REPORT

ON THE

PROPOSED AMENDMENT

OF

THE BOMBAY LAND REVENUE CODE, 18

REVENUE DEPARTMENT,

GOVERNMENT OF BOMBAY.

May, 1911.

REPORT

ON THE PROPOSED AMENDMENT OF THE BOMBAY LAND REVENUE CODE, 1879.

1. The subject-matter of this report* may be roughly divided as follows :—(1) the relation between liability for land revenue and title to land; the basis of liability; and the apportionment of the liability for the assessment of areas less in extent than a survey number; (2) the record of liability and the registration of title; (3) specific amendments in the law unconnected with the above subjects.

Statement of the question.

I.

The Basis of Liability.

2. The first essential in an enquiry relative to the liability for land revenue is to come to a clear understanding of the manner in which that liability is at present placed. In the Land Revenue Code the primary responsibility for the land revenue of unalienated land is laid upon the registered occupant. In case of default by the registered occupant the revenue may be recovered (under section 136) from any person in actual possession; and, as a matter of practice, in cases where the registered occupant has lost his interest in the land, it is frequently recovered in the first instance from the person in possession. This report, however, is concerned with the primary, not the ultimate liability, and the proposed Bill will not affect the latter. It is not proposed to alter the existing law as to the responsibility for the land revenue of alienated land. The registered occupant, then, is at present primarily liable for the revenue of unalienated land. The Government orders under which this report has been written direct that the actual occupant should be made primarily responsible. I propose, therefore, in the first place to examine the meaning of the word "occupant" and the terms connected with it in the Code. For this purpose it will be of advantage to touch briefly upon the use of these words in the Bombay Presidency previous to the passing of the Bombay Land Revenue Code, 1879. The comparative method is of course advisable in all enquiries, where it is possible, but the land revenue systems and legislative terminology of other provinces in India present such differences from those of Bombay that references to the enactments of other provinces would afford little assistance in the present case, while the risk of false analogy would be great; a cursory allusion to the history of the question in Bombay is therefore all that appears advisable.

Liability for land revenue; present position.

3. Bombay Regulation No. XVII of 1827 is an enactment which throws much light on certain provisions of the Land Revenue Code. The first paragraph of section 3 of that Regulation runs as follows :—"The settlement of the assessment shall be made with the occupant of land. The cultivator, when the land is held direct by him from Government, is to be considered the occupant; and when it is not so held, the person having the highest right or holding, recognized by the custom of the country or resting on specific grant, which intervenes between Government and the cultivator, is to be so considered." Then, in section 5, the occupant is made liable for the revenue of his land. The provisions which I have quoted are lucid and direct compared with the definitions of the Land Revenue Code. In this old Regulation, which was finally repealed by the Code, one finds that the cultivator (that is, the person in actual possession) was primarily liable when the land was held direct from Government (that is, when the holder was the owner or a tenant of Government);

Previous use of word "occupant." Bom. Reg. XVII of 1827.

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*This report has been prepared under the orders contained in Government Resolution in the Revenue Department No. 1489, dated the 14th February 1911.

when one or more landlords intervened between Government and the cultivator, then the superior landlord was considered the occupant. The Regulation failed (as the Code failed) to determine whether a mortgagee in possession was to be deemed to be an occupant (that is, whether he had a higher right than his mortgagor), but probably mortgages of agricultural lands had not assumed much prominence in 1827.

Bom. I of 1865.

4. Next, by section 2 (*j*) of Bombay Act No. I of 1865 (which was, however, by section 51, to be read as part of the above-mentioned Regulation) occupant is defined as "the person whose name is entered authorizedly in the survey papers, or other public accounts, as responsible to Government for payment of the assessment due upon any field or recognized share of a field." This, it will be noticed, rests upon an entirely different principle from that mentioned above. The occupant is not the person in possession, but the person entered in the records as responsible for revenue. This is an artificial use of the word, and appears to be the genesis of the "registered occupant" of the Land Revenue Code; but it is clear and comprehensible. It may be observed that the word "holder" is used, in the same sense as the word "occupant" is used in the Act of 1865, in rule 5 of the rules in the Joint Report of 1847 * :— "Every cultivator in whose name any field, or share of a field, on whatever tenure held, is entered in the village cultivation returns, is to be considered the holder of such field or share."

Registered occupant in the Land Revenue Code.

5. In the Land Revenue Code an attempt was made to combine the two principles of possession and record in fixing the liability for revenue. The reasons for the failure of this attempt will be referred to hereafter, and it is first necessary to state the provisions of the Code in this respect. They are contained in clause (17) of section 3 and in section 136. "Registered occupant" is the occupant entered in the Government records as holding unalienated land. Section 136 makes the registered occupant primarily responsible for the land revenue of unalienated land, and lays down that, in case of default by the person primarily responsible, the revenue may be recovered from a co-occupant, inferior holder or person in actual occupation. A careful study of the definitions of "holder" and the words connected with it, in section 3 of the Land Revenue Code, is necessary to ascertain their meaning, and this subject will be discussed in a subsequent paragraph; at present it is sufficient to note that the apparent intention of the framers of the Code was that the demand for land revenue should be made upon a person entered in the revenue records as being responsible, but that only persons who had an interest in the land should be so entered.

Present divorce of liability from title.

6. Now at present there is a very large number of registered occupants (who under section 136 of the Code are responsible for the land revenue) without any interest in the land. This divergence between liability and title is generally known and has been brought into prominence since the preparation of the "record of rights." It is unnecessary to do more than make two brief quotations in this connection. The first is from Mr. Curtis's first note on the record of rights which is printed as an accompaniment to Government Resolution No. 388, dated the 13th January 1908. In paragraph 16 he says:—"Let us consider first the most marked feature of our revenue administration . . . . the extraordinary divergence between the record of liability . . . . and the record of persons in actual beneficial occupation of the land . . . . This divergence, which is noticeable everywhere, becomes especially so in parts of Poona and Sátára. In Khed and Chákan in the former district, for instance, there are 1,982 and 1,065 survey numbers, with 700 and 375 nominal khátedárs [*i. e.*, registered occupants], while the total number of sub-divisions is 10,131 and 4,661 respectively . . . ." Mr. Curtis does not say how many of these nominal registered occupants have lost all interest in the land, but the Revenue

* Messrs. Goldsmid Wingate and Davidson's report, dated the 2nd August 1847; Survey and Settlement Manual, Vol. I.

Department could probably without difficulty furnish full information on the point. I think, however, that the Report of the Indian Famine Commission, issued in 1901, is sufficiently convincing. In paragraph 334 it is stated that the Commission thought it probable that at least one-fourth of the cultivators in the Bombay Presidency had lost possession of their lands. This was in 1901, and ten years have elapsed since the Report was issued. I will also quote briefly from paragraphs 336 to 338 of the Report :—"The cultivators, whose names are recorded, may for the purpose in hand be divided into three classes: (1) those who have completely lost their lands . . . . It is a curious, but common, practice in Bombay for the money-lender owner to maintain the name of a cultivator of the first class on the village proprietary register and to keep his own name off it . . . ." The reason is indicated thus :—" . . . . through the great reluctance of the ryot to sever all connection with the land, the sávkár is able to exact more than the ordinary rent . . . ."

Reasons for divorce of liability from title.

7. A slight knowledge of the Land Revenue Code is sufficient for understanding how the divergence between liability and title has been brought about. A landholder may sell, lease, mortgage or otherwise transfer his land to another person without restriction, except in the few rare instances where a non-transferable tenure has been created. The transfer may be made at any time; any portion of land, whatever its size and position, may be transferred; and transfer may be effected without any reference to the revenue authorities. But it will be remembered that the person responsible for the payment of land revenue is the person whose name is entered in the Government records as registered occupant. Therefore, if the liability for land revenue is to coincide with the ownership of land, it is obvious that, whenever a transfer of ownership occurs, it should be accompanied by a simultaneous alteration in the name of the registered occupant. For instance, suppose A to be the owner of a survey number of which the area is 6 acres. A has four brothers who are all joint owners with A. A is the registered occupant because he is the eldest. Now A and his brothers sell 2 acres out of the survey number to B, and B thereby becomes an owner with an entirely independent title. It is almost incredible, but it is a fact, that the Revenue Code not only does not require any alteration in the name of the registered occupant but does not contemplate the case at all. A still remains "registered occupant" of the land sold to B, although he is no longer a holder, much less an occupant, of that land; and he still remains liable for the revenue assessed upon it. The only cases in which the Code provides for alteration in the registered occupant's name are those given in sections 70, 71, 74, 81 and 115. Of these, section 71 is the only one that makes a change compulsory, and this section applies only on the death of a registered occupant: in that case the Collector is required to enter the name of the heir. Section 70 provides for the change of the registered occupant's name in case of transfer under Civil Court decrees and in execution proceedings, but it is not compulsory. Section 74 is quite optional: it lays down that an occupant may "relinquish"* a whole survey number or recognized share in favour of another person by giving notice before a certain date, and the "relinquishment" takes effect from the close of the revenue year; but it is clear that section 74 falls far behind the requirements of the case, for in the instance given above, if the portion of land sold by A and B were less than a recognized share, or if the sale were effected in the course of the year, the actual facts of the transfer could not be reproduced on the revenue records, and there would be no necessity for relinquishment at all if the parties preferred to take no action. Section 81 is limited in operation to cases of forfeiture, and section 115 only comes into operation at the time of a revision of survey, in which case it is discretional. Section 110 cannot be read as giving the Collector any power to alter the name of a registered occupant. Having regard to the word "authorizedly" in section 3 (*17*) and to the context and position in the Act in which section 110 occurs, that section can refer only to the mere registration of changes which have already taken place under the provisions of the Code. From the foregoing observations it is clear that the

* "Relinquish" means primarily "relinquish liability for the land revenue of," in this section.

Land Revenue Code fails to make adequate provision for the recognition of transfers of right, and that in the natural order of things the divergence between liability and title must occur very rapidly and become very wide.

Reasons for co-ordinating liability and title.

8. The principle that the actual occupant should be principally responsible for the land revenue on the land in his possession has been accepted by Government; and it is perhaps superfluous to cite arguments in its favour. The practical disadvantages of the present system are great; the necessity for issuing notices of demand to persons who have no interest in the land, before a claim can be made (under the second paragraph of section 136) upon the person in actual possession, is sufficient reason for a change in procedure. At the same time the preservation of a nominal occupant's name upon the records is of no advantage, legal or practical, to such registered occupant. Legally, of course, the proposition is absurd; the revenue records are maintained for the purposes of the revenue demand: they do not affect rights in land. If a mortgagor asserts that a deed purporting to effect a sale is really a mortgage deed, the Court, if it is permitted to go into the question at all, must consider the deed on its own merits and in the light of any evidence available. The entry in the revenue records will not be evidence of the transaction. It is totally unconnected with the transaction between the mortgagor and mortgagee: at best it could but record the transaction after it had taken place, but in view of the defective provisions of the Code for representing transfers, and of well known facts, it is as likely that a presumption would arise against, as in favour of, the correctness of an entry in the revenue records. Actual payment of the land revenue would be a kind of evidence of title, but where the registered occupant is nominal the revenue would be paid by the actual owner. In proof, however, of the practical disadvantages of the present system another brief quotation from the Famine Commission Report (1901, paragraph 338) is apposite:—"Now we urge that the maintenance of the old owner's name on the register has inconvenient results in many directions. The first of these is that the register is not a record of actual facts as it should be; and from this it follows that the demand for the land revenue is made upon a person who is not actually responsible for the payment of it; that an opportunity is thus given for the exercise by untrustworthy subordinate officials of powers which are susceptible of great abuse; that the capitalist owner is exempted from directly bearing those responsibilities which the possession of property should impose; and that the Government is prevented from protecting the actual cultivator, *i. e.*, the expropriated owner, by a Tenancy Law. Moreover, there is reason to believe that the refusal to recognize actual facts in this connection has positively contributed to the people's indebtedness. It is in evidence that the *Márwári* or alien class of money-lender, the most exacting of all, does not care to stand forth as owner and cultivate the land. Had money-lenders of this class been compelled to record their names, had the duties of proprietorship been enforced against them, and had their sub-tenants been protected against excessive rack-renting, these money-lenders would probably have concluded that land was a less desirable investment than it has been and is." This Report was written ten years ago and nothing has been done yet by way of remedy. It only remains to add, in conclusion of this part of the subject, that the existing divergence between right and liability is unintentional; it is the outcome of the defects in the law that have been pointed out already, and is opposed to the past, as well as the present, policy of Government. I have already alluded to the sections of the Regulation of 1827 which clearly fixed liability upon possession and to the intention of the framers of the Land Revenue Code in this respect; I shall refer now to Mr. Curtis's second note appended to Government Resolution No. 388, dated the 13th January 1908. In paragraph 11 he says:—"I would only lay emphasis on the fact which I have referred to before, and which no revenue officer that I have met outside the Survey Department seems aware of, *viz.*, that sub-division in the field in accordance with actual holding was for 22 years, and those the palmy days of the survey, the accepted policy of the department. In fact, the field was not the unit of assessment: it was only the unit of mapping, and often, as in the case of *pót* numbers, not that. The unit of assessment was the recognized share of a survey number,

which might be, and often was . . . . as low as one *guntha*. So that there may be no mistake, I quote the order which approved the procedure, Government Resolution No. 3862 of July 8th, 1873, paragraph 5:—'The *khâta* constitutes the highest description of title-deed which the occupant can possess, and Government therefore are glad to learn that it is Col. Anderson's practice to convert every recognized occupancy, by which is understood that held by a *pôt khâtedár*, into a separate number' . . . . " As to which it must be observed, however, that the *revenue* record, even if absolutely correct, could never have anything but a somewhat remote bearing as evidence of title, and that in the circumstances the statement that a *khâta* constituted a title-deed was in the highest degree erroneous. But as will be seen hereafter, the alterations which it is now proposed to make in the law will make the record of rights valuable evidence of title.

Meaning of occupant and connected terms in Land Revenue Code.

9. It has been stated above that in the Land Revenue Code the registered occupant is primarily responsible for the revenue of unalienated land. The registered occupant is, however, a particular kind of occupant, and the definition of occupant in section 3 depends upon those of "holder" and "to hold land." The words "occupant" and "occupancy" are frequently used in the Code, and they are not always used in the same sense. In Government Resolution No. 1489, dated the 14th February 1911, it has been directed that the "actual occupant" should be responsible for the revenue. It is essential therefore in the present enquiry to understand fully the meaning attaching to these words, and I shall at this point attempt to give some explanation of their purport. The group of definitions in section 3 relating to possession of land begins with the phrase "*to hold land.*" "'To hold land' means to be legally invested with a right to the possession and enjoyment or disposal of such land, either immediate or at the termination of tenancies legally subsisting." This definition is very wide, and as any person having a right to the "disposal" of land, whether he were in possession (constructive or actual) or not, would be said to hold the land, and as "disposal" is a word of vague and comprehensive extent, the expression "to hold land" apparently means nothing more than "to have a right to land." Secondly, "'*holder*' . . . . signifies the person in whom a right to hold land is vested . . . . " This is a bad definition, for it uses the phrase "to hold land," which has already been defined, and it does not fit in with the foregoing definition. "Holder," on a strict construction of the wording used, would mean "a person having a right to have a right to land." But in fact the definition of "holder" is redundant and may for practical purposes be neglected. Passing to "*occupant*," it will be found that an occupant is "a holder of unalienated land; or where there are more holders than one, the holder having the highest right in respect of any such land; or where such highest right vests equally in more holders than one, any one of such holders." It has been stated above that "to hold land" means "to have a right to land;" "holder" must therefore mean "a person having a right to land." Where, then, there is only one holder, "occupant" means "a person having a right to unalienated land." It is where there are more holders than one that difficulty arises; in such case the definition states that the person having the "highest right" is the occupant, and the "occupant" would therefore be "the person having the highest right to unalienated land." This, in fact, is the actual sense of the word in the Code, but there is no criterion for the estimation of the relative importance of rights. For instance, has a mortgagee a higher right than a mortgagor, or a perpetual tenant than the lessor? Next, "*registered occupant*" signifies "a sole occupant, or the eldest or principal of several joint occupants, whose name is authorizedly entered in the Government records as holding unalienated land, whether in person or by his co-occupant, tenant, agent, servant or other legal representative." This definition uses the word "occupant," the interpretation of which has its own difficulties, as has been shown; but "registered occupant" gives rise to further questions. Firstly, it does not define the difference between "joint occupants" and "co-occupants." "Joint occupant" implies some unity of interest. But very frequently there are several occupants holding, on a perfectly independent tenure, parts of a survey number or group of survey numbers of which there is only one registered

occupant. The appropriate term for independent occupants of a given area entered in the name of one registered occupant would appear to be "co-occupants;" but in the Code neither co-occupant nor joint occupant is defined. Secondly, in the case of co-occupants (in the proper sense), who can be said to be the principal, and what is the sense of entering the eldest? Thirdly, supposing a registered occupant sells all his interest in the land by private contract to another person but fails to have any alteration made in the revenue books (which course is purely optional), can a person, who is no longer an occupant, continue to be a registered occupant, and if not, where is the authority for the alteration of the records?—Lastly, "*occupancy*" is said to signify "the sum of the rights vested in an occupant as such." But it has been shown that "occupant" merely means "a person having a right to unalienated land;" therefore "occupancy" in this definition means the aggregate of *any* rights which an occupant may have in unalienated land.

Inconsistent use of occupant and occupancy.

10. It has been indicated before that certain words of fundamental importance are used in various senses in the body of the Code, and it is necessary to prove this statement before proceeding further. Lists of the sections in which these words are found will be given at the end of this report: here I will only mention instances of the various meanings given to them. Firstly, as to "*occupant.*" According to the definition in section 3, "occupant is the person having the highest right to unalienated land." In section 163 it is used in the opposite sense in the phrase "actual occupants of the soil" which are distinguished from "superior holder," although "occupant" would (by the definition) be equivalent to "superior holder," in the case of unalienated land in the actual possession of tenants. Similarly in section 70 "occupant" is used in the sense of "inferior holder." In section 40 "occupant" is used in the general sense of "holder," as will be seen on reading section 42, which deals with the same subject. "*Occupancy*" has been defined as an aggregate of rights. In section 56 it means "the land held by an occupant." This is clear, not only from section 57 (where the land is referred to), but from the phrase "failure in payment . . . . shall make the occupancy . . . . *together with all rights of the occupant* . . . . liable to forfeiture"; for if "occupancy" were used in the sense of the definition ("sum of rights") there would be no rights over and above the occupancy. The word is similarly used in section 75, where division of an occupancy is spoken of: if a division of rights were intended, the section would be nonsense. In section 68 "occupancy" is used, in the first and second places where it occurs, in the sense of "tenure;" the words are interchangeable both here and in section 73 (in the second place where "occupancy" is used). In section 80 "occupancy" means "occupation" in the phrase "continuance of the occupancy" and it also means "occupation" in section 99. In section 81 the phrase occurs:—"instead of selling . . . . the occupancy [it shall be lawful] to forfeit only the said registered occupant's interest in the same." Here then "occupancy" means the land entered in a *registered* occupant's name. In sections 62 and 63 there is the *reductio ad absurdum* of the definition: the Collector may dispose of the occupancy of *unoccupied land*, that is, he can deal with "sum of rights vested in an occupant" who has never existed. The framers of the amending Act of 1901* added the phrase "or interest of the occupant" in the proviso to section 70 and in section 73A. In section 181 there is the expression "land included in such occupancy," where "occupancy" can have none of the foregoing meanings, and I have been unable to discover what is its exact purport.

Right of occupancy and rights of occupants.

11. The phrase "right of occupancy" or "occupancy-right" is not defined in the Code, but it occurs in a few places, *e.g.*, sections 63, 73 and 79A; and the title of chapter VI and the sub-title printed above section 65 mention "occupant's rights." It will tend to elucidate the subject if these phrases are examined. I must first recur to the word "occupant." The "occupant" (in the Code) is the person having the highest right to unalienated land (if there

* Bom. VI of 1901.

are tenants, he is the superior holder). Now it is plain that the occupant may hold under any tenure; he may be an absolute owner, a tenant holding directly under Government (though not under a private landlord), a mortgagor or mortgagee, the holder of a life interest, a grantee under a conditioned grant of any sort. The rights vesting in an occupant do not therefore constitute a specific kind of tenure, for those rights may vary indefinitely. And it is possible to go further; an occupant *as such* can be said to have no rights, and there is no such thing as "right of occupancy" or "occupancy-right" under the Land Revenue Code. An examination of the sections which purport to confer rights upon occupants as such will prove the truth of this statement, and show that either no rights are conferred or the rights exist independently of the status of occupant. The principal sections in point are 65, 68, 73 and 73A. By section 65 an occupant is granted liberty to use agricultural land in certain ways; but these rights go with the land: the word "holder" might be used with equal propriety for "occupant." In section 68 the proviso shows that no specific conditions attach, invariably, necessarily or by implication, to the position of an occupant; the period and conditions of the occupation may vary according to the circumstances of each grant. This is also borne out by sections 73 and 73A. Turning to other sections which might be thought at first sight to confer rights, it will be seen that in section 40 the word "holder" could be used for "occupant" (as in section 42); sections 74 and 104 confer no rights on occupants—they contain rules for resignation. Section 106, which forbids enhancement of assessment during a period of guarantee, does not even mention occupants. There are therefore no rights of occupants and no right of occupancy. The latter is, of course, a well known term, but in other enactments where it is used it has a meaning. In the Khoti Settlement Act, 1880, the rights included in the right of occupancy are defined in sections 5 to 10. Similarly in the Punjab Tenancy Act, 1887 (Act XVI of 1887), possession of the right of occupancy attracts certain other defined rights (*vide* sections 5, 22, 39, 53, 61 and 63). Enough has perhaps been said to show that the definitions of the Land Revenue Code are unsatisfactory and the use of words is inconsistent: a reconstruction is necessary if the difficulties that constantly arise in the interpretation and practical application of the Code are to be mitigated in future.

Possession.

12. It is now possible to attempt to formulate the principles upon which the revision of the Code for the purpose of re-defining the incidence of liability will proceed in accordance with the orders of Government. The resolution (No. 1489, dated the 14th February 1911) refers to the policy of making the actual occupant principally responsible for the land revenue in his possession (here "actual occupant" must mean a person in actual possession). The Commissioners, in their letter printed in the preamble to the resolution, would define "occupant" as the holder of unalienated land other than a tenant; and "holder" as a person lawfully in possession, either actual or constructive, of land. The preliminary word, then, is "possession," and it is necessary to consider its meaning. The word is explained as clearly as is possible in Lightwood's "Possession of Land."* "Possession is a matter of greater difficulty [than ownership], and it has sometimes been doubted whether it is a fact or a right. Primarily possession is a fact, but mere possession frequently secures for the possessor a certain measure of legal protection, and hence it becomes the source of a right known as the right of possession (*jus possessionis*) (page 1) . . . . Possession which is recognized by the law . . . . is known as civil possession, and although ordinarily the actual and the civil possession coincide, yet the civil possession, and with it the advantages of possession, may be ascribed to a person who has no actual possession. This happens in two classes of cases. The actual possession may be held by another on behalf of the civil possessor—by his servant or tenant, for example—and here the civil possession is still based on actual possession. Or there may be no connection at all between the civil and the actual possession, as where the actual possession is vacant, or is in dispute, or even where it is held adversely by another. Thus a civil possession,

*"Treatise on the Possession of Land," by J. M. Lightwood, Bar.-at-Law, 1894.

founded in the first instance on actual possession, may continue after the actual possession has come to an end, whether by mere loss of control over the thing or by the intrusion of a stranger. And so, too, before any actual possession has been acquired, civil possession may be recognized as existing; where, for example, the actual possession being in dispute between two persons, the civil possession is ascribed to the one who has the better title; or where, upon the death of the possessor, the civil possession is ascribed immediately to his heir." "Civil possession" is otherwise termed "constructive possession" and is practically identical with the right of possession, and all these terms are distinguished from "actual possession." The term "constructive possession" is used in section 3 of the Transfer of Property Act, 1882, as contrasted with "actual possession" (in the definition of "actionable claim"). But the term is not very generally used, and until the phraseology of the subject is more fixed, it is perhaps advisable to avoid the use of the word. In the definition of "holder," which I have proposed, I have therefore used a periphrasis.

Provisions of the Bill regulating liabilitity for land revenue.

13. The provisions of the draft Bill to which reference will first be made are the definition of "to hold land," "tenant," "occupant," and "occupancy." "'To hold land,' or to be a 'landholder' or 'holder' of land, means to be lawfully in possession of land, whether such possession is actual or not." Reference to a preceding paragraph will show that this definition is more limited than the present definition, but it will include constructive as well as actual possession, and will (in connection with the definition of "occupant" and with section 136) effectually base liability upon possession, as the existing provisions of the Code do not, and it appears to be suitable for the object in view. It is, as will be seen, the same in effect as the Commissioners' definition. Next, "'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." Thus, the "holder" is a person in lawful possession; the occupant is a person in (lawful and) *actual* possession (of unalienated land), *unless the person in actual possession is a tenant.* If the actual possessor is a tenant, then the landlord, who is not in actual, but in constructive, possession, is the occupant (or, if the landlord is himself a tenant, then the superior landlord is occupant). Here again I have adopted the Commissioners' definition, which appears suitable. Their version, however, leaves the meaning of tenant open to question. Now it will be observed here that in none of the discussions on the subject has it been noticed that a very large number of occupants are tenants, that is, actual lessees, holding under written leases from Government. It is sufficient, to prove this, to refer to No. 31 of the Land Revenue Code Rules; there is a variety of standard forms of lease and the individual instances must be numerous. If therefore all tenants are to be excluded from the definition of "occupant," these tenants of Government will have no status, and apart from the conditions of their particular leases, their liability to pay land revenue will not be determined. As they are clearly occupants, however, they have been specifically referred to in the definition of "tenant," to which I will now advert. The Land Revenue Code does at present contain a definition of tenant. "Tenant" is at present defined as a person who holds by a right derived from a superior holder; and a "superior holder" is a person entitled to receive rent or land revenue from other persons. Therefore, under the existing definition, a "tenant" is a person whose right is derived from another, and who pays either rent or land revenue to that other. But this is too wide to suit the facts; it would include all persons, whose land has been granted on any tenure whatever by Government or by any one else, if only they pay rent *or land revenue* to the grantor. That is, it would cover (*a*) lessees under Government, (*b*) proprietors of land whose land has been granted by Government and who pay land revenue (as most proprietors do), (*c*) a mortgagee with possession holding under a mortgage from a registered occupant (for the registered occupant would be responsible for the land revenue and the mortgagee should properly pay through him). I have therefore discarded the existing definition and have defined tenant as a "lessee." This is a very well known word and it is defined in the Transfer of

Property Act 1882, the Act which governs land tenure in the Bombay Presidency. In order, however, to show that no written lease is necessary, the definition has been framed thus:—"'tenant' means a lessee, whether holding under an instrument or under an oral agreement." This, read in connection with the third paragraph of section 83 of the Land Revenue Code, will cover all cases of customary tenancy and will not include tenures which are not tenancies, as the present definition does. Further, the definition in the Bill includes mortgagees of a tenant's rights with possession. Such mortgagees are in the same category as tenants; they can exist, for the Transfer of Property Act makes express provision for the mortgage by a lessee of his interest (section 108 (*j*)): and I am informed that instances are not uncommon; it is therefore necessary to provide for the case. Lastly, the proposed definition expressly excludes tenants holding directly under Government; such tenants therefore come under the definition of occupant, as is required. Now, taking the definition of "holder" and "occupant" with the provisions of section 136 it will be clear that under the proposed Bill liability for land revenue will be based primarily upon the actual possession of land. The definition of "occupancy" remains to be considered. This word is frequently used in the Code, and to avoid excessive alteration it seems advisable to retain it where possible. As has been shown before, its meaning varies considerably as at present used, and some one specific meaning must be assigned to it. The sense given in the existing definition (section 3 (*18*)) is not required, for it has been shown that there is no specific tenure implied in the word "occupancy" or in the status of an occupant: there is no "right of occupancy." Therefore the most suitable meaning to assign to the word seems to be "a portion of land held by an occupant." This will be analogous to the meaning given to "holding" and will be plain. The necessary alterations have been made in the text of the Code to ensure the consistent use of the word in this sense.

Ownership.

14. This appears to be an appropriate place to guard against a possible misconception. When unoccupied agricultural (unalienated) land is at present granted by Government to a person, the phrases used are—sell or dispose of the "occupancy" or the "occupancy right;" these words come from section 62 of the Code. But it has been seen that there is no such thing as an occupancy-right and that "occupancy" neither imports any specific rights or tenure nor excludes any. Consequently there is no change of meaning if, instead of speaking of the sale or disposal of an occupancy, one speaks of selling or disposing of the *land;* for when land is sold or disposed of by Government it is permissible to attach the same conditions to the tenure as when an "occupancy" is sold or disposed of. Land is always subject to land revenue, whether sold or not (unless exempted by special contract), under section 45; and mining rights are reserved by the Code (section 69). As incalculable confusion of thought and misunderstanding of intention and fact has arisen by reason of the use of the word "occupancy" in the sense of an aggregate of rights (because there are no rights which one can predicate of "occupancy"), it has been deemed advisable in the Bill to confine the word "occupancy" to the meaning of the land held by an occupant, and in speaking of sale, disposal and transaction in general with reference to land, to use the word "land," except where from the context it is already held by an occupant and is thereby an occupancy. There is no reason for apprehension that this terminology will confer the right of ownership (or any other right) where such right would not be conferred by the use of the terms at present employed in the Code. At present the great majority of occupants are owners, although Government have (in terms) only conferred occupancies upon them. An *occupant* who by the terms of the grant of the *occupancy* is entitled to hold his land for ever subject merely to the condition of paying a land tax (or enhanced land tax if the land is used for building), and subject to the reservation of mining rights, is an owner. Whereas a person may be granted *land* on terms that would make him merely a tenant-at-will of Government.

II.

The apportionment of liability within the survey number.

Sub-divisions.

15. The principle that liability should be based on possession being accepted, it has to be considered how the amount of assessment to be charged to the occupant should be ascertained in cases where the land held by him is less than the area of a survey number. This question would not arise at all if land could be assessed at so much per square yard without reference to any other factors than area. But as in practice it is necessary to assess land according to its quality, advantages and position, it is evident that there must be some unit of assessment or revenue unit. The revenue unit is at present the survey number. ("Recognized shares of survey numbers" are survey numbers for the present purpose and need not be separately considered.) The survey number is the unit of area on which a separate assessment is fixed at a revenue survey, or afterwards when for specific purposes a survey number may be split up into several survey numbers. The survey number (still including "recognized shares" in the term) is the unit of which the assessment is guaranteed, in the case of agricultural land, under section 102 of the Code, for a period of years. Now under the existing system of revenue administration the registered occupant is responsible for the assessment of the whole survey number. Changes of possession do not affect his responsibility, for he may not relinquish his liability for any portion of the survey number (including "recognized share"). When an alteration of name is made in the revenue records it must be made with reference to an entire survey number. But there is no limit to changes of possession. An occupant may sell, bequeath or mortgage any portion of a survey number; on his death it may descend to any number of representatives; and such changes of possession may take place at any time within the revenue year. In future, therefore, when any person comes into separate possession of a piece of land less than a survey number, it will be necessary to determine what portion of the assessment of the whole number he is responsible for, because he will be liable to pay the assessment on only the area in his possession. A subordinate revenue unit is therefore required, having a separate assessment. It is proposed to call all subordinate revenue units "sub-divisions".

Survey number, sub-division and recognized share.

16. The definitions of survey number and sub-division adopted in the Bill are as follows:—"'Survey number' means a portion of land of which the area and assessment are separately entered, under an indicative number, in the land records": "'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". First it is necessary briefly to allude to the term "land records". As used in the Bill, this phrase includes survey records, revenue records, the record of rights, village accounts, and in short all records maintained under the provisions of, or for the purposes of, the Land Revenue Code (which itself includes a chapter embodying the provisions of the Record of Rights Act). The Survey Department no longer exists and survey operations are carried out by the same agency as the general revenue administration, while the maintenance of the record of rights has taken an important position in the revenue system. There appears to be no reason for any legal distinction between the various kinds of records kept for the purposes of the revenue department and it is anticipated that the term "land records" (which is already used in administrative parlance) will be found convenient for general adoption. In the new definitions of survey number and sub-division quoted above, it will be seen that the only difference between them is that the sub-division is part of a survey number and that the number by which it will be known will be subordinate to that of the survey number of which it is a part (*e. g.*, survey number 101 may have sub-divisions numbered 101 A, 101 B, etc., or 101 (1), 101 (2), etc.) It is evident then that "sub-division" will include all existing "recognized shares", and it would be possible to use

the term "recognized share" instead of "sub-division" for the subordinate revenue unit. There is no practical difference between the existing definition of recognized share (section 3 (7)) and the proposed definition of sub-division. It will also be noticed that the only distinction made in the body of the Code between survey numbers and recognized shares is in section 99 (*b*). That section lays down that when a recognized share is absolutely relinquished (*i. e.* falls out of occupation) the holders of the other shares of the survey number are ultimately responsible for the assessment. This principle must, as will be shown below, be maintained and applied to all sub-divisions. It would therefore be possible to use the term "recognized share" for the subordinate revenue unit. But it is a cumbrous phrase. Also the new sub-division will coincide with the separate occupancy while the existing recognized share does not, and the use of an old word in a new application is open to misconception. It is therefore proposed to abolish the term "recognized share". The term "subordinate survey number" appears to have no legal sanction: it is used in number 55 of the Land Revenue Code Rules in the sense of a recognized share defined by boundary marks. This is an accidental and not an essential difference, and the word has not been used in the Bill. It greatly facilitates discussion and the investigation of legal questions if a simple and precise terminology is used. The only terms adopted for revenue units in the Bill, therefore, are survey number and sub-division. If these terms are accepted in the sense proposed, it will depend upon circumstances whether a given area is a survey number or a sub-division. Existing survey numbers must remain as such during the currency of an existing settlement of land revenue, subject to the provisions of section 116. Existing recognized shares, even if of less than the minimum area fixed for survey numbers under section 98, and existing "pôt numbers", may, if that course is advisable, be hereafter made into survey numbers with the sanction of the Commissioner of Survey; and the same principle will apply to sub-divisions constituted under the Bill: otherwise they will remain as sub-divisions. If a separate assessment has been fixed on an existing survey number or recognized share or pôt number at the time of a settlement of land revenue, the total assessment of that unit must not be raised when the unit is split up into sub-divisions. Sub-divisions of which the assessment may hereafter be guaranteed for a fixed period will also be safeguarded in the same way. In short, the only point to be remembered in connection with the formation of sub-divisions will be that a total assessment, which has once been fixed either on a survey number or sub-division for a period of years under section 102, must not be enhanced during such period. This point has been clearly brought out in the Bill (section 117A (4)) and subject to its due observance it will be possible to divide survey numbers into sub-divisions as may be required in order to make the assessment recoverable from each occupant from time to time correspond to the area in his possession.

Manner of assessment and record of sub-divisions.

17. The amount of assessment chargeable on a sub-division must be a portion of the assessment fixed on the whole survey number. The amount of this portion may be ascertained by survey, or by agreement between the parties (that is the persons holding the several sub-divisions of the number), or by the rule of proportion. The first method will not at present be feasible to any great extent. In practice the parties to a transfer of land generally agree as to the proportion of the assessment to be paid by each, and it will be possible to enter the assessment of the several sub-divisions according to actual payment, as is done at present in the record of rights. In cases where there is no agreement (for instance in cases of succession or dispute) it will be necessary for the revenue authorities to decide the proportion, and it is probable that it will generally be fixed by the rule of three. In the circumstances it appears necessary to leave the precise method of determining the relative assessments to be laid down in rules, and section 117A has been framed accordingly. Similarly, the question of the record or register in which the area and assessment of sub-divisions are to be entered, has been left open. As the record of rights is maintained everywhere except in certain exempted areas, and as that record already shows the area and assessment of sub-divisions, it is probable that it will be found convenient to continue the present practice.

18. It must here be observed that the unrestricted creation of sub-divisions will not involve any risk to the realization of the land revenue and will not cause the disintegration of the survey number. The revenue is safeguarded by section 99 (*b*), which appears in the Bill as section 117B. The maintenance of the responsibility of all the holders of sub-divisions within a survey number for the revenue of any sub-division that goes out of occupation will be necessary at least until it becomes possible to survey and assess separately every sub-division that is made. For it is not unlikely that an unequal distribution of assessment over sub-divisions will occur by agreement, collusion or otherwise, and in the absence of such a provision as section 117B the overburdened sub-divisions would sooner or later become waste. Nor will the recognition, for revenue purposes, of divisions of interest affect in any way the occurrence of such divisions. The only way to prevent the creation of occupancies less in area than survey numbers would be to enact a law against the transfer or inheritance of land in parcels of less than a specified area. The divisions already exist: their recognition does not affect the matter in any way. The last point to notice in connection with sub-divisions is the definition of "joint occupants" in the Bill. Owing to the ambiguity arising from the present use of the word "co-occupant", it seems advisable to lay down clearly what is meant by "joint occupant" and to avoid the use of the word "co-occupant". At present, when a piece of land, for the assessment of which one registered occupant is responsible, is actually held by several persons with independent titles, each of those persons may appropriately be termed "co-occupants". But when all several occupants are separately recognized, there will be no co-occupants. There will on the other hand be "joint occupants". To hold land jointly means that the interests of the holders are indistinguishable: a group of joint holders is one person. The actual terms of the definition given in the Bill were suggested by sub-sections (1A) and (2) of section 9 of the Bombay Court of Wards Act, 1905, of which the wording was recently settled after exhaustive discussion.

Disintegration of the survey number. Joint occupants.

III.

The record of liability and the record of title.

19. The two principal sections of the Land Revenue Code relating to the actual assessment of land are sections 52 and 100: the first enables the Collector to determine the assessment in cases where it has not been fixed at a survey and guaranteed for a period of years: the second enables a survey officer to fix the assessment during the course of a survey. But the Code does not require that the record of liability, that is the record of the assessment from time to time to be levied on land, and the persons by whom it is payable, should be kept in any particular form. Section 108 prescribes a "settlement register", but that is not necessarily the record of liability: the actual record of liability is one of the village forms, which are maintained under section 17 or in accordance with rules under section 214. Similarly the Bill does not lay down any particular record of liability. If necessary such a record could be prescribed by rule under section 214, but it is probable that the record of rights, which already contains the assessment of survey numbers and sub-divisions and the names of occupants, will be sufficient for the purpose. In areas in which the record of rights chapter will be declared not to be in force (*e. g.*, khoti and alienated villages) no other record of liability will be required than exists at present. In khoti villages the matter is provided for by section 17 of the Khoti Settlement Act, 1880. In alienated villages the system of basing the primary liability upon actual possession will not apply, for a holder of alienated land is not an occupant, and in the case of alienated land the superior holder will, as heretofore, be primarily responsible for the land revenue. It seems unnecessary therefore to maintain any other register than the record of rights as a record of liability. This becomes more evident when it is realized that the record of rights will be at the same time a more important and a more correct record than at present. The reasons why it will be so are given in the following paragraph.

The record of liability.

20. In the first place it has been decided as a matter of policy that officers of a superior grade, that is " aval karkuns " (or Mamlatdars' first karkuns) should be employed in connection with the record of rights. The Bill provides (new section 135D (5) and (6)) that entries shall not be transferred from the register of mutations to the record of rights until they have been tested and certified by an officer of the grade mentioned. Secondly, section 135J will raise the presumption for all purposes that an entry is true until it is proved not to be so. No landowner will run the risk of allowing an incorrect entry to remain on the record, when it may be used to his disadvantage at any time in a revenue or civil proceeding. At present some laxity has been observed in the reporting of the acquisition of rights: if this section becomes law, one of the first things which the parties to a transaction would do, would be to take measures for the alteration of the record of rights. Thirdly, the plaintiff in a suit relating to land is required under the present law (Bom. IV of 1903, section 10) to annex to the plaint a certified copy of any entry in the record of rights regarding the subject-matter of the suit. This enactment has been extended to applications by new section 135H and will therefore have a more general effect, particularly when the entry in the record is presumed to be true. Fourthly, the fact that the entry in the record of rights will show the person who is liable for the land revenue will make the entry a matter of great interest to the revenue payer. Payment of land revenue is some sort of evidence of title, and in practice persons who are in possession of land are almost invariably found to be desirous of having their liability recognized. The existing records of rights are fairly correct: they have stood the test of time and it is reasonable to suppose that in the course of test and revision errors have been brought to light and corrected. But the foregoing facts appear to justify the assumption that if the Bill becomes law any errors that have as yet been undetected will be removed at an early date, while there will be adequate security for the correctness of future entries.

The record of rights as a record of liability.

21. If the principles outlined in the foregoing paragraphs of this report are accepted, it appears hardly necessary to add anything in justification of the inclusion of the provisions of the Record of Rights Act in the Land Revenue Code. The record of rights will be in a sense the basis of the revenue administration: it will show the actual facts of the occupation of land and the land revenue payable by each holder. Secondly, it would be anomalous to take away the system of registered occupancy and to substitute nothing in its place in the Code. The occupant is liable for the land revenue; but there would be no indication of the manner in which the occupant is to be discovered. Thirdly, Mr. Curtis, in the admirable note to which reference has already been made,* has shown that the record of rights, properly understood, constitutes a step in the evolution of the transfer of land—a stage in the process by which conveyance by the agency of the State has been substituted, in many progressive communities, for private conveyance. He has shown however that at present it is of very little use, and has expressed the opinion that unless it is made the keystone of the revenue administration and the fundamental register of title it will remain a statistical incubus. It is believed that the present Bill will place the record in its natural position with reference to the revenue administration, and facilitate any further reforms which Government may hereafter decide to effect in relation to the public transfer of land.

The position and importance of the record of rights.

IV.

Specific amendments in the Bill.

22. The first group of amendments comprised in the Bill consists of the chief alterations required for the imposition of the primary liability on the occupant and the abolition of the registered occupant. The *definitions* have been mentioned previously: it may be added here that the

Amendments in the Land Revenue Code relating to the liability for revenue.

* The first note appended to Government Resolution No. 388, dated the 13th January 1908.

words "*occupy*" and "*occupation*", although they are unnecessary, have been retained in order to avoid change as far as possible, and they have been assigned a definite meaning (possess, possession). The definition of "*superior holder*" has been recast, but its meaning remains the same. Turning to the body of the Code, the first portion of *section 70* has been repealed: so far as it refers to registered occupants, it will have no application; so far as it refers to occupants it is covered by the record of rights chapter. *Section 71* refers entirely to registered occupants and has been repealed. *Section 74* has been redrafted. So far as it refers to registered occupants, it will not be required. There will also be no such thing as "relinquishment in favour of a specified person." Such "relinquishment" means principally a relinquishment of liability for revenue, and, generally, a release of liabilities and rights under the Code: it has no reference to the title to land. But under the Bill, liability for revenue will change automatically with change of possession and there will be no separate relinquishment of liabilities and rights. Again, if the occupant holds under a written agreement with Government, that agreement will be his title deed and will be transferred when a transfer of the land is effected, as in the case of other title deeds: no new agreement between Government and the transferee will be required. And the words "subject to any rights . . ." have been inserted in the amended section: I have been assured that, although they are implied in the present section, the principle they embody is frequently forgotten by revenue officers. Relinquishment in future will mean absolute relinquishment, and to this kind of relinquishment alone the principle of co-responsibility for the assessment of sub-divisions will apply (section 117B). *Section 75* conflicts with the principle of the Bill: any portion of land may be transferred and so (in the case of unalienated land) the liability of any portion must shift with the transfer. It is doubtful whether any cases that would be covered by the section still exist in unalienated land. If they do, and occasion arose, a separate assessment could be placed on individual survey numbers under section 106; the assessment of sub-divisions is covered by section 117A. Alienated lands are governed by the terms of the particular tenure in each case, and so are special tenures of unalienated land. The first clause of *section 78* is covered by the definition of "joint holders" in section 3 and it is in any case superfluous: a joint holder cannot act apart from his co-holders. As there is nothing in section 76 which could affect the validity of the terms of an express grant, and section 73 has been repealed, the provisions of clause (*b*) of section 78 are not needed with reference to those sections: but clause (*b*) is required with reference to section 74, and that section has therefore been alluded to in place of the said sections. *Section 79* is obsolete and has been repealed. *Section 80* has been revised in view of the substitution of "occupant" for "registered occupant" as responsible for revenue. *Section 81* is obsolete and has been repealed. *Section 99* has been repealed: in its place section 117B has been inserted in a more appropriate position: section 117B follows the Commissioners' draft with verbal alterations. In *section 113* the first two rules will have no application under a system of free transfer of liability: if a sub-division is relinquished, the case is covered by section 117B: the third rule has been retained in the amended section. *Section 115* is obsolete. *Section 117A* has already been referred to. *Section 136* has been recast in view of the abolition of the registered occupant. The revision of the wording of *section 185* is consequential upon the words "including all arrears" in section 136. The words "registered occupant", and "co-occupant", as the case may be, have also been repealed in *sections 65, 66, 108 and 217*.

Subsidiary amendments.

23. Secondly there is a group of amendments subsidiary to the first group and relating to the same subject. The definition of "*sub-division*" and the recognition of sub-divisions have required verbal amendments in sections 104, 119 and 122. The definitions of "*occupant*" and "*occupancy*" have required verbal amendments in sections 62, 63, 68, 70, 73, 73A, 79A, 111, 130, 163, 181 and schedule H. With regard to section 63, the phrase "disposed of in perpetuity" is incorrect: alluvial land, like other land, may be granted on any conditions the Collector deems fit, under sections 62 and 68. With respect to section 111, as the Collector could not sell land in an alienated village under management, the wording has been altered to "grant unoccupied lands on lease." The definition of "*land-records*" has occasioned verbal amendments in sections 98, 119, 181 and 213 only. The proper sense of *holding* has been preserved by a verbal amendment of section 57. The use of the word *holding* in *sections 47 and 64*

raises difficulties in connection with the new principle of assessment of sub-divisions : the course that suggests itself is to fix the limit absolutely at half an acre : such cases occur but rarely and the amendment will make no practical difference. *Sections 109 and 110* have been repealed. Section 109 provides for the correction of the settlement register, (*a*) in respect of clerical and admitted errors, (*b*) in respect of registered occupants' names. Registered occupants' names will not in future be entered in the register, and therefore the second and third clauses of the section are unnecessary. With respect to the first clause—the correction of clerical and admitted errors—there is no reason to treat this register differently from other land records. The impossibility of correcting it causes practical inconvenience at present. The repeal of the section will bring it to the level of other registers maintained under the Act, that is, their maintenance and correction will be regulated by the orders of Government and rules under section 214 (*o*). The fixity of assessments guaranteed under section 102 will be preserved by section 106. *Section 110* is obsolete : it has been repealed and a small consequential amendment made in section 119.

Amendments in other Acts consequential upon the foregoing amendments in the Code. Khoti Act.

24. The third group of amendments is contained in Parts III and IV of the draft Bill and comprises amendments in other Acts than the Land Revenue Code : these amendments are with one exception (referred to below) consequential upon the amendments included in the first two groups. I shall refer first to the *Khoti Settlement Act, 1880*. In clauses 78, 79, 83 and 84 of the Bill there will be found some provisions which will effect a verbal alteration in certain terms used in the Khoti Act. For "right of occupancy" and "occupancy tenant" it is proposed to substitute "*permanent tenancy*" and "*permanent tenant*". This is merely an alteration in words and does not affect the meaning of the Act at all. The reason for the change is that in the Land Revenue Code the word "occupancy" will mean the *land* held by an occupant, and to retain this word in the Khoti Act in an entirely different meaning and connection would be anomalous. Right of occupancy in the Khoti Act is defined by the provisions of sections 5 to 10 of that Act, and clearly has the sense of "permanent tenancy" : the necessary alteration has therefore been made throughout. *Section 26* of the Act contains a reference to *the registered occupant*. This must clearly be altered and it is proposed simply to repeal the last few words of the section from "and shall for all the purposes" to the end (clause 82 of the Bill). On careful consideration of all the sections of the Land Revenue Code in which the phrases "registered occupant" and "occupant" are used, it will be found that no further change is needed : for by section 26 of the Khoti Act the managing khot is empowered to receive rents, pay the Government dues, and generally to perform all acts legally required to be performed by the khot. This section in fact gives the khot (who is the "occupant" of all lands not held by privileged occupants) the power to act on behalf of other occupants (*i.e.*, other sharers), and this is exactly the purpose of the registered occupant in the Land Revenue Code. The amendment of *section 16* of the Khoti Act (clause 81 of the Bill) is also consequential upon the abolition of the registered occupant : the rent payable by each privileged occupant must at present be entered in the "other records" by virtue of section 17 : therefore it is probable that the names of all privileged occupants are already entered in the settlement register. If this is not so (as to which I have no information), it will be necessary to enter the names of such privileged occupants as hold on separate tenure. There will be no registered occupant in the case of privileged occupants, but as privileged occupants are already treated separately in respect of rent (sections 17 (*a*) and 20 (*1*) (*b*)) this will cause no difficulty. It will be remembered that in khoti villages the settlement register already records all changes, by virtue of section 18, and is therefore in effect a record of rights. *Section 39* of the Khoti Act has been amended (clause 85 of the Bill) by the elision of the reference to sections 99, 109 and 110 of the Land Revenue Code which have been repealed, and the addition to the excepted sections of new sections 117A and 117B which cannot apply. Clause (*a*) of section 39 of the Khoti Act has been repealed in view of the alteration of section 103 of the Land Revenue Code. Amended *sections 9 and 10* of the Khoti Act have been inserted, not with reference to the alteration of liability

in the Land Revenue Code, but because these amendments have been approved separately by Government and it would appear to be convenient to include them in the Bill: a few verbal alterations have been made so as to use the phrases "permanent tenants" and "permanent tenancies".

Gujarát Tálukdárs Act.

25. The *Gujarát Tálukdárs Act, 1888*, presents less difficulty, because the Act itself constitutes the registered tálukdár. The only amendment contained in Part IV of the Bill that appears to call for separate mention is the repeal of the phrase "the words 'registered tálukdár' for the words '*registered occupant*'" in section 33 (*2*) (*m*) of the Tálukdárs Act. It would at first sight seem that some provision is needed to enable the registered tálukdár to act on behalf of the other sharers in cases where the Land Revenue Code now empowers or requires the registered occupant to act on behalf of other occupants. There will however be no difficulty. Of the relevant sections of the Land Revenue Code, sections 65, 66, 67, 109, 136 and 217 do not apply (Tálukdárs Act, section 33 (*1*)): sections 70, 71, 79, 108 and 115 have been repealed in whole or in part. Section 74 will in future require an (absolute) relinquishment to be made by the whole body of tálukdárs, but it is doubtful whether such a contingency ever occurs, and if it did it would cause no difficulty. Section 80 requires no change.

Amending Acts.

26. The *Acts amending the Land Revenue Code* have been provided for in clause 3 of the Bill: they are the following:—Act XVI of 1895; Bombay Acts VII of 1879, III of 1886, IV of 1886, VI of 1901, IV of 1905 and I of 1910. In view of the number of amending Acts, to which it is proposed to add another, it is for consideration whether, as soon as the Amending Act has been passed, a consolidating Act should not be enacted for the purpose of repealing all the amending Acts and passing the Land Revenue Code as amended to date, with the sections renumbered. This course, for which I think precedents could be found, would make the reprinting of the Code an easier matter than it is at present and would remove a good deal of useless matter from the statute book. A purely consolidating Act would not be open to discussion (as regards its subject-matter) in the Legislative Council.

Revenue Jurisdiction and Court of Wards Acts.

27. There appear to be no Acts, other than the foregoing, in which alteration will be required. Under section 5 (*a*) of the *Bombay Revenue Jurisdiction Act, 1876*, it will be observed that a suit brought to contest a recovery of revenue, on the ground that the plaintiff is not the person liable, is cognizable by a Civil Court. But no danger is anticipated on this account. For, firstly, the enactment applies at present and causes no difficulty, although revenue is frequently recovered from persons who are not registered occupants. Secondly, in practice, persons are anxious, rather than the reverse, to be recognized as liable for revenue. In the same section the expression "recognized share" is used; but a specific amendment is rendered unnecessary by section 9 of the Bombay General Clauses Act, 1904. No change appears necessary in section 2 (*b*) of the *Bombay Court of Wards Act, 1905*, for the practical effect of the new definition of "holder" in the Code will be the same for the purposes of the Court of Wards Act as that of the old definition.

The record of rights chapter.

28. The fourth group of amendments concerns the record of rights and is contained in new Chapter XA of the Land Revenue Code. This chapter embodies the draft prepared by the Commissioners and submitted to Government with their letter No. R.—2813, dated the 26th September 1910, with the following modifications:—(1) The manner in which tenancies in general shall be dealt with has been left to rules. Section 135C requires all rights to be reported. But section 135B (*2*) lays down that no tenancies (except perpetual tenancies) shall be entered in the record of rights, except so far as Government by notification directs in the case of any specified classes of tenancies. Section 135D (*7*) directs that tenancies (other than perpetual tenancies and tenancies to which such a notification may apply) shall be entered in a separate "register of tenancies" in such manner and under such procedure as Government may prescribe by rules. Therefore (unless such a notification as aforesaid is issued) all tenancies except perpetual tenancies will be entered in a separate register.

This register of tenancies could conveniently be Part II of the Mutation Register which has recently been introduced, unless it is decided to record additional statistics regarding this class of rights. This register is not really a mutation register, it is a register of tenancies; and it is proposed to alter the name accordingly. (2) Section 135H embodies (with a few verbal alterations) the redraft of sections 10 and 11 of the Record of Rights Act which has already been submitted to Government. (3) Section 135J is similar in purport to section 44 of the Punjab Land Revenue Act, 1887. Some such section appears to be absolutely necessary if the record of rights is to be of any practical value, and I have ventured to insert it in the Bill. In view of this section it appears necessary to insert a provision (section 135D (5) and (6)) requiring that entries in the register of mutations shall be tested and certified by an officer of a rank not lower than that of a Mamlatdar's first karkun* before they have the same validity as an entry in the record of rights. (4) The inclusion of the provisions of the Record of Rights Act has enabled those provisions to be shortened in several respects: the definitions in section 2 of the Record of Rights Act relating to "chavdi", "certified copy", and Sind, have been entered in section 3 of the Land Revenue Code: the definition of "suit" (extended to include suits under the Mamlatdars' Courts Act in accordance with the orders of Government) will be found in section 135H (4), and that of "High Court" is unnecessary, for the phrase only occurs in section 135H (3), where it is explained. The provisions of section 17 and of section 1 (3) of the Record of Rights Act have been combined in new section 135A. The provisions of section 3 (2), (3) and (4) of the Record of Rights Act are reproduced in section 214 (*l*) of the Code.

Other amendments.

29. The fifth and last group of amendments consists principally of those separately approved by Government. In *sections 13 and 14* provision has been made for the appointment of Mahalkaris without a defined local charge: this alteration was approved by Government partly in order that Mamlatdars' first karkuns might be empowered to perform the duties of a Mamlatdar or Mahalkari under the Record of Rights Act without the useless formality of constituting a local "mahal". The revised provisions of chapter XA will render the amendment unnecessary for this purpose, but as the provision may be useful for other purposes it has been included in the Bill. The amendment of *section 37* and the repeal of *section 135* have been approved by Government. The amendment of *section 48*, with the consequential amendments in sections 38, 61, 65, 66, 116 and 134, has been approved by Government. The amendment of *section 88* (*d*) has been ordered by Government. New *section 94A* has been approved by Government. The amendment of *section 132* has similarly been approved. Here it is necessary to observe that the draft amendment of *section 121* has not been inserted in the Bill. It was proposed to add the following sub-section to section 121:—"(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 not to appertain to his holding or to the holding of any person through or under whom he claims." Now it would seem at first sight as if this power was the natural corollary of the existing clause (*b*) of the section. If the Collector may determine the rights of landholders, he should be able to evict a landholder wrongfully in possession of land judged not to belong to him. But the purport of section 121 (*b*), if construed in this comprehensive manner, is foreign to the context in which the section occurs and gives the Collector powers outside his duties as a revenue officer. Chapter IX applies to the settlement of boundaries. Sections 118 and 119 empower the officer enquiring into a matter regarding boundaries to fix the limits of villages or fields. The wording of these sections clearly shows that what such officer is empowered to do and what he was intended to do, is to ascertain and decide the actual physical boundary line between villages, holdings or survey numbers; to decide, that is, how much land belongs to field (or village) A, and how much to field (or village) B, and to point out the line between them. And, so far, the determination of the boundary involves the determination of the rights of the holders of A and B

*This is the term as used in the present Code.

(who may be referred to as a′ and b′). But the chapter does not contemplate that the Collector should enquire whether a′, who now holds a portion of B, does so by encroachment or by right: the Collector is concerned solely with the question whether the field A ends here or there. The proposed amendment would transfer to the Collector the power of deciding questions of title to land arising between private parties, which properly belong to the Civil Courts. I state these views with great deference and have refrained from including the provision in the Bill pending the further orders of Government: it involves no other changes in the Act and can be inserted at any time if Government desire.

30. I now refer to certain amendments of no great importance which have been inserted in the Bill for the reasons given below, but on which no orders have been recorded. *Section 1.* The Record of Rights Act applies *proprio vigore* to Sind: the Land Revenue Code does not, but has been applied under the Scheduled Districts Act, 1874. As the first named Act is now to be embodied in the Code it would be convenient if the Code were made to apply *proprio vigore* to Sind. *Section 2* is spent. The definition of "Collector" in *section 3* (*3*) is unnecessary in view of section 3 (11) of the Bombay General Clauses Act, 1904. *Section 7* has been slightly altered to enable Government to prescribe the limits of districts and other revenue divisions: notifications are frequently issued to this effect, but strictly the section only applies to the number of such divisions. The latter portion of *section 42* is spent. The second paragraph of *section 54* is obsolete. With regard to *section 67*, it has been doubted whether this section allows the Collector to conclude an agreement with the occupant: in terms it refers to Government. For administrative purposes the Collector should have the power, subject to rules made by Government. Further, it is proposed, by the amendment of section 88 (*d*), to give *inamdars* powers under section 67 and it would be anomalous that the *inamdar* should have a power which the Collector does not possess. *Section 103* has been altered for administrative reasons. The existing provisions are productive of great inconvenience and in the circumstances of the present day involve a useless formality. The amended section will indicate clearly the point at which a settlement is to be deemed to be introduced. *Section 116* has been slightly expanded to cover certain omitted cases. The references to the old Civil Procedure Code have been brought up to date in *sections 120, 189 and 192.* The last clause of *section 132* is spent. A few words have been added in *section 133* to cover cases where the terms of Schedule H are not strictly applicable to the tenure of the holder: a case recently occurred which will be within the remembrance of the Revenue Department. The form of *section 214* is obsolete and the section has been redrafted in conformity with the wording now generally used: a "rule" must be general and there is no need to preserve the power of making a rule in a particular instance. It will be found that the new section confers exactly the same powers as the former section in cases where the Code has not been amended, and it adds certain powers rendered necessary by new or amended provisions. The consistent use of the word "rules" requires that the phrase "or orders" and certain other redundant words should be repealed in sections 32, 52, 56, 61, 68 and 122. Lastly, *Schedule A* is spent and has been repealed.

Conclusion.

31. The work preliminary to the compilation of this report was carried out in consultation with Mr. F. G. Pratt. The report was not actually written when he took leave, but the provisions of the Bill were drafted before he left Poona, and he authorized me to say that he fully concurred in all the measures proposed. Mr. Pratt wished me to add that he was not certain how far the modifications of procedure relating to the liability for land revenue, which had been fully discussed with reference to the Presidency proper, had been considered with reference to the circumstances of Sind.

G. D. FRENCH.

18th April 1911.

APPENDIX.

Lists of sections.

1. The following words occur in the following sections :—

(1) Registered occupant.—3, 65, 66, 67, 70, 71, 74, 79, 80, 81, 108, 109, 115, 136, 217.

(2) Occupant.—3, 40, 56, 63, 64, 65, 66, 68, 69, 70, 72, 73A, 74, 75, 80, 81, 82, 99, 104, 163, 181, 217.

(3) Occupancy.—3, 56, 62, 63, 68, 70, 72, 73, 73A, 74, 75, 79, 79A, 80, 81, 99, 111, 130, 150, 153, 181, 214.

(4) Occupy.—40, 61, 62, 68, 79A, 130, 214.

(5) Occupation.—38, 43, 54, 60, 61, 64, 65, 68, 79A, 80, 81, 119, 136, 217.

2. There are specific rule-making powers in the following sections :—

(1) Old sections retained.—21, 32, 48, 52, 56, 61, 100, 122.

(2) New or amended sections.—37, 62, 67, 68, 103, 117A, 135B, 135D, 135G.

(All those in group (1) are referred to in old section 214.)

BILL No. I of 1921.

A Bill further to amend the Bombay Land Revenue Code, 1879.

(As amended by the Select Committee.)

WHEREAS it is expedient further to amend the Bombay Land Revenue Code, 1879, in manner hereinafter appearing; It is hereby enacted as follows:—

Bom. V of 1879.

Short title.

1. This Act may be called the Bombay Land Revenue Code (Amendment) Act, 192 .

Amendment of section 61.

Bom. V of 1879.

2. In section 61 of the Bombay Land Revenue Code, 1879, hereinafter called the said Code—

(*a*) for the first paragraph the following paragraph shall be substituted, namely :—

"~~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 having been lawfully in occupation of any such land ceases under any of the provisions of this Act or any rule thereunder or any condition of an agreement made with the Collector to be entitled to its occupation, shall~~";

"*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*"

and

(*b*) in the second paragraph before the word "occupation" the word "unauthorized" shall be inserted.

Amendment of section 79A.

3. For clause (*a*) of section 79A of the said Code, the following clause shall be substituted, namely :—

"(a) ~~to the use and occupation of which he was not entitled or his right~~

~~thereto under any of the provisions of this Act or any rule thereunder or any condition of an agreement made with the Collector has ceased, or~~"

"(*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*"

BILL No. I of 1921.

A Bill further to amend the Bombay Land Revenue Code, 1879.

REPORT OF THE SELECT COMMITTEE.

We, the undersigned members of the Select Committee appointed to consider Bill No. I of 1921 (a Bill further to amend the Bombay Land Revenue Code, 1879), beg to submit our report as follows :—

1. As under section 68 of the Act an occupant of land is only entitled to occupy land for the period to which his tenure is limited or if the period is unlimited on fulfilment of the terms and conditions lawfully annexed to the tenure we have deleted in the amendments of sections 61 and 79A all reference to rules under the Act and conditions of an agreement made with the Collector as unnecessary. We have also slightly altered the drafting of both amendments.

2. We direct that this report and the bill as amended should be published in Marathi, Gujarati, Kanarese and Sindhi.

IBRAHIM RAHIMTOOLA.
C. M. BAKER.
R. R. KALE.
P. R. CHICKODI.
B. G. PAHALAJANI.
NAHARSINGJI.
RAMANBHAI M. NILKANTH.
F. G. PRATT.
V. N. MUTALIK.

6th May 1921.

Government of Bombay.

LEGAL DEPARTMENT.

[Bill No. I of 1921.]

(As amended by the Select Committee.)

A Bill further to amend the Bombay Land Revenue Code, 1879.

[The Honourable Sir IBRAHIM RAHIMTOOLA, Kt., C.I.E.]

[*Price—2a. 6p.*]

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