid has not been given, may apply to the Recording-officer to have such decision or amendment cancelled or altered, as the circumstances of the case may require, and, subject to the provisions of sub-section (2), the Recording-officer shall reinvestigate the matter and may, if he thinks fit, cancel or alter such decision or amendment accordingly.

Recording-officer's decision final in certain matters;

20. (1) Subject to such orders as may be passed on appeal under sub-section (2) and to the provisions of sub section (3), every entry in the settlement-register or other records made by the Recording-officer under section 16, 17 or 18, and purporting to record—

(*a*) the fact that the interest of any permanent tenant is or is not transferable otherwise than by inheritance, or

(*b*) the liability of each privileged occupant to pay rent of the description and amount entered,

shall, subject to the provisions of section 18, be conclusive and final evidence of the fact or liability so recorded.

subject to appeal to Governor in Council.

(2) Any person aggrieved by any such entry may, within one year of the making of the entry, appeal to the Governor in Council to have the entry altered, and the entry shall be altered if the orders passed on the appeal so direct, and the entry so altered in accordance with such orders shall be conclusive and final evidence in the manner and to the extent specified in sub-section (1).

Saving of pending civil proceedings.

(3) Nothing in this section shall affect proceedings pending in any Civil Court at the time when this section comes into force.

Notice.—A landlord can sue in ejectment his yearly tenants who have attempted to deny his title, and in such case it is not necessary to give any notice to them prior to suit. It is a disclaimer on the part of a yearly tenant to claim to be a *mirasi* or permanent tenant. Where under a plea of ownership a party has succeeded in obtaining a possessory order in a suit before a Mamlatdar, it is not necessary for the evicted party to give notice to quit before suing in ejectment on his title. It may, however, be otherwise when the possessory order is sought on the plea of a disturbance of an existing easement (*Mahipat v. Lakshman,* 24 Bom 420).

Cause of action.—This section and the following section do not constitute a fresh cause of action in a case where there has been a denial of title prior to the proceedings before the survey officer (*Vithal v. Sitabai,* 3 Bom. I. R. 181).

Recording-officer's decision when not final to be set aside only by a decree of Court.

21. In any other matter the decision of the said Recording-officer shall not be open to appeal or revision, and shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court :

Provided that—

Proviso in restraint of suits.

(*a*) no person shall be permitted in any Civil Court, as a defendant or otherwise, to plead, whether directly or indirectly, that such decision or entry is erroneous or is not binding upon him, if such person is, at the date of the institution of the suit in which the question arises, debarred by the law of limitation for the time being in force from instituting a suit for, or with a view to, the reversal or modification of such decision or entry ; and

(*b*) no fresh cause of action shall accrue in respect of

(*i*) a decision or entry made for the purpose of, or in the course of, a revised survey-settlement, or

(*ii*) an amendment of an entry made under any of the provisions of section 18,

which makes no alteration affecting the substance of the previous decision or entry relating to the same subject-matter.

Entry in revenue records not conclusive.—The mere entry of the name of some paticular person as occupant is not a decision of the recording officer which is final. Decisions to the class of tenure and as to the complicated rights of the khots are conclusive (*Bhiva v. Babu,* 43 Bom. 469).

Entry in Bot-khat-Decision of officer.—This section nowhere provides that the mere entry in the settlement register of the name of a particular person as the occupant of a survey number is either final and conclusive or that it is binding upon all parties concerned unless and until it is reversed or modified by a decree of the Civil Court. What is made binding by the provisions of this section is the *decision* of the Recording Officer and not a mere entry of a person's name in the settlement register (*Rajaram, v. Jaganaath* 46 Bom. 966).

Limitation.—The period of limitation for a suit, contemplated by this section, is six years under Art. 120, Sch. II, Limitation Act (*Gopal v. Krishna*, 8 Bom. L. R. 420).

Bar of suits against Government or Government officers.

22. No suit shall lie against Government or against any officer of Government to set aside any decision or order of a Survey-officer or other Recording-officer under this Part.

PART IV.

ADMINISTRATION OF SURVEY-SETTLEMENTS MADE UNDE THIS ACT.

Provisions of this Part when to apply.

23. The provisions of this Part shall not apply to any village to which this Act extends until such time as the Governor in Council first after the passing of this Act sanctions a survey-settlement or a revised survey-settlement of such village and declares the assessments settled thereunder fixed for a period of years, in accordance with section 102 of the Bombay Land-Revenue Code, 1879.

Until such time, the rights and responsibilities of all parties so far as regards the matters treated of in this Part shall continue to be such as they would be if this Part had not been enacted.

Khots' Jama.

Jama how to be calculated.

24. The jama payable to Government by the khot shall be the aggregate of the survey-assessments of the lands of the village minus such precentage of deduction, if any, as Government may in each case direct.

Amount to be fixed for certain periods.

The amount of the said jama shall be from time to time fixed for the same period for which the survey-assessments are fixed.

Managing Khots.

Abolition of khots' kabulayats.

25. The annual kabulayats hitherto executed by khots shall no longer be required from them: Provided that nothing herein contained shall be deemed to affect the liability of khots to perform any condition of their tenure, or to do any act which they are now bound to perform or to do, or their obligation to refrain from doing anything which they are now bound not to do.

Appointment of "managing khot."

26. When a village is held by two or more co-sharers jointly, the said sharers shall be jointly and severally responsible for the jama, but one of their number shall be nominated every year to receive the inferior holders' rents, to pay the Government dues, and generally to perform all acts required by this Act or by any other law or rule having the force of law, to be performed by the khot.

The sharer so nominated shall be called "the managing khot".*

* *Note.*—The words repealed by Bom. Act IV of 1913, s. 83, are omitted.

Managing khot how to be nominated.

27. If the co-sharers have, at the time of the framing of the survey settlement records or at any subsequent period, agreed in writing as to the order of rotation, the nomination of the managing khot shall be made by the Collector in the order so agreed upon.

In the absence of any such agreement, [a] or if the sharer whose turn it is to be nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31-A within such time as may be prescribed by the Collector in this behalf, [a] the co-sharers shall be called upon to nominate one of their number year by year, [b] or for the year, as the case may be, [b] and in the event of their failing so to do within such time as may be prescribed by the Collector in this behalf, or if they are not unanimous as to the nomination, the Collector shall either select the managing khot for the year, or cause the village to be attached and taken under the management of himself or any agent whom he appoints for that purpose in the manner provided in section 144 of the Bombay Land-Revenue Code, 1879.

Collector's nomination or selection not to be disputed.

28. [c] The Collector's nomination or selection under section 27 shall be made by a written order, which shall not be open to appeal, and no suit shall lie against Government or against any officer of Government in respect of any such nomination or selection [c].

But suits in respect to the right of management not barred amongst the khots themselves.

But it shall be lawful for any of the co-sharers at any time to sue for a decree *inter se* to declare which of them is entitled to the management, or the order in which they should respectively have the management, if more than one of them be entitled to the same, and from the commencement of the revenue year next after an application (accompanied by a certified copy of any such decree) is duly made to him for the purpose, the Collector shall nominate the managing khot in accordance with such decree.

Managing khot's certificates.

29. [d] The mamlatdar shall furnish every managing khot [e] nominated or selected under section 27 [e] with a certificate under his hand and seal to the effect that the holder thereof is the recognized managing khot for the year to which such certificate relates, and a certificte so signed and sealed shall be conclusive evidence of the right of the khot therein named to manage the village to which it relates for the year therein specified.

Managing khot when there are no co-sharers.

30. When a village is held by a khot in his own sole right, he shall be deemed to be the managing khot thereof for all the purposes of this Act, and it shall not be necessary to furnish him with any such certificate as is described in the last preceding section.

Exclusive power of managing khot.

31. When a managing khot has been duly appointed under any of the foregoing provisions, he alone shall be entitled to assistance for the recovery of rent from privileged occupants under sections 86 and 87 of the Bombay Land-Revenus Code, 1879.

[a–a] These words were inserted by Bom Act III of 1904, s. 5, cl. (a).

[b–b] These words were inserted by Bom. Act III of 1994, s. 5, cl (b).

[c–c] This paragraph was substitued for the original paragraph 1 by Bom. Act III of 1204, s. 6.

[d] Words repeald by Bom. Act III of 1905, s. 7, are omitted.

[e–e] These words were inserted by Bom. Act III of 1904, s. 7.

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

Delegation of duties and powers by managing khot

Separated Sharers.

32. When the khots have divided their khotki or a partition thereof has been effected by the Civil Court, or otherwise, and the co-sharers hold their respective shares in severalty, the Collector shall determine the amount of jama payable in respect of each separate share, and the holders of the said shares shall be held severally liable for the portions of the jama so fixed on their respective shares, and all the provisions of this Act shall apply to them respectively as if they were independent holders of entire khotkis.

Separated sharers to be severally responsible for their respective shares.

Privileged Occupant's Rents.

33. The rent payable to the khot by privileged occupants shall be as follows (namely):—

Nature and amount of rent payable by privileged occupants.

(*a*) by a dharekari: the survey-assessment of his land;

(*b*) by a quasi-dharekari: the survey-assessment of his land and in addition thereto the amounts of grain or money respectively set forth in the schedule [*b*];

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

Liability to payment.—The liability of occupancy tenant to pay rent to khot is as laid down by cl. (*c*) of this section, *i. e.*, a fixed proportion of gross annual produce of land and fruit trees, if any (*Vinayak v. Sitaram*, 37 Bom.284).

Rule I. Every such entry shall show whether any rent is payable and, if so, whether it is payable as

Entry to show form of payment

(*a*) an amount fixed: that is so say, a certain amount, irrespective of the crop, payable in money or kind, or both; or

(*b*) a crop-share: that is to say, a fixed proportion of the gross annual produce of the land, and of the produce of fruit-trees (if any).

Rule II. (1) Amounts fixed shall be entered as determined by agreement of the parties—

How and when entries are to be entered as determined by agreement.

(*a*) at the time of framing the survey-record, if the Recording-officer is satisfied that they have then or at any time previous agreed

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[*a*] Section 31-A was inserted by Bom. Act III of 1904, s. 8.

[*b*] Words repealed by Bom. Act III of 1886 are omitted.

[*c*] Clause (*c*) was substituted for the original clause by Bom. Act III of 1904, s. 9.

that such amounts shall be the rent payable during any period subsequent to the introduction of the survey ; or

(*b*) at any other time, on the parties appearing in person or by duly authorized agent before the Recording-officer and consenting to such entry.

No crop-share to be entered as determined by agreement.

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

Meaning of the word 'parties.'

(3) In this rule the word 'parties' means, with reference to an agreement, the tenant and the person who at the time of the agreement is the managing khot :

How far, in an agreement with a tenant, a managing khot can bind a sharer or sharers in a khotki.

Provided that if any sharer in a khotki whose interest, or any number of such sharers the aggregate of whose interests, exceeds three-eighths of the entire khotki, shall declare in writing delivered to the Recording-officer at the time of the nomination or appointment of a managing khot, or at any time during the tenure of his office by such managing khot, that the managing khot shall have no power to bind such sharer or sharers by an agreement with any tenant specified in such writing, no agreement entered into after the delivery of such declaration, between such managing khot and such tenant, shall be binding on such sharer or sharers, unless—

(*a*) such sharers shall appear before the Recording-officer and assent thereto, or

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

How entries other than those of amounts fixed by agreement are to be determined.

Rule III. If at the framing of the survey-record there appears to be no amount fixed by agreement of the parties, the Recording-officer shall,

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

enter such crop-share ; or,

(*b*) if he finds in any case that the rent theretofore paid has been different in description or amount from that payable under the general custom of the village in respect of similar land therein, or that no such general custom is ascertainable,

enter the rent theretofore paid in such case, or, if such rent has not been uniform, the average of the rent paid or payable for such land during the twelve years last preceding his enquiry ; or,

(*c*) if he finds that a commuted-value of a crop-share has become payable under sub-rule (1) of rule V,

enter the commuted-value payable under sub-rule (3) of the same rule :

Provided that no crop-share shall in any case be entered exceeding in the case of rice land one-half and in the case of warkas land one-third.

Limits of crop shares.

Rule IV. (1) If in any case—

Power to make or alter entries in case of omission of entry at settlement or on account of entry ceasing to be applicable;

(*a*) no entry has been made at the introduction of a survey-settlement, or

(*b*) the entry made has, by reason of a decree of a competent Court or of any change in the tenant's mode of cultivation or otherwise, ceased to be applicable, wholly or in part, to the land in respect of which it was made,

and no amount fixed by agreement has been subsequently entered,

the Recording-officer may determine and enter, or alter the entry already made in respect of, the rent payable, as if he were acting under rule III.

(2) If any land is held wholly or partly in consideration of services to be rendered by the tenant to the khot or to the village community, or for the benefit of any class thereof, the Recording officer shall, upon proof that such services are no longer rendered, determine and enter the rent which would have been leviable, but for such total or partial exemption.

or when tenant holding on special conditions of service ceases to render such service:

(3) If in respect of any land, other than land which is entered as held rent-free, the amount fixed, or in the case of crop-shares the commuted-value which has been, or might be, under rule V entered as payable, is less than the total sum representing the survey assessment and local fund cess recoverable from the khot in respect thereof, together with twenty-five per centum of such assessment and local fund cess (hereinafter called "the percentage"), the Recording-officer shall on the application of either of the parties, raise such amount fixed or commuted-value to such total sum or the equivalent thereof in kind, and shall alter the entry accordingly:

or when amount fixed is not equal to sum of survey assessment and local fund cess together with a percentage thereon,

Provided that the Governor in Council may, during the period of the survey-settlement in force at the commencement of the Khoti Settlement Act Amendment Act, 1904, by general or special orders in this behalf, direct that the whole or part of the percentage shall during the remainder of such period be defrayed by Government; and so long as such defrayal continues, the rent payable by the tenant to the khot under the provisions of this sub-rule shall be reduced to the extent of the amount so defrayed, and a note shall be inserted by the Recording-officer in the altered entry accordingly.

subject to proportionate reduction, if Government defrays whole or part of the percentage;

(4) If the survey-assessment fixed on any survey-number has been reduced or struck off on account of diluvion, deterioration by floods or other cause beyond the control of the permanent-tenant, the Recording-officer shall reduce the total amount fixed, or in the case of crop-shares the total

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

commuted-value (if any), which has been entered as payable for the portion of that number in such tenant's occupation, by an amount bearing to the total amount or commuted-value the same proportion as the amount of assessment remitted or struck off bears to the total assessment for the entire area in his occupation and shall make an entry in the record specifying—

(*a*) the reduced amount, and

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

When entry of commuted value of cropshare may be made, and effect of such entry.

Rule V. (1) On an application made on or before the first day of May in any year by any tenant, whose rent is payable wholly or partly as a crop-share, the Recording officer shall fix and enter the commuted-value of the whole of such crop-share, and such commuted-value shall thenceforth, subject to the provisions of sub-rule (3), be payable, with effect from the commencement of the next ensuing revenue-year, by the tenant in lieu of the whole crop-share hitherto payable by him.

Meaning of 'commuted-value' and how fixed.

(2) In this rule 'commuted-value' means the average money value of the produce payable, and the Recording-officer shall, in the absence of any satifactory evidence to the contrary, take, as a standard for estimating such money-value, a half crop-share as equivalent to hree multiples of the survey-assessment fixed on the land, a third crop-share as equivalent to two multiples of such assessment, and any other crop-share as equivalent to a proportional multiple of such assessment :

Proviso as to warkas land used for rab manure.

provided that the commuted-value of the produce payable on any warkas land entered in the records existing on the day when this rule comes into operation, as land actually used for the purpose of rab manure in connection with rice cultivation, shall not exceed an amount equal to the survey-assessment on such land.

Commuted-value subject to revision at a revised survey-settlement.

(3) Where a commuted-value has become payable under sub-rule (1), the Recording-officer shall at a revised survey-settlement revise the commuted-value in accordance with the provisions of sub-rule (2) with reference to the revised survey-assessment fixed on the land, but shall not alter the description of the rent so payable.

***Thal to be determined by Survey officer and not by Civil Court*—Under this section it is the duty of the Survey officer to determine the thal or customary rent payable to a khot by an occupancy-tenant. Until a new determination has been made by the Survey officer under this section of the rent payable to the khot, a Civil Court must award rent to the old rate legally fixed (*Bapujirao v. Ganu*, 24 Bom. 489).**

***Appeal*.—Under this section an appeal lies from a decision, and the decision can be revised under s. 211 of the Land Revenue Code by the authorities therein mentioned (*Gopal v. Dashrathshet*, 21 Bom. 244).**

34. The rents due by privileged occupants shall be payable on such dates, in such instalments and subject to such rules not inconsistent with the provisions of this Act as may from time to time be prescribed in this behalf by the Governor in Council.

Privileged occupants' rents how and when to be paid.

Cesses, etc.

35. It shall not be lawful for any khot to levy *phaski*, *veth*, *nangarveth*, *wartala*, or any other cess, rate, tax or service of any description or denomination whatsoever, from any privileged occupant other than the rent lawfully leviable under the provisions of this Act.

Abolition of all cesses etc.

Local Fund Cess.

36. Local fund cess at such rate as shall from time to time be fixed by Government under section 6 of the Bombay Local Funds Act, 1869, shall be leviable by Government from the khot on every rupee of his jama.

Khot's liability for local fund cess.

The khot shall be entitled to assistance under sections 86 and 87 of the Bombay Land-Revenue Code, 1879, for recovery of the said cess at the said rate from dharekaris and quasi-dharekaris on every rupee of the survey-assessment of.....* their respective holdings.

Dharekaris and quasi-dharekaris to what extent liable for the cess.

Note.—The words "the lands in" repealed by Bom. Act IV of 1913, s. 91, are omitted.

Inferior holders of khoti lands shall not be liable to local fund cess, anything contained in section 8 of the Bombay Local Funds Act, 1869, to the contrary notwithstanding.

Other inferior holders not liable for the cess.

PART V.

MISCELLANEOUS.

37. Existing survey-settlements of the land-revenue of any village to which this Act extends, made, approved and confirmed under the authority of the Governor in Council, shall be deemed to have been lawfully made, and, except as is hereinafter otherwise provided, shall continue in force for the terms for which they have been respectively guaranteed, subject to all the provisions of law which would be applicable thereto if this Act had not been passed, and anything in this Act which is inconsistent with any of the said provisions shall be deemed not to apply to such settlements.

Existing survey-settlements confirmed.

Upon the expiry of the period of any such guarantee, or, if it shall appear to the Governor in Council that a majority of the land-holders affected by any such guarantee so desire, at any time previous to the expiry of the said period (such time being fixed by the Governor in Council), a new survey-settlement shall be introduced into the village in which such guarantee was in force,

New settlements may be substituted for existing settlements.

and the provisions of this Act shall thenceforward apply to the said settlement, anything in any other law to the contrary notwithstanding.

Bombay Land Revenue Code, 1879, how far inapplicable to khoti villages.

39. Nothing in sections 68, 72, 73, 74, the second paragraph of section 104, sections 112, 117A, 117B, clause (*b*) of section 150, or section 153 of the Bombay Land Revenue Coce, 1879, ahall be deemed to apply to any village to which this Act extends

The provisions of the said Code when applied to any such village shall be subject to the following modifications (namely):—

(*a*) *Repealed by Bom. Act IV of 1913, section 92 (b).*

(*b*) sections 118, 119 and 123 shall be read and understood as if the word "khots" were substituted for the words "patels and other village-officers", and the words "village-officers" and the words "village-officers and servants", wherever they occur;

(*c*) the khot shall for the purposes of section 136 be deemed to be the person primarily responsible to Government for the jama of his village;

(*d*) the word "alienated" in clause (*f*) of section 150 shall be deemed to be omitted; and

(*e*) if such village is under attachment at the date of this Act coming into force, applications may be made under section 162 for the restoration thereof at any time within twelve years from the first day of August next after such date.

Rules to be made by Governor in Council.

40. The Governor in Council may, by notification in the *Bombay Government Gaxttee*, from time to time frame, and from time to time vary or rescind, rules not inconsistent with the provisions of this Act—

(*a*) for the inspection and appraisement of crops when the rent payable to a khot consists of a share of the produce of a privileged occupant's land;

(*b*) for determining what land is dhara land;

(*c*) for allotting to each privileged occupant, when the exact limits of his warkas holding are not ascertainable, such portion of the entire warkas land of the village or such rights or privileges in respect of any warkas land, or both a portion of the entire warkas land and such rights or privileges in respect of any other such land as may be fair and reasonable;

(*d*) determining to what extent, if any, any rule or order made under section 214 of the Bombay Land-Revenue Code, 1879, shall be applicable to villages to which this Act extends;

(*e*) for the furtherance of the objects of this Act in matters not expressly provided for therein;

(*f*) generally for the guidance of all persons in matters connected with the enforcement of this Act.

Government may constitute uncultivated land a reserved forest.

41. And whereas it is necessary in the general interests of the people to enable Government to promote the extension of forests in villages held by khots; it is hereby enacted that Government may at any time constitute any uncultivated land in any

village to which this Act extends, or may hereafter be extended, a reserved forest [*a*] in accordance with the procedure enacted in Chapter II of the Indian Forest Act, 1878 [*a*]. But nothing in this section contained shall derogate from any rights conferred by any sanad or other grant made by any lawful authority.

Explanation.—For the purposes of this section "uncultivated land means land which has not been tilled for a period of twenty years next before the 1st June, 1879, or the date of the order constituting such reserved forest.

Reserved forest constituted under last preceding section to be subject to provisions of Indian Forest Act.

42. Every reserved forest constituted under the last preceding section shall be subject to all the provisions of the Indian Forest Act, 1878, and of any other law relating to forests for the time being in force: provided—

(1) that, upon the condition of duly preforming such service connected with such forest as shall from time to time be prescribed by Government, the khot shall be entitled to a share of one-third of the net profits derived by Government from such forest after deducting the cost of management;

(2) that, in the event of the service prescribed by Government as aforesaid not being duly performed by the khot, the provisions of section 80 of the Indian Forest Act, 1878, shall be apblicable.

SCHEDULE.

(*See section 3, clause 7, and section 33.*)

Denomination of quasi-dharekaris.	Excess amount of rent payable for every Rupee and proportionately for every fraction of a Rupee of the Survey-Assessment in respect of		
	Rice lands	Warkas lands.	Bagayat or Rabi lands.
Dispatkari ...	2 annas ...	2 annas	2 annas
Dupatkari	½ maund of rice in the husk.	5 pailis of grain (half *nachani* and half *vari*).	8 annas.
Didpatkari or Didiwala	3 pailis of rice in the husk.	2 pailis of grain (half *nachani* and half *vari*).	3 annas.
Paune dupatkari	6 pailis of rice in the husk.	4 pailis of grain (half *nachani* and half *vari*).	6 annas.

INDEX

Page

Acquisition of right—
report regarding, exempt from Court fee stamp ...101
Agricultural produce—
not exempted from attachment 115
Alienated—
meaning of ... 7
Alienated holdings—
non-applicability of s. 72 to ...113
not to be alienated for recovery of arrears of local fund cess ...113
Alluvial land—
vesting in Government, grant of 47
of small extent, temporary right to ... 48
register of ... 39
"Any other natural product"—
does not include excavated stones ... 33
Appeal—
against Collector's order under Irrigation Act lies to Commissioner ...132
when to lie to Governor in Council ...133
periods within which, to be brought ...133
admission of, after period of limitation ...133
provision when last day for, falls on Sunday or holiday ...133
Copy of order to acompany petition of ...133
to lie from any order passed by revenue officer to his superior ...132
Arrears of revenue—
public moneys may be recovered as ... 23
Arrears of assessment—
suit by Inamdar for ... 75
Arrest—
power of, by whom to be exercised ...116
Assessment—
excess of, may be laid on land inadequately assessed held with it ... 38

Page

Assessment—contd.
by whom to be fixed ... 39
settlement of, to be made with the holder directly from Government ... 40
survey officer to fix ... 81
may be on land or on means of irrigation ... 82
not leviable without sanction of Government ... 82
excess, not to be levied in the year in which Survey Settlement is introduced ... 83
limited to ordinary land revenue ... 83
power of Government to direct fresh survey and revision of ... 84
conditions applicable to revisions of ... 84
Assistance suits—
appointment of temporary clerks for ... 76
Attachment and sale—
of houses and buildings of agriculturists, exemption from ...115
Boundary—
effect of settlement of ... 91
decisions of revenue officers as to, are final ... 92
fixed by Collector ... 92
decision of revenue officer as to, is final ... 93
Boundary disputes—
Settlement of, by arbitration .. 90
settlement of, by Collector ...92, 93
Boundary-marks—
meaning of ... 4
Construction and repair of, of survey numbers ... 93
requisition on land-holders to erect or repair ... 93
responsibility for maintenance of ... 94
Collector to have charge of, after introduction of Survey Settlement ... 94
of survey numbers and villages, Construction of ... 93
description of ... 93

Page

Boundary-marks—contd.
responsibility for maintenance of ... 94
penalty for injuring ... 94
Building site—
meaning of ... 4
Certified copy or Certified extract—
meaning of ... 7
Certified purchaser—
bar of suit against ...123
liable only for land revenue subsequently due ...124
Chavdi—
meaning of ... 4
Civil suit—
not to be barred ... 75
mamlatdar's order does not bar ... 76
Collector—
Assistant and Deputy Collector subordinate to ... 10
Powers of ...11, 12
Chitnis to, and head clerk to, is graded with mamlatdar... 15
revisional jurisdiction of ...135
Commuted assessment—
of land indirectly taxed to the State ... 38
of land liable to occasional assessment ... 38
Superior holder to recover, from inferior holder ... 38
Commission—
power of Commissioner by, to confer certain powers on holders of alienated lands .. 76
grant of, to sharakatdar not necessary ... 77
form of ... 77
reference to be made by holder of, to Collector ... 78
power under, to extend to current and previous year's arrears ... 78
holder of, not to enforce any unusual or excessive demand ... 78
holder of, to establish his right to enhanced rent in Civil Court ... 79
Creditors—
surplus not to be paid to, except under order of Court 124
Crop—
reaping of, not to be unduly deferred ...108
when to be released ...108

Page

Decision or order—
notice of damand by Mamlatdar to pay assessmeent is not .. 132
Defaulter—
sale of immoveable property of ...114
arrest and detention of ...116
not to be detained in custody longer than debtors may be detained by Civil Court ...116
date upto which, to pay arrears ...120
arrest of, to be made upon warrant ...130
Dispute—
meaning of ...90
Distraint—
of defaulter's property ...113
by whom to be made ...113
delegation to Mamlatdars and Mahalkaris of the power of ..114
of chattels how effected ...114
of cash and currency notes or ornaments ...114
Distraint and sale—
exemptions from ...114
Estate—
meaning of ... 3
Exemptions, claims to—
to be determined by Collector... 96
Field boundaries—
determination of ... 90
Fine—
inflicted by revenue officer not to exceed two months' pay... 27
how recovered ...27
Forfeited holdings—
may be taken possession of ... 43
Forfeiture—
order for, when illegal ...113
not followed by sale ...113
declaration of, before sale ...113
Hereditary Officers—
to grant receipts ... 44
Hereditary village accountant—
talati appointed to be kulkarni is not ... 74
Holding—
meaning of ... 5
Immoveable property—
Sale of defaulter's ...114
Joint holders or joint occupants—
meaning of ... 7

Page

Land—
- includes benefits to arise out of, 3
- to be assigned for special purposes and, when assigned, shall not be otherwise used without sanction of Collector ... 30
- land revenue to be a paramount charge on ... 41
- penalty for using, for any other purpose without permission ...51

Land records—
- meaning of ... 7
- open to inspection ...135

Land Revenue—
- assessment of, in case of diluvion ... 36
- manner and alteration of ... 36
- payment of, by khatedar creats no charge ... 62
- recovery of, how to be credited ...107
- may be levied at any time during revenue year ...107
- to secure, Collector to prevent reaping of Crop ...107
- fine under s. 142 is no arrear of, of any occupancy ... 108
- Government to determine dates of payment of ...109
- liability incurred by default of payment of ...110
- Certified account to be evidence as to arrears of ...110
- process for recovery of arrears of ...110
- recovery of arrears of ...111

Land Revenue Code...
- short title ... 1
- extent ... 1

Mahalkari—
- delegation of power to ... 15
- duties of ... 16
- Extra Aval Karkun treated as ... 16
- Assistant or Deputy Collector in charge of taluka is superior to ... 16
- may depute subordinate to perform his duties ... 19
- entitled to issue warrants under ss. 25 and 26 ... 22
- empowered to fine village officers ... 26

Page

Mahalkari—contd.
- written permission of, required previous to taking up unoccupied land ...44

Mamlatdar—
- appointment of ... 12
- duties and powers of ... 13
- may depute subordinate to perform his duties ... 16
- substitute under s. 15 not competent to exercise powers of ... 17
- entitled to issue warrants under ss. 25 and 26 ... 22
- empowered to fine village officers ...26
- written permission of, required previous to taking up unoccupied land ... 44

Mines and mineral products—
- reservation of right of Government to ... 54

Notice—
- of relinquishment of occupancy by occupants or of alienated land by holders of such land is exempt from registration.. 58
- does not require court fee nor stamp duty ... 59
- mode of serving ...127
- not void for error ...127

Notice of demand—
- when to issue ...111
- when compulsory ...112
- when to be served ...112
- form of ...112

Notice to quit—
- when necessary ... 70
- when not necessary ... 70
- of ten days is invalid ... 71

Occupancy—
- grant of, subject to prohibition of alienation ... 53
- when not liable to process of Civil Court ... 55
- intestate, to be sold ... 55
- to be transferable and heriable ... 56
- not to be alienated for recovery of arrears of local fund cess ...113

Occupant—
- meaning of ... 5
- tenant responsible to, in damages. ... 51
- rights of, are conditional ... 53

Page

Occupation—
means possession ... 7
Occupy land—
means possess or take possession of land ... 7
Ordinary enquiries—
how to be conducted ...129
Partition—
decree for, not properly executed ... 86
Civil Court cannot reopen ... 86
of certain estates by Collector on application by co-sharers. 87
Pasturage—
regulation of use of ... 31
Plaint or application—
Certified copy of record to be annexed to ...103
not to be rejected for omission to attach certified copy ...104
Processes—
to be stayed on security being given or on amount demanded being paid under protest...119
Public roads—
belong to Government ... 28
encroachment on, amounts to criminal trespass ... 47
Purchase money—
when to be made ...121
Razinama and Kabulyat—
registration of, compulsory under s. 54 of T. P. Act ... 59
execution of, does not amount to transfer of property ... 59
Receipts—
to be given by revenue officers, hereditary patels and village accountans for receiving payments of land revenue ... 43
exempt from stamp duty ... 44
penalty for failure to grant ... 44
Record—
Certified copy of, to be annexed to plaint application ...103
Record of rights—
to be maintained in every village 99
particulars of ... 99
introduction of, in Inam villages ...100
entry in, to be presumed as correct ...105
application for certified copy of entry in, to be made to village Accountant, Mahalkuri or Mamlatdar ...105

Page

Register of mutations—
entries in, how to be certified...101
Certified entry in, to be presumed as correct ...105
applicatinon for certified copy of entry in, to whom to be made ...105
Resale—
notification before ...122
liability of purchaser for loss by ...122
Revenue demands—
of former years how recoverable ...111
Revenue defaulters—
sureties liable as ...125
Revenue officer—
meaning of ... 3
watandar village officer is not... 3
forest officer is not ... 3
District Inspector of Land Records is ... 3
Karkun taking temporary charge of the office during absence of mamlatdar is not.. 17
seals to be used by ... 19
security to be furnished by ...20
for purposes of ss. 25 and 26 village officers are ... 22
prohibited acts of—
not to trade ...24
not to purchase at public sale... 25
not to be concerned in the revenue ... 25
not to make private use of public money or property ... 25
not to make or receive undue exactions or presents ... 25
orders of, to be made in writing ... 26
fine inflicted by, not to exceed to months' pay ... 27
to give receipt for receiving payment of land revenue ... 43
subordination of ...126
Revenue survey—
introduction of, by Governor in Council ... 80
control of ... 80
Rules—
framed by Government ...136
penalty for breach of ...137
Sale—
forfeiture not followed by ...113
declaration of forfeiture before ...113

Page

Sale—contd.
of defaulter's property ...113
proclaimation of, to be made by beat of drum ... 119
notification of ... 120
by whom to be made ... 120
at what time to be made ... 120
postponement of ... 120
of perishable articles ... 120
when to be stayed ... 120
of moveable property when liable to confirmation ... 121
mode of payment for moveable property when, subject to confirmation ... 121
deposit by purchaser in case of, of immoveable property ... 121
application to set aside ... 122
order confirming or setting aside ... 122
refund of deposit or purchase money when, set aside ... 123
on confirmation of purchaser to be put in possession ... 123
certificate of ... 123
application of proceeds of ... 124
does not extinguish incumbrances ... 113

Sanad—
to be granted without extra charge ... 97
given under s. 133 is document of title ... 98
inferior and superior holders entitled to get ... 98

Seals—
to be used by revenue officers 19

Security—
to be furnished by revenue officers ... 20
fresh or additional ... 22

Settlements—
introduction of ... 82

Sites of villages—
limits of, how to be fixed ... 95

Stipendiary Patel—
when to be appointed ... 17

Stipendiary village accountant—
not to hold land other than hereditary ... 25

Stipulated rent—
Collector not to demand more in addition to ... 117

Summary enquiry—
officer holding, to be deemed Civil Court ... 128
how to be conducted ... 128
to be deemed judicial proceedings 129

Page

Summons—
to be in writing signed, and sealed ... 127
how to be served ... 127
service of, in district other than that of issuer ... 127

Superior holder—
meaning of ... 5
Talukdari S. Officer is ... 6
recovery of dues of ... 73
suit by, to recover dues from inferior holders ... 73
entitled to assistance in recovery of dues from inferior holders ... 74
application by, for, assistance may be sent by post ... 74
municipality deemed to be ... 75

Sureties—
liable as revenue officers ... 125

Surplus profits—
application of ... 117

Surplus receipts—
disposal of ... 118

Surety—
to be liable as principal ... 23
not liable to imprisonment if penalty be paid ... 23
in jail may, by furnishing security, obtain his release 24
liability of, not affected by death of principal or by his taking different appointment ... 24
how to withdraw from further liability ... 24

Survey Mamlatdar—
appointment of, by Commissioner of Survey ... 15

Survey numbers—
meaning of ... 4
division of, in new survey numbers ... 87
division of, into sub-divisions 87

Survey officer—
meaning of ... 3
appointment of, by Governor in Council ... 17
their duties and powers ... 18
to fix assessments ... 81

Talati—
not to act as money lender ... 25

Tenancy—
section 83 determines nature of ... 64
from year to year ... 64
burden of proof of annual ... 64
forty years old ... 64

	Page
Tenancy—contd.	
not more than forty years old	64
hundred years old ...	65
perpetual ...	65
ancient ...	65
antiquity of ...	65
permanent ...	66
Tenant—	
meaning of ...	5
responsible to occupant in damages ...	51
amount of rent payable by ...	63
suit by, to recover possession claiming as full owner ...	69
Towns and Cities—	
sites of, how to be fixed ...	95
Unoccupied land—	
to be granted on conditions ...	47
Village—	
includes town or city ...	7
Village Accountant—	
when to be appointed ...	17
to keep records ...	17
to prepare public writings ...	17
bound to give receipts ...	44
Village boundaries—	
determination of ...	88
may be settled by agreement...	89
Court has no power to fix ...	89
may be settled by agreement...	89
power of court to fix ...	89
Village cattle—	
does not include cattle of any roving grazier ...	31